



# Child Support, Pensions and Social Security Act 2000

## 2000 CHAPTER 19

### PART I

#### CHILD SUPPORT

##### *Applications for a variation*

#### **5 Departure from usual rules for calculating maintenance.**

- (1) The 1991 Act shall be amended as follows.
- (2) For sections 28A to 28C (which deal respectively with applications for departure directions, their preliminary consideration, and the imposition of a regular payments condition) there shall be substituted—

##### *“ Variations*

#### **28A Application for variation of usual rules for calculating maintenance.**

- (1) Where an application for a maintenance calculation is made under section 4 or 7, or treated as made under section 6, the person with care or the non-resident parent or (in the case of an application under section 7) either of them or the child concerned may apply to the Secretary of State for the rules by which the calculation is made to be varied in accordance with this Act.
- (2) Such an application is referred to in this Act as an “application for a variation”.
- (3) An application for a variation may be made at any time before the Secretary of State has reached a decision (under section 11 or 12(1)) on the application

*Status: Point in time view as at 10/11/2000.*

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for a maintenance calculation (or the application treated as having been made under section 6).

- (4) A person who applies for a variation—
  - (a) need not make the application in writing unless the Secretary of State directs in any case that he must; and
  - (b) must say upon what grounds the application is made.
- (5) In other respects an application for a variation is to be made in such manner as may be prescribed.
- (6) Schedule 4A has effect in relation to applications for a variation.

### **28B Preliminary consideration of applications.**

- (1) Where an application for a variation has been duly made to the Secretary of State, he may give it a preliminary consideration.
- (2) Where he does so he may, on completing the preliminary consideration, reject the application (and proceed to make his decision on the application for a maintenance calculation without any variation) if it appears to him—
  - (a) that there are no grounds on which he could agree to a variation;
  - (b) that he has insufficient information to make a decision on the application for the maintenance calculation under section 11 (apart from any information needed in relation to the application for a variation), and therefore that his decision would be made under section 12(1); or
  - (c) that other prescribed circumstances apply.

### **28C Imposition of regular payments condition.**

- (1) Where—
  - (a) an application for a variation is made by the non-resident parent; and
  - (b) the Secretary of State makes an interim maintenance decision,
 the Secretary of State may also, if he has completed his preliminary consideration (under section 28B) of the application for a variation and has not rejected it under that section, impose on the non-resident parent one of the conditions mentioned in subsection (2) (a “regular payments condition”).
- (2) The conditions are that—
  - (a) the non-resident parent must make the payments of child support maintenance specified in the interim maintenance decision;
  - (b) the non-resident parent must make such lesser payments of child support maintenance as may be determined in accordance with regulations made by the Secretary of State.
- (3) Where the Secretary of State imposes a regular payments condition, he shall give written notice of the imposition of the condition and of the effect of failure to comply with it to—
  - (a) the non-resident parent;
  - (b) all the persons with care concerned; and

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- (c) if the application for the maintenance calculation was made under section 7, the child who made the application.
- (4) A regular payments condition shall cease to have effect—
  - (a) when the Secretary of State has made a decision on the application for a maintenance calculation under section 11 (whether he agrees to a variation or not);
  - (b) on the withdrawal of the application for a variation.
- (5) Where a non-resident parent has failed to comply with a regular payments condition, the Secretary of State may in prescribed circumstances refuse to consider the application for a variation, and instead reach his decision under section 11 as if no such application had been made.
- (6) The question whether a non-resident parent has failed to comply with a regular payments condition is to be determined by the Secretary of State.
- (7) Where the Secretary of State determines that a non-resident parent has failed to comply with a regular payments condition he shall give written notice of his determination to—
  - (a) that parent;
  - (b) all the persons with care concerned; and
  - (c) if the application for the maintenance calculation was made under section 7, the child who made the application.”
- (3) In section 28D (determination of applications)—
  - (a) for subsection (1) there shall be substituted—
    - “(1) Where an application for a variation has not failed, the Secretary of State shall, in accordance with the relevant provisions of, or made under, this Act—
      - (a) either agree or not to a variation, and make a decision under section 11 or 12(1); or
      - (b) refer the application to an appeal tribunal for the tribunal to determine what variation, if any, is to be made.”;
    - (b) in each of subsections (2) and (3), for “an application for a departure direction” there shall be substituted “an application for a variation”; and
    - (c) in subsection (2), in paragraph (a) “lapsed or” shall be omitted, at the end of paragraph (b) “or” shall be inserted, and after that paragraph there shall be inserted—
      - “(c) the Secretary of State has refused to consider it under section 28C(5).”
- (4) In section 28E (matters to be taken into account)—
  - (a) in subsections (1), (3) and (4), for “any application for a departure direction” (wherever appearing) there shall be substituted “whether to agree to a variation”; and
  - (b) in subsection (4)(a), for “a departure direction were made” there shall be substituted “the Secretary of State agreed to a variation”.
- (5) For section 28F (departure directions) there shall be substituted—

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**“28F Agreement to a variation.**

- (1) The Secretary of State may agree to a variation if—
  - (a) he is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
  - (b) it is his opinion that, in all the circumstances of the case, it would be just and equitable to agree to a variation.
- (2) In considering whether it would be just and equitable in any case to agree to a variation, the Secretary of State—
  - (a) must have regard, in particular, to the welfare of any child likely to be affected if he did agree to a variation; and
  - (b) must, or as the case may be must not, take any prescribed factors into account, or must take them into account (or not) in prescribed circumstances.
- (3) The Secretary of State shall not agree to a variation (and shall proceed to make his decision on the application for a maintenance calculation without any variation) if he is satisfied that—
  - (a) he has insufficient information to make a decision on the application for the maintenance calculation under section 11, and therefore that his decision would be made under section 12(1); or
  - (b) other prescribed circumstances apply.
- (4) Where the Secretary of State agrees to a variation, he shall—
  - (a) determine the basis on which the amount of child support maintenance is to be calculated in response to the application for a maintenance calculation (including an application treated as having been made); and
  - (b) make a decision under section 11 on that basis.
- (5) If the Secretary of State has made an interim maintenance decision, it is to be treated as having been replaced by his decision under section 11, and except in prescribed circumstances any appeal connected with it (under section 20) shall lapse.
- (6) In determining whether or not to agree to a variation, the Secretary of State shall comply with regulations made under Part II of Schedule 4B.”

**Commencement Information**

- II** S. 5 partly in force; s. 5 not in force at Royal Assent see s. 86(2); s. 5 in force for certain purposes at 10.11.2000 by S.I. 2000/2994, art. 2; s. 5 in force for certain further purposes at 3.3.2003 by S.I. 2003/192, art. 3, Sch.

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