
STATUTORY INSTRUMENTS

2001 No. 156

The Child Support (Variations) Regulations 2000

PART III

SPECIAL EXPENSES

Special expenses—contact costs

10.—(1) Subject to the following paragraphs of this regulation, and to regulation 15, the following costs incurred or reasonably expected to be incurred by the non-resident parent, whether in respect of himself or the qualifying child or both, for the purpose of maintaining contact with that child, shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act—

- (a) the cost of purchasing a ticket for travel;
- (b) the cost of purchasing fuel where travel is by a vehicle which is not carrying fare-paying passengers;
- (c) the taxi fare for a journey or part of a journey where the Secretary of State is satisfied that the disability or long-term illness of the non-resident parent or the qualifying child makes it impracticable for any other form of transport to be used for that journey or part of that journey;
- (d) the cost of car hire where the cost of the journey would be less in total than it would be if public transport or taxis or a combination of both were used;
- (e) where the Secretary of State considers a return journey on the same day is impracticable, or the established or intended pattern of contact with the child includes contact over two or more consecutive days, the cost of the non-resident parent's, or, as the case may be, the child's, accommodation for the number of nights the Secretary of State considers appropriate in the circumstances of the case; and
- (f) any minor incidental costs such as tolls or fees payable for the use of a particular road or bridge incurred in connection with such travel, including breakfast where it is included as part of the accommodation cost referred to in sub-paragraph (e).

(2) The costs to which paragraph (1) applies include the cost of a person to travel with the non-resident parent or the qualifying child, if the Secretary of State is satisfied that the presence of another person on the journey, or part of the journey, is necessary including, but not limited to, where it is necessary because of the young age of the qualifying child or the disability or long-term illness of the non-resident parent or that child.

(3) The costs referred to in paragraphs (1) and (2)—

- (a) shall be expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act only to the extent that they are—
 - (i) incurred in accordance with a set pattern as to frequency of contact between the non-resident parent and the qualifying child which has been established at or, where at the time of the variation application it has ceased, which had been established before, the time that the variation application is made; or

- (ii) based on an intended set pattern for such contact which the Secretary of State is satisfied has been agreed between the non-resident parent and the person with care of the qualifying child; and
- (b) shall be—
 - (i) where head (i) of sub-paragraph (a) applies and such contact is continuing, calculated as an average weekly amount based on the expenses actually incurred over the period of 12 months, or such lesser period as the Secretary of State may consider appropriate in the circumstances of the case, ending immediately before the first day of the maintenance period from which a variation agreed on this ground would take effect;
 - (ii) where head (i) of sub-paragraph (a) applies and such contact has ceased, calculated as an average weekly amount based on the expenses actually incurred during the period from the first day of the maintenance period from which a variation agreed on this ground would take effect to the last day of the maintenance period in relation to which the variation would take effect; or
 - (iii) where head (ii) of sub-paragraph (a) applies, calculated as an average weekly amount based on anticipated costs during such period as the Secretary of State considers appropriate.

(4) For the purposes of this regulation, costs of contact shall not include costs which relate to periods where the non-resident parent has care of a qualifying child overnight as part of a shared care arrangement for which provision is made under paragraphs 7 and 8 of Schedule 1 to the Act and regulation 7 of the Maintenance Calculations and Special Cases Regulations.

(5) Where the non-resident parent has at the date he makes the variation application received, or at that date is in receipt of, or where he will receive, any financial assistance, other than a loan, from any source to meet, wholly or in part, the costs of maintaining contact with a child as referred to in paragraph (1), only the amount of the costs referred to in that paragraph, after the deduction of the financial assistance, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

Special expenses—illness or disability of relevant other child

11.—(1) Subject to the following paragraphs of this regulation, expenses necessarily incurred by the non-resident parent in respect of the items listed in sub-paragraphs (a) to (m) due to the long-term illness or disability of a relevant other child shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act—

- (a) personal care and attendance;
- (b) personal communication needs;
- (c) mobility;
- (d) domestic help;
- (e) medical aids where these cannot be provided under the health service;
- (f) heating;
- (g) clothing;
- (h) laundry requirements;
- (i) payments for food essential to comply with a diet recommended by a medical practitioner;
- (j) adaptations required to the non-resident parent's home;
- (k) day care;
- (l) rehabilitation; or

(m) respite care.

