
STATUTORY INSTRUMENTS

1996 No. 2907

**The Child Support Departure Direction and
Consequential Amendments Regulations 1996**

PART IX

**MAINTENANCE ASSESSMENT FOLLOWING A
DEPARTURE DIRECTION: PARTICULAR CASES**

Child support maintenance payable where effect of a departure direction would be to decrease an absent parent's assessable income but case still fell within paragraph 2(3) of Schedule 1 to the Act

41.—(1) Subject to regulation 42 and paragraph (8), where the effect of a departure direction would, but for the following provisions of this regulation, be to reduce an absent parent's assessable income and his assessable income following that direction would be such that the case fell within paragraph 2(3) of Schedule 1 to the Act (additional element of maintenance payable), the amount of child support maintenance payable shall be determined in accordance with paragraphs (2) to (5).

(2) There shall be calculated the amount equal to $A \times P$, where A is equal to the amount that would be the absent parent's assessable income if the departure direction referred to in paragraph (1) had been given and P has the value prescribed in regulation 5 of the Maintenance Assessments and Special Cases Regulations.

(3) There shall be determined the amount that would be payable under a maintenance assessment calculated by reference to the circumstances at the time the application is made, in accordance with the provisions of Part I of Schedule 1 to the Act.

(4) The lower of the amounts calculated in accordance with paragraph (2) and determined in accordance with paragraph (3) shall constitute the revised amount for the purposes of regulation 7 (rejection of application on completion of a preliminary consideration) and regulation 31 (refusal to give a departure direction under section 28F(4) of the Act), and the Secretary of State may apply regulation 7 and shall apply regulation 31 in relation to the current amount and the revised amount as so construed.

(5) Subject to paragraph (7), where the application of the provisions of paragraph (4) results in a departure direction being given, the amount of child support maintenance payable following that direction shall be determined by the child support officer as being the revised amount as defined in paragraph (4).

(6) Where the assessable income of an absent parent changes following a review under section 16, 17, 18 or 19 of the Act, the provisions of paragraphs (2) to (5) shall be applied to—

- (a) the amount calculated under paragraph (2) which takes account of the change in assessable income; and
- (b) the amount that would be payable under the maintenance assessment calculated in accordance with the provisions of Part I of Schedule 1 to the Act which takes account of that change in assessable income.

(7) Where the provisions of paragraph 6 of Schedule 1 to the Act (protected income) as modified by the provisions of regulation 38 apply following a departure direction, and the amount of child support maintenance payable under those provisions is lower than that payable under paragraph (5), the amount of child support maintenance payable shall be that payable under those provisions.

(8) Where a departure direction given in accordance with the provisions of paragraphs (1) to (7) has effect, those provisions shall apply, subject to the modifications set out in paragraph (9), where—

- (a) the effect of a later direction would, but for the provisions of paragraphs (2) to (5), be to change the absent parent's assessable income and his assessable income following the direction would be such that the case fell within paragraph 2(3) of Schedule 1 to the Act (additional element of maintenance payable); and
- (b) that assessable income following the later direction would be less than the assessable income would be if it were calculated in accordance with the provisions of Part I of Schedule 1 to the Act by reference to the circumstances at the time the application for the later direction is made.

(9) The modifications referred to in paragraph (8) are—

- (a) in paragraph (2), A would be the absent parent's assessable income following the later direction but for the provisions of paragraphs (3) to (5);
- (b) the references to regulation 7 in paragraph (4) are omitted.

Application of regulation 41 where there is a transfer of property falling within paragraph 3 of Schedule 4B to the Act

42.—(1) Where the application of regulation 41 to a case would result in a change in the amount of child support maintenance payable and a direction is given in respect of a transfer of property falling within paragraph 3 of Schedule 4B to the Act, regulation 41 shall be applied subject to the modifications set out in paragraphs (2) and (3).

(2) 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, that amount shall be excluded—

- (a) in calculating the amount A defined in paragraph (2) of regulation 41;
- (b) in calculating the maintenance assessment specified in paragraph (3) of regulation 41.

(3) For the purposes of this regulation, the revised amount for the purposes of regulations 7 and 31 shall be the amount as defined in paragraph (4) of regulation 41, subject to paragraph (2) of this regulation, less the amount determined in accordance with regulation 22 (the value of a transfer of property and its equivalent weekly value for a case falling within paragraph 3 of Schedule 4B to the Act).

(4) Where the application of the provisions of paragraph (3) results in a departure direction being given, the amount of child support maintenance payable following that direction shall be the revised amount as defined in paragraph (3).

