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CHILD SUPPORT: THE LEGISLATION

Commentary by
Edward Jacobs and Gillian Douglas

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CHILD SUPPORT: THE LEGISLATION

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To Jill and Ane

FOREWORD

In keeping with the companion volumes in the Social Security Legislation series, this volume of Child Support legislation and accompanying commentary has rapidly become an indispensable source of information and guidance for those working in the difficult area of Child Support. I welcome this latest edition and commend it to all those who have an interest in this area of work, whether they are decision-makers, panel members or appellants.

His Honour Judge Michael Harris
President of Appeal Tribunals

PREFACE

This edition is based on materials available to me at the end of May 2005.

The child support scheme as reformed by the Child Support, Pensions and Social Security Act 2000 has not been implemented as smoothly or as quickly as anticipated. This has led to a continuing demand for the material that was last provided in the 1999 edition of this book. The ideal solution would have been to include all the law that comprises both the reformed and the unreformed scheme. That, however, would have resulted in a large book that was cumbersome to use and expensive. I have instead opted for a compromise. What I have provided is the text of the four key sets of provisions under the unreformed scheme: the original version of Schedule 1 to the Child Support Act 1991, the Child Support (Maintenance Assessment Procedure) Regulations 1992, the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 and the Child Support Departure Direction and Consequential Amendments Regulations 1996. I have provided a commentary for the formula assessment provisions. Commentary for the other provisions is available, with suitable adjustment, under the equivalent provisions under the reformed scheme: the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (for supersession and revision), the Child Support (Maintenance Calculation Procedure) Regulations 2000, the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 and the Child Support (Variations) Regulations 2000.

As always I have to thank those who have drawn attention to my errors of omission and commission. Once again I owe a special debt to Professor Nick Wikeley whose attention to the details of my errors is fast making him indispensable and who has developed the valuable knack of anticipating my mistakes before they get into print.

Edward Jacobs
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TABLE OF ABBREVIATIONS

the Act	Child Support Act 1991
the 1995 Act	Child Support Act 1995
the 2000 Act	Child Support, Pensions and Social Security 2000
Amendment Regulations	Child Support (Miscellaneous Amendments) Regulations 1993
Amendment Regulations 1995	Child Support and Income Support (Amendment) Regulations 1995
Amendment Regulations 2005	Social Security, Child Support and Tax Credits (Miscellaneous Amendments) Regulations 2005
Amendment (No.2) Regulations 1996	Social Security (Adjudication) and Child Support Amendment (No.2) Regulations 1996
Appeals Regulations	Social Security and Child Support (Decisions and Appeals) Regulations 1999
Appeals Amendment Regulations 2000	Child Support (Decisions and Appeals) (Amendment) Regulations 2000
Appeals Amendment Regulations 2002	Social Security and Child Support (Decisions and Appeals) (Miscellaneous Amendments) Regulations 2002
Arrears, Interest and Adjustment of Maintenance Assessments Regulations	Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992
Child Benefit Amendment Regulations	Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996
Collection and Enforcement Regulations	Child Support (Collection and Enforcement) Regulations 1992
Collection and Enforcement and Miscellaneous Amendments Regulations 2000	Child Support (Collection and Enforcement and Miscellaneous Amendments) Regulations 2000
Collection and Enforcement of Other Forms of Maintenance Regulations	Child Support (Collection and Enforcement of Other Forms of Maintenance) Regulations 1992
Commencement No.7 Order 1999	Social Security Act 1998 (Commencement No.7 and Consequential and Transitional Provisions) Order 1999

