
STATUTORY INSTRUMENTS

2001 No. 156

The Child Support (Variations) Regulations 2000

PART V

ADDITIONAL CASES

Assets

18.—(1) Subject to paragraphs (2) and (3), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Act where the Secretary of State is satisfied there is an asset—

- (a) in which the non-resident parent has the beneficial interest, or which the non-resident parent has the ability to control;
- (b) which has been transferred by the non-resident parent to trustees, and the non-resident parent is a beneficiary of the trust so created, in circumstances where the Secretary of State is satisfied the non-resident parent has made the transfer to reduce the amount of assets which would otherwise be taken into account for the purposes of a variation under paragraph 4(1) of Schedule 4B to the Act; or
- (c) which has become subject to a trust created by legal implication of which the non-resident parent is a beneficiary.

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

- (a) money, whether in cash or on deposit, including any which, in Scotland, is monies due or an obligation owed, whether immediately payable or otherwise and whether the payment or obligation is secured or not and the Secretary of State is satisfied that requiring payment of the monies or implementation of the obligation would be reasonable;
- (b) a legal estate or beneficial interest in land and rights in or over land;
- (c) shares as defined in section 744 of the Companies Act 1985⁽¹⁾, stock and unit trusts as defined in section 6 of the Charging Orders Act 1979⁽²⁾, gilt-edged securities as defined in Part 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1992⁽³⁾, and other similar financial instruments; or
- (d) a chose in action which has not been enforced when the Secretary of State is satisfied that such enforcement would be reasonable,

and includes any such asset located outside Great Britain.

(3) Paragraph (2) shall not apply—

- (a) where the total value of the assets referred to in that paragraph does not exceed £65,000 after deduction of the amount owing under any mortgage or charge on those assets;

(1) 1985 c. 6.
(2) 1979 c. 53.
(3) 1992 c. 12.

- (b) in relation to any asset which the Secretary of State is satisfied is being retained by the non-resident parent to be used for a purpose which the Secretary of State considers reasonable in all the circumstances of the case;
- (c) to any asset received by the non-resident parent as compensation for personal injury suffered by him;
- (d) to any asset used in the course of a trade or business; or
- (e) to property which is the home of the non-resident parent or any child of his.

(4) For the purposes of this regulation, where any asset is held in the joint names of the non-resident parent and another person the Secretary of State shall assume, unless evidence to the contrary is provided to him, that the asset is held by them in equal shares.

(5) Where a variation is agreed on the ground that the non-resident parent has assets for which provision is made in this regulation, the Secretary of State shall calculate the weekly value of the assets by applying the statutory rate of interest to the value of the assets and dividing by 52, and the resulting figure, aggregated with any benefit, pension or allowance which the non-resident parent receives, other than any benefits referred to in regulation 26(3), shall be taken into account as additional income under regulation 25.

(6) For the purposes of this regulation, the “statutory rate of interest” means interest at the statutory rate prescribed for a judgment debt or, in Scotland, the statutory rate in respect of interest included in or payable under a decree in the Court of Session, which in either case applies on the date from which the maintenance calculation which takes account of the variation takes effect.

Income not taken into account and diversion of income

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

- (a) the non-resident parent’s liability to pay child support maintenance under the maintenance calculation which is in force or has been applied for or treated as applied for, is, or would be, as the case may be—
 - (i) the nil rate owing to the application of paragraph 5(a) of Schedule 1 to the Act; or
 - (ii) a flat rate, owing to the application of paragraph 4(1)(b) of Schedule 1 to the Act, or would be a flat rate but is less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act; and
- (b) the Secretary of State is satisfied that the non-resident parent is in receipt of income which would fall to be taken into account under the Maintenance Calculations and Special Cases Regulations but for the application to the non-resident parent of paragraph 4(1)(b) or 5(a) of Schedule 1 to the Act.

(2) Paragraph (1) shall apply where the income referred to in sub-paragraph (b) of that paragraph is a net weekly income of over £100.

(3) Net weekly income for the purposes of paragraph (2), in relation to earned income of a non-resident parent who is a student, shall be calculated by aggregating the income for the year ending with the relevant week (which for this purpose shall have the meaning given in the Maintenance Calculations and Special Cases Regulations) and dividing by 52, or, where the Secretary of State does not consider the result to be representative of the student’s earned income, over such other period as he shall consider representative and dividing by the number of weeks in that period.

