

Draft Statutory Instrument laid before Parliament under section 52(2) and (2A) of the Child Support Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2000 No.

FAMILY LAW

CHILD SUPPORT

**The Child Support (Maintenance Calculations
and Special Cases) Regulations 2000**

*Made - - - - 2000
Coming into force in accordance with regulation 1(4)
and (5)*

Whereas a draft of this Instrument was laid before Parliament in accordance with section 52(2) and (2A) of the Child Support Act 1991(1) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 14(1) and (1A), 42, 51, 52(4) and 54 of, and paragraphs 3(2), 4(1)(b) and (c), 4(3), 5(a), 7(3), 9, 10 and 10C(2)(b) of Schedule 1 to, the Child Support Act 1991(2), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Maintenance Calculations and Special Cases) Regulations 2000.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Child Support Act 1991;

(1) 1991 c. 48. Section 52 is amended by section 25 of the Child Support, Pensions and Social Security Act 2000 (c. 19).
(2) Sections 14(1) and (1A), 51 and 54 are amended and Part I of Schedule 1 is substituted respectively by sections 12 of and paragraphs 11(7), 11(9) and 11(20) of Schedule 3 to and section 1 of the Child Support, Pensions and Social Security Act 2000. Section 54 is cited because of the meaning ascribed to the word “prescribed”.

“Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(3);

“Contributions and Benefits (Northern Ireland) Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(4);

“couple” means a man and a woman who are—

- (a) married to each other and are members of the same household; or
- (b) not married to each other but are living together as husband and wife;

“course of advanced education” means—

- (a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a Diploma of Higher Education, a higher national diploma, a higher national diploma or higher national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority or a teaching qualification; or
- (b) any other full-time course which is a course of a standard above that of an ordinary national diploma, a national diploma or national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority, the advanced level of the General Certificate of Education, a Scottish certificate of education (higher level), a Scottish certificate of sixth year studies or a Scottish National Qualification at Higher Level;

“day” includes any part of a day;

“day to day care” means—

- (a) care of not less than 104 nights in total during the 12 month period ending with the relevant week; or
- (b) where, in the opinion of the Secretary of State, a period other than 12 months is more representative of the current arrangements for the care of the child in question, care during that period of not less in total than the number of nights which bears the same ratio to 104 nights as that period bears to 12 months, and for the purpose of this definition—
 - (i) where a child is a boarder at a boarding school or is a patient in a hospital or other circumstances apply, such as where the child stays with a person who is not a parent of the child, and which the Secretary of State regards as temporary, the person who, but for those circumstances, would otherwise provide day to day care of the child shall be treated as providing day to day care during the periods in question; and
 - (ii) “relevant week” shall have the meaning ascribed to it in the definition in this paragraph, except that in a case where notification is given under regulation 7C of the Decisions and Appeals Regulations(5) to the relevant persons on different dates, “relevant week” means the period of 7 days immediately preceding the date of the latest notification;

“Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(6);

“disabled person’s tax credit” means a disabled person’s tax credit under section 129 of the Contributions and Benefits Act(7);

(3) 1992 c. 4.

(4) 1992 c. 7.

(5) Regulation 7C was inserted by S.I. 2000/119.

(6) S.I. 1999/991. The Regulations were amended by S.I. 1999/1446, 1623, 1662, 1670, 2570, 2677, 3178, 2000/119, 127, 897, 1596 and 1982.

(7) See section 1 of, and paragraphs 1 and 2(h) of Schedule 1 to, the Tax Credits Act 1999 (c. 10).

“effective date” means the date on which a maintenance calculation takes effect for the purposes of the Act;

“employed earner” has the same meaning as in section 2(1)(a) of the Contributions and Benefits Act except that it shall include—

- (a) a person gainfully employed in Northern Ireland; and
- (b) a person to whom section 44(2A)(8) of the Act applies;

“family” means—

- (a) a couple (including the members of a polygamous marriage) and any member of the same household for whom one or more of them is responsible and who is a child; or
- (b) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child;

“home” means—

- (a) the dwelling in which a person and any family of his normally live; or
- (b) if he or they normally live in more than one home, the principal home of that person and any family of his,

and for the purpose of determining the principal home in which a person normally lives no regard shall be had to residence in a residential care home or a nursing home during a period which does not exceed 52 weeks or, where it appears to the Secretary of State that the person will return to his principal home after that period has expired, such longer period as the Secretary of State considers reasonable to allow for the return of that person to that home;

“Income Support Regulations” means the Income Support (General) Regulations 1987(9);

“the Jobseekers Act” means the Jobseekers Act 1995(10);

“Maintenance Calculation Procedure Regulations” means the Child Support (Maintenance Calculation Procedure) Regulations 2000(11);

“net weekly income” has the meaning given in the Schedule to these Regulations;

“nursing home” has the same meaning as in regulation 19(3) of the Income Support Regulations;

“occupational pension scheme” means such a scheme within the meaning in section 1 of the Pension Schemes Act 1993(12) and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988(13);

“partner” means—

- (a) in relation to a member of a couple, the other member of that couple;
- (b) in relation to a member of a polygamous marriage, any other member of that marriage with whom he lives;

“patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a young offender institution within the meaning of the Criminal Justice Act 1982(14) or the Prisons (Scotland) Act 1989(15) who is regarded as receiving free in-

(8) Section 44(2A) is inserted by section 22 of the Child Support, Pensions and Social Security Act 2000.

(9) S.I. 1987/1967; the relevant amending instruments are S.I. 1988/663, 1228, 1445, 2022, 1989/534, 1034, 1678, 1990/547, 1168, 1776; 1991/236, 387, 503, 1559.

(10) 1995 c. 18.

(11) S.I. 2000/ .

(12) 1993 c. 48.

(13) 1988 c. 1.

(14) 1982 c. 48. The Act is amended by the Criminal Justice Act 1988 (c. 33).

