STATUTORY RULES OF NORTHERN IRELAND

2012 No. 427

The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

PART 5

VARIATIONS

CHAPTER 2

GROUNDS FOR VARIATION: SPECIAL EXPENSES

Contact costs

62.—(1) Subject to the following provisions of this regulation and regulation 67, the following costs incurred or reasonably expected to be incurred by the non-resident parent, whether in respect of the non-resident parent or the qualifying child or both, for the purpose of maintaining contact with that child, constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B(**1**)—

(a) the cost of purchasing a ticket for travel;

(b) the cost of purchasing fuel where travel is by a vehicle which is not carrying fare-paying passengers;

(c) the taxi fare for a journey or part of a journey where the Department is satisfied that the disability or long-term illness of the non-resident parent or the qualifying child makes it impracticable for any other form of transport to be used for that journey or part of that journey;

(d) the cost of car hire where the cost of the journey would be less in total than it would be if public transport or taxis or a combination of both were used;

(e) where the Department considers a return journey on the same day is impracticable, or the established or intended pattern of contact with the child includes contact over two or more consecutive days, the cost of the non-resident parent's or, as the case may be, the child's accommodation for the number of nights the Department considers appropriate in the circumstances of the case; and

(f) any minor incidental costs such as tolls or fees payable for the use of a particular road or bridge incurred in connection with such travel, including breakfast where it is included as part of the accommodation cost referred to in sub-paragraph (e).

(2) The costs to which paragraph (1) applies include the cost of a person to travel with the non-resident parent or the qualifying child, if the Department is satisfied that the presence of another person on the journey, or part of the journey, is necessary including, but not limited to, where it is necessary because of the young age of the qualifying child or the disability or long-term illness of the non-resident parent or that child.

(**1**) Schedule 4B was inserted by section 3(3) of the Child Support (Northern Ireland) Order 1995 and is substituted by section 6(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(3) The costs referred to in paragraphs (1) and (2)—

(a) are expenses for the purposes of paragraph 2(2) of Schedule 4B only to the extent that they are—

(i) incurred in accordance with a set pattern as to frequency of contact between the non-resident parent and the qualifying child which has been established at or, where at the time of the variation application it has ceased, which had been established before, the time that the variation application is made, or

(ii) based on an intended set pattern for such contact which the Department is satisfied has been agreed between the non-resident parent and the person with care of the qualifying child; and

(b) are—

(i) where sub-paragraph (a)(i) applies and such contact is continuing, calculated as an average weekly amount based on the expenses actually incurred during the period of 12 months, or such lesser period as the Department may consider appropriate in the circumstances of the case, ending immediately before the day from which a variation agreed on this ground would take effect,

(ii) where sub-paragraph (a)(i) applies and such contact has ceased, calculated as an average weekly amount based on the expenses actually incurred during the period from the day from which a variation agreed on this ground would take effect to the last day on which the variation would take effect, or

(iii) where sub-paragraph (a)(ii) applies, calculated as an average weekly amount based on anticipated costs during such period as the Department considers appropriate.

(4) Where, at the date on which the variation application is made, the non-resident parent has received, is in receipt of, or will receive, any financial assistance, other than a loan, from any source to meet, wholly or in part, the costs of maintaining contact with a child as referred to in paragraph (1), only the amount of the costs referred to in that paragraph, after the deduction of the financial assistance, constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B.

Illness or disability of relevant other child

63.—(1) Subject to the following provisions of this regulation, expenses necessarily incurred by the non-resident parent in respect of the items listed in sub-paragraphs (a) to (m) due to the long-term illness or disability of a relevant other child constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B—

(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 non-resident parent's home;

(k) day care;

(l) rehabilitation; or

(m) respite care.

(2) For the purposes of this regulation and regulation 62—

(a) a person is "disabled" for a period in respect of which—

(i) a disability living allowance is paid to or in respect of that person,

(ii) that person would receive disability living allowance if it were not for the fact that the person is a patient, though remaining part of the applicant's family, or

(iii) that person is registered as blind in a register maintained by or on behalf of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(**2**),

and "disability" is to be construed accordingly;

(b) "disability living allowance" means the care component of a disability living allowance, payable under section 72 of the Contributions and Benefits Act(**3**);

(c) "health services" has the same meaning as in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972;

(d) "long-term illness" means an illness from which the child is suffering at the date of the application or the date from which the variation, if agreed, would take effect and which is likely to last for at least 12 months after that date, or, if likely to be shorter than 12 months, for the remainder of the child's life;

(e) "relevant other child" has the meaning given in paragraph 10C(2) of Schedule 1(**4**).

