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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 III**

**Special Expenses**

**Costs incurred in travelling to work**

**13.**—(1) Subject to paragraphs (2) and (3), the following costs shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order where they are incurred by the applicant for the purposes of travel between his home and his normal place of work—

- (a) the cost of purchasing a ticket for such travel;
- (b) the cost of purchasing fuel, where such travel is by a vehicle which is not carrying fare-paying passengers; or
- (c) in exceptional circumstances, the taxi fare for a journey which must unavoidably be undertaken during hours when no other reasonable mode of travel is available,

and any minor incidental costs, such as tolls or fees for the use of a particular road or bridge, incurred in connection with such travel.

(2) Where the Department considers any costs referred to in paragraph (1) to be unreasonably high or to have been unreasonably incurred it may substitute such lower amount as it considers reasonable, including a nil amount.

(3) Costs which can be set off against the income of the applicant under the Income and Corporation Taxes Act 1988(1) shall not constitute expenses for the purposes of paragraph (1).

**Contact costs**

**14.**—(1) Where at the time a departure direction is applied for a set pattern has been established as to frequency of contact between the absent parent and a child in respect of whom the current assessment was made, the following costs, based upon that pattern and incurred by that absent parent for the purpose of maintaining contact with that child, shall, subject to paragraphs (2) to (6), constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order—

- (a) the cost of purchasing a ticket for travel for the purpose of maintaining that contact;
- (b) the cost of purchasing fuel, where travel is for the purpose of maintaining that contact and is by a vehicle which is not carrying fare-paying passengers; or
- (c) the taxi fare for a journey or part of a journey to maintain that contact where the Department is satisfied that the disability of the absent parent makes it impracticable to use any other form of transport which might otherwise have been available to him,

and any minor incidental costs, such as tolls or fees for the use of a particular road or bridge, incurred in connection with such travel.

(2) Subject to paragraph (3), where the Department considers any costs referred to in paragraph (1) to be unreasonably high or to have been unreasonably incurred it may substitute such lower amount as it considers reasonable, including a nil amount.

(3) Any lower amount substituted by the Department under paragraph (2) shall not be so low as to make it impossible, in the Department's opinion, for contact to be maintained at the frequency specified in any court order made in respect of the absent parent and the child mentioned in paragraph (1) where the absent parent is maintaining contact at that frequency.

(4) Paragraph (1) shall not apply where regulation 20 of the Maintenance Assessments and Special Cases Regulations (persons treated as absent parents) applies to the applicant.

(5) Where paragraph (1)(c) applies and the applicant has, at the date an application is made, received, or at that date is in receipt of, financial assistance from any source to meet, wholly or in part, costs of maintaining contact with the child who is referred to in paragraph (1), which arise wholly from his disability and which are in excess of the costs which would be incurred if that disability did not exist, only the net amount of the costs referred to in paragraph (1)(c), after the deduction of that financial assistance, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order.

(6) For the purposes of this regulation, a person is disabled if he is blind, deaf or dumb or is substantially or permanently handicapped by illness, injury, mental disorder or congenital deformity.

(7) Where, at the time a departure direction is applied for, no set pattern has been established as to frequency of contact between the absent parent and a child in respect of whom the current assessment was made, but the Department is satisfied that that absent parent and the person with care of that child have agreed upon a pattern of contact for the future, the costs mentioned in paragraph (1) and which are based upon that intended pattern of contact shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order, and paragraphs (2) to (6) shall apply to that application.

### **Illness or disability**

**15.**—(1) Subject to paragraphs (2) to (4), the costs being met by the applicant in respect of the items listed in sub-paragraphs (a) to (m), which arise from long-term illness or disability of that applicant or a dependant of that applicant and which are in excess of the costs which would be incurred if that illness or disability did not exist, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order—

- (a) personal care and attendance;
- (b) personal communication needs;
- (c) mobility;
- (d) domestic help;
- (e) medical aids where these cannot be provided as part of health services;
- (f) heating;
- (g) clothing;
- (h) laundry requirements;
- (i) payments for food essential to comply with a diet recommended by a medical practitioner;
- (j) adaptations required to the applicant's home;
- (k) day care;
- (l) rehabilitation; or
- (m) respite care.

(2) Where the Department considers any costs referred to in paragraph (1) to be unreasonably high or to have been unreasonably incurred it may substitute such lower amount as it considers reasonable, including a nil amount.