(15) 1989 c. 45.

patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975⁽¹⁶⁾;

“person” does not include a local authority;

“personal pension scheme” means such a scheme within the meaning in section 1 of the Pension Schemes Act 1993 and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988;

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and in respect of which any ceremony of marriage took place under the law of a country which at the time of that ceremony permitted polygamy;

“prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person whose detention is under the Mental Health Act 1983⁽¹⁷⁾ or the Mental Health (Scotland) Act 1984⁽¹⁸⁾;

“relevant week” means—

- (a) in relation to an application for child support maintenance—
 - (i) where the application is made by a non-resident parent, the period of 7 days immediately before the application is made; and
 - (ii) in any other case, the period of 7 days immediately before the date of notification to the non-resident parent and for this purpose “the date of notification to the non-resident parent” means the date on which the non-resident parent is first given notice by the Secretary of State under the Maintenance Calculation Procedure Regulations that an application for a maintenance calculation has been made, or treated as made, as the case may be, in relation to which the non-resident parent is named as the parent of the child to whom the application relates;
- (b) where a decision (“the original decision”) is to be—
 - (i) revised under section 16 of the Act; or
 - (ii) superseded by a decision under section 17 of the Act on the grounds that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact or was erroneous in point of law,
 the period of 7 days which was the relevant week for the purposes of the original decision;
- (c) where a decision (“the original decision”) is to be superseded under section 17 of the Act—
 - (i) on an application made for the purpose on the basis that a material change of circumstances has occurred since the original decision was made, the period of 7 days immediately preceding the date on which that application was made;
 - (ii) subject to sub-paragraph (b), in a case where a relevant person is given notice under regulation 7C of the Decisions and Appeals Regulations, the period of 7 days immediately preceding the date of that notification,

except that where, under paragraph 15 of Schedule 1 to the Act, the Secretary of State makes separate maintenance calculations in respect of different periods in a particular case, because he is aware of one or more changes of circumstances which occurred after the date which is applicable to that case, the relevant week for the purposes of each separate maintenance calculation made to take account of each such change of circumstances shall be the period of 7 days immediately before the date on which notification was given to the Secretary of State of the change of circumstances relevant to that separate maintenance calculation;

⁽¹⁶⁾ 1975/555; relevant amending instruments are S.I. 1977/1693, 1987/1683 and 1999/1326.

⁽¹⁷⁾ 1983 c. 20.

⁽¹⁸⁾ 1984 c. 36.

“residential care home” has the same meaning as in regulation 19(3) of the Income Support Regulations;

“retirement annuity contract” means an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision of a life annuity in old age or the provision of an annuity for a partner or dependant and in respect of which relief from income tax may be given on any premium;

“self-employed earner” has the same meaning as in section 2(1)(b) of the Contributions and Benefits Act except that it shall include a person gainfully employed in Northern Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

“student” means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or who is aged 19 or over and attending a full-time course of study at an educational establishment; and for the purposes of this definition—

- (a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the last day of the course or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course (within the meaning of paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) (No. 2) Regulations 1993⁽¹⁹⁾) shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

“training allowance” means an allowance payable under section 2 of the Employment and Training Act 1973⁽²⁰⁾, or section 2 of the Enterprise and New Towns (Scotland) Act 1990⁽²¹⁾;

“work-based training for young people or, in Scotland, Skillseekers training” means—

- (a) arrangements made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or
- (b) arrangements made by the Secretary of State for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966⁽²²⁾ (power of Defence Council to make regulations as to engagement of persons in regular forces),

for purposes which include the training of persons who, at the beginning of their training, are under the age of 18;

“working families’ tax credit” means a working families’ tax credit under section 128 of the Contributions and Benefits Act⁽²³⁾; and

“year” means a period of 52 weeks.

- (3) The following other description of children is prescribed for the purposes of paragraph 10C(2) (b) of Schedule 1 to the Act (relevant other children)—

children other than qualifying children in respect of whom the non-resident parent or his partner would receive child benefit under Part IX of the Contributions and Benefits Act but who do not solely because the conditions set out in section 146 of that Act (persons outside Great Britain) are not met.

- (4) Subject to paragraph (5), these Regulations shall come into force in relation to a particular case on the day on which Part I of Schedule 1 to the 1991 Act as amended by the Child Support, Pensions and Social Security Act 2000 comes into force in relation to that type of case.

⁽¹⁹⁾ S.I. 1993/2914.

⁽²⁰⁾ 1973 c. 50. Section 2 was substituted by the Employment Act 1988 (c. 19), section 25(1).

⁽²¹⁾ 1990 c. 35.

⁽²²⁾ 1966 c. 45.

⁽²³⁾ See Section 1 of, and paragraphs 1 and 2(g) of Schedule 1 to, the Tax Credits Act 1999 (c. 10).

(5) Paragraphs (1) and (2) of regulation 4 and, for the purposes of those provisions, this regulation shall come into force on 31st January 2001.

PART II

CALCULATION OF CHILD SUPPORT MAINTENANCE

Calculation of amounts

2.—(1) Where any amount is to be considered in connection with any calculation made under these Regulations or under Schedule 1 to the Act, it shall be calculated as a weekly amount and, except where the context otherwise requires, any reference to such an amount shall be construed accordingly.

(2) Subject to paragraph (3), where any calculation made under these Regulations or under Schedule 1 to the Act results in a fraction of a penny that fraction shall be treated as a penny if it is either one half or exceeds one half, otherwise it shall be disregarded.

(3) Where the calculation of the basic rate of child support maintenance or the reduced rate of child support maintenance results in a fraction of a pound that fraction shall be treated as a pound if it is either one half or exceeds one half, otherwise it shall be disregarded.

(4) In taking account of any amounts or information required for the purposes of making a maintenance calculation, the Secretary of State shall apply the dates or periods specified in these Regulations as applicable to those amounts or information, provided that if he becomes aware of a material change of circumstances occurring after such date or period, but before the effective date, he shall take that change of circumstances into account.

(5) Information required for the purposes of making a maintenance calculation in relation to the following shall be the information applicable at the effective date—

- (a) the number of qualifying children;
- (b) the number of relevant other children;
- (c) whether the non-resident parent receives a benefit, pension or allowance prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act;
- (d) whether the non-resident parent or his partner receives a benefit prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act; and
- (e) whether paragraph 5(a) of Schedule 1 to the Act applies to the non-resident parent.

Reduced Rate

3. The reduced rate is an amount calculated as follows—

$F+(A \times T)$

where—

F is the flat rate liability applicable to the non-resident parent under paragraph 4 of Schedule 1 to the Act;

A is the amount of the non-resident parent's net weekly income between £100 and £200; and

T is the percentage determined in accordance with the following Table—

| Number of relevant other children of the non-resident parent | 1 qualifying child of the non-resident parent | | | 2 qualifying children of the non-resident parent | | | 3 or more qualifying children of the non-resident parent | | | | | |
|--|---|------|-----------|--|----|----|--|----|----|------|-----------|------|
| | 1 | 2 | 3 or more | 0 | 1 | 2 | 3 or more | 0 | 1 | 2 | 3 or more | |
| T (%) | 25 | 20.5 | 19 | 17.5 | 35 | 29 | 27 | 25 | 45 | 37.5 | 35 | 32.5 |

Flat rate

4.—(1) The following benefits, pensions and allowances are prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act—

- (a) under the Contributions and Benefits Act—
- (i) bereavement allowance under section 39B(24);
 - (ii) category A retirement pension under section 44(25);
 - (iii) category B retirement pension under section 48C(26);
 - (iv) category C and category D retirement pensions under section 78(27);
 - (v) incapacity benefit under section 30A(28);
 - (vi) invalid care allowance under section 70;
 - (vii) maternity allowance under section 35(29);
 - (viii) severe disablement allowance under section 68(30);
 - (ix) industrial injuries benefit under section 94;
 - (x) widowed mother's allowance under section 37;
 - (xi) widowed parent's allowance under section 39A; and
 - (xii) widow's pension under section 38;
- (b) contribution-based jobseeker's allowance under section 1 of the Jobseekers Act;
- (c) a social security benefit paid by a country other than the United Kingdom;
- (d) a training allowance (other than work-based training for young people or, in Scotland, Skillseekers training); and

(24) Sections 39A and 39B were inserted by section 55 of the Welfare Reform and Pensions Act 1999 (c. 30).

