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STATUTORY RULES OF NORTHERN IRELAND

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**1996 No. 541**

**The Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996**

**Part VIII**

**Maintenance Assessment Following a Departure Direction**

**Effect of a departure direction — general**

**36.**—(1) Except where a case falls within regulation 22, 41, 42 or 43, a departure direction shall specify, as the basis on which the amount of child support maintenance is to be fixed by any fresh assessment made in consequence of the direction, that the amount of net income or exempt income of the parent with care or absent parent or the amount of protected income of the absent parent be increased or, as the case may be, decreased in accordance with those provisions of regulations 37, 38 and 40 which are applicable to the particular case.

(2) Where the provisions of paragraph (1) apply to a departure direction, the amount of child support maintenance fixed by a fresh maintenance assessment shall be determined in accordance with the provisions of Part I of Schedule 1 to the Order, but with the substitution of the amounts changed in consequence of the direction for the amounts determined in accordance with those provisions.

**Effect of a departure direction in respect of special expenses — exempt income**

**37.**—(1) Subject to paragraph (2), where a departure direction is given in respect of special expenses, the exempt income of the absent parent or, as the case may be, the parent with care shall be increased by the amount constituting the special expenses or the aggregate of the special expenses determined in accordance with regulations 13 to 20.

(2) Where a departure direction is given with respect to costs incurred in travelling to work or expenses which include such costs, and a component of exempt income has been determined in accordance with regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or regulation 10 of those Regulations applying regulation 9(1)(i), the increase in exempt income determined in accordance with paragraph (1) shall be reduced by that component of exempt income.

(3) A departure direction with respect to special expenses for a case falling within regulation 16 shall be given only for the repayment period remaining applicable to that debt at the date on which that direction takes effect except—

- (a) where in consequence of the applicant's unemployment or incapacity for work, the repayment period of that debt has been extended by agreement with the creditor, a departure direction may be given to cover the additional weeks allowed for repayment; or
- (b) where the Department is satisfied that, as a consequence of the income of the applicant having been substantially reduced the repayment period of that debt has been extended by agreement with the creditor, a departure direction may be given for such repayment period as the Department considers is reasonable.

(4) Where regulation 16(4) applies, a departure direction may be given in respect only of repayment of that part of the debt incurred which is referable to the debt, repayment of which would have fallen within paragraph (1) of that regulation, based upon the amount, rate of repayment and repayment period agreed in respect of that part at the time it was taken out.

### **Effect of a departure direction in respect of special expenses — protected income**

**38.**—(1) Subject to paragraphs (2) and (3), where a departure direction is given with respect to special expenses in response to an absent parent's application, his protected income shall be determined in accordance with regulation 11(1) of the Maintenance Assessments and Special Cases Regulations<sup>(1)</sup> with the modification that the increase of exempt income as determined in accordance with regulation 37 shall be added to the aggregate of the amounts mentioned in regulation 11(1)(a) to (kk)<sup>(2)</sup> of the Maintenance Assessments and Special Cases Regulations.

(2) Protected income shall not be increased in accordance with paragraph (1) on account of special expenses constituted by costs falling within regulation 18 (costs incurred in supporting certain children).

(3) Where a departure direction is given with respect to costs which include costs incurred in travelling to work, the absent parent's protected income shall be determined in accordance with paragraph (1), but without inclusion of the amount determined in accordance with regulation 11(1) (kk) of the Maintenance Assessments and Special Cases Regulations within the aggregate of the amounts mentioned in that regulation.

### **Effect of a departure direction in respect of a transfer of property**

**39.**—(1) Where a departure direction is given in respect of a transfer of property for a case falling within paragraph 3 of Schedule 4B to the Order—

- (a) where the exempt income of an absent parent includes a component of exempt income determined in accordance with regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations<sup>(3)</sup>, the exempt income of the absent parent shall be reduced by that component of exempt income;
- (b) subject to sub-paragraph (c) and paragraphs (2) and (3), the fresh maintenance assessment made in consequence of the direction shall be the maintenance assessment calculated in accordance with the provisions of paragraphs 1 to 5 and 7 to 10 of Part I of Schedule 1 to the Order, as modified by sub-paragraph (a) where that sub-paragraph is applicable to the case in question, reduced by the equivalent weekly value of the property transferred as determined in accordance with regulation 22;
- (c) where the equivalent weekly value is nil, the fresh maintenance assessment made in consequence of the direction shall be the maintenance assessment calculated in accordance with the provisions of Part I of Schedule 1 to the Order, as modified by sub-paragraph (a), where that sub-paragraph is applicable to the case in question.

(2) The amount of child support maintenance fixed by an assessment made in consequence of a direction falling within paragraph (1) shall not be less than the amount prescribed by regulation 13 of the Maintenance Assessments and Special Cases Regulations<sup>(4)</sup>.