(3) Where—

- (a) an applicant or his dependant has, at the date an application is made, received, or at that date is in receipt of, financial assistance from any source in respect of his long-term illness or disability or that of his dependant; or
- (b) that applicant or his dependant is adjudged eligible for either of the allowances referred to in paragraph (4),

only the net amount of the costs incurred in respect of the items listed in paragraph (1), after the deduction of the financial assistance referred to in sub-paragraph (a) and, where applicable, the allowance referred to in sub-paragraph (b) shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order.

(4) Where the Department considers that a person who has made an application in respect of special expenses falling within paragraph (1) or his dependant may be entitled to disability living allowance under section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2) or attendance allowance under section 64 of that Act—

- (a) if that applicant or his dependant has at the date of that application, or within a period of six weeks beginning with and including the giving or sending to him of notification of the possibility of entitlement to either of those allowances, applied for either of those allowances, the application made by that applicant shall not be determined until a decision has been made by the adjudicating authority on the eligibility for that allowance of that applicant or that dependant;
- (b) if that applicant or his dependant has failed to apply for either of those allowances within the six week period specified in sub-paragraph (a), the Department shall determine the application for a departure direction made by that applicant on the basis that that applicant has income equivalent to the highest rate prescribed in respect of that allowance by or under those sections.

(5) For the purposes of this regulation, a dependant of an applicant shall be—

- (a) where the applicant is an absent parent—
  - (i) the partner of that absent parent;
  - (ii) any child of whom that absent parent or his partner is a parent and who lives with them; or
- (b) where the applicant is a parent with care—
  - (i) the partner of that parent with care;
  - (ii) any child of whom that parent with care or that parent's partner is a parent and who lives with them, except any child in respect of whom the absent parent against whom the current assessment is made is the parent.

(6) For the purposes of this regulation—

- (a) a person is disabled if he is blind, deaf or dumb or is substantially or permanently handicapped by illness, injury, mental disorder or congenital deformity;
- (b) “long-term illness” means an illness from which the applicant or his dependant is suffering at the date of the application and which is likely to last for at least 52 weeks from and including that date or if likely to be shorter than 52 weeks, for the rest of the life of that applicant or his dependant;

- (c) “health services” has the same meaning as in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972(3).

### **Debts incurred before the absent parent became an absent parent**

**16.**—(1) Subject to paragraphs (2) to (4), repayment of debts incurred—

- (a) for the joint benefit of the applicant and the non-applicant parent;
- (b) for the benefit of the non-applicant parent where the applicant remains legally liable to repay the whole or part of that debt;
- (c) for the benefit of any person who at the time the debt was incurred—
  - (i) was a child;
  - (ii) lived with the applicant and non-applicant parent, and
  - (iii) of whom the applicant or the non-applicant parent is the parent, or both are the parents; or
- (d) for the benefit of any child with respect to whom the current assessment was made,

shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order where those debts were incurred before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made and at a time when the applicant and the non-applicant parent were a married or unmarried couple who were living together.

(2) Paragraph (1) shall not apply to repayment of—

- (a) a debt which would otherwise fall within paragraph (1) where the applicant has retained for his own use and benefit the asset the purchase of which incurred the debt;
- (b) a debt incurred for the purposes of any trade or business;
- (c) a gambling debt;
- (d) a fine imposed on the applicant;
- (e) unpaid legal costs in respect of separation or divorce from the non-applicant parent;
- (f) amounts due after use of a credit card;
- (g) a debt incurred by the applicant to pay any of the items listed in sub-paragraphs (c) to (f) and (j);
- (h) amounts payable by the applicant under a mortgage or loan taken out on the security of any property except where that mortgage or loan was taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which is the home of the parent with care and any child in respect of whom the current assessment was made;
- (i) amounts payable by the applicant in respect of a policy of insurance of a kind referred to in paragraph 3(4) or (5) of Schedule 3 to the Maintenance Assessments and Special Cases Regulations(4) (eligible housing costs) except where that policy of insurance was obtained or retained to discharge a mortgage or charge taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which is the home of the parent with care and any child in respect of whom the current assessment was made;
- (j) a bank overdraft except where the overdraft was, at the time it was taken out, agreed to be for a specified amount repayable over a specified period;
- (k) a loan obtained by the applicant, other than a loan obtained from a qualifying lender or the applicant’s current or former employer;