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Commencement No. 3 Order 2000	Child Support, Pensions and Social Security Act 2000 (Commencement No. 3) Order 2000
Commencement No. 5 Order 2000	Child Support, Pensions and Social Security Act 2000 (Commencement No. 5) Order 2000
Commencement No. 12 Order 2003	Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003
Commissioners Procedure Amendment Regulations 2005	Social Security and Child Support Commissioners (Procedure) (Amendment) Regulations 2005
Departure Regulations	Child Support Departure Direction and Consequential Amendments Regulations 1996
Information, Evidence and Disclosure Regulations	Child Support (Information, Evidence and Disclosure) Regulations 1992
Information, Evidence and Disclosure and Maintenance Arrangements and Jurisdiction Amendment Regulations 2000	Child Support (Information, Evidence and Disclosure and Maintenance Arrangements and Jurisdiction) (Amendment) Regulations 2000
Jobseekers Amendment Regulations	Social Security and Child Support (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996
Jobseekers Miscellaneous Amendments Regulations	Social Security and Child Support (Jobseeker's Allowances) (Miscellaneous Amendments) Regulations 1996
Maintenance Arrangements and Jurisdiction Regulations	Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992
Maintenance Assessment Procedure Regulations	Child Support (Maintenance Assessment Procedure) Regulations 1992
Maintenance Calculation Procedure Regulations	Child Support (Maintenance Calculation Procedure) Regulations 2000
Maintenance Calculations and Special Cases Regulations	Child Support (Maintenance Calculations and Special Cases) Regulations 2000
Maintenance Assessments and Special Cases Regulations	Child Support (Maintenance Assessments and Special Cases) Regulations 1992
Miscellaneous Amendments Regulations 1994	Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994
Miscellaneous Amendments Regulations 1995	Child Support (Miscellaneous Amendments) Regulations 1995

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Miscellaneous Amendments Regulations 2003	Child Support (Miscellaneous Amendments) Regulations 2003
Miscellaneous Amendments Regulations 2004	Child Support (Miscellaneous Amendments) Regulations 2004
Miscellaneous Amendments Regulations 2005	Child Support (Miscellaneous Amendments) Regulations 2005
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Miscellaneous Amendments (No.3) Regulations 1995	Child Support (Miscellaneous Amendments) (No.3) Regulations 1995
Miscellaneous Amendments (No.2) Regulations 1996	Child Support (Miscellaneous Amendments) (No.2) Regulations 1996
Miscellaneous Amendments (No.2) Regulations 1998	Child Support (Miscellaneous Amendments) (No.2) Regulations 1998
Miscellaneous Amendments (No.2) Regulations 1999	Child Support (Miscellaneous Amendments) (No.2) Regulations 1999
Miscellaneous Amendments (No. 2) Regulations 2003	Child Support (Miscellaneous Amendments) (No.2) Regulations 2003
State Pension Credit Regulations	State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) (No.2) Regulations 2002
Tax Credits Amendments Regulations 1999	Social Security and Child Support (Tax Credits) Consequential Amendments Regulations 1999
Transitional Amendments Regulations 2003	Child Support (Transitional Provision) (Miscellaneous Amendments) Regulations 2003
Transitional Provisions Order	Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992
Variation Regulations	Child Support (Variations) regulations 2000

USING THIS BOOK

Those users who are unfamiliar with child support law or who are new to tribunal work may find it helpful to understand how the book is structured so that they can find their way around it. The structure may not always be apparent and may on occasions break down, but understanding it should stand users in good stead.

The book may need to be consulted in one of three ways: to find a known provision or decision; to find a definition of a word or phrase; or to find a provision or decision on a particular topic.

In order to find a known legislative provision or decision by a court or a Commissioner, consult the tables at the beginning of the book.

In order to find the meaning of a word or phrase in a particular provision, look at the “Definitions” list at the end of the provision in question. This will indicate which words and phrases are defined elsewhere and where the definitions may be found. In the case of regulations, also check the Act for any relevant definitions. If a definition is adopted from another statute, that definition will be reproduced in the General Note.

The most difficult task is to find a provision or decision on a particular topic. The key to doing this successfully is twofold. First think of the concept involved and the context in which it is likely to occur. Then use the statutes and the general notes to home in on the relevant provision or decision. The following example shows how this works in practice.

Suppose that the topic is the significance of the fact that the child is at a boarding school. Begin by identifying the concept involved in the topic or the context in which the topic is likely to occur. The “Overview” section may help with this. In the case of a child at a boarding school, the relevant concept is day to day care of the child. This may lead to the definition of person with care. Another possibility is that it may be identified as an exception, which in child support law is defined as a special case.

Once the concept and the likely context have been identified, use the “Arrangement of Sections” list at the beginning of the relevant statute in order to find the relevant statutory provision. The general note to that provision will refer to any relevant regulations. Relevant decisions will be referred to in the appropriate general note. The general note will contain cross references to any other significant related provisions. The index of the main work may also be helpful in finding the relevant pages.

Some concepts, such as waiver and estoppel, have no place in the legislative structure.

This process is easier to explain than to apply in practice and a number of possible avenues may have to be explored before the search is successful. Ultimately, however, it should lead to the relevant provision or decision.

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