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SCHEDULES

SCHEDULE 1

DEPARTURE DIRECTIONS

Commencement Information

- II** Sch. 1 wholly in force at 2.12.1996; Sch. 1 not in force at Royal Assent see. s. 30(4); Sch. 1 in force for certain purposes only at 14.10.1996 by S.I. 1996/2630, art. 2(1), Sch. Pt. I; Sch. 1 in force so far as not already in force at 2.12.1996 by S.I. 1996/2630, art. 2(2), Sch. Pt. II

The following Schedule is inserted in the 1991 Act, after Schedule 4—

“SCHEDULE 4A

DEPARTURE DIRECTIONS

Interpretation

- 1 In this Schedule—
“departure application” means an application for a departure direction;
“regulations” means regulations made by the Secretary of State;
“review” means a review under section 16, 17, 18 or 19.

Applications for departure directions

- 2 Regulations may make provision—
(a) as to the procedure to be followed in considering a departure application;
(b) as to the procedure to be followed when a departure application is referred to a child support appeal tribunal under section 28D(1)(b);
(c) for the giving of a direction by the Secretary of State as to the order in which, in a particular case, a departure application and a review are to be dealt with;
(d) for the reconsideration of a departure application in a case where further information becomes available to the Secretary of State after the application has been determined.

Completion of preliminary consideration

- 3 Regulations may provide for determining when the preliminary consideration of a departure application is to be taken to have been completed.

Information

- 4 (1) Regulations may make provision for the use for any purpose of this Act of—

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- (a) information acquired by the Secretary of State in connection with an application for, or the making of, a departure direction;
 - (b) information acquired by a child support officer or the Secretary of State in connection with an application for, or the making of, a maintenance assessment.
- (2) If any information which is required (by regulations under this Act) to be furnished to the Secretary of State in connection with a departure application has not been furnished within such period as may be prescribed, the Secretary of State may nevertheless proceed to determine the application.

Anticipation of change of circumstances

- 5 (1) A departure direction may be given so as to provide that if the circumstances of the case change in such manner as may be specified in the direction a fresh maintenance assessment is to be made.
- (2) Where any such provision is made, the departure direction may provide for the basis on which the amount of child support maintenance is to be fixed by the fresh maintenance assessment to differ from the basis on which the amount of child support maintenance was fixed by any earlier maintenance assessment made as a result of the direction.

Reviews and departure directions

- 6 Regulations may make provision—
- (a) with respect to cases in which a child support officer is conducting a review of a maintenance assessment which was made as a result of a departure direction;
 - (b) with respect to cases in which a departure direction is made at a time when a child support officer is conducting a review.

Subsequent departure directions

- 7 (1) Regulations may make provision with respect to any departure application made with respect to a maintenance assessment which was made as a result of a departure direction.
- (2) The regulations may, in particular, provide for the application to be considered by reference to the maintenance assessment which would have been made had the departure direction not been given.

Joint consideration of departure applications and appeals

- 8 (1) Regulations may provide for two or more departure applications with respect to the same current assessment to be considered together.
- (2) A child support appeal tribunal considering—
- (a) a departure application referred to it under section 28D(1)(b), or
 - (b) an appeal under section 28H,
- may consider it at the same time as hearing an appeal under section 20 in respect of the current assessment, if it considers that to be appropriate.

Child support appeal tribunals

- 9 (1) Regulations may provide that, in prescribed circumstances, where—

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- (a) a departure application is referred to a child support appeal tribunal under section 28D(1)(b), or
 - (b) an appeal is brought under section 28H,
- the application or appeal may be dealt with by a tribunal constituted by the chairman sitting alone.
- (2) Sub-paragraph (1) does not apply in relation to any appeal which is being heard together with an appeal under section 20.

Current assessments which are replaced by fresh assessments

- 10 Regulations may make provision as to the circumstances in which prescribed references in this Act to a current assessment are to have effect as if they were references to any later maintenance assessment made with respect to the same persons as the current assessment.”

SCHEDULE 2

Section 6(2).

DEPARTURE DIRECTIONS: THE CASES AND CONTROLS

Commencement Information

- I2** Sch. 2 wholly in force at 2.12.1996; Sch. 2 not in force at Royal Assent see s. 30(3); Sch. 2 in force for certain purposes at 14.10.1996 by S.I. 1996/2630, art. 2(1), Sch. Pt. I; Sch. 2 in force at 2.12.1996 in so far as not already in force by S.I. 1996/2630, art. 2(2), Sch. Pt. II

The following Schedule is inserted in the 1991 Act, after Schedule 4A—

“SCHEDULE 4B

DEPARTURE DIRECTIONS: THE CASES AND CONTROLS

PART I

THE CASES

General

- 1 (1) The cases in which a departure direction may be given are those set out in this Part of this Schedule or in regulations made under this Part.
- (2) In this Schedule “applicant” means the person whose application for a departure direction is being considered.