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(3) S.I.1972/1265 (N.I. 14)

(4) Paragraph 3(4) was amended by regulation 9(16)(d) of S.R. 1995 No. 162 and paragraph 3(5) was substituted by regulation 5(6) of S.R. 1994 No. 37

- (l) a debt in respect of which a departure direction has already been given and which has not been repaid during the period for which that direction was in force except where the maintenance assessment in respect of which that direction was given was cancelled or ceased to have effect and, during the period for which that direction was in force, a further maintenance assessment was made in respect of the same applicant, non-applicant and qualifying child with respect to whom the earlier assessment was made; or
- (m) any other debt which the Department is satisfied it is reasonable to exclude.

(3) Except where the repayment is of an amount which is payable under a mortgage or loan, or in respect of a policy of insurance, which falls within the exception set out in paragraph (2)(h) or (i), repayment of a debt shall not constitute expenses for the purposes of paragraph (1) where the Department is satisfied that the applicant has taken responsibility for repayment of that debt, as, or as part of, a financial settlement with the non-applicant parent or by virtue of a court order.

(4) Where an applicant has incurred a debt partly to repay a debt or debts repayment of which would have fallen within paragraph (1), the repayment of that part of the debt incurred which is referable to the debts repayment of which would have fallen within that paragraph shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order.

(5) For the purposes of this regulation—

- (a) “married or unmarried couple” has the meaning set out in regulation 1(2) of the Maintenance Assessments and Special Cases Regulations;
- (b) “non-applicant parent” means—
  - (i) where the applicant is the person with care, the absent parent;
  - (ii) where the applicant is the absent parent, the partner of that absent parent at the time the debt in respect of which the application is made was entered into;
- (c) “qualifying lender” has the meaning given to it in section 376(4) of the Income and Corporation Taxes Act 1988;
- (d) “repairs and improvements” means major repairs necessary to maintain the fabric of the home and any of the measures set out in paragraph 2(a) to (j) of Schedule 3 to the Maintenance Assessments and Special Cases Regulations (eligible housing costs) and other improvements which the Department considers reasonable in the circumstances where those measures or other improvements are undertaken with a view to improving fitness for occupation of the home.

### **Pre-1993 financial commitments**

17.—(1) A financial commitment entered into by an absent parent before 5th April 1993, except any commitment of a kind listed in regulation 16(2)(b) to (g) and (j) or which has been wholly or partly taken into account in the calculation of a maintenance assessment shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order where—

- (a) there was in force on 5th April 1993 and at the date that commitment was entered into, a court order or maintenance agreement made before 5th April 1993 in respect of that absent parent and every child in respect of whom, before that date, he was, or was found or adjudged to be, the parent; and
- (b) the Department is satisfied that it is impossible for the absent parent to withdraw from that commitment or unreasonable to expect him to do so.

(2) For the purposes of paragraph (1)—

- (a) “court order” means an order made under the statutory provisions listed in or prescribed under Article 10(11) of the Order, for the making or securing the making of financial provision for the benefit of a child in respect of whom the current assessment was made;

- (b) “maintenance agreement” means an agreement in writing for the making or securing the making of financial provision for the benefit of a child in respect of whom the current assessment was made.

### **Costs incurred in supporting certain children**

**18.**—(1) The costs incurred by a parent in supporting a child who is not his child but who is part of his family (a “relevant child”) shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order if the conditions set out in paragraph (2) are satisfied and shall, if those conditions are satisfied, equal the amount specified in paragraph (3).

(2) The conditions referred to in paragraph (1) are—

- (a) the child became a relevant child prior to 5th April 1993;
- (b) subject to paragraph (7), the liability of the absent parent of a relevant child to pay maintenance to or for the benefit of that child under a court order, a written maintenance agreement or a maintenance assessment is less than the amount specified in paragraph (4), or there is no such liability; and
- (c) the net income of the parent’s current partner where the relevant child is the child of that partner, calculated in accordance with paragraph (5), is less than the amount calculated in accordance with paragraph (6) (“the partner’s outgoings”).

(3) The amount referred to in paragraph (1) constituting special expenses for a case falling within this regulation is the difference between the amount specified in paragraph (4) and, subject to paragraph (7), the liability of the absent parent of a relevant child to pay maintenance of a kind mentioned in paragraph (2)(b), and if there is no such liability is the amount specified in paragraph (4).