Maintenance assessment following a departure direction for certain cases falling within regulation 22 of the Maintenance Assessments and Special Cases Regulations

43.—(1) Where the provisions of regulation 41 or 42 are applicable to a case falling within regulation 22 of the Maintenance Assessments and Special Cases Regulations⁽¹⁾ (multiple applications relating to an absent parent), those provisions shall apply for the purposes of determining the total maintenance payable in consequence of a departure direction.

(1) Regulation 22 was amended by regulation 23 of S.I.1993/913, regulation 51 of S.I. 1995/1045 and regulation 45 of S.I. 1995/3261.

(2) In a case falling within paragraph (1), the amount of child support maintenance payable in respect of each application for child support maintenance following the direction shall be the lower of—

- (a) the amount as determined in accordance with paragraph (3) of regulation 41, subject to the modification that regulation 22 of the Maintenance Assessments and Special Cases Regulations is applied in determining the amount that would be payable (“Y”);
- (b) the amount calculated by the formula—

$$(A \times P) \times \frac{Y}{Q}$$

where A and P have the same meanings as in regulation 41(2) and Q is the sum of the amounts calculated in accordance with sub-paragraph (a) for each assessment.

(3) Where, in a case falling within regulation 22 of the Maintenance Assessments and Special Cases Regulations, a departure direction has been given in respect of an absent parent in a case falling within paragraph 3 of Schedule 4B to the Act (property or capital transfers), the equivalent weekly value of the transfer of property as calculated in accordance with regulation 22 of these Regulations shall be deducted from the amount of the maintenance assessment in respect of the person with care or child to or in respect of whom the property transfer was made.

Maintenance assessment following a departure direction where there is a phased maintenance assessment

44.—(1) Where a departure direction is given in a case falling within a relevant enactment, the assessment made in consequence of that direction shall be the assessment that fixes the amount of child support maintenance that would be payable but for the provisions of that enactment (“the unadjusted departure amount”).

(2) Where a departure direction takes effect on the effective date of a maintenance assessment to which the provisions of a relevant enactment become applicable, those provisions shall remain applicable to that case following the departure direction.

(3) Where a departure direction takes effect on a date later than the date on which the provisions of a relevant enactment become applicable to a maintenance assessment, the amount of child support maintenance payable in consequence of that direction shall be—

- (a) where the unadjusted departure amount is more than the formula amount, the phased amount plus the difference between the unadjusted departure amount and the formula amount;
- (b) where the unadjusted departure amount is more than the phased amount but less than the formula amount, the phased amount;
- (c) where the unadjusted departure amount is less than the phased amount, the unadjusted departure amount.

(4) Regulation 31 shall have effect for cases falling within paragraphs (1) to (3) as if “current amount” referred to the amount payable under the maintenance assessment that would be in force when the departure direction is given but for the provisions of the relevant enactment and “revised amount” referred to the unadjusted departure amount.

(5) Where a child support officer determines that, were a fresh maintenance assessment to be made as a result of a review under section 17, 18 or 19 of the Act in relation to a case to which the provisions of paragraphs (1) to (3) have been applied, and the amount payable under it (“the reviewed unadjusted departure amount”) would be—

- (a) more than the unadjusted departure amount, the amount of child support maintenance payable shall be the amount determined in accordance with paragraph (3), plus the

difference between the unadjusted departure amount and the reviewed unadjusted departure amount;

- (b) less than the unadjusted departure amount but more than the phased amount, the amount of child support maintenance payable shall be the phased amount;
- (c) less than the phased amount, the amount of child support maintenance payable shall be the reviewed unadjusted departure amount.

(6) In this regulation—

“the 1992 enactment” means Part II of the Schedule to the Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992⁽²⁾ (modification of maintenance assessment in certain cases);

“the 1994 enactment” means Part III of the Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994⁽³⁾ (transitional provisions);

“formula amount” has the same meaning as in the relevant enactment;

“phased amount” means—

- (a) where the 1992 enactment is applicable to the particular case, the modified amount as defined in paragraph 6 of that enactment;
- (b) where the 1994 enactment is applicable to the particular case, the transitional amount as defined in regulation 6(1) of that enactment;

“relevant enactment” means—

- (a) the 1992 enactment where that enactment is applicable to the particular case;
- (b) the 1994 enactment where that enactment is applicable to the particular case.

⁽²⁾ S.I. 1992/2644. The relevant amending instrument is S.I. 1993/966.

⁽³⁾ S.I. 1994/227. The relevant amending instrument is S.I. 1995/1045.