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STATUTORY INSTRUMENTS

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**1996 No. 635**

**The Child Support Departure Direction  
(Anticipatory Application) Regulations 1996**

**PART V**

**Additional cases**

**Assets capable of producing income or higher income**

**23.**—(1) Subject to paragraphs (2) to (4), a case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the Secretary of State is satisfied that any asset in which the non-applicant has a legal estate or beneficial interest, or which he has the ability to control—
  - (i) is capable of being utilised to produce income but has not been so utilised;
  - (ii) has been invested in such a way that the income obtained from it is less than might reasonably be expected;
  - (iii) is a chose in action which has not been enforced where the Secretary of State is satisfied that such enforcement would be reasonable; or
  - (iv) has not been sold where the Secretary of State is satisfied that the sale of the asset would be reasonable;
- (b) any asset has been transferred by the non-applicant to trustees and the non-applicant is a beneficiary of the trust so created; or
- (c) any asset has become subject to an implied resulting or constructive trust of which the non-applicant is a beneficiary.

(2) Paragraph (1) shall not apply where—

- (a) the total value of the asset or assets referred to in that paragraph does not exceed £10,000.00 after deduction of the amount owing under any mortgage or charge on that asset; or
- (b) the Secretary of State is satisfied that any asset referred to in that paragraph is being retained by the non-applicant to be used for a purpose which the Secretary of State considers reasonable in all the circumstances of the case.

(3) No application may be made under this regulation where income support is paid to or in respect of the non-applicant.

(4) For the purposes of this regulation the term “asset” means—

- (a) money, whether in cash or on deposit;
- (b) any asset used in the course of a trade or business carried on—
  - (i) by the non-applicant as a sole trader or in partnership; or
  - (ii) by a close company within the meaning of section 414 and 415 of the Income and Corporation Taxes Act 1988 in which the non-applicant is a participant;

- (c) a legal estate or equitable interest in land and rights in or over land;
- (d) shares as defined in section 455 of the Companies Act 1948<sup>(1)</sup>, stock and unit trusts as defined in section 6 of the Charging Orders Act 1979<sup>(2)</sup>, gilt edged securities as defined in paragraph 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1979<sup>(3)</sup>, and other similar financial instruments.

(5) For the purposes of paragraph (4) the term “asset” includes any asset falling within that paragraph which is located outside Great Britain.

### **Diversion of income**

**24.** A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the non-applicant has the ability to control the amount of income he receives, including earnings from employment or self-employment and dividends from shares, whether or not the whole of that income is derived from the company or business from which his earnings are derived; and
- (b) the Secretary of State is satisfied that the non-applicant has reduced the amount of income he would otherwise receive by diverting it to other persons or for purposes other than the provision of income for himself.

### **Life-style inconsistent with declared income**

**25.**—(1) Subject to paragraph (2), a case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where the Secretary of State is satisfied that the current maintenance assessment is based upon a level of income of the non-applicant which is substantially lower than the level of income required to support the overall life-style of that non-applicant.

(2) Paragraph (1) shall not apply where—

- (a) income support is paid to or in respect of the non-applicant;
- (b) the Secretary of State is satisfied that the life-style of the non-applicant is paid for—
  - (i) out of capital belonging to him; or
  - (ii) by his partner unless the non-applicant is able to influence or control the amount of income received by that partner.

(3) Where the Secretary of State is satisfied that the life-style of the non-applicant is paid for by his partner, the Secretary of State shall, whether or not any application on that ground has been made, consider whether the case falls within regulation 27.

### **Unreasonably high housing costs**

**26.** A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the housing costs of the non-applicant exceed the limits set out in paragraph (1) of regulation 18 of the Maintenance Assessments and Special Cases Regulations (excessive housing costs);
- (b) the non-applicant falls within paragraph (2) of that regulation or would fall within that paragraph if it applied to parents with care; and

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(1) 1948 c. 38.  
 (2) 1979 c. 53.  
 (3) 1979 c. 12.

- (c) the Secretary of State is satisfied that the housing costs of the non-applicant are substantially higher than is necessary taking into account any special circumstances applicable to that parent.

#### **Partner's contribution to housing costs**

**27.** A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where a partner of the non-applicant occupies the home with him and the Secretary of State considers that it is reasonable for that partner to contribute to the payment of the housing costs of the non-applicant.

#### **Unreasonably high travel costs**

**28.** A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where an amount in respect of travel to work costs has been included in the calculation of the exempt income of the non-applicant under regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations<sup>(4)</sup> (exempt income: calculation or estimation of E) or, as the case may be, under regulation 10 of those Regulations (exempt income: calculation or estimation of F)<sup>(5)</sup> applying regulation 9(1)(i), and the Secretary of State is satisfied that, in all the circumstances of the case, that amount is unreasonably high.

#### **Travel costs to be disregarded**

**29.** A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) an amount in respect of travel to work costs has, in the calculation of a maintenance assessment, been included in the calculation of the exempt income of the non-applicant under regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or, as the case may be, under regulation 10 of those Regulations applying regulation 9(1)(i); and
- (b) the Secretary of State is satisfied that the non-applicant has sufficient income remaining after the deduction of the amount that would be payable under that assessment, had the amount referred to in paragraph (a) not been included in its calculation, for it to be inappropriate for all or part of that amount to be included in the exempt income of the non-applicant.

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(4) Sub-paragraph (i) was added to regulation 9(1) by regulation 44(2)(b) of S.I. 1995/1045.

(5) Regulation 10 was amended by regulation 45 of S.I. 1995/1045.