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STATUTORY INSTRUMENTS

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**2012 No. 2677**

**The Child Support Maintenance Calculation Regulations 2012**

**PART 5**

VARIATIONS

CHAPTER 3

GROUNDS FOR VARIATION: ADDITIONAL INCOME

**Non-resident parent with unearned income**

**69.**—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where the non-resident parent has unearned income equal to or exceeding £2,500 per annum.

(2) For the purposes of this regulation unearned income is income of a kind that is chargeable to tax under—

- (a) Part 3 of ITTOIA (property income);
- (b) Part 4 of ITTOIA (savings and investment income); or
- (c) Part 5 of ITTOIA (miscellaneous income).

(3) Subject to paragraphs (5) and (6), the amount of the non-resident parent's unearned income is to be determined by reference to information provided by HMRC at the request of the Secretary of State in relation to the latest available tax year and, where that information does not identify any income of a kind referred to in paragraph (2), the amount of the non-resident parent's unearned income is to be treated as nil.

(4) For the purposes of paragraph (2), the information in relation to property income is to be taken after deduction of relief under section 118 of the Income Tax Act 2007 <sup>M1</sup> (carry forward against subsequent property business profits).

(5) Where—

- (a) the latest available tax year is not the most recent tax year; or
- (b) the information provided by HMRC in relation to the latest available tax year does not include any information from a self-assessment return; <sup>F1</sup>or
- (c) the Secretary of State is unable, for whatever reason, to request or obtain the information from HMRC,]

the Secretary of State may, if satisfied that there is sufficient evidence to do so, determine the amount of the non-resident parent's unearned income by reference to the most recent tax year; and any such determination must, as far as possible, be based on the information that would be required to be provided in a self-assessment return.

(6) Where the Secretary of State is satisfied that, by reason of the non-resident parent no longer having any property or assets from which unearned income was derived in a past tax year and having no current source from which unearned income may be derived, the non-resident parent will have no

unearned income for the current tax year, the amount of the non-resident parent's unearned income for the purposes of this regulation is to be treated as nil.

(7) Where a variation is agreed to under this regulation, the non-resident parent is to be treated as having additional weekly income of the amount determined in accordance with paragraph (3) or (5) divided by 365 and multiplied by 7.

[<sup>F2</sup>(8) Subject to paragraph (9), where the non-resident parent makes relievable pension contributions, which have not been otherwise taken into account for the purposes of the maintenance calculation, there is to be deducted from the additional weekly income calculated in accordance with paragraph (7) an amount determined by the Secretary of State as representing the weekly average of those contributions.

(9) An amount must only be deducted in accordance with paragraph (8) where the relievable pension contributions referred to in that paragraph relate to the same tax year that has been used for the purposes of determining the additional weekly income.]

- F1** Reg. 69(5)(c) and word inserted (coming into force in accordance with reg. 1(2)(3) of the amending S.I.) by [The Child Support and Claims and Payments \(Miscellaneous Amendments and Change to the Minimum Amount of Liability\) Regulations 2013 \(S.I. 2013/1654\)](#), reg. 1(2)(3), **5(3)(a)**
- F2** Reg. 69(8)(9) inserted (coming into force in accordance with reg. 1(2)(3) of the amending S.I.) by [The Child Support and Claims and Payments \(Miscellaneous Amendments and Change to the Minimum Amount of Liability\) Regulations 2013 \(S.I. 2013/1654\)](#), reg. 1(2)(3), **5(3)(b)**

#### Modifications etc. (not altering text)

- C1** Reg. 69(5) modified (temp.) (10.12.2012) by [The Child Maintenance and Other Payments Act 2008 \(Commencement No. 10 and Transitional Provisions\) Order 2012 \(S.I. 2012/3042\)](#), art. 6(b) (which amending art. 6 was omitted (29.7.2013) by virtue of S.I. 2013/1860, art. 6)
- C2** Reg. 69(5) modified (temp.) (29.7.2013) by [The Child Maintenance and Other Payments Act 2008 \(Commencement No. 11 and Transitional Provisions\) Order 2013 \(S.I. 2013/1860\)](#), art. 7(c)

#### Commencement Information

- I1** Reg. 69 wholly in force; reg. 69 not in force at made date; reg. 69 in force at 29.7.2013 for certain purposes and reg. 69 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and [S.I. 2013/2947](#)

#### Marginal Citations

- M1** 2007 c. 3.