(4) The amount referred to in paragraphs (2)(b) and (3) is the aggregate of—

- (a) an amount in respect of each relevant child equal to the personal allowance for that child specified in column (2) of paragraph 2 of the relevant Schedule (income support personal allowance);
- (b) if the conditions set out in paragraph 14(b) and (c) of that Schedule (income support disabled child premium) are satisfied in respect of a relevant child, an amount equal to the amount specified in column (2) of paragraph 15(6) of that Schedule in respect of each such child;
- (c) an amount equal to the income support family premium specified in paragraph 3 of that Schedule that would be payable if the parent were a claimant, except where the family includes other children of the parent; and
- (d) an amount equal to the income support lone parent premium specified in column (2) of paragraph 15(1) of that Schedule that would be payable, if the parent were a claimant, except where the family includes children of the parent.

(5) For the purposes of paragraph (2)(c), the net income of the parent’s partner shall be the aggregate of—

- (a) the income of that partner, calculated in accordance with regulation 7(1) of the Maintenance Assessments and Special Cases Regulations (but excluding the amount mentioned in sub-paragraph (d) of that regulation) as if that partner were an absent parent to whom that regulation applied;
- (b) the child benefit payable in respect of each relevant child; and
- (c) any income, other than earnings, in excess of £10·00 per week in respect of each relevant child.

(6) For the purposes of paragraph (2)(c), a current partner’s outgoings shall be the aggregate of—

- (a) an amount equal to the amount specified in column (2) of paragraph 1(1)(e) of the relevant Schedule (income support personal allowance for a single claimant aged not less than 25);
- (b) where a departure direction has already been given in a case falling within regulation 27 in respect of the housing costs attributable to the partner, the amount determined in accordance with regulation 40(7) as the housing costs the partner is able to contribute;
- (c) the amount of any reduction in the parent's exempt income, calculated under regulation 9(1) of the Maintenance Assessments and Special Cases Regulations<sup>(5)</sup>, in consequence of the application of paragraph (2) of that regulation<sup>(6)</sup>; and
- (d) the amount specified in paragraph (3).

(7) The Department may, if it is satisfied that it is appropriate in the particular circumstances of the case, treat a liability of a kind mentioned in paragraph (2)(b) as not constituting a liability for the purposes of that paragraph and of paragraph (3).

(8) For the purposes of this regulation—

- (a) a child who is not the child of a particular person is a part of that person's family where that child is the child of a current or former partner of that person;
- (b) "relevant Schedule" means Schedule 2 to the Income Support (General) Regulations (Northern Ireland) 1987<sup>(7)</sup>.

#### **Special expenses for a case falling within regulation 13, 14, 16 or 17**

**19.**—(1) This regulation applies where the expenses of an applicant fall within one or more of the descriptions of expenses falling within regulation 13 (travel to work costs), 14 (contact costs), 16 (debts incurred before the absent parent became an absent parent) or 17 (pre-1993 financial commitments).

(2) Special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order in respect of the expenses mentioned in paragraph (1) shall be—

- (a) where the expenses fall within only one description of expenses, those expenses in excess of £15·00;
- (b) where the expenses fall within more than one description of expenses, the aggregate of those expenses in excess of £15·00.

#### **Application for a departure direction in respect of special expenses other than those with respect to which a direction has already been given**

**20.** Where a departure direction with respect to special expenses falling within one or more of the descriptions of expenses falling within regulation 13, 14, 16 or 17 has already been given and an application with respect to special expenses falling within one or more of those descriptions of expenses is made where none of those expenses are ones with respect to which the earlier direction has been given, the special expenses with respect to which any later direction is given shall be the expenses, determined in accordance with regulation 13, 14, 16 or 17, as the case may be, with respect to which the later application is made, and the provisions of regulation 19 shall not apply.

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(5) Paragraph (1) was amended by S.R. 1993 No. 164, S.R. 1995 Nos. 162 and 475 and S.R. 1996 No. 317

(6) Paragraph (2) was amended by S.R. 1993 No. 164, S.R. 1995 No. 162 and S.R. 1996 No. 288

(7) S.R. 1987 No. 459; relevant amending rules are S.R. 1988 No. 318, S.R. 1991 No. 338, S.R. 1992 No. 6 and S.R. 1996 No. 73