Special expenses

- 2 (1) A departure direction may be given with respect to special expenses of the applicant which were not, and could not have been, taken into account in determining the current assessment in accordance with the provisions of, or made under, Part I of Schedule 1.

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- (2) In this paragraph “special expenses” means the whole, or any prescribed part, of expenses which fall within a prescribed description of expenses.
- (3) In prescribing descriptions of expenses for the purposes of this paragraph, the Secretary of State may, in particular, make provision with respect to—
- (a) costs incurred in travelling to work;
 - (b) costs incurred by an absent parent in maintaining contact with the child, or with any of the children, with respect to whom he is liable to pay child support maintenance under the current assessment;
 - (c) costs attributable to a long-term illness or disability of the applicant or of a dependant of the applicant;
 - (d) debts incurred, before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made—
 - (i) for the joint benefit of both parents;
 - (ii) for the benefit of any child with respect to whom the current assessment was made; or
 - (iii) for the benefit of any other child falling within a prescribed category;
 - (e) pre-1993 financial commitments from which it is impossible for the parent concerned to withdraw or from which it would be unreasonable to expect that parent to have to withdraw;
 - (f) costs incurred by a parent in supporting a child who is not his child but who is part of his family.
- (4) For the purposes of sub-paragraph (3)(c)—
- (a) the question whether one person is a dependant of another shall be determined in accordance with regulations made by the Secretary of State;
 - (b) “disability” and “illness” have such meaning as may be prescribed; and
 - (c) the question whether an illness or disability is long-term shall be determined in accordance with regulations made by the Secretary of State.
- (5) For the purposes of sub-paragraph (3)(e), “pre-1993 financial commitments” means financial commitments of a prescribed kind entered into before 5th April 1993 in any case where—
- (a) a court order of a prescribed kind was in force with respect to the absent parent and the person with care concerned at the time when they were entered into; or
 - (b) an agreement between them of a prescribed kind was in force at that time.
- (6) For the purposes of sub-paragraph (3)(f), a child who is not the child of a particular person is a part of that person’s family in such circumstances as may be prescribed.

Property or capital transfers

- 3 (1) A departure direction may be given if—
- (a) before 5th April 1993—
 - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
 - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;

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- (b) in consequence of one or more transfers of property of a prescribed kind—
 - (i) the amount payable by the absent parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or
 - (ii) no amount was payable by the absent parent by way of maintenance; and
 - (c) the effect of that transfer, or those transfers, is not properly reflected in the current assessment.
- (2) For the purposes of sub-paragraph (1)(b), “maintenance” means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.
- (3) For the purposes of sub-paragraph (1)(c), the question whether the effect of one or more transfers of property is properly reflected in the current assessment shall be determined in accordance with regulations made by the Secretary of State.
- 4 (1) A departure direction may be given if—
- (a) before 5th April 1993—
 - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
 - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
 - (b) in pursuance of the court order or agreement, the absent parent has made one or more transfers of property of a prescribed kind;
 - (c) the amount payable by the absent parent by way of maintenance was not reduced as a result of that transfer or those transfers;
 - (d) the amount payable by the absent parent by way of child support maintenance under the current assessment has been reduced as a result of that transfer or those transfers, in accordance with provisions of or made under this Act; and
 - (e) it is nevertheless inappropriate, having regard to the purposes for which the transfer or transfers was or were made, for that reduction to have been made.
- (2) For the purposes of sub-paragraph (1)(c), “maintenance” means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.

Additional cases

- 5 (1) The Secretary of State may by regulations prescribe other cases in which a departure direction may be given.
- (2) Regulations under this paragraph may, for example, make provision with respect to cases where—
- (a) assets which do not produce income are capable of producing income;
 - (b) a person’s life-style is inconsistent with the level of his income;
 - (c) housing costs are unreasonably high;
 - (d) housing costs are in part attributable to housing persons whose circumstances are such as to justify disregarding a part of those costs;
 - (e) travel costs are unreasonably high; or

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- (f) travel costs should be disregarded.