(25) Section 44 was amended by paragraph 32 of Schedule 8 to the Pension Schemes Act 1993 (c. 48), sections 1–3, 5, 6, 8–10 of and Schedule 1 to, the Social Security (Incapacity for Work) Act 1994 (c. 18), sections 127–134 of, and Schedules 1 and 2 to, the Pensions Act 1995 (c. 26) and by sections 30(2) and 35(5)–(7) of the Child Support, Pensions and Social Security Act 2000. Section 44(4) was substituted by section 68 of the Social Security Act 1998 (c. 47).

(26) Section 48C was inserted by paragraph 7 of Schedule 8 to the Welfare Reform and Pensions Act 1999.

(27) Section 78 was amended by section 127–134 of, and Schedules 4 and 5 to, the Pensions Act 1995.

(28) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994.

(29) Section 35 was amended by section 67 of the Social Security Act 1988, section 2 of the Still-Birth Definition Act 1992 (c. 29) and by section 53 of the Welfare Reform and Pensions Act 1999. Sections 35(1) and (1A) were substituted by section 53 of the Welfare Reform and Pensions Act 1999.

(30) Section 68 is prospectively repealed with savings by section 65 of, and Part IV of Schedule 13 to, the Welfare Reform and Pensions Act 1999.

- (e) a war disablement pension or war widow's pension within the meaning of section 150(2) of the Contributions and Benefits Act(31) or a pension which is analogous to such a pension paid by the government of a country outside Great Britain.
- (2) The benefits prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act are—
 - (a) income support under section 124 of the Contributions and Benefits Act; and
 - (b) income-based jobseeker's allowance under section 1 of the Jobseekers Act.
- (3) Where the non-resident parent is liable to pay a flat rate by virtue of paragraph 4(2) of Schedule 1 to the Act—
 - (a) if he has one partner, then the amount payable by the non-resident parent shall be half the flat rate; and
 - (b) if he has more than one partner, then the amount payable by the non-resident parent shall be the result of apportioning the flat rate equally among him and his partners.

Nil rate

- 5. The rate payable is nil where the non-resident parent is—
 - (a) a student;
 - (b) a child within the meaning given in section 55(1) of the Act;
 - (c) a prisoner;
 - (d) a person who is 16 or 17 years old and—
 - (i) in receipt of income support or income-based jobseeker's allowance; or
 - (ii) a member of a couple whose partner is in receipt of income support or income-based jobseeker's allowance;
 - (e) a person receiving an allowance in respect of work-based training for young people, or in Scotland, Skillseekers training;
 - (f) a person in a residential care home or nursing home who—
 - (i) is in receipt of a pension, benefit or allowance specified in regulation 4(1) or (2); or
 - (ii) has the whole or part of the cost of his accommodation met by a local authority;
 - (g) a patient in hospital who is in receipt of income support whose applicable amount includes an amount under paragraph 1(a) or (b) of Schedule 7 to the Income Support Regulations (patient for more than 6 weeks);
 - (h) a person in receipt of a benefit specified in regulation 4(1) the amount of which has been reduced in accordance with the provisions of regulations 4(d) and 6 of the Social Security Hospital In-Patients Regulations 1975 (circumstances in which personal benefit is to be adjusted and adjustment of personal benefit after 52 weeks in hospital)(32); or
 - (i) a person who would be liable to pay the flat rate because he satisfies the description in paragraph 4(1)(c) of Schedule 1 to the Act but his net weekly income, inclusive of—
 - (aa) any benefit, pension or allowance that he receives which is prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Act; and
 - (bb) any benefit that he or his partner receives which is prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Act,

(31) Section 150(2) was amended by section 132 of, and paragraph 13 of Schedule 4 to, the Pensions Act 1995.

(32) S.I. 1975/555. Regulation 4(d) has been amended by regulation 2(3)(b) of S.I. 1987/1683 and regulation 6 has been amended by section 18(1) of the Social Security Act 1986 (c. 50), regulation 3 of S.I. 1977/1963, regulation 2 of S.I. 1987/31 and regulation 2 of S.I. 1987/1683.

is less than £5 a week.

Apportionment

6. If, in making the apportionment required by regulation 4(3) or paragraph 6 of Part I of Schedule 1 to the Act, the effect of the application of regulation 2(2) (rounding) would be such that the aggregate amount of child support maintenance payable by a non-resident parent would be different from the aggregate amount payable before any apportionment, the Secretary of State shall adjust that apportionment so as to eliminate that difference; and that adjustment shall be varied from time to time so as to secure that, taking one week with another and so far as is practicable, each person with care receives the amount which she would have received if no adjustment had been made under this paragraph.

Shared care

7.—(1) For the purposes of paragraphs 7 and 8 of Part I of Schedule 1 to the Act a night will count for the purposes of shared care where the non-resident parent—

- (a) has the care of a qualifying child overnight; and
- (b) the qualifying child stays at the same address as the non-resident parent.

(2) For the purposes of paragraphs 7 and 8 of Part I of Schedule 1 to the Act, a non-resident parent has the care of a qualifying child when he is looking after the child.

(3) Subject to paragraph (4), in determining the number of nights for the purposes of shared care, the Secretary of State shall consider the 12 month period ending with the relevant week and for this purpose “relevant week” has the same meaning as in the definition of day to day care in regulation 1 of these Regulations.

(4) The circumstances in which the Secretary of State may have regard to a number of nights over less than a 12 month period are where there has been no pattern for the frequency with which the non-resident parent looks after the qualifying child for the 12 months preceding the relevant week, or the Secretary of State is aware that a change in that frequency is intended, and in that case he shall have regard to such lesser period as may seem to him to be appropriate, and the Table in paragraph 7(4) and the period in paragraph 8(2) of Schedule 1 to the Act shall have effect subject to the adjustment described in paragraph (5).

(5) Where paragraph (4) applies, the Secretary of State shall adjust the number of nights in that lesser period by applying to that number the ratio which the period of 12 months bears to that lesser period.

