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# SCHEDULES

## SCHEDULE 2

### SUBSTITUTED SCHEDULES 4A AND 4B TO THE 1991 ACT

PROSPECTIVE

#### PART II

#### SUBSTITUTED SCHEDULE 4B

##### Commencement Information

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

VALID FROM 03/03/2003

#### “SCHEDULE 4B

#### APPLICATIONS FOR A VARIATION: THE CASES AND CONTROLS

##### PART I

##### THE CASES

##### *General*

- 1 (1) The cases in which a variation may be agreed 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 variation is being considered.

##### *Special expenses*

- 2 (1) A variation applied for by a non-resident parent may be agreed with respect to his special expenses.
- (2) In this paragraph “special expenses” means the whole, or any amount above a prescribed amount, or any prescribed part, of expenses which fall within a prescribed description of expenses.

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- (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 by a non-resident parent in maintaining contact with the child, or with any of the children, with respect to whom the application for a maintenance calculation has been made (or treated as made);
  - (b) costs attributable to a long-term illness or disability of a relevant other child (within the meaning of paragraph 10C(2) of Schedule 1);
  - (c) debts of a prescribed description incurred, before the non-resident parent became a non-resident parent in relation to a child with respect to whom the maintenance calculation has been applied for (or treated as having been applied for)—
    - (i) for the joint benefit of both parents;
    - (ii) for the benefit of any such child; or
    - (iii) for the benefit of any other child falling within a prescribed category;
  - (d) boarding school fees for a child in relation to whom the application for a maintenance calculation has been made (or treated as made);
  - (e) the cost to the non-resident parent of making payments in relation to a mortgage on the home he and the person with care shared, if he no longer has an interest in it, and she and a child in relation to whom the application for a maintenance calculation has been made (or treated as made) still live there.
- (4) For the purposes of sub-paragraph (3)(b)—
- (a) “disability” and “illness” have such meaning as may be prescribed; and
  - (b) 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)(d), the Secretary of State may prescribe—
- (a) the meaning of “boarding school fees”; and
  - (b) components of such fees (whether or not itemised as such) which are, or are not, to be taken into account,
- and may provide for estimating any such component.

*Property or capital transfers*

- 3 (1) A variation may be agreed in the circumstances set out in sub-paragraph (2) if before 5th April 1993—
- (a) a court order of a prescribed kind was in force with respect to the non-resident parent and either the person with care with respect to the application for the maintenance calculation or the child, or any of the children, with respect to whom that application was made; or
  - (b) an agreement of a prescribed kind between the non-resident parent and any of those persons was in force.
- (2) The circumstances are that in consequence of one or more transfers of property of a prescribed kind and exceeding (singly or in aggregate) a prescribed minimum value—

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- (a) the amount payable by the non-resident parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or
  - (b) no amount was payable by the non-resident parent by way of maintenance.
- (3) For the purposes of sub-paragraph (2), “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 application for a maintenance calculation has been made.

#### *Additional cases*

- 4 (1) The Secretary of State may by regulations prescribe other cases in which a variation may be agreed.
- (2) Regulations under this paragraph may, for example, make provision with respect to cases where—
- (a) the non-resident parent has assets which exceed a prescribed value;
  - (b) a person’s lifestyle is inconsistent with his income for the purposes of a calculation made under Part I of Schedule 1;
  - (c) a person has income which is not taken into account in such a calculation;
  - (d) a person has unreasonably reduced the income which is taken into account in such a calculation.

## **PART II**

### **REGULATORY CONTROLS**

- 5 (1) The Secretary of State may by regulations make provision with respect to the variations from the usual rules for calculating maintenance which may be allowed when a variation is agreed.
- (2) No variations may be made other than those which are permitted by the regulations.
- (3) Regulations under this paragraph may, in particular, make provision for a variation to result in—
- (a) a person’s being treated as having more, or less, income than would be taken into account without the variation in a calculation under Part I of Schedule 1;
  - (b) a person’s being treated as liable to pay a higher, or a lower, amount of child support maintenance than would result without the variation from a calculation under that Part.
- (4) 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 variation, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.
- (5) Any regulations under this paragraph may in particular make different provision with respect to different levels of income.

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- 6 The Secretary of State may by regulations provide for the application, in connection with child support maintenance payable following a variation, of paragraph 7(2) to (7) of Schedule 1 (subject to any prescribed modifications).”

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