(2) For the purposes of this regulation and regulation 10—

(a) a person is “disabled” for a period in respect of which—

- (i) either an attendance allowance, disability living allowance or a mobility supplement is paid to or in respect of him;
- (ii) he would receive an attendance allowance or disability living allowance if it were not for the fact that he is a patient, though remaining part of the applicant’s family; or
- (iii) he is registered blind or treated as blind within the meaning of paragraph 12(1)(a) (iii) and (2) of Schedule 2 to the Income Support (General) Regulations 1987(1);

and for this purpose—

- (i) “attendance allowance” means an allowance payable under section 64 of the Contributions and Benefits Act or an increase of disablement pension under section 104 of that Act, or an award under article 14 of the Naval, Military and Air Forces Etc., (Disablement and Death) Service Pensions Order 1983(2) or any analogous allowance payable in conjunction with any other war disablement pension within the meaning of section 150(2) of the Contributions and Benefits Act;
 - (ii) “disability living allowance” means an allowance payable under section 72 of the Contributions and Benefits Act;
 - (iii) “mobility supplement” means an award under article 26A of the Naval, Military and Air Forces Etc., (Disablement and Death) Service Pensions Order 1983 or any analogous allowance payable in conjunction with any other war disablement pension within the meaning of section 150(2) of the Contributions and Benefits Act; and
 - (iv) “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a young offenders institution within the meaning of the Criminal Justice Act 1982(3)) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(4);
- (b) “the health service” has the same meaning as in section 128 of the National Health Service Act 1977(5) or in section 108(1) of the National Health Service (Scotland) Act 1978(6);
- (c) “long-term illness” means an illness from which the non-resident parent or child is suffering at the date of the application or the date from which the variation, if agreed, would take effect and which is likely to last for at least 52 weeks from that date, or, if likely to be shorter than 52 weeks, for the remainder of the life of that person; and
- (d) “relevant other child” has the meaning given in paragraph 10C(2) of Schedule 1 to the Act and Regulations made under that paragraph.

(3) Where the non-resident parent has, at the date he makes the variation application, received, or at that date is in receipt of, or where he will receive any financial assistance from any source in respect of the long-term illness or disability of the relevant other child or a disability living allowance is received by the non-resident parent on behalf of the relevant other child, only the net amount of the costs incurred in respect of the items listed in paragraph (1), after the deduction of the financial assistance or the amount of the allowance, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

(1) S.I. 1987/1967.

(2) S.I. 1983/883.

(3) 1982 c. 48. The Act is amended by the Criminal Justice Act 1988 c. 33.

(4) S.I. 1975/555. Relevant amendments are made by S.I. 1992/2595 and 1999/1326.

(5) 1977 c. 49.

(6) 1978 c. 29.

Special expenses—prior debts

12.—(1) Subject to the following paragraphs of this regulation and regulation 15, the repayment of debts to which paragraph (2) applies shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act where those debts were incurred—

- (a) before the non-resident parent became a non-resident parent in relation to the qualifying child; and
 - (b) at the time when the non-resident parent and the person with care in relation to the child referred to in sub-paragraph (a) were a couple.
- (2) This paragraph applies to debts incurred—
- (a) for the joint benefit of the non-resident parent and the person with care;
 - (b) for the benefit of the person with care where the non-resident parent remains legally liable to repay the whole or part of the debt;
 - (c) for the benefit of any person who is not a child but who at the time the debt was incurred—
 - (i) was a child;
 - (ii) lived with the non-resident parent and the person with care; and
 - (iii) of whom the non-resident parent or the person with care is the parent, or both are the parents;
 - (d) for the benefit of the qualifying child referred to in paragraph (1); or
 - (e) for the benefit of any child, other than the qualifying child referred to in paragraph (1), who, at the time the debt was incurred—
 - (i) lived with the non-resident parent and the person with care; and
 - (ii) of whom the person with care is the parent.
- (3) Paragraph (1) shall not apply to repayment of—
- (a) a debt which would otherwise fall within paragraph (1) where the non-resident parent has retained for his own use and benefit the asset in connection with the purchase of which he incurred the debt;
 - (b) a debt incurred for the purposes of any trade or business;
 - (c) a gambling debt;
 - (d) a fine imposed on the non-resident parent;
 - (e) unpaid legal costs in respect of separation or divorce from the person with care;
 - (f) amounts due after use of a credit card;
 - (g) a debt incurred by the non-resident parent to pay any of the items listed in sub-paragraphs (c) to (f) and (j);
 - (h) amounts payable by the non-resident parent under a mortgage or loan taken out on the security of any property except where that mortgage or loan was taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which is the home of the person with care and any qualifying child;
 - (i) amounts payable by the non-resident parent in respect of a policy of insurance except where that policy of insurance was obtained or retained to discharge a mortgage or charge taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which is the home of the person with care and the qualifying child;
 - (j) a bank overdraft except where the overdraft was at the time it was taken out agreed to be for a specified amount repayable over a specified period;

- (k) a loan obtained by the non-resident parent other than a loan obtained from a qualifying lender or the non-resident parent's current or former employer;
- (l) a debt in respect of which a variation has previously been agreed and which has not been repaid during the period for which the maintenance calculation which took account of the variation was in force; or
- (m) any other debt which the Secretary of State is satisfied it is reasonable to exclude.

(4) Except where the repayment is of an amount which is payable under a mortgage or loan or in respect of a policy of insurance which falls within the exception set out in sub-paragraph (h) or (i) of paragraph (3), repayment of a debt shall not constitute expenses for the purposes of paragraph (1) where the Secretary of State is satisfied that the non-resident parent has taken responsibility for repayment of that debt as, or as part of, a financial settlement with the person with care or by virtue of a court order.

