

[<sup>F1</sup>SCHEDULE 3A

Regulations 9(1)(bb)

AMOUNT TO BE ALLOWED IN RESPECT OF TRANSFER OF PROPERTY

**Textual Amendments**

**F1** Sch. 3A inserted (18.4.1995) by [The Child Support and Income Support \(Amendment\) Regulations 1995 \(S.I. 1995/1045\)](#), regs. 1(2), 57

**Interpretation**

1.—(1) In this Schedule—

“property” means—

- (a) a legal estate or an equitable interest in land; or
- (b) a sum of money which is derived from or represents capital, whether in cash or in the form of a deposit with—
  - (i) the Bank of England;
  - (ii) an authorised institution or an exempted person within the meaning of the Banking Act 1987;
  - (iii) a building society incorporated or deemed to be incorporated under the Building Societies Act 1986;
- (c) any business asset as defined in sub-paragraph (2) (whether in the form of money or an interest in land or otherwise);
- (d) any policy of insurance which has been obtained and retained for the purpose of providing a capital sum to discharge a mortgage or charge secured upon an estate or interest in land which is also the subject of the transfer (in this schedule referred to as an endowment policy);

“qualifying transfer” means a transfer of property—

- (a) which was made in pursuance of a court order made, or a written maintenance agreement executed, before 5th April 1993;
- (b) which was made between the absent parent and either the parent with care or a relevant child<sup>[F2]</sup>, or both whether jointly or otherwise including, in Scotland, in common property];
- (c) which was made at a time when the absent parent and the parent with care were living separate and apart;
- (d) [<sup>F3</sup>the effect of which is that (subject to any mortgage or charge) the parent with care or a relevant child is solely beneficially entitled to the property of which the property transferred forms the whole or part, or the business asset, or the parent with care is beneficially entitled to that property or that asset together with the relevant child or absent parent or both, jointly or otherwise or, in Scotland, in common property, or the relevant child is so entitled together with the absent parent;]
- (e) [<sup>F4</sup>which was not made for the purpose only of compensating the parent with care either for the loss of a right to apply for, or receive, periodical payments or a capital sum in respect of herself, or for any reduction in the amount of such payments or sum;]

“Compensating transfer” means a transfer of property which would be a qualifying transfer (disregarding the requirement of paragraph (e) of the definition of “qualifying transfer”) if it were made by the absent parent, but which is made by the parent with care in favour of the

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absent parent<sup>[F5]</sup>, or] relevant child <sup>[F6]</sup>or both jointly or otherwise, or, in Scotland, in common property];

“relevant date” means the date of the making of the court order or the execution of the written maintenance agreement in pursuance of which the qualifying transfer was made.

(2) For the purposes of sub-paragraph (1) “business asset” means an asset, whether in the form of money or an interest in land or otherwise which, prior to the date of transfer was use in the course of a trade or business carried on—

- (a) by the absent parent as a sole trader;
- (b) by the absent parent in partnership, whether with the parent with care or not;
- (c) by a close company within the meaning of sections 414 and 415 of the Income and Corporation Taxes Act 1988 in which the absent parent was a participator at the date of the transfer.

(3) Where the condition specified in regulation 10(a)

is satisfied this Schedule shall apply as if references—

- (a) to the parent with care were references to the absent parent; and
- (b) to the absent parent were references to the parent with care.

#### Textual Amendments

- F2** Words in Sch. 3A para. 1(1) inserted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(a)(i)** (with reg. 7)
- F3** Words in Sch. 3A para. 1(1) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(a)(ii)** (with reg. 7)
- F4** Words in Sch. 3A para. 1(1) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(a)(iii)** (with reg. 7)
- F5** Word in Sch. 3A para. 1(1) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(b)(i)** (with reg. 7)
- F6** Words in Sch. 3A para. 1(1) added (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(b)(ii)** (with reg. 7)

#### Evidence to be produced in connection with the allowance for transfers of property

2.—(1) Where the absent parent produces to the Secretary of State—

- (a) contemporaneous evidence in writing of the making of a court order or of the execution of a written maintenance agreement, which requires the relevant person to make a qualifying transfer of property;
- (b) evidence in writing and whether contemporaneous or not as to—
  - (i) the fact of the transfer;
  - (ii) the value of the property transferred at the relevant date;
  - (iii) the amount of any mortgage or charge outstanding at the relevant date,

an amount in respect of the relevant value of the transfer determined in accordance with the following provisions of this Schedule shall be allowed in calculating or estimating the exempt income of the absent parent.

(2) Whether the evidence specified in sub-paragraph (1) is not produced within a reasonable time after the Secretary of State has been notified of the wish of the absent parent that <sup>[F7]</sup>the Secretary of

State] consider the question, [<sup>F8</sup>he] shall determine the question on the basis that the relevant value of the transfer is nil.

