
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 5

VARIATIONS

CHAPTER 4

EFFECT OF VARIATION ON THE MAINTENANCE CALCULATION

Effect on the maintenance calculation – special expenses

72.—(1) Subject to paragraph (2) and regulation 74 (effect on maintenance calculation – general), where the variation agreed to is one falling within Chapter 2 (variation grounds: special expenses), effect is to be given to the variation in the maintenance calculation by deducting from the gross weekly income of the non-resident parent the weekly amount of the expenses referred to in Chapter 2.

(2) Where the income which is taken into account in the maintenance calculation is the capped amount, then—

- (a) the weekly amount of the expenses is first to be deducted from the actual gross weekly income of the non-resident parent;
- (b) the amount by which the capped amount exceeds the figure calculated under sub-paragraph (a) is to be calculated; and
- (c) effect is to be given to the variation in the maintenance calculation by deducting from the capped amount the amount calculated under sub-paragraph (b).

Effect on the maintenance calculation – additional income grounds

73.—(1) Subject to paragraph (2) and regulation 74 (effect on maintenance calculation – general), where the variation agreed to is one falling within Chapter 3 (grounds for variation : additional income) effect is to be given to the variation by increasing the gross weekly income of the non-resident parent which would otherwise be taken into account by the weekly amount of the additional income except that, where the amount of gross weekly income calculated in this way would exceed the capped amount, the amount of the gross weekly income taken into account is to be the capped amount.

(2) Where a variation is agreed to under this Chapter and the non-resident parent's liability would, apart from the variation, be the flat rate (or an amount equivalent to the flat rate), the amount of child support maintenance which the non-resident parent is liable to pay is a weekly amount calculated by adding an amount equivalent to the flat rate to the amount calculated by applying Schedule 1 to the 1991 Act to the additional income arising under the variation.

Effect on maintenance calculation – general

74.—(1) Subject to paragraph (5), where more than one variation is agreed to in respect of the same period, regulations 72 and 73 apply and the results are to be aggregated as appropriate.

(2) Paragraph 7(2) to (7) of Schedule 1 to the 1991 Act⁽¹⁾ (shared care) applies where the rate of child support maintenance is affected by a variation which is agreed to and paragraph 7(2) is to be read as if after the words “as calculated in accordance with the preceding paragraphs of this Part of this Schedule” there were inserted the words, “, Schedule 4B and regulations made under that Schedule”.

(3) Subject to paragraphs (4) and (5), where the non-resident parent shares the care of a qualifying child within the meaning in Part 1 of Schedule 1 to the 1991 Act, or where the care of such a child is shared with a local authority, the amount of child support maintenance that the non-resident parent is liable to pay to the person with care, calculated to take account of any variation, is to be reduced in accordance with the provisions of paragraph 7 of that Part or regulation 53 (care provided in part by a local authority), as the case may be.

(4) If the application of paragraph (3) would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to the person with care (or all of them) to less than a figure equivalent to the flat rate referred to in paragraph 4(1) of Schedule 1 to the 1991 Act (or in that sub-paragraph as modified by regulations under paragraph 10A of Schedule 1), the non-resident parent is instead liable to pay child support maintenance at a rate equivalent to that flat rate apportioned if appropriate as provided in paragraph 6 of Schedule 1 to that Act.

(5) The effect of a variation is not to be applied for any period during which a circumstance referred to in regulation 57(1)(d) to (f) (rejection of an application following preliminary consideration) applies.

Situations in which a variation previously agreed to may be taken into account in calculating maintenance liability

75.—(1) This regulation applies where—

- (a) a variation that has been agreed to has ceased to have effect in relation to the weekly amount of the non-resident parent’s liability for child support maintenance because—
 - (i) the non-resident parent has become liable to pay child support maintenance at the nil rate, or another rate which means that the variation cannot be taken into account; or
 - (ii) the decision as to the maintenance calculation has been replaced with a default maintenance decision under section 12(1)(b) of the 1991 Act; and
- (b) the non-resident parent has subsequently become liable to pay a rate of child support maintenance which can be adjusted to take account of the variation by virtue of a decision under section 16(1B) or 17 of the 1991 Act.

(2) Where this regulation applies and the Secretary of State is satisfied, on the information or evidence available, that there has been no material change of circumstances relating to the variation since the date from which the variation ceased to have effect, the Secretary of State may, when making the decision referred to in paragraph (1)(b), take into account the effect of the variation upon the amount of liability for child support maintenance notwithstanding the fact that an application has not been made.

(1) Paragraph 7(2) was amended by paragraphs 1 and 6 of Schedule 4 to the 2008 Act.