(5) Where an applicant has incurred a debt partly to repay a debt repayment of which would have fallen within paragraph (1), the repayment of that part of the debt incurred which is referable to the debt repayment of which would have fallen within that paragraph shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

(6) For the purposes of this regulation and regulation 14—

- (a) “qualifying lender” has the meaning given to it in section 376(4) of the Income and Corporation Taxes Act 1988(7); and
- (b) “repairs or improvements” means major repairs necessary to maintain the fabric of the home and any of the following measures—
 - (i) installation of a fixed bath, shower, wash basin or lavatory, and necessary associated plumbing;
 - (ii) damp-proofing measures;
 - (iii) provision or improvement of ventilation and natural light;
 - (iv) provision of electric lighting and sockets;
 - (v) provision or improvement of drainage facilities;
 - (vi) improvement of the structural condition of the home;
 - (vii) improvements to the facilities for the storing, preparation and cooking of food;
 - (viii) provision of heating, including central heating;
 - (ix) provision of storage facilities for fuel and refuse;
 - (x) improvements to the insulation of the home; or
 - (xi) other improvements which the Secretary of State considers reasonable in the circumstances.

Special expenses—boarding school fees

13.—(1) Subject to the following paragraphs of this regulation and regulation 15, the maintenance element of the costs, incurred or reasonably expected to be incurred, by the non-resident parent for the purpose of the attendance at a boarding school of the qualifying child shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

(2) Where the Secretary of State considers that the costs referred to in paragraph (1) cannot be distinguished with reasonable certainty from other costs incurred in connection with the attendance at boarding school by the qualifying child, he may instead determine the amount of those costs and any such determination shall not exceed 35% of the total costs.

(7) 1988 c. 1.

(3) Where—

- (a) the non-resident parent has at the date the variation application is made, received, or at that date is in receipt of, financial assistance from any source in respect of the boarding school fees; or
- (b) the boarding school fees are being paid in part by the non-resident parent and in part by another person,

a portion of the costs incurred by the non-resident parent in respect of the boarding school fees shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act being the same proportion as the maintenance element of the costs bears to the total amount of the costs.

(4) No variation on this ground shall reduce by more than 50% the income to which the Secretary of State would otherwise have had regard in the calculation of maintenance liability.

(5) For the purposes of this regulation, “boarding school fees” means the fees payable in respect of attendance at a recognised educational establishment providing full-time education which is not advanced education for children under the age of 19 and where some or all of the pupils, including the qualifying child, are resident during term time.

Special expenses—payments in respect of certain mortgages, loans or insurance policies

14.—(1) Subject to regulation 15, the payments to which paragraph (2) applies shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

(2) This paragraph applies to payments, whether made to the mortgagee, lender, insurer or the person with care—

- (a) in respect of a mortgage or loan where—
 - (i) the mortgage or loan was taken out to facilitate the purchase of, or repairs or improvements to, a property (“the property”) by a person other than the non-resident parent;
 - (ii) the payments are not made under a debt incurred by the non-resident parent or do not arise out of any other legal liability of his for the period in respect of which the variation is applied for;
 - (iii) the property was the home of the applicant and the person with care when they were a couple and remains the home of the person with care and the qualifying child; and
 - (iv) the non-resident parent has no legal or equitable interest in and no charge or right to have a charge over the property; or
- (b) of amounts payable in respect of a policy of insurance taken out for the discharge of a mortgage or loan referred to in sub-paragraph (a), including an endowment policy, except where the non-resident parent is entitled to any part of the proceeds on the maturity of that policy.

Thresholds for and reduction of amount of special expenses

15.—(1) Subject to paragraphs (2) to (4), the costs or repayments referred to in regulations 10 and 12 to 14 shall be special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act where and to the extent that they exceed the threshold amount, which is—

- (a) £15 per week where the expenses fall within only one description of expenses and, where the expenses fall within more than one description of expenses, £15 per week in respect of the aggregate of those expenses, where the relevant net weekly income of the non-resident parent is £200 or more; or

(b) £10 per week where the expenses fall within only one description of expenses, and, where the expenses fall within more than one description of expenses, £10 per week in respect of the aggregate of those expenses, where the relevant net weekly income is below £200.

(2) Subject to paragraph (3), where the Secretary of State considers any expenses referred to in regulations 10 to 14 to be unreasonably high or to have been unreasonably incurred he may substitute such lower amount as he considers reasonable, including an amount which is below the threshold amount or a nil amount.

(3) Any lower amount substituted by the Secretary of State under paragraph (2) in relation to contact costs under regulation 10 shall not be so low as to make it impossible, in the Secretary of State's opinion, for contact between the non-resident parent and the qualifying child to be maintained at the frequency specified in any court order made in respect of the non-resident parent and that child where the non-resident parent is maintaining contact at that frequency.

(4) For the purposes of this regulation, "relevant net weekly income" means the net weekly income taken into account for the purposes of the maintenance calculation before taking account of any variation on the grounds of special expenses.