PART II

REGULATORY CONTROLS

- 6 (1) The Secretary of State may by regulations make provision with respect to the directions which may be given in a departure direction.
- (2) No directions may be given other than those which are permitted by the regulations.
- (3) Regulations under this paragraph may, in particular, make provision for a departure direction to require—
- (a) the substitution, for any formula set out in Part I of Schedule 1, of such other formula as may be prescribed;
 - (b) any prescribed amount by reference to which any calculation is to be made in fixing the amount of child support maintenance to be increased or reduced in accordance with the regulations;
 - (c) the substitution, for any provision in accordance with which any such calculation is to be made, of such other provision as may be prescribed.
- (4) Regulations may limit the extent to which the amount of the child support maintenance fixed by a maintenance assessment made as a result of a departure direction may differ from the amount of the child support maintenance which would be fixed by a maintenance assessment made otherwise than as a result of the direction.
- (5) Regulations may provide for the amount of any special expenses to be taken into account in a case falling within paragraph 2, for the purposes of a departure direction, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.
- (6) No departure direction may be given so as to have the effect of denying to an absent parent the protection of paragraph 6 of Schedule 1.
- (7) Sub-paragraph (6) does not prevent the modification of the provisions of, or made under, paragraph 6 of Schedule 1 to the extent permitted by regulations under this paragraph.
- (8) Any regulations under this paragraph may make different provision with respect to different levels of income.”

SCHEDULE 3

Section 30(5).

MINOR AND CONSEQUENTIAL AMENDMENTS

Income and Corporation Taxes Act 1988 (c. 1)

- 1 In section 617(2) of the Income and Corporation Taxes Act 1988 (social security and other benefits which are not treated as income for purposes of the Income Tax Acts), insert after paragraph (ac)—
- “(ad) payments of a child maintenance bonus;

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- (ae) compensation payments made under regulations under section 24 of the Child Support Act 1995 or under any corresponding enactment having effect with respect to Northern Ireland;”.

Commencement Information

I3 Sch. 3 para. 1 wholly in force at 14.10.1996; Sch. 3 para. 1 not in force at Royal Assent see s. 30(4); Sch. 3 para. 1 in force at 1.10.1995 for certain purposes by S.I. 1995/2302, art. 2(2), Sch. Pt. II; Sch. 3 para. 1 wholly in force at 14.10.1996 by S.I. 1996/2630, art. 2(1), Sch. Pt. I

Child Support Act 1991 (c. 48)

2 The 1991 Act is amended as follows.

3 (1) In section 14 (information required by Secretary of State), after subsection (1) insert—

“(1A) Regulations under subsection (1) may make provision for notifying any person who is required to furnish any information or evidence under the regulations of the possible consequences of failing to do so.”

(2) ^{F1}

Textual Amendments

F1 Sch. 3 para. 3(2) repealed (8.9.1998) by 1998 c. 14, s. 86(2), Sch. 8; S.I. 1998/2209, art. 2(a), Sch. Pt. I

Commencement Information

I4 Sch. 3 para. 3 wholly in force at 1.10.1995; Sch. 3 para. 3 not in force at Royal Assent see s. 30(4); Sch. 3 para. 3(2) in force at 4.9.1995 by S.I. 1995/2302, art. 2(1), Sch. Pt. I and Sch. 3 para. 3(1) in force at 1.10.1995 by S.I. 1995/2302, art. 2(2), Sch. Pt. II

^{F24}

Textual Amendments

F2 Sch. 3 para. 4 repealed (1.6.1999) by 1998 c. 14, s. 86(2), Sch. 8; S.I. 1999/1510, Pt. I art. 2 (f)(iii)

^{F35}

Textual Amendments

F3 Sch. 3 para. 5 repealed (1.6.1999) by 1998 c. 14, s. 86(2), Sch. 8; S.I. 1999/1510, Pt. I art. 2(f)(iii)

^{F46}

Textual Amendments

F4 Sch. 3 para. 6 repealed (1.6.1999) by 1998 c. 14, s. 86(2), Sch. 8; S. I. 1999/ 1510, Pt. I art. 2(f)(iii)

7 (1) Section 24 (appeal to Child Support Commissioner) is amended as follows.

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^{F5}(2)

(3) In subsection (3), for paragraph (c) substitute—

- “(c) on an appeal by the Secretary of State, refer the case to a child support appeal tribunal with directions for its determination; or
- (d) on any other appeal, refer the case to a child support officer or, if he considers it appropriate, to a child support appeal tribunal with directions for its determination.”

Textual Amendments
F5 Sch. 3 para. 7(2) repealed (1.6.1999) by 1998 c. 14, s. 86(2), Sch. 8; S.I. 1999/ 1510, Pt. I art. 2(f)(iii)

8 (1) In section 25 (appeal from Child Support Commissioner on question of law), insert after subsection (3)—

“(3A) The Child Support Commissioner to whom an application for leave to appeal under this section is made shall specify as the appropriate court either the Court of Appeal or the Court of Session.

(3B) In determining the appropriate court, the Child Support Commissioner shall have regard to the circumstances of the case, and in particular the convenience of the persons who may be parties to the appeal.”

