

*Status: Point in time view as at 03/03/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Child Support Act 1995, SCHEDULE 2. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 2

Section 6(2).

#### DEPARTURE DIRECTIONS: THE CASES AND CONTROLS

##### Textual Amendments

- F1** Sch. 2 repealed (3.3.2003 for certain purposes) by 2000 c. 19, ss. 85, 86(1)(e)(2), Sch. 9 Pt. I (with s. 83(6)); S.I. 2003/192, art. 3, Sch.

##### Commencement Information

- II** Sch. 2 wholly in force at 2.12.1996; Sch. 2 not in force at Royal Assent see s. 30(3); Sch. 2 in force for certain purposes at 14.10.1996 by S.I. 1996/2630, art. 2(1), Sch. Pt. I; Sch. 2 in force at 2.12.1996 in so far as not already in force by S.I. 1996/2630, art. 2(2), Sch. Pt. II

The following Schedule is inserted in the 1991 Act, after Schedule 4A—

#### “SCHEDULE 4B

#### DEPARTURE DIRECTIONS: THE CASES AND CONTROLS

##### PART I

##### THE CASES

##### *General*

- 1 (1) The cases in which a departure direction may be given are those set out in this Part of this Schedule or in regulations made under this Part.
- (2) In this Schedule “applicant” means the person whose application for a departure direction is being considered.

##### *Special expenses*

- 2 (1) A departure direction may be given with respect to special expenses of the applicant which were not, and could not have been, taken into account in determining the current assessment in accordance with the provisions of, or made under, Part I of Schedule 1.
- (2) In this paragraph “special expenses” means the whole, or any prescribed part, of expenses which fall within a prescribed description of expenses.
- (3) In prescribing descriptions of expenses for the purposes of this paragraph, the Secretary of State may, in particular, make provision with respect to—
  - (a) costs incurred in travelling to work;

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- (b) costs incurred by an absent parent in maintaining contact with the child, or with any of the children, with respect to whom he is liable to pay child support maintenance under the current assessment;
  - (c) costs attributable to a long-term illness or disability of the applicant or of a dependant of the applicant;
  - (d) debts incurred, before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made—
    - (i) for the joint benefit of both parents;
    - (ii) for the benefit of any child with respect to whom the current assessment was made; or
    - (iii) for the benefit of any other child falling within a prescribed category;
  - (e) pre-1993 financial commitments from which it is impossible for the parent concerned to withdraw or from which it would be unreasonable to expect that parent to have to withdraw;
  - (f) costs incurred by a parent in supporting a child who is not his child but who is part of his family.
- (4) For the purposes of sub-paragraph (3)(c)—
- (a) the question whether one person is a dependant of another shall be determined in accordance with regulations made by the Secretary of State;
  - (b) “disability” and “illness” have such meaning as may be prescribed; and
  - (c) the question whether an illness or disability is long-term shall be determined in accordance with regulations made by the Secretary of State.
- (5) For the purposes of sub-paragraph (3)(e), “pre-1993 financial commitments” means financial commitments of a prescribed kind entered into before 5th April 1993 in any case where—
- (a) a court order of a prescribed kind was in force with respect to the absent parent and the person with care concerned at the time when they were entered into; or
  - (b) an agreement between them of a prescribed kind was in force at that time.
- (6) For the purposes of sub-paragraph (3)(f), a child who is not the child of a particular person is a part of that person’s family in such circumstances as may be prescribed.

*Property or capital transfers*

- 3 (1) A departure direction may be given if—
- (a) before 5th April 1993—
    - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
    - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
  - (b) in consequence of one or more transfers of property of a prescribed kind—
    - (i) the amount payable by the absent parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or
    - (ii) no amount was payable by the absent parent by way of maintenance; and

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- (c) the effect of that transfer, or those transfers, is not properly reflected in the current assessment.
  - (2) For the purposes of sub-paragraph (1)(b), “maintenance” means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.
  - (3) For the purposes of sub-paragraph (1)(c), the question whether the effect of one or more transfers of property is properly reflected in the current assessment shall be determined in accordance with regulations made by the Secretary of State.
- 4 (1) A departure direction may be given if—
- (a) before 5th April 1993—
    - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
    - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
  - (b) in pursuance of the court order or agreement, the absent parent has made one or more transfers of property of a prescribed kind;
  - (c) the amount payable by the absent parent by way of maintenance was not reduced as a result of that transfer or those transfers;
  - (d) the amount payable by the absent parent by way of child support maintenance under the current assessment has been reduced as a result of that transfer or those transfers, in accordance with provisions of or made under this Act; and
  - (e) it is nevertheless inappropriate, having regard to the purposes for which the transfer or transfers was or were made, for that reduction to have been made.
- (2) For the purposes of sub-paragraph (1)(c), “maintenance” means periodical payments of maintenance made (otherwise than under this Act) with respect to the child, or any of the children, with respect to whom the current assessment was made.

*Additional cases*

- 5 (1) The Secretary of State may by regulations prescribe other cases in which a departure direction may be given.
- (2) Regulations under this paragraph may, for example, make provision with respect to cases where—
- (a) assets which do not produce income are capable of producing income;
  - (b) a person’s life-style is inconsistent with the level of his income;
  - (c) housing costs are unreasonably high;
  - (d) housing costs are in part attributable to housing persons whose circumstances are such as to justify disregarding a part of those costs;
  - (e) travel costs are unreasonably high; or
  - (f) travel costs should be disregarded.

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## PART II

### REGULATORY CONTROLS

- 6 (1) The Secretary of State may by regulations make provision with respect to the directions which may be given in a departure direction.
- (2) No directions may be given other than those which are permitted by the regulations.
- (3) Regulations under this paragraph may, in particular, make provision for a departure direction to require—
- (a) the substitution, for any formula set out in Part I of Schedule 1, of such other formula as may be prescribed;
  - (b) any prescribed amount by reference to which any calculation is to be made in fixing the amount of child support maintenance to be increased or reduced in accordance with the regulations;
  - (c) the substitution, for any provision in accordance with which any such calculation is to be made, of such other provision as may be prescribed.
- (4) Regulations may limit the extent to which the amount of the child support maintenance fixed by a maintenance assessment made as a result of a departure direction may differ from the amount of the child support maintenance which would be fixed by a maintenance assessment made otherwise than as a result of the direction.
- (5) Regulations may provide for the amount of any special expenses to be taken into account in a case falling within paragraph 2, for the purposes of a departure direction, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.
- (6) No departure direction may be given so as to have the effect of denying to an absent parent the protection of paragraph 6 of Schedule 1.
- (7) Sub-paragraph (6) does not prevent the modification of the provisions of, or made under, paragraph 6 of Schedule 1 to the extent permitted by regulations under this paragraph.
- (8) Any regulations under this paragraph may make different provision with respect to different levels of income.”]

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