
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 4

THE MAINTENANCE CALCULATION RULES

CHAPTER 1

DETERMINATION OF GROSS WEEKLY INCOME

The general rule for determining gross weekly income

34.—(1) The gross weekly income of a non-resident parent for the purposes of a calculation decision is a weekly amount determined at the effective date of the decision on the basis of either historic income or current income in accordance with this Chapter.

- (2) The non-resident parent's gross weekly income is to be based on historic income unless—
- (a) current income differs from historic income by an amount that is at least 25% of historic income; or
 - (b) the amount of historic income is nil or no historic income is available.

(3) For the purposes of paragraph (2)(b) no historic income is available if HMRC did not, when a request was last made by the Secretary of State for the purposes of regulation 35, have the required information in relation to a relevant tax year.

(4) "Relevant tax year" has the meaning given in regulation 4(2).

(5) This regulation is subject to regulation 23(4) (change to current income outside the annual review or periodic current income check).

Historic income – general

35.—(1) Historic income is determined by—

- (a) taking the HMRC figure last requested from HMRC in relation to the non-resident parent;
- (b) adjusting that figure where required in accordance with paragraph (3); and
- (c) dividing by 365 and multiplying by 7.

(2) A request for the HMRC figure is to be made by the Secretary of State—

- (a) for the purposes of a decision under section 11 of the 1991 Act (the initial maintenance calculation) no more than 30 days before the initial effective date; and
- (b) for the purposes of updating that figure, no more than 30 days before the review date.

(3) Where the non-resident parent has made relievable pension contributions during the tax year to which the HMRC figure relates and those contributions have not been deducted under net pay arrangements, the HMRC figure is, if the non-resident parent so requests and provides such information as the Secretary of State requires, to be adjusted by deducting the amount of those contributions.

Historic income – the HMRC figure

36.—(1) The HMRC figure is the amount identified by HMRC from information provided in a self-assessment return or under the PAYE regulations, as the sum of the income on which the non-resident parent was charged to tax for the latest available tax year—

- (a) under Part 2 of ITEPA (employment income);
- (b) under Part 9 of ITEPA (pension income);
- (c) under Part 10 of ITEPA (social security income) but only in so far as that income comprises the following taxable UK benefits listed in Table A in Chapter 3 of that Part—
 - (i) incapacity benefit;
 - (ii) contributory employment and support allowance;
 - (iii) jobseeker’s allowance; and
 - (iv) income support; and
- (d) under Part 2 of ITTOIA (trading income).

(2) The amount identified as income for the purposes of paragraph (1)(a) is to be taken—

- (a) after any deduction for relievable pension contributions made by the non-resident parent’s employer in accordance with net pay arrangements; and
- (b) before any deductions under Part 5 of ITEPA (deductions allowed from earnings).

(3) The amount identified as income for the purposes of paragraph (1)(b) is not to include a UK social security pension.

(4) The amount identified as income for the purposes of paragraph (1)(d) is to be taken after deduction of any relief under section 83 of the Income Tax Act 2007⁽¹⁾ (carry forward trade loss relief against trade profits).

(5) Where, for the latest available tax year, HMRC has both information provided in a self-assessment return and information provided under the PAYE Regulations, the amount identified for the purposes of paragraph (1) is to be taken from the former.

Current income – general

37.—(1) Current income is the sum of the non-resident parent’s income—

- (a) as an employee or office-holder;
- (b) from self-employment; and
- (c) from a pension,

calculated or estimated as a weekly amount at the effective date of the relevant calculation decision in accordance with regulations 38 to 42.

(2) Where payment is made in a currency other than sterling, an amount equal to any banking charge payable in converting that payment to sterling is to be disregarded in calculating the current income of a non-resident parent.

Current income as an employee or office-holder

38.—(1) The non-resident parent’s current income as an employee or office-holder is income of a kind that would be taxable earnings within the meaning of section 10(2) of ITEPA and is to be calculated as follows.

(1) 2007 c. 3.

(2) As regards any part of the non-resident parent's income that comprises salary, wages or other amounts paid periodically—

- (a) if it appears to the Secretary of State that the non-resident parent is (or is to be) paid a regular amount according to a settled pattern that is likely to continue for the foreseeable future, that part of the non-resident parent's income is to be calculated as the weekly equivalent of that amount; and
- (b) if sub-paragraph (a) does not apply (for example where the non-resident parent is a seasonal worker or has working hours that follow an irregular pattern) that part of the non-resident parent's income is to be calculated as the weekly average of the amounts paid over such period preceding the effective date of the relevant calculation decision as appears to the Secretary of State to be appropriate.

(3) Where the income from the non-resident parent's present employment or office has, during the past 12 months, included bonus or commission or other amounts paid separately from, or in relation to a longer period than, the amounts referred to in paragraph (2), the amount of that income is to be calculated by aggregating those payments, dividing by 365 and multiplying by 7.

(4) Where the earnings from the non-resident parent's present employment or office have, in the past 12 months, included amounts treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code) the non-resident parent's current income is to be taken to include the amount of those benefits as last obtained by HMRC divided by 365 and multiplied by 7.

(5) Where the non-resident parent's employer makes deductions of relievable pension contributions from the payments referred to in paragraph (2) or (3) the amount of those payments is to be calculated after those deductions.

Current income from self-employment

39.—(1) The non-resident parent's current income from self-employment is to be determined by reference to the profits of any trade, profession or vocation carried on by the non-resident parent at the effective date of the relevant calculation decision.

(2) The profits referred to in paragraph (1) are the profits determined in accordance with Part 2 of ITTOIA for the most recently completed relevant period or, if no such period has been completed, the estimated profits for the current relevant period.

(3) The weekly amount is calculated by dividing the amount of those profits by the number of weeks in the relevant period.

(4) In paragraphs (2) and (3) the "relevant period" means a tax year or such other period in respect of which the non-resident parent should, in the normal course of events, report the profits or losses of the trade, profession or vocation in question to HMRC in a self-assessment return.

(5) In the case of a non-resident parent who carries on a trade, profession or vocation in partnership, the profits referred to in this regulation are the profits attributable to the non-resident parent's share of the partnership.

(6) The profits of a trade, profession or vocation that the non-resident parent has ceased to carry on at the effective date of the relevant calculation decision are to be taken as nil.

Deduction for pension contributions relievable at source

40. Where the non-resident parent—

- (a) has current income from self-employment or as an employee or office-holder at the effective date of the relevant calculation decision; and
- (b) makes relievable pension contributions which are not taken into account under regulation 38(5),

there is to be deducted from the sum of any amounts calculated in accordance with regulation 38 or 39 (current income as an employee, current income from self-employment) an amount determined by the Secretary of State as representing the weekly average of those contributions.

Current income from a pension

41. The non-resident parent's current income from a pension is to be calculated as the weekly average, over such period as the Secretary of State considers appropriate, of amounts received by the non-resident parent from a pension or annuity or other income (excluding UK social security pensions) of a kind that would be charged to tax under Part 9 of ITEPA.

Estimate of current income where insufficient information available

42.—(1) Where—

- (a) current income applies by virtue of regulation 34(2)(b) (historic income nil or not available); and
- (b) the information available in relation to current income is insufficient or unreliable,

the Secretary of State may estimate that income and, in doing so, may make any assumption as to any fact.

(2) Where the Secretary of State is satisfied that the non-resident parent is engaged in a particular occupation, whether as an employee, office-holder or self-employed person, the assumptions referred to in paragraph (1) may include an assumption that the non-resident parent has the average weekly income of a person engaged in that occupation in the UK or in any part of the UK.