
STATUTORY INSTRUMENTS

1996 No. 2907

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

[^{F1}PART V

ADDITIONAL CASES

Textual Amendments

- F1** Instrument Regulations revoked (coming into force in accordance with reg. 1(4) of the amending S.I.) by [The Child Support \(Meaning of Child and New Calculation Rules\) \(Consequential and Miscellaneous Amendment\) Regulations 2012 \(S.I. 2012/2785\)](#), [reg. 10\(d\)](#)

Assets capable of producing income or higher income

23.—(1) Subject to paragraphs (2) and (3), a case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the Secretary of State is satisfied that any asset in which the non-applicant has a beneficial interest, or which he has the ability to control—
 - (i) is capable of being utilised to produce income but has not been so utilised;
 - (ii) has been invested in such a way that the income obtained from it is less than might reasonably be expected;
 - (iii) is a chose in action which has not been enforced where the Secretary of State is satisfied that such enforcement would be reasonable;
 - (iv) in Scotland, is monies due or an obligation owed, whether immediately payable or otherwise and whether the payment or obligation is secured or not and the Secretary of State is satisfied that requiring payment of the monies or the implementation of the obligation would be reasonable; or
 - (v) has not been sold where the Secretary of State is satisfied that the sale of the asset would be reasonable;
 - (b) any asset has been transferred by the non-applicant to trustees and the non-applicant is a beneficiary of the trust so created; or
 - (c) any asset has become subject to a trust created by legal implication of which the non-applicant is a beneficiary.
- (2) Paragraph (1) shall not apply where—
- (a) the total value of the asset or assets referred to in that paragraph does not exceed £10,000.00 after deduction of the amount owing under any mortgage or charge on that asset; or

- (b) the Secretary of State is satisfied that any asset referred to in that paragraph is being retained by the non-applicant to be used for a purpose which the Secretary of State considers reasonable in all the circumstances of the case^{F2}; or
- (c) if the non-applicant were a claimant, paragraph 64 of Schedule 10 to the Income Support (General) Regulations 1987 (treatment of relevant trust payments) would apply to the asset referred to in that paragraph.]

^{F3}(3)

(4) For the purposes of this regulation the term “asset” means—

- (a) money, whether in cash or on deposit;
- (b) a beneficial interest in land and rights in or over land;
- (c) shares as defined in section 744 of the Companies Act 1985 ^{M1}, stock and unit trusts as defined in section 6 of the Charging Orders Act 1979 ^{M2}, gilt edged securities as defined in paragraph 1 of Schedule 2 to the Capital Gains Tax Act 1979 ^{M3}, and other similar financial instruments.

(5) For the purposes of paragraph (4) the term “asset” includes any asset falling within that paragraph which is located outside Great Britain.

Textual Amendments

- F2** Reg. 23(2)(c) and word added (30.4.2002) by [The Child Support \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/1204\)](#), **reg. 3**, (a)
- F3** Reg. 23(3) omitted (19.1.1998) by virtue of [The Child Support \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/58\)](#), **regs. 1(2), 16** (with reg. 59)

Marginal Citations

- M1** 1985 c.6.
- M2** 1979 c.53.
- M3** 1979 c.14.

Diversion of income

^{F4}24.—(1) A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the non-applicant (“A”) has the ability to control the amount of income that—
 - (i) A receives, or
 - (ii) is taken into account as A’s assessable income, including earnings from employment or self-employment and dividends from shares, whether or not the whole of that income is derived from the company or business from which those earnings are derived; and
- (b) the ^{F5}Secretary of State] is satisfied that A has unreasonably reduced the amount of A’s income which would otherwise fall to be taken into account under regulation 7 or 8 of the Maintenance Assessments and Special Cases Regulations by diverting it to other persons or for purposes other than the provision of such income for A.

(2) In this regulation “assessable income” means the amount calculated in accordance with paragraph 5(1) to (3) of Schedule 1 to the Act and regulations made for the purposes of that paragraph.]