(2) In the definition of “appropriate court” in subsection (4) of that section, for the words from “means” to “Session” substitute “, except in subsections (3A) and (3B), means the court specified in accordance with those subsections ”.

9 In section 30 (collection and enforcement of maintenance payments other than child support maintenance), at the end add—

“(5A) Regulations made under subsection (1) or (2) prescribing payments which may be collected by the Secretary of State may make provision for the payment to him by such person or persons as may be prescribed of such fees as may be prescribed.”

10 In section 33 (liability orders), at the end add—

“(5) If the Secretary of State designates a liability order for the purposes of this subsection it shall be treated as a judgment entered in a county court for the purposes of section 73 of the County Courts Act 1984 (register of judgments and orders).”

11 In section 41 (retention by Secretary of State of arrears recovered by him in benefit cases) for subsection (2) substitute—

“(2) Where the Secretary of State recovers any such arrears he may, in such circumstances as may be prescribed and to such extent as may be prescribed, retain them if he is satisfied that the amount of any benefit paid to or in respect of the person with care of the child or children in question would have been less had the absent parent made the payment or payments of child support maintenance in question.

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(2A) In determining for the purposes of subsection (2) whether the amount of any benefit paid would have been less at any time than the amount which was paid at that time, in a case where the maintenance assessment had effect from a date earlier than that on which it was made, the assessment shall be taken to have been in force at that time.”

12 In section 46(5) (circumstances in which child support officer may give a reduced benefit direction), after “may” insert “, except in prescribed circumstances,”.

PROSPECTIVE

13 In section 47 (fees), in subsections (1) and (2) in each case after “takes” insert “, or proposes to take,”.

14 In section 48(1) (power of Secretary of State to confer right of audience), for “person authorised” substitute “ officer of the Secretary of State who is authorised”.

15 In section 52(2) (statutory instruments subject to affirmative resolution control)—
(a) after “12(2),” insert “ 28C(2)(b), 28F(3), 30(5A) ”;
(b) after “or (4)” insert “ 41A, 41B(6) ”; and
(c) after “Schedule 1” insert “ or under Schedule 4B ”.

16 In section 54 (interpretation), insert the following definitions in the appropriate places—
““application for a departure direction” means an application under section 28A;
“current assessment”, in relation to an application for a departure direction, means (subject to any regulations made under paragraph 10 of Schedule 4A) the maintenance assessment with respect to which the application is made;
“departure direction” has the meaning given in section 28A; and
“parent with care” means a person who is, in relation to a child, both a parent and a person with care.”

F617

Textual Amendments

F6 Sch. 3 para. 17 repealed (1.6.1999) by 1998 c. 14, s. 86(2), Sch. 8; S.I. 1999/1510, Pt. I art. 2(f)(iii)

18 (1) In Schedule 4 (Child Support Commissioners), after paragraph 2 insert—

Expenses of other persons

“2A (1) The Secretary of State may pay to any person required to attend at any proceedings before a Child Support Commissioner such travelling and

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other allowances as, with the consent of the Treasury, the Secretary of State may determine.

(2) In sub-paragraph (1), references to travelling and other allowances include references to compensation for loss of remunerative time.

(3) No compensation for loss of remunerative time shall be paid to any person under this paragraph in respect of any time during which he is in receipt of other remuneration so paid.”

(2) In paragraph 8 of Schedule 4 (application of Schedule to Northern Ireland), after sub-paragraph (b) insert—

“(bb) paragraph 2A were omitted;”.

19 (1) In paragraph 3(2) of Schedule 5 (amendment of the ^{M1}House of Commons Disqualification Act 1975), after “Part I” insert “ of Schedule 1 ”.

^{F7}(2)

(3) In paragraph 4(1) of Schedule 5 (amendment of the ^{M2}Northern Ireland Assembly Disqualification Act 1975), after “Part I of” insert “ Schedule 1 to ”.

Textual Amendments

F7 Sch. 3 para. 19(2) repealed (1.6.1999) by 1998 c. 14, s. 86(2), Sch. 8; S.I. 1999/ 1510, Pt. I art. 2(f)(iii)

Marginal Citations

M1 1975 c. 24.

M2 1975 c. 25.

Social Security Administration Act 1992 (c. 5)

20 In section 170(5) of the Social Security Administration Act 1992 (the Social Security Advisory Committee)—

(a) in the definition of “the relevant enactments”, after paragraph (aa) insert—
“(ab) section 10 of the Child Support Act 1995;”; and

(b) in the definition of “the relevant Northern Ireland enactments”, after paragraph (aa) insert—

“(ab) any enactment corresponding to section 10 of the Child Support Act 1995 having effect with respect to Northern Ireland; and”.

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