(6) Where a child is a boarder at a boarding school, or is a patient in a hospital, the person who, but for those circumstances, would otherwise have care of the child overnight shall be treated as providing that care during the periods in question.

PART III

SPECIAL CASES

Persons treated as non-resident parents

8.—(1) Where the circumstances of a case are that—

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) at least one of those persons is a parent of the child,

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this special case a parent who provides day to day care for a child of his is to be treated as a non-resident parent for the purposes of the Act in the following circumstances—

- (a) a parent who provides such care to a lesser extent than the other parent, person or persons who provide such care for the child in question; or
- (b) where the persons mentioned in paragraph (1)(a) include both parents and the circumstances are such that care is provided to the same extent by both but each provides care to an extent greater than or equal to any other person who provides such care for that child—
 - (i) the parent who is not in receipt of child benefit for the child in question; or
 - (ii) if neither parent is in receipt of child benefit for that child, the parent who, in the opinion of the Secretary of State, will not be the principal provider of day to day care for that child.

(3) For the purposes of this regulation and regulation 10 “child benefit ” means child benefit payable under Part IX of the Contributions and Benefits Act.

Care provided in part by a local authority

9.—(1) This regulation applies where paragraph (2) applies and the rate of child support maintenance payable is the basic rate, or the reduced rate, or has been calculated following agreement to a variation where the non-resident parent’s liability would otherwise have been a flat rate or the nil rate.

(2) Where the circumstances of a case are that the care of the qualifying child is shared between the person with care and a local authority and—

- (a) the qualifying child is in the care of the local authority for 52 nights or more in the 12 month period ending with the relevant week; or
- (b) where, in the opinion of the Secretary of State, a period other than the 12 month period mentioned in sub-paragraph (a) is more representative of the current arrangements for the care of the qualifying child, the qualifying child is in the care of the local authority during that period for no fewer than the number of nights which bears the same ratio to 52 nights as that period bears to 12 months; or
- (c) it is intended that the qualifying child shall be in the care of the local authority for a number of nights in a period from the effective date,

that case shall be treated as a special case for the purposes of the Act.

(3) In a case where this regulation applies, the amount of child support maintenance which the non-resident parent is liable to pay the person with care of that qualifying child is the amount calculated in accordance with the provisions of Part I of Schedule 1 to the Act and decreased in accordance with this regulation.

(4) First, there is to be a decrease according to the number of nights spent or to be spent by the qualifying child in the care of the local authority during the period under consideration.

(5) Where paragraph (2)(b) or (c) applies, the number of nights in the period under consideration shall be adjusted by the ratio which the period of 12 months bears to the period under consideration.

(6) After any adjustment under paragraph (5), the amount of the decrease for one child is set out in the following Table—

| <i>Number of nights in care of local authority</i> | <i>Fraction to subtract</i> |
|--|-----------------------------|
| 52–103 | One-seventh |

| <i>Number of nights in care of local authority</i> | <i>Fraction to subtract</i> |
|--|-----------------------------|
| 104–155 | Two-sevenths |
| 156–207 | Three-sevenths |
| 208–259 | Four-sevenths |
| 260–262 | Five-sevenths |

(7) If the non-resident parent and the person with care have more than one qualifying child, the applicable decrease is the sum of the appropriate fractions in the Table divided by the number of such qualifying children.

(8) In a case where the amount of child support maintenance which the non-resident parent is liable to pay in relation to the same person with care is to be decreased in accordance with the provisions of both this regulation and of paragraph 7 of Part I of Schedule 1 to the Act, read with regulation 7 of these Regulations, the applicable decrease is the sum of the appropriate fractions derived under those provisions.

(9) If the application of this regulation would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to less than the rate stated in or prescribed for the purposes of paragraph 4(1) of Part I of Schedule 1 to the Act, he is instead liable to pay child support maintenance at a rate equivalent to that rate, apportioned (if appropriate) in accordance with paragraph 6 of Part I of Schedule 1 to the Act and regulation 6.

(10) Where a qualifying child is a boarder at a boarding school or is an in-patient at a hospital, the qualifying child shall be treated as being in the care of the local authority for any night that the local authority would otherwise have been providing such care.

(11) A child is in the care of a local authority for any night in which he is being looked after by the local authority within the meaning of section 22 of the Children Act 1989⁽³³⁾ or section 17(6) of the Children (Scotland) Act 1995⁽³⁴⁾.

Care provided for relevant other child by a local authority

10. Where a child other than a qualifying child is cared for in part or in full by a local authority and the non-resident parent or his partner receives child benefit for that child, the child is a relevant other child for the purposes of Schedule 1 to the Act.

Non-resident parent liable to pay maintenance under a maintenance order

11.—(1) Subject to paragraph (2), where the circumstances of a case are that—

- (a) an application for child support maintenance is made or treated as made, as the case may be, with respect to a qualifying child and a non-resident parent; and
- (b) an application for child support maintenance for a different child cannot be made under the Act but that non-resident parent is liable to pay maintenance under a maintenance order for that child,

that case shall be treated as a special case for the purposes of the Act.

(2) This regulation applies where the rate of child support maintenance payable is the basic rate, or the reduced rate, or has been calculated following agreement to a variation where the non-resident parent's liability would otherwise have been a flat rate or the nil rate.

⁽³³⁾ 1989 c. 41.

⁽³⁴⁾ 1995 c. 36.

(3) Where this regulation applies, the amount of child support maintenance payable by the non-resident parent shall be ascertained by—

- (a) calculating the amount of maintenance payable as if the number of qualifying children of that parent included any children with respect to whom he is liable to make payments under the order referred to in paragraph (1)(b); and
- (b) apportioning the amount so calculated between the qualifying children and the children with respect to whom he is liable to make payments under the order referred to in paragraph (1)(b),

and the amount payable shall be the amount apportioned to the qualifying children, and the amount payable to each person with care shall be that amount subject to the application of apportionment under paragraph 6 of Schedule 1 to the Act and the shared care provisions in paragraph 7 of Part I of that Schedule.

(4) In a case where this regulation applies paragraph 7 of Part I of Schedule 1 to the Act (shared care) and regulation 10 (care provided in part by local authority) shall not apply in relation to a child in respect of whom the non-resident parent is liable to make payments under a maintenance order as provided in paragraph (1)(b).

Child who is a boarder or an in-patient in hospital

12.—(1) Where the circumstances of the case are that—

- (a) a qualifying child is a boarder at a boarding school or is an in-patient in a hospital; and
- (b) by reason of those circumstances, the person who would otherwise provide day to day care is not doing so,

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case, section 3(3)(b) of the Act shall be modified so that for the reference to the person who usually provides day to day care for the child there shall be substituted a reference to the person who would usually be providing such care for that child but for the circumstances specified in paragraph (1).