Textual Amendments

- F4** Reg. 24 substituted (6.4.2009) by [The Child Support \(Miscellaneous and Consequential Amendments\) Regulations 2009 \(S.I. 2009/736\)](#), regs. 1(1), **2(3)**
- F5** Words in reg. 24(1)(b) substituted (1.8.2012) by [The Public Bodies \(Child Maintenance and Enforcement Commission: Abolition and Transfer of Functions\) Order 2012 \(S.I. 2012/2007\)](#), art. 1(2), **Sch. para. 112(b)**

Life-style inconsistent with declared income

25.—(1) Subject to paragraph (2), a case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where the Secretary of State is satisfied that the current ^{F6}... assessment is based upon a level of income of the non-applicant which is substantially lower than the level of income required to support the overall life-style of that non-applicant.

[^{F7}(2) Paragraph (1) shall not apply where the Secretary of State is satisfied that the life-style of the non-applicant is paid for—

- (a) out of capital belonging to him; or
- (b) by his partner, unless the non-applicant is able to influence or control the amount of income received by that partner.]

(3) Where the Secretary of State is satisfied in a particular case that the provisions of paragraph (1) would apply but for the provisions of paragraph [^{F8}(2)(b)], he may, whether or not any application on that ground has been made, consider whether the case falls within regulation 27.

Textual Amendments

- F6** Word in reg. 25(1) omitted (19.1.1998) by virtue of [The Child Support \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/58\)](#), regs. 1(2), **17(2)** (with reg. 59)
- F7** Reg. 25(2) substituted (19.1.1998) by [The Child Support \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/58\)](#), regs. 1(2), **17(3)** (with reg. 59)
- F8** Word in reg. 25(3) substituted (19.1.1998) by [The Child Support \(Miscellaneous Amendments\) Regulations 1998 \(S.I. 1998/58\)](#), regs. 1(2), **17(4)** (with reg. 59)

Unreasonably high housing costs

26. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the housing costs of the non-applicant exceed the limits set out in paragraph (1) of regulation 18 of the Maintenance Assessments and Special Cases Regulations (excessive housing costs);
- (b) the non-applicant falls within paragraph (2) of that regulation or would fall within that paragraph if it applied to parents with care; and
- (c) the Secretary of State is satisfied that the housing costs of the non-applicant are substantially higher than is necessary taking into account any special circumstances applicable to that non-applicant.

Partner's contribution to housing costs

27. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where a partner of the non-applicant occupies the home with him and the Secretary of State considers

that it is reasonable for that partner to contribute to the payment of the housing costs of the non-applicant.

Unreasonably high travel costs

28. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where an amount in respect of travel to work costs has been included in the calculation of exempt income of the non-applicant under regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations ^{M4} (exempt income: calculation or estimation of E) or, as the case may be, under regulation 10 of those Regulations (exempt income: calculation or estimation of F) ^{M5} applying regulation 9(1)(i), and the Secretary of State is satisfied that, in all the circumstances of the case, that amount is unreasonably high.

Marginal Citations

M4 Sub-paragraph (1) was added to regulation 9(1) by regulation 44(2)(b) of [S.I. 1995/1045](#).

M5 Regulation 10 was amended by regulation 45 of [S.I. 1995/1045](#).

Travel costs to be disregarded

29. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) an amount in respect of travel to work costs has, in the calculation of a maintenance assessment, been included in the calculation of the exempt income of the non-applicant under regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or, as the case may be, under regulation 10 of those Regulations applying regulation 9(1)(i); and
- (b) the Secretary of State is satisfied that the non-applicant has sufficient income remaining after the deduction of the amount that would be payable under that assessment, had the amount referred to in sub-paragraph (a) not been included in its calculation, for it to be inappropriate for all or part of that amount to be included in the exempt income of the non-applicant.]

Changes to legislation:

There are currently no known outstanding effects for the The Child Support Departure Direction and Consequential Amendments Regulations 1996, PART V.