#### Textual Amendments

- F7** Words in Sch. 3A para. 2(2) substituted (1.6.1999) by The Social Security Act 1998 (Commencement No. 7 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/1510), arts. 3(1), **21(a)(i)**
- F8** Word in Sch. 3A para. 2(2) substituted (1.6.1999) by The Social Security Act 1998 (Commencement No. 7 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/1510), arts. 3(1), **21(a)(ii)**

#### Consideration of evidence produced by other parent

[<sup>F9</sup>3.—(1) Where an absent parent has notified the Secretary of State that he wishes him to consider whether an amount should be allowed in respect of the relevant value of a qualifying transfer, the Secretary of State shall—

- (a) give notice to the other parent of that application; and
- (b) have regard in determining the application to any representations made by the other parent which are received within the period specified in sub-paragraph (2).

(2) The period specified in this sub-paragraph is one month from the date on which the notice referred to in sub-paragraph (1)(a) above was sent or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case.]

#### Textual Amendments

- F9** Sch. 3A para. 3 substituted (1.6.1999) by The Social Security Act 1998 (Commencement No. 7 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/1510), arts. 3(1), **21(b)**

#### Computation of qualifying value—business assets and land

4.—(1) Subject to paragraph 6, where the property [<sup>F10</sup>transferred] by the absent parent is, or includes an estate or interest in land, or a business asset, the qualifying value of that estate, interest or asset shall be determined in accordance with the formula—

$$QV=(VPMCP)2(VAPMCR)VCR$$

[<sup>F11</sup>where—

QV is the qualifying value,

VP is the value at the relevant date of the business asset or the property of which the estate or interest forms the whole or part,

and

for the purposes of this calculation it is assumed that the estate, interest or asset held on the relevant date by the absent parent or by the absent parent and the parent with care is held by them jointly in equal shares or, in Scotland, in common property;

MCP is the amount of any mortgage or charge outstanding immediately prior to the relevant date on the business asset or on the property of which the estate or interest forms the whole or part;

VAP is the value calculated at the relevant date of the business asset or of the property of which the estate or interest forms the whole or part beneficially owned by the absent parent immediately following the transfer (if any);

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MCR is, where immediately after the transfer the absent parent is responsible for discharging a mortgage or charge on the business asset or on the property of which the estate or interest forms the whole or part, the amount calculated at the relevant date which is a proportion of any such mortgage or charge outstanding immediately following the transfer, being the same percentage as VAP bears to that property as a whole; and

VCR is the value of any charge in favour of the absent parent on the business asset or on the property of which the estate or interest forms the whole or part, being the amount specified in the court order or written maintenance agreement in relation to the charge, or the amount of a proportion of the value of the business asset or the property on the relevant date specified in the court order or written maintenance agreement.]

(2) For the purposes of sub-paragraph (1) the value of an estate or interest in land is to be determined upon the basis that the parent with care and any relevant child, if in occupation of the land, would quit on completion of the sale.

**Textual Amendments**

- F10** Words in Sch. 3A para. 4(1) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(c)(i)** (with reg. 7)
- F11** Words in Sch. 3A para. 4(1) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(c)(ii)** (with reg. 7)

**Computation of qualifying value—cash, deposits and endowment policies**

**5.** —Subject to paragraph 6, where the property which is the subject of the qualifying transfer is, or includes—

- (i) a sum of money whether in cash or in the form of a deposit with the Bank of England, and authorised institution or exempted person within the meaning of the Banking Act 1987, or a building society incorporated or deemed to be incorporated under the Building societies Act 1986, derived from or representing capital; or
- (ii) an endowment policy,

the amount of the qualifying value shall be determined by applying the formula—

$$QV=VT^2$$

where—

- a QV is the qualifying value; and
- b VT is the amount of cash, the balance of the account or the surrender value of the endowment policy on the relevant date <sup>F12</sup>and for the purposes of this calculation it is assumed that the cash, balance or policy held on the relevant date by the absent parent and the parent with care is held by them jointly in equal shares or, in Scotland, in common property.]

**Textual Amendments**

- F12** Words in Sch. 3A para. 5(b) inserted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(d)** (with reg. 7)

### Transfer wholly in lieu of periodical payments for relevant child

6. Where the evidence produced in relation to a transfer to, or in respect of, a relevant child, shows expressly that the whole of that transfer was made exclusively in lieu of periodical payments in respect of that child—

- (a) in a case to which paragraph 4 applies, [<sup>F13</sup>the qualifying value shall be treated as being twice the qualifying value calculated in accordance with that paragraph];  
and
- (b) in a case to which paragraph 5 applies, the qualifying value shall be [<sup>F14</sup>treated as being twice the qualifying value calculated in accordance with that paragraph.]