Child who is allowed to live with his parent under section 23(5) of the Children Act 1989

13.—(1) Where the circumstances of a case are that a qualifying child who is in the care of a local authority in England and Wales is allowed by the authority to live with a parent of his under section 23(5) of the Children Act 1989, that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case, section 3(3)(b) of the Act shall be modified so that for the reference to the person who usually provides day to day care for the child there shall be substituted a reference to the parent of the child with whom the local authority allow the child to live with under section 23(5) of the Children Act 1989.

Person with part-time care who is not a non-resident parent

14.—(1) Where the circumstances of a case are that—

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) those persons do not include any parent who is treated as a non-resident parent of that child by regulation 8(2),

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case—

- (a) the person whose application for a maintenance calculation is being proceeded with shall, subject to sub-paragraph (b), be entitled to receive all of the child support maintenance payable under the Act in respect of the child in question;
- (b) on request being made to the Secretary of State by—
 - (i) that person; or
 - (ii) any other person who is providing day to day care for that child and who intends to continue to provide that care,

the Secretary of State may make arrangements for the payment of any child support maintenance payable under the Act to the persons who provide such care in the same ratio as that in which it appears to the Secretary of State that each is to provide such care for the child in question;

- (c) before making an arrangement under sub-paragraph (b), the Secretary of State shall consider all of the circumstances of the case and in particular the interests of the child, the present arrangements for the day to day care of the child in question and any representations or proposals made by the persons who provide such care for that child.

PART IV

REVOCATION AND SAVINGS

Revocation and savings

15.—(1) Subject to paragraphs (2), (3) and (4), the Child Support (Maintenance Assessments and Special Cases) Regulations 1992⁽³⁵⁾ (“the 1992 Regulations”) shall be revoked with respect to a particular case with effect from the date that these Regulations come into force with respect to that type of case (“the commencement date”).

- (2) Where before the commencement date in respect of a particular case—
 - (a) an application was made and not determined for—
 - (i) a maintenance assessment;
 - (ii) a departure direction; or
 - (iii) a revision or supersession of a decision;
 - (b) the Secretary of State had begun but not completed a revision or supersession of a decision on his own initiative;
 - (c) any time limit provided for in Regulations for making an application for a revision or a departure direction had not expired; or
 - (d) any appeal was made but not decided or any time limit for making an appeal had not expired,

the provisions of the 1992 Regulations shall continue to apply for the purposes of—

- (aa) the decision on the application referred to in sub-paragraph (a);
- (bb) the revision or supersession referred to in sub-paragraph (b);
- (cc) the ability to apply for the revision or the departure direction referred to in sub-paragraph (c) and the decision whether to revise or to give a departure direction following any such application;
- (dd) any appeal outstanding or made during the time limit referred to in sub-paragraph (d); or

⁽³⁵⁾ S.I. 1992/1815.

(ee) any revision, supersession, appeal or application for a departure direction in relation to a decision, ability to apply or appeal referred to in sub-paragraphs (aa) to (dd) above.

(3) Where immediately before the commencement date in respect of a particular case an interim maintenance assessment was in force, the provisions of the 1992 Regulations shall continue to apply for the purposes of the decision under section 17 of the Act to make a maintenance assessment calculated in accordance with Part I of Schedule 1 to the Act before its amendment by the 2000 Act and any revision, supersession or appeal in relation to that decision.

(4) Where under regulation 28(1) of the Child Support (Transitional Provisions) Regulation 2000⁽³⁶⁾ an application for a maintenance calculation is treated as an application for a maintenance assessment, the provisions of the 1992 Regulations shall continue to apply for the purposes of the determination of the application and any revision, supersession or appeal in relation to any such assessment made.

(5) Where after the commencement date a maintenance assessment is revised from a date which is prior to the commencement date the 1992 Regulations shall apply for the purposes of that revision.

(6) For the purposes of this regulation—

- (a) “departure direction”, “maintenance assessment” and “interim maintenance assessment” have the same meaning as in section 54 of the Act before its amendment by the 2000 Act;
- (b) “revision or supersession” means a revision or supersession of a decision under section 16 or 17 of the Act before their amendment by the 2000 Act; and
- (c) “2000 Act” means the Child Support, Pensions and Social Security Act 2000.

Signed by authority of the Secretary of State for Social Security.

2000

Parliamentary Under-Secretary of State,
Department of Social Security

⁽³⁶⁾ S.I. 2000/3186.

SCHEDULE

Regulation 1(2)

NET WEEKLY INCOME

PART I
GENERAL

Net weekly income

1. Net weekly income means the aggregate of the net weekly income of the non-resident parent provided for in this Schedule.

Amounts to be disregarded when calculating income

2. The following amounts shall be disregarded when calculating the net weekly income of the non-resident parent—

- (a) where a payment is made in a currency other than sterling, an amount equal to any banking charge or commission payable in converting that payment to sterling;
- (b) any amount payable in a country outside the United Kingdom where there is a prohibition against the transfer to the United Kingdom of that amount.

PART II
EMPLOYED EARNER

Net weekly income of employed earner

3.—(1) The net weekly income of the non-resident parent as an employed earner shall be—

- (a) his earnings provided for in paragraph 4 less the deductions provided for in paragraph 5 and calculated or estimated by reference to the relevant week as provided for in paragraph 6; or
- (b) where the Secretary of State is satisfied that the person is unable to provide evidence or information relating to the deductions provided for in paragraph 5, the non-resident parent's net earnings estimated by the Secretary of State on the basis of information available to him as to the non-resident parent's net income.

(2) Where any provision of these Regulations requires the income of a person to be estimated, and that or any other provision of these Regulations requires that the amount of such estimated income is to be taken into account for any purpose, after deducting from it a sum in respect of income tax, or of primary Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, or contributions paid by that person towards an occupational pension scheme or personal pension scheme, then,

- (a) subject to sub-paragraph (c), the amount to be deducted in respect of income tax shall be calculated by applying to that income the rates of income tax applicable at the effective date less only the personal relief to which that person is entitled under Chapter I of Part VII of the Income and Corporation Taxes Act 1988 (personal relief); but if the period in respect of which that income is to be estimated is less than a year, the amount of the personal relief deductible under this paragraph shall be calculated on a pro-rata basis and the amount of income to which each tax rate applies shall be determined on the basis that the ratio of that

amount to the full amount of the income to which each tax rate applies is the same as the ratio of the proportionate part of that personal relief to the full personal relief;

- (b) subject to sub-paragraph (c), the amount to be deducted in respect of Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, shall be calculated by applying to that income the appropriate primary percentage applicable on the effective date;
- (c) in relation to any bonus or commission which may be included in that person's income—
 - (i) the amount to be deducted in respect of income tax shall be calculated by applying to the gross amount of that bonus or commission the rate or rates of income tax applicable at the effective date;
 - (ii) the amount to be deducted in respect of primary Class 1 contributions under the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act, shall be calculated by applying to the gross amount of that bonus or commission the appropriate main primary percentage applicable on the effective date but no deduction shall be made in respect of the portion (if any) of the bonus or commission which, if added to the estimated income, would cause such income to exceed the upper earnings limit for Class 1 contributions as provided for in section 5(1)(b) of the Contributions and Benefits Act or, as the case may be, the Contributions and Benefits (Northern Ireland) Act;
- (d) the amount to be deducted in respect of any sums or contributions towards an occupational pension scheme or personal pension scheme shall be the full amount of any such payments made or, where that scheme is intended partly to provide a capital sum to discharge a mortgage secured upon that parent's home, 75 per centum of any such payments made.