(3) Where, at the date on which the non-resident parent makes the variation application—

(a) the non-resident parent or a member of the non-resident parent's household has received, is in receipt of, or will receive any financial assistance from any source in respect of the long-term illness or disability of the relevant other child; or

(b) a disability living allowance is received by the non-resident parent or the member of the non-resident parent's household on behalf of the relevant other child,

only the net amount of the costs incurred in respect of the items listed in paragraph (1), after the deduction of the financial assistance or the amount of the allowance, constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(4) For the purpose of paragraph (2)(a)—

(a) "patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a juvenile justice centre within the meaning of Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998(**5**) or a young offenders centre within the meaning of section 2 of the Treatment of Offenders Act (Northern Ireland) 1968(**6**) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005(**7**); and

(b) where a person has ceased to be registered in a register as referred to in head (iii) of that sub-paragraph, having regained their eyesight, that person is to be treated as though

(**2**) S.I. 1972/1265 (N.I. 14)

(**3**) Section 72 was amended by Article 64(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), sections 48 and 54(2) of, and Schedule 8 to, the Welfare Reform Act (Northern Ireland) 2007 and regulation 2(4) of S.R. 2011 No. 356

(**4**) Paragraph 10C is inserted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and was amended by paragraph 12 of Schedule 24 to the Civil Partnership Act 2004

(**5**) S.I. 1998/1504 (N.I. 9)

(**6**) 1968 c. 29 (N.I.); section 2 was amended by Article 13(5) of the Treatment of Offenders (Northern Ireland) Order 1989 (S.I. 1989/1344 (N.I. 15)), paragraph 3 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) and paragraph 6 of Schedule 1 and Schedule 2 to the Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)

(**7**) S.R. 2005 No. 580

registered blind, for a period of 28 days after the day on which that person ceased to be registered in such a register.

Prior debts

64.—(1) Subject to the following provisions of this regulation and regulation 67, the repayment of debts to which paragraph (2) applies constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B where those debts were incurred—

(a) before the non-resident parent became a non-resident parent in relation to the qualifying child; and

(b) at the time when the non-resident parent and the person with care in relation to the child referred to in sub-paragraph (a) were a couple.

(2) This paragraph applies to debts incurred—

(a) for the joint benefit of the non-resident parent and the person with care;

(b) for the benefit of the person with care where the non-resident parent remains legally liable to repay the whole or part of the debt;

(c) for the benefit of any person who is not a child but who at the time the debt was incurred—

(i) was a child,

(ii) lived with the non-resident parent and the person with care, and

(iii) of whom the non-resident parent or the person with care is the parent, or both are the parents;

(d) for the benefit of the qualifying child referred to in paragraph (1); or

(e) for the benefit of any child, other than the qualifying child referred to in paragraph (1), who, at the time the debt was incurred—

(i) lived with the non-resident parent and the person with care, and

(ii) of whom the person with care is the parent.

(3) Paragraph (1) does not apply to repayment of—

(a) a debt which would otherwise fall within paragraph (1) where the non-resident parent has retained for the non-resident parent's own use and benefit the asset in connection with the purchase of which the debt was incurred;

(b) a debt incurred for the purposes of any trade or business;

(c) a gambling debt;

(d) a fine imposed on the non-resident parent;

(e) unpaid legal costs in respect of—

(i) separation from the person with care,

(ii) divorce from the person with care, or

(iii) dissolution of a civil partnership that had been formed with the person with care;

(f) amounts due after use of a credit card;

(g) a debt incurred by the non-resident parent to pay for any of the items listed in sub-paragraphs (c) to (f) and (j);

(h) amounts payable by the non-resident parent 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 was, and continues to be, the home of the person with care and any qualifying child;

(i) amounts payable by the non-resident parent in respect of a policy of insurance, 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 was, and continues to be, the home of the person with care and the qualifying child;

(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 non-resident parent other than a loan obtained from a qualifying lender or the non-resident parent's current or former employer; or

(l) any other debt which the Department is satisfied is reasonable to exclude.

(4) 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 (3)(h) or (i), repayment of a debt does not constitute expenses for the purposes of paragraph (1) where the Department is satisfied that the non-resident parent has taken responsibility for repayment of that debt as, or as part of, a financial settlement with the person with care or by virtue of a court order.