(3) Where there has been a transfer by the applicant of property to trustees as set out in regulation 21(2) and the equivalent weekly value is greater than nil, any monies paid to the parent with care out of that trust fund for maintenance of a child with respect to whom the current assessment

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(1) Regulation 11(1) was amended by S.R. 1993 No. 164, S.R. 1994 No. 37 and S.R. 1995 Nos. 162 and 475

(2) Sub-paragraph (kk) was added by regulation 9(7)(a)(iv) of S.R. 1995 No. 162

(3) Sub-paragraph (bb) was inserted by regulation 9(5)(a)(i) of S.R. 1995 No. 162

(4) Regulation 13 was amended by regulation 2(2) of S.R. 1996 No. 65

was made shall be disregarded in calculating the assessable income of that parent with care in accordance with the provisions of Part I of Schedule 1 to the Order.

(4) A departure direction falling within paragraph (1) shall cease to have effect at the end of the number of years of liability, as defined in paragraph 1 of the Schedule, for the case in question.

(5) Where a departure direction has ceased to have effect under the provisions of paragraph (4), the exempt income of an absent parent shall be determined as if regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations were omitted.

(6) Where a departure direction is given in respect of a transfer of property for a case falling within paragraph 4 of Schedule 4B to the Order, the exempt income of the absent parent shall be reduced by the component of exempt income determined in accordance with regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations.

(7) This regulation is subject to regulation 42.

### **Effect of a departure direction in respect of additional cases**

**40.**—(1) This regulation applies where a departure direction is given for an additional case falling within paragraph 5 of Schedule 4B to the Order.

(2) In a case falling within regulation 23(1)(a) (assets capable of producing income or higher income), subject to paragraph (4), the net income of the non-applicant shall be increased by an amount calculated by applying interest at the same rate as that prescribed for judgments by Order 42 rule 9 of the Rules of the Supreme Court (Northern Ireland) 1980(5) at the date on which the departure direction is given to—

- (a) any monies falling within regulation 23(1)(a);
- (b) the net value of any asset, other than monies, falling within regulation 23(1)(a), after deduction of the amount owing on any mortgage or charge on that asset,

less any income received in respect of that asset which has been taken into account in the calculation of the current assessment.

(3) In a case falling within regulation 23(1)(b) or (c), subject to paragraph (4), the net income of the non-applicant shall be increased by an amount calculated by applying interest at the same rate as that prescribed for judgments by Order 42 rule 9 of the Rules of the Supreme Court (Northern Ireland) 1980 at the date of the application to the value of the asset subject to the trust less any income received from the trust which has been taken into account in the calculation of the current assessment.

(4) In a case to which regulation 24 (diversion of income) applies, the net income of the non-applicant who is a parent of a child in respect of whom the current assessment is made shall be increased by the amount by which the Department is satisfied that that parent has reduced his income.

(5) In a case to which regulation 25 (life-style inconsistent with declared income) applies, the net income of the non-applicant who is a parent of a child in respect of whom the current assessment is made shall be increased by the difference between the two levels of income referred to in paragraph (1) of that regulation.

(6) In a case to which regulation 26 applies (unreasonably high housing costs) the amount of housing costs included in exempt income and the amount referred to in regulation 11(1)(b) of the Maintenance Assessments and Special Cases Regulations(6) shall not exceed the amounts set out in regulation 18(1)(a) or (b), as the case may be, of the Maintenance Assessments and Special Cases Regulations (excessive housing costs) and the provisions of regulation 18(2) of those Regulations shall not apply.

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(5) S.R. 1980 No. 346

(6) Paragraph (1)(b) was amended by regulation 9(7)(a) of S.R. 1995 No. 162 and regulation 4(5)(a) of S.R. 1995 No. 475

(7) In a case to which regulation 27 applies (partner's contribution to housing costs) that part of the exempt income constituted by the eligible housing costs determined in accordance with regulation 14 of the Maintenance Assessments and Special Cases Regulations (eligible housing costs) shall, subject to paragraphs (8) and (9), be reduced by the percentage of the housing costs which the Department considers appropriate, taking into account the income of that parent and the income or estimated income of that partner.

(8) Where paragraph (7) applies, the housing costs determined in accordance with regulation 11(1)(b) of the Maintenance Assessments and Special Cases Regulations (protected income) shall remain unchanged.

(9) Where a Category B interim maintenance assessment is in force in respect of a non-applicant, the whole of the eligible housing costs may be deducted from the exempt income of that non-applicant.

(10) In a case to which regulation 28 (unreasonably high travel costs) or regulation 29 (travel costs to be disregarded) applies, for the component of exempt income determined in accordance with regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or in accordance with that regulation as applied by regulation 10 of those Regulations and, in the case of an absent parent, for the amount determined in accordance with regulation 11(1)(kk) of those Regulations, there shall be substituted such amount, including a nil amount, as the Department considers to be appropriate in all the circumstances of the case.