Earnings

4.—(1) Subject to sub-paragraph (2), “earnings” means, in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus, commission, payment in respect of overtime, royalty or fees;
 - (b) any holiday pay except any payable more than 4 weeks after termination of the employment;
 - (c) any payment by way of a retainer;
 - (d) any statutory sick pay under Part XI of the Contributions and Benefits Act or statutory maternity pay under Part XII of the Contributions and Benefits Act; and
 - (e) any payment in lieu of notice, and any compensation in respect of the absence or inadequacy of any such notice, but only in so far as such payment or compensation represents loss of income.
- (2) Earnings for the purposes of this Part of Schedule 1 do not include—
- (a) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
 - (b) any tax-exempt allowance made by an employer to an employee;
 - (c) any gratuities paid by customers of the employer;
 - (d) any payment in kind;
 - (e) any advance of earnings or any loan made by an employer to an employee;
 - (f) any amount received from an employer during a period when the employee has withdrawn his services by reason of a trade dispute;
 - (g) any payment made in respect of the performance of duties as—

- (i) an auxiliary coastguard in respect of coast rescue activities;
- (ii) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Acts 1947 to 1959⁽³⁷⁾;
- (iii) a person engaged part-time in the manning or launching of a lifeboat;
- (iv) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979⁽³⁸⁾;
- (h) any payment made by a local authority to a member of that authority in respect of the performance of his duties as a member;
- (i) any payment where—
 - (i) the employment in respect of which it was made has ceased; and
 - (ii) a period of the same length as the period by reference to which it was calculated has expired since that cessation but prior to the effective date; or
- (j) where, in any week or other period which falls within the period by reference to which earnings are calculated, earnings are received both in respect of a previous employment and in respect of a subsequent employment, the earnings in respect of the previous employment.

Deductions

5.—(1) The deductions to be taken from gross earnings to calculate net income for the purposes of this Part of the Schedule are any amount deducted from those earnings by way of—

- (a) income tax;
- (b) primary Class 1 contributions under the Contributions and Benefits Act or under the Contributions and Benefits (Northern Ireland) Act; or
- (c) any sums paid by the non-resident parent towards an occupational pension scheme or personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage secured upon that parent's home, 75 per centum of any such sums.

(2) For the purposes of sub-paragraph (1)(a), amounts deducted by way of income tax shall be the amounts actually deducted, including in respect of payments which are not included as earnings in paragraph 4.

Calculation or estimate

6.—(1) Subject to sub-paragraphs (2) to (4), the amount of earnings to be taken into account for the purpose of calculating net income shall be calculated or estimated by reference to the average earnings at the relevant week having regard to such evidence as is available in relation to that person's earnings during such period as appears appropriate to the Secretary of State, beginning not earlier than 8 weeks before the relevant week and ending not later than the date of the calculation, and for the purposes of the calculation or estimate he may consider evidence of that person's cumulative earnings during the period beginning with the start of the year of assessment (within the meaning of section 832 of the Income and Corporation Taxes Act 1988) in which the relevant week falls and ending with a date no later than the date when the calculation is made.

(2) Subject to sub-paragraph (4), where a person has claimed, or has been paid, working families' tax credit or disabled person's tax credit on any day during the period beginning not earlier than 8 weeks before the relevant week and ending not later than the date on which the calculation is made,

⁽³⁷⁾ 1947 c. 41, 1951 c. 27, 1959 c. 44.

⁽³⁸⁾ S.I. 1979/591. Part I of Schedule 3 was substituted by regulation 6 of S.I. 1980/1975 and paragraph 9 was substituted by regulation 4 of S.I. 1994/1553.

the Secretary of State may have regard to the amount of earnings taken into account in determining entitlement to those tax credits in order to calculate or estimate the amount of earnings to be taken into account for the purposes of calculating net earnings, notwithstanding the fact that entitlement to those tax credits may have been determined by reference to earnings attributable to a period other than that specified in sub-paragraph (1).

(3) Where a person's earnings during the period of 52 weeks ending with the relevant week include a bonus or commission made in anticipation of the calculation of profits which is paid separately from, or in relation to a longer period than, the other earnings with which it is paid, the amount of that bonus or commission shall be determined for the purposes of the calculation of earnings by aggregating any such payments received in that period and dividing by 52.

(4) Where a calculation would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal amount of the earnings of the person in question, such earnings, or any part of them, shall be calculated by reference to such other period as may, in the particular case, enable the normal weekly earnings of that person to be determined more accurately, and for this purpose the Secretary of State shall have regard to—

- (a) the earnings received, or due to be received from any employment in which the person in question is engaged, has been engaged or is due to be engaged; and
- (b) the duration and pattern, or the expected duration and pattern, of any employment of that person.

PART III

SELF-EMPLOYED EARNER

Figures submitted to the Inland Revenue

7.—(1) Subject to sub-paragraph (6) the net weekly income of the non-resident parent as a self-employed earner shall be his gross earnings calculated by reference to one of the following, as the Secretary of State may decide, less the deductions to which sub-paragraph (3) applies—

- (a) the total taxable profits from self-employment of that earner as submitted to the Inland Revenue in accordance with their requirements by or on behalf of that earner; or
- (b) the income from self-employment as a self-employed earner as set out on the tax calculation notice or, as the case may be, the revised notice.

(2) Where the information referred to in head (a) or (b) of sub-paragraph (1) is made available to the Secretary of State he may nevertheless require the information referred to in the other head from the non-resident parent and where the Secretary of State becomes aware that a revised notice has been issued he may require and use this in preference to the other information referred to in sub-paragraph (1)(a) and (b).

(3) This paragraph applies to the following deductions—

- (a) any income tax relating to the gross earnings from the self-employment determined in accordance with sub-paragraph (4);
- (b) any National Insurance contributions relating to the gross earnings from the self-employment determined in accordance with sub-paragraph (5); and
- (c) any premiums paid by the non-resident parent in respect of a retirement annuity contract or a personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage or a charge secured upon the parent's home, 75 per centum of the contributions payable.