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

- (a) the non-resident parent has the ability to control the amount of income he receives, including earnings from employment or self-employment, 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-resident parent has unreasonably reduced the amount of his income which would otherwise fall to be taken into account under the Maintenance Calculations and Special Cases Regulations by diverting it to other persons or for purposes other than the provision of such income for himself in order to reduce his liability to pay child support maintenance.
- (5) Where a variation on this ground is agreed to—
- (a) in a case to which paragraph (1) applies, the additional income taken into account under regulation 25 shall be the whole of the income referred to in paragraph (1)(b), aggregated with any benefit, pension or allowance which the non-resident parent receives other than any benefits referred to in regulation 26(3); and
 - (b) in a case to which paragraph (4) applies, the additional income taken into account under regulation 25 shall be the whole of the amount by which the Secretary of State is satisfied the non-resident parent has unreasonably reduced his income.

Life-style inconsistent with declared income

20.—(1) Subject to paragraph (3), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Act where—

- (a) the non-resident parent's liability to pay child support maintenance under the maintenance calculation which is in force, or which has been applied for or treated as applied for, is, or would be, as the case may be—
 - (i) the basic rate,
 - (ii) the reduced rate,
 - (iii) a flat rate owing to the application of paragraph 4(1)(a) of Schedule 1 to the Act, including where the net weekly income of the non-resident parent taken into account for the purposes of the maintenance calculation is, or would be, £100 per week or less owing to a variation being taken into account, or to the application of regulation 18, 19 or 21 of the Transitional Regulations (deduction for relevant departure direction or relevant property transfer);
 - (iv) £5 per week or such other amount as may be prescribed owing to the application of paragraph 7(7) of Schedule 1 to the Act (shared care);
 - (v) equivalent to the flat rate provided for in, or prescribed for the purposes of, paragraph 4(1)(b) of Schedule 1 to the Act owing to the application of—
 - (aa) regulation 27(5);
 - (bb) regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by a local authority); or
 - (cc) regulation 23(5) of the Transitional Regulations; or
 - (vi) the nil rate owing to the application of paragraph 5(b) of Schedule 1 to the Act; and
- (b) the Secretary of State is satisfied that the income which has been, or would be, taken into account for the purposes of the maintenance calculation is substantially lower than the level of income required to support the overall life-style of the non-resident parent.

(2) Subject to paragraph (4), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Act where the non-resident parent's liability to pay child support maintenance under the maintenance calculation which is in force, or which has been applied for or treated as applied for, is, or would be, as the case may be—

- (a) a flat rate owing to the application of paragraph 4(1)(b) of Schedule 1 to the Act, or would be a flat rate but is less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Act; or
- (b) the nil rate owing to the application of paragraph 5(a) of Schedule 1 to the Act,

and the Secretary of State is satisfied that the income which would otherwise be taken into account for the purposes of the maintenance calculation is substantially lower than the level of income required to support the overall life-style of the non-resident parent.

(3) Paragraph (1) shall not apply where the Secretary of State is satisfied that the life-style of the non-resident parent is paid for from—

- (a) income which is or would be disregarded for the purposes of a maintenance calculation under the Maintenance Calculations and Special Cases Regulations;
- (b) income which falls to be considered under regulation 19(4) (diversion of income);
- (c) assets as defined for the purposes of regulation 18, or income derived from those assets;
- (d) the income of any partner of the non-resident parent, except where the non-resident parent is able to influence or control the amount of income received by that partner; or
- (e) assets as defined for the purposes of regulation 18 of any partner of the non-resident parent, or any income derived from such assets, except where the non-resident parent is able to influence or control the assets, their use, or income derived from them.

(4) Paragraph (2) shall not apply where the Secretary of State is satisfied that the life-style of the non-resident parent is paid for—

- (a) from a source referred to in paragraph (3);
- (b) from net weekly income of £100 or less; or
- (c) from income which falls to be considered under regulation 19(1).

(5) Where a variation on this ground is agreed to, the additional income taken into account under regulation 25 shall be the difference between the income which the Secretary of State is satisfied the non-resident parent requires to support his overall life-style and the income which has been or, but for the application of paragraph 4(1)(b) or 5(a) of Schedule 1 to the Act, would be taken into account for the purposes of the maintenance calculation, aggregated with any benefit, pension or allowance which the non-resident parent receives other than any benefits referred to in regulation 26(3).