#### Textual Amendments

**F13** Words in Sch. 3A para. 6(a) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(e)(i)** (with reg. 7)

**F14** Words in Sch. 3A para. 6(b) substituted (6.4.1999) by [The Child Support \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/977\)](#), regs. 1(1), **6(7)(e)(ii)** (with reg. 7)

### Multiple transfers to related persons

7.—(1) Where there has been more than one qualifying transfer from the absent parent—

- (a) to the same parent with care;
- (b) to or for the benefit of the same relevant child;
- (c) to or for the benefit of two or more relevant children with respect to all of whom the same persons are respectively the parent with care and the absent parent;

or any combination thereof, the relevant value by reference to which the allowance is to be calculated in accordance with paragraph 10 shall be the aggregate of the qualifying transfers calculated individually in accordance with the preceding paragraphs of this Schedule, less the value of any compensating transfer or where there has been more than one, the aggregate of the values of the compensating transfers so calculated.

(2) Except as provided by sub-paragraph (1), the values of transfers shall not be aggregated for the purposes of this Schedule.

### Computation of the value of compensation transfers

8. [<sup>F15</sup>Subject to paragraph 8A, the value of] a compensation transfer shall be determined in accordance with paragraph 4 to 7 above, but as if any reference in those paragraphs—

- (a) to the absent parent were a reference to the parent with care;
- (b) to the parent with care were a reference to the absent parent; and
- (c) to a qualifying transfer were a reference to a compensating transfer.

#### Textual Amendments

**F15** Words in Sch. 3A para. 8 substituted (18.12.1995) by [The Child Support \(Miscellaneous Amendments\) \(No. 2\) Regulations 1995 \(S.I. 1995/3261\)](#), regs. 1(2), **48(1)**

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<sup>F16</sup>8A.—(1) This paragraph applies where—

- (a) the property which is the subject of a compensating transfer is or includes cash or deposits as defined in paragraph 5(i);
- (b) that property was acquired by the parent with care after the relevant date;
- (c) the absent parent has no legal interest in that property;
- (d) if that property is or includes cash obtained by a mortgage or charge, that mortgage or charge was executed by the parent with care after the relevant date and was of property to the whole of which she is legally entitled; and
- (e) the effect of the compensating transfer is that the parent with care or a relevant child is beneficially entitled (subject to any mortgage or charge) to the whole of the absent parent’s legal estate in the land which is the subject of the qualifying transfer.

(2) Where sub-paragraph (1) applies, the qualifying value of the compensating transfer shall be the amount of the cash or deposits transferred pursuant to the court order or written maintenance agreement referred to in head (a) of the definition of “qualifying transfer” in paragraph 1(1).]

#### Textual Amendments

**F16** Sch. 3A para. 8A inserted (18.12.1995) by [The Child Support \(Miscellaneous Amendments\) \(No. 2\) Regulations 1995 \(S.I. 1995/3261\)](#), regs. 1(2), **48(2)**

#### Computation of relevant value of a qualifying transfer

**9.** The relevant value of a qualifying transfer shall be calculated by deducting from the qualifying value of the qualifying transfer the qualifying value of any compensating transfer between the same persons as are parties to the qualifying transfer.

#### Amount to be allowed in respect of a qualifying transfer

**10.** For the purposes of regulation 9(1)(bb), the amount to be allowed in the computation of E, or in the case where regulation 10(a) applies, F, shall be—

- (a) where the relevant value calculated in accordance with paragraph 9 is less than £5,000, nil;
- (b) where the relevant value calculated in accordance with paragraph 9 is at least £5,000, but less than £10,000, £20.00 per week;
- (c) where the relevant value calculated in accordance with paragraph 9 is at least £10,000, but less than £25,000, £40.00 per week;
- (d) where the relevant value calculated in accordance with paragraph 9 is not less than £25,000, £60.00 per week.

**11.** This Schedule in its application to Scotland shall have effect as if—

- (a) in paragraph 1 for the words “legal estate or equitable interest in land” [<sup>F17</sup>and in head (e) of paragraph 8A(1), for the words “legal estate in the land”] there were substituted the words “an interest in land within the meaning of section 2(6) of the Conveyancing and Feudal Reform (Scotland) Act 1970”;
- (b) in paragraph 4 the word “estate.” and the words “estate or” in each place where they respectively occur were omitted.]
- [<sup>F18</sup>(c) in paragraphs 1, 2, 4 and 8A for the word “mortgage” there were substituted the words “heritable security”.]

**Changes to legislation:** There are currently no known outstanding effects for the The Child Support (Maintenance Assessments and Special Cases) Regulations 1992, SCHEDULE 3A. (See end of Document for details)

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**Textual Amendments**

- F17** Words in Sch. 3A para. 11(a) inserted (6.4.1999) by The Child Support (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/977), regs. 1(1), **6(7)(f)(i)** (with reg. 7)
- F18** Sch. 3A para. 11(c) inserted (6.4.1999) by The Child Support (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/977), regs. 1(1), **6(7)(f)(ii)** (with reg. 7)

**Changes to legislation:**

There are currently no known outstanding effects for the The Child Support (Maintenance Assessments and Special Cases) Regulations 1992, SCHEDULE 3A.