(4) For the purpose of sub-paragraph (3)(a), the income tax to be deducted from the gross earnings shall be determined in accordance with the following provisions—

- (a) subject to head (d), an amount of gross earnings equivalent to any personal allowance applicable to the earner by virtue of the provisions of Chapter I of Part VII of the Income and Corporation Taxes Act 1988 (personal relief) shall be disregarded;
- (b) subject to head (c), an amount equivalent to income tax shall be calculated in relation to the gross earnings remaining following the application of head (a) (the “remaining earnings”);
- (c) the tax rate applicable at the effective date shall be applied to all the remaining earnings, where necessary increasing or reducing the amount payable to take account of the fact that the earnings related to a period greater or less than one year; and
- (d) the amount to be disregarded by virtue of head (a) shall be calculated by reference to the yearly rate applicable at the effective date, that amount being reduced or increased in the same proportion to that which the period represented by the gross earnings bears to the period of one year.

(5) For the purposes of sub-paragraph (3)(b), the amount to be deducted in respect of National Insurance contributions shall be the total of—

- (a) the amount of Class 2 contributions (if any) payable under section 11(1) or, as the case may be, (3) of the Contributions and Benefits Act or under section 11(1) or (3) of the Contributions and Benefits (Northern Ireland) Act; and
- (b) the amount of Class 4 contributions (if any) payable under section 15(2) of that Act, or under section 15(2) of the Contributions and Benefits (Northern Ireland) Act,

at the rates applicable at the effective date.

(6) The net weekly income of a self-employed earner may only be determined in accordance with this paragraph where the earnings concerned relate to a period which terminated not more than 24 months prior to the relevant week.

(7) In this paragraph—

“tax calculation notice” means a document issued by the Inland Revenue containing information as to the income of the self-employed earner; and

“revised notice” means a notice issued by the Inland Revenue where there has been a tax calculation notice and there is a revision of the figures relating to the income of a self-employed earner following an enquiry under section 9A of the Taxes Management Act 1970⁽³⁹⁾ or otherwise by the Inland Revenue.

(8) Any request by the Secretary of State in accordance with sub-paragraph (2) for the provision of information shall set out the possible consequences of failure to provide such information, including details of the offences provided for in section 14A of the Act⁽⁴⁰⁾ for failing to provide, or providing false, information.

Figures calculated using gross receipts less deductions

8.—(1) Where—

- (a) the conditions of paragraph 7(6) are not satisfied; or
- (b) the Secretary of State accepts that it is not reasonably practicable for the self-employed earner to provide information relating to his gross earnings from self-employment in the forms submitted to, or as issued or revised by, the Inland Revenue; or

⁽³⁹⁾ 1970 c. 9. Section 9A was inserted by sections 180 and 199(1) and (2) of the Finance Act 1994 (c. 9) and amended by section 133 and Schedule 19, paragraph 2 of the Finance Act 1996 (c. 8).

⁽⁴⁰⁾ Section 14A is inserted by section 13 of the Child Support, Pensions and Social Security Act 2000 (c. 19).

- (c) in the opinion of the Secretary of State, information as to the gross earnings of the self-employed earner which has satisfied the criteria set out in paragraph 7 does not accurately reflect the normal weekly earnings of the self-employed earner,

net income means in the case of employment as a self-employed earner his earnings calculated by reference to the gross receipts of the employment less the deductions provided for in sub-paragraph (2).

(2) The deductions to be taken from the gross receipts to calculate net earnings for the purposes of this paragraph are—

- (a) any expenses which are reasonably incurred and are wholly and exclusively defrayed for the purposes of the earner’s business in the period by reference to which his earnings are determined under paragraph 9(2) or (3);
- (b) any value added tax paid in the period by reference to which his earnings are determined in excess of value added tax received in that period;
- (c) any amount in respect of income tax determined in accordance with sub-paragraph (4);
- (d) any amount of National Insurance contributions determined in accordance with sub-paragraph (4); and
- (e) any premium paid by the non-resident parent in respect of a retirement annuity contract or a personal pension scheme or, where that scheme is intended partly to provide a capital sum to discharge a mortgage or a charge secured upon the parent’s home, 75 per centum of contributions payable.

(3) For the purposes of sub-paragraph (2)(a)—

- (a) such expenses include—
 - (i) repayment of capital on any loan used for the replacement, in the course of business, of equipment or machinery, or the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (ii) any income expended in the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair; and
 - (iii) any payment of interest on a loan taken out for the purposes of the business;
- (b) such expenses do not include—
 - (i) repayment of capital on any other loan taken out for the purposes of the business;
 - (ii) any capital expenditure;
 - (iii) the depreciation of any capital assets;
 - (iv) any sum employed, or intended to be employed, in the setting up or expansion of the business;
 - (v) any loss incurred before the beginning of the period by reference to which earnings are determined;
 - (vi) any expenses incurred in providing business entertainment; or
 - (vii) any loss incurred in any other employment in which he is engaged as a self-employed earner.

(4) For the purposes of sub-paragraph (2)(c) and (d), the amounts in respect of income tax and National Insurance contributions to be deducted from the gross receipts shall be determined in accordance with paragraph 7(4) and (5) of this Schedule as if in paragraph 7(4) references to gross earnings were references to taxable earnings and in this sub-paragraph “taxable earnings ” means the gross receipts of the earner less the deductions mentioned in sub-paragraph (2)(a) and (b).

Rules for calculation under paragraph 8

9.—(1) This paragraph applies only where the net income of a self-employed earner is calculated or estimated under paragraph 8 of this Schedule.

(2) Where—

- (a) a non-resident parent has been a self-employed earner for 52 weeks or more, including the relevant week, the amount of his net weekly income shall be determined by reference to the average of the earnings which he has received in the 52 weeks ending with the relevant week; or
- (b) a non-resident parent has been a self-employed earner for a period of less than 52 weeks including the relevant week, the amount of his net weekly income shall be determined by reference to the average of the earnings which he has received during that period.

(3) Where a calculation would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal weekly income of the non-resident parent in question, such earnings, or any part of them, shall be calculated by reference to such other period as may, in the particular case, enable the normal weekly earnings of the non-resident parent to be determined more accurately and for this purpose the Secretary of State shall have regard to—

- (a) the earnings from self-employment received, or due to be received, by him; and
- (b) the duration and pattern, or the expected duration and pattern, of any self-employment of that non-resident parent.

(4) Where a person has claimed, or has been paid, working families' tax credit or disabled person's tax credit on any day during the period beginning not earlier than 8 weeks before the relevant week and ending not later than the date on which the calculation is made, the Secretary of State may have regard to the amount of earnings taken into account in determining entitlement to those tax credits in order to calculate or estimate the amount of earnings to be taken into account for the purposes of calculating net income, notwithstanding the fact that entitlement to those tax credits may have been determined by reference to earnings attributable to a period other than that specified in sub-paragraph (2).