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

(6) In paragraph (3)(h) "repairs or improvements" means repairs that the Department considers are major repairs necessary to maintain the fabric of the home and any of the following measures—

(a) installation of a fixed bath, shower, wash basin or lavatory, and necessary associated plumbing;

(b) damp-proofing measures;

(c) provision or improvement of ventilation and natural light;

(d) provision of electric lighting and sockets;

(e) provision or improvement of drainage facilities;

(f) improvement of the structural condition of the home;

(g) improvements to the facilities for the storing, preparation and cooking of food;

(h) provision of heating, including central heating;

(i) provision of storage facilities for fuel and refuse;

(j) improvements to the insulation of the home; or

(k) other improvements which the Department considers reasonable in the circumstances.

Boarding school fees

65.—(1) Subject to the following provisions of this regulation and regulation 67, the maintenance element of boarding school fees, incurred or reasonably expected to be incurred by the non-resident parent, constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(2) Where the Department considers that the maintenance element of the boarding school fees cannot be distinguished with reasonable certainty from the total fees, the Department may instead determine the amount of the maintenance element and any such determination is not to exceed 35 per cent. of the total fees.

(3) Where—

(a) the non-resident parent has, at the date on which the variation application is made, received, or at that date is in receipt of, financial assistance from any source in respect of the boarding school fees; or

(b) the boarding school fees are being paid in part by the non-resident parent and in part by another person,

a portion of the expenses incurred by the non-resident parent in respect of the boarding school fees, calculated in accordance with paragraph (4), constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(4) For the purposes of paragraph (3), the portion in question is calculated as follows—

(a) find the amount (A) that results from deducting from the amount of the boarding school fees the financial assistance, or the amount that another person is paying, as referred to in paragraph (3);

(b) find the amount that bears the same proportion to A as the maintenance element of the fees referred to in paragraph (1) bears to the total fees referred to in that paragraph, and that amount is the portion in question.

(5) No variation on this ground may reduce by more than 50 per cent. the income to which the Department would otherwise have had regard in the calculation of maintenance liability.

(6) For the purposes of this regulation, "boarding school fees" means the fees payable in respect of attendance at a recognised educational establishment providing full-time education, which is not advanced education, for children under the age of 20 and where some or all of the pupils, including the qualifying child, are resident during term time.

(7) For the purposes of paragraph (6)—

"recognised educational establishment" means an establishment recognised by the Department for the purposes of that paragraph as being, or as comparable to, a university, college or school;

"advanced education" means education for the purposes of—

(a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or

(b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level) or a Scottish national qualification (higher or advanced higher).

Payments in respect of certain mortgages, loans or insurance policies

66.—(1) Subject to regulation 67, the payments to which paragraph (2) applies constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(2) This paragraph applies to payments, whether made to the mortgagee, lender, insurer or the person with care—

(a) in respect of a mortgage or a loan from a qualifying lender where—

(i) the mortgage or loan was taken out to facilitate the purchase of, or repairs or improvements to, a property ("the property") by a person other than the non-resident parent,

(ii) the payments are not made under a debt incurred by the non-resident parent and do not arise out of any other legal liability of the non-resident parent for the period in respect of which the variation is applied for,

(iii) the property was the home of the applicant and the person with care when they were a couple and remains the home of the person with care and the qualifying child, and

(iv) the non-resident parent has no legal or equitable interest in and no charge or right to have a charge over the property, or

(b) of amounts payable in respect of a policy of insurance taken out for the discharge of a mortgage or loan referred to in sub-paragraph (a), including an endowment policy, except where the non-resident parent is entitled to any part of the proceeds on the maturity of that policy.

Thresholds

67.—(1) Subject to paragraphs (3) and (4), the costs or repayments referred to in regulations 62 and 64 to 66 are to be special expenses for the purposes of paragraph 2(2) of Schedule 4B only where they are equal to or exceed the threshold amount of £10 per week.

(2) Where the expenses fall within more than one description of expense referred to in paragraph (1), the threshold amount applies separately in respect of each description.

(3) Subject to paragraph (4), where the Department considers any expenses referred to in this Chapter to be unreasonably high or to have been unreasonably incurred it may substitute such lower amount as it considers to be reasonable, including an amount which is below the threshold amount or a nil amount.

(4) Any lower amount substituted by the Department under paragraph (3) in relation to contact costs under regulation 62 must not be so low as to make it impossible, in the Department's opinion, for contact between the non-resident parent and the qualifying child to be maintained at the frequency specified in any court order made in respect of the non-resident parent and that child where the non-resident parent is maintaining contact at that frequency.