
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 5

VARIATIONS

CHAPTER 3

GROUNDS FOR VARIATION: ADDITIONAL INCOME

Non-resident parent with unearned income

69.—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where the non-resident parent has unearned income equal to or exceeding £2,500 per annum.

(2) For the purposes of this regulation unearned income is income of a kind that is chargeable to tax under—

- (a) Part 3 of ITTOIA (property income);
- (b) Part 4 of ITTOIA (savings and investment income); or
- (c) Part 5 of ITTOIA (miscellaneous income).

(3) Subject to paragraphs (5) and (6), the amount of the non-resident parent's unearned income is to be determined by reference to information provided by HMRC at the request of the Secretary of State in relation to the latest available tax year and, where that information does not identify any income of a kind referred to in paragraph (2), the amount of the non-resident parent's unearned income is to be treated as nil.

(4) For the purposes of paragraph (2), the information in relation to property income is to be taken after deduction of relief under section 118 of the Income Tax Act 2007⁽¹⁾ (carry forward against subsequent property business profits).

(5) Where—

- (a) the latest available tax year is not the most recent tax year; or
- (b) the information provided by HMRC in relation to the latest available tax year does not include any information from a self-assessment return,

the Secretary of State may, if satisfied that there is sufficient evidence to do so, determine the amount of the non-resident parent's unearned income by reference to the most recent tax year; and any such determination must, as far as possible, be based on the information that would be required to be provided in a self-assessment return.

(6) Where the Secretary of State is satisfied that, by reason of the non-resident parent no longer having any property or assets from which unearned income was derived in a past tax year and having no current source from which unearned income may be derived, the non-resident parent will have no

(1) 2007 c. 3.

unearned income for the current tax year, the amount of the non-resident parent's unearned income for the purposes of this regulation is to be treated as nil.

(7) Where a variation is agreed to under this regulation, the non-resident parent is to be treated as having additional weekly income of the amount determined in accordance with paragraph (3) or (5) divided by 365 and multiplied by 7.

Non-resident parent on a flat rate or nil rate with gross weekly income

70.—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where—

- (a) the non-resident parent's liability to pay child support maintenance under a maintenance calculation which is in force or has been applied for is or would be—
 - (i) the nil rate by virtue of the non-resident parent being one of the persons referred to in paragraph (3); or
 - (ii) the flat rate by virtue of the non-resident parent receiving a benefit, pension or allowance mentioned in regulation 44(1) (flat rate);
- (b) the Secretary of State is satisfied that the non-resident parent has an amount of income that would be taken into account in the maintenance calculation as gross weekly income if sub-paragraph (a) did not apply; and
- (c) that income is equal to or more than £100 per week.

(2) Where a variation is agreed to under this regulation, the non-resident parent is treated as having additional income of the amount referred to in paragraph (1)(b).

(3) The persons referred to are—

- (a) a child;
- (b) a prisoner;
- (c) a person receiving an allowance in respect of work-based training for young people, or in Scotland, Skillseekers training;
- (d) a person referred to in regulation 45(1)(e) (persons resident in a care home or independent hospital etc.).

Diversion of income

71.—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where—

- (a) the non-resident parent ("P") has the ability to control, whether directly or indirectly, the amount of income that—
 - (i) P receives, or
 - (ii) is taken into account as P's gross weekly income; and
- (b) the Secretary of State is satisfied that P has unreasonably reduced the amount of P's income which would otherwise fall to be taken into account as gross weekly income or as unearned income under regulation 69 by diverting it to other persons or for purposes other than the provision of such income for P.

(2) Where a variation is agreed to under this regulation, the additional income to be taken into account is the whole of the amount by which the Secretary of State is satisfied that P has reduced the amount that would otherwise be taken into account as P's income.