Income from board or lodging

10. In a case where a non-resident parent is a self-employed earner who provides board and lodging, his earnings shall include payments received for that provision where those payments are the only or main source of income of that earner.

PART IV

TAX CREDITS

Working families' tax credit

11.—(1) Subject to sub-paragraphs (2) and (3), payments by way of working families' tax credit under section 128 of the Contributions and Benefits Act(41), shall be treated as the income of the non-resident parent where he has qualified for them by his engagement in, and normal engagement in, remunerative work, at the rate payable at the effective date.

(2) Where working families' tax credit is payable and the amount which is payable has been calculated by reference to the weekly earnings of the non-resident parent and another person—

(41) See section 1 of, and paragraphs 1 and 2(g) of Schedule 1 to, the Tax Credits Act 1999 (c. 19).

- (a) where during the period which is used by the Inland Revenue to calculate his income the normal weekly earnings (as determined in accordance with Chapter II of Part IV of the Family Credit (General) Regulations 1987⁽⁴²⁾) of that parent exceed those of the other person, the amount payable by way of working families' tax credit shall be treated as the income of that parent;
 - (b) where during that period the normal weekly earnings of that parent equal those of the other person, half of the amount payable by way of working families' tax credit shall be treated as the income of that parent; and
 - (c) where during that period the normal weekly earnings of that parent are less than those of that other person, the amount payable by way of working families' tax credit shall not be treated as the income of that parent.
- (3) Where—
- (a) working families' tax credit is in payment; and
 - (b) not later than the effective date the person, or, if more than one, each of the persons by reference to whose engagement, and normal engagement, in remunerative work that payment has been calculated is no longer the partner of the person to whom that payment is made,

the payment in question shall only be treated as the income of the non-resident parent in question where he is in receipt of it.

Employment Credits

12. Payments made by way of employment credits under section 2(1) of the Employment and Training Act 1973 to a non-resident parent who is participating in a scheme arranged under section 2(2) of the Employment and Training Act 1973 and known as the New Deal 50 plus shall be treated as the income of the non-resident parent, at the rate payable at the effective date.

Disabled Person's Tax Credits

13. Payments made by way of disabled person's tax credit under section 129 of the Contributions and Benefits Act⁽⁴³⁾ to a non-resident parent shall be treated as the income of the non-resident parent at the rate payable at the effective date.

PART V OTHER INCOME

Amount

14. The amount of other income to be taken into account in calculating or estimating net weekly income shall be the aggregate of the payments to which paragraph 15 applies, net of any income tax deducted and otherwise determined in accordance with this Part.

⁽⁴²⁾ S.I. 1987/1973. Relevant amending instruments are S.I. 1988/1438 and 1970, 1990/574, 1991/1520, 1992/573 and 2155, 1993/315 and 2119, 1994/527, 1924 and 2139, 1995/516, 1996/462, 2545, 3137, and 1997/2793.

⁽⁴³⁾ See section 1 of, and paragraphs 1 and 2(h) of Schedule 1 to, the Tax Credits Act 1999.

Types

15. This paragraph applies to any periodic payment of pension or other benefit under an occupational or personal pension scheme or a retirement annuity contract or other such scheme for the provision of income in retirement whether or not approved by the Inland Revenue.

Calculation or estimate and period

16.—(1) The amount of any income to which this Part applies shall be calculated or estimated—

- (a) where it has been received in respect of the whole of the period of 26 weeks which ends at the end of the relevant week, by dividing such income received in that period by 26;
- (b) where it has been received in respect of part of the period of 26 weeks which ends at the end of the relevant week, by dividing such income received in that period by the number of complete weeks in respect of which such income is received and for this purpose income shall be treated as received in respect of a week if it is received in respect of any day in the week in question.

(2) Where a calculation or estimate to which this Part applies would, but for this sub-paragraph, produce an amount which, in the opinion of the Secretary of State, does not accurately reflect the normal amount of the other income of the non-resident parent in question, such income, or any part of it, shall be calculated by reference to such other period as may, in the particular case, enable the other income of that parent to be determined more accurately and for this purpose the Secretary of State shall have regard to the nature and pattern of receipt of such income.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for various matters relating to the calculation of child support maintenance under the Child Support Act 1991 (“the Act”) and also make provision for special cases under the Act, consequent upon the introduction of changes to the child support system made by the Child Support, Pensions and Social Security Act 2000 (c. 48). Subject to savings for transitional purposes, these Regulations revoke the Child Support (Maintenance Assessments and Special Cases) Regulations 1992 (S.I.1992/1815). Apart from paragraphs (1) and (2) of regulation 4, which come into force on 31st January 2001, these Regulations come into force at different times for different cases according to the dates on which provisions of the Child Support, Pensions and Social Security Act 2000 which are relevant to these Regulations are commenced for different types of cases.

Regulation 1 contains provisions relating to citation, commencement and interpretation.

Regulation 2 contains general provisions regarding the calculation of child support maintenance under the Act. The Schedule to these Regulations prescribes the amounts to be taken into account to calculate net weekly income for the purposes of Schedule 1 to the Act.

Regulation 3 prescribes the method of calculating the reduced rate of child support maintenance and regulation 4 prescribes the benefits, pensions and allowances for the purposes of paragraph 4(1) of Schedule 1 to the Act (flat rate cases).

Regulation 5 prescribes the circumstances for which the rate payable is nil.

Regulation 6 provides a general rule for adjusting the child support maintenance payable following apportionment and regulation 7 prescribes the circumstances in which a night will count for the purposes of paragraphs 7 and 8 of Part I of Schedule 1 to the Act (shared care).

Regulations 8 to 14 prescribe the circumstances in which cases are to be treated as special cases for the purposes of the Act. These include cases where persons are treated as non-resident parents; where care of a qualifying child or a relevant other child is provided in part by a local authority; where the non-resident parent is liable to pay maintenance under a maintenance order; where a child is a boarder or an in-patient in hospital; where a child is allowed to live with his parent under section 23(5) of the Children Act 1989 and where a person with part-time care of the child is not a non-resident parent.

Regulation 15 revokes the Child Support (Maintenance Assessments and Special Cases) Regulations 1992, with savings for transitional purposes.

The impact on business of these Regulations was covered in the Regulatory Impact Assessment (RIA) for the Child Support, Pensions, and Social Security Act 2000, in accordance with which, and in consequence of which, these Regulations are made. A copy of that RIA has been placed in the libraries of both Houses of Parliament and can be obtained from the Department of Social Security, Regulatory Impact Unit, Adelphi, 1–11 John Adam Street, London WC2N 6HT.