#### [<sup>F3</sup>Assets exceeding a prescribed value

**69A.**—(1) Where this paragraph applies, the other cases prescribed under paragraph 4(1) of Schedule 4B to the 1991 Act are cases where the Secretary of State is satisfied that there is an asset in which the non-resident parent has a legal or beneficial interest and the value of that interest exceeds the prescribed value.

(2) In this regulation “asset” means—

- (a) money, whether in cash or on deposit, including any money which is due to a non-resident parent where the Secretary of State is satisfied that requiring payment of the monies to the non-resident parent immediately would be reasonable;
- (b) gold, silver or platinum bullion bars or coins;
- (c) a virtual currency which is capable of being exchanged for money;
- (d) land or rights in or over land;

- (e) shares within the meaning of section 540 of the Companies Act 2006;
  - (f) stock and unit trusts within the meaning of section 6 of the Charging Orders Act 1979;
  - (g) gilt edged securities within the meaning of paragraphs 1 and 1A of Part 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1992; or
  - (h) a chose in action which has not been enforced on the date of an application for a variation under regulation 56 and where the Secretary of State is satisfied that such enforcement would be reasonable.
- (3) In this regulation “asset” includes any asset which is subject to a trust where the non-resident parent is a beneficiary.
- (4) Paragraph (1) does not apply in the case of any asset which—
- (a) has been received by the non-resident parent as compensation for personal injury suffered by the non-resident parent;
  - (b) is being used in the course of the non-resident parent’s trade or business;
  - (c) the Secretary of State is satisfied could have been purchased from the gross weekly income of the non-resident parent which has been taken into account for the purposes of a maintenance calculation;
  - (d) will need to be sold in order to meet any additional maintenance payment required as a result of a variation under paragraph 4(1) of Schedule 4B to the 1991 Act where the Secretary of State is satisfied that the sale of that asset would cause hardship to a child of the non-resident parent, or would otherwise be unreasonable having taken into account all relevant circumstances; or
  - (f) is a legal or beneficial interest in land where the land in question is the primary residence of the non-resident parent or any child of the non-resident parent.
- (5) The “prescribed value” is £31,250.
- (6) In the case of an asset which is subject to a mortgage or charge, the value of that asset will be its value after a deduction is made for any amount owing under the mortgage or charge.
- (7) The Secretary of State shall calculate the weekly value of an asset by applying the statutory rate of interest to the value of the asset and dividing by 52.
- (8) For the purposes of this regulation—
- “statutory rate of interest” means interest at the statutory rate prescribed for a judgment debt or, in Scotland, the statutory rate of interest included in or payable under a decree in the Court of Sessions applicable on the date upon which the variation takes effect;
- “virtual currency” means a digital representation of value which is not issued by a central bank or a public authority; is accepted by natural or legal persons as a means of payment; and can be transferred, stored or traded electronically.]

**F3** Reg. 69A inserted (13.12.2018) by [The Child Support \(Miscellaneous Amendments\) Regulations 2018 \(S.I. 2018/1279\)](#), regs. 1(2), 2(2)

### **Non-resident parent on a flat rate or nil rate with gross weekly income**

**70.**—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where—

- (a) the non-resident parent's liability to pay child support maintenance under a maintenance calculation which is in force or has been applied for is or would be—

- (i) the nil rate by virtue of the non-resident parent being one of the persons referred to in paragraph (3); or
  - (ii) the flat rate by virtue of the non-resident parent receiving a benefit, pension or allowance mentioned in regulation 44(1) (flat rate);
  - (b) the Secretary of State is satisfied that the non-resident parent has an amount of income that would be taken into account in the maintenance calculation as gross weekly income if sub-paragraph (a) did not apply; and
  - (c) that income is <sup>F4</sup>... more than £100 per week.
- (2) Where a variation is agreed to under this regulation, the non-resident parent is treated as having additional income of the amount referred to in paragraph (1)(b).
- (3) The persons referred to are—
- (a) a child;
  - (b) a prisoner;
  - (c) a person receiving an allowance in respect of work-based training for young people, or in Scotland, Skillseekers training;
  - (d) a person referred to in regulation 45(1)(e) (persons resident in a care home or independent hospital etc.).

**F4** Reg. 70(1)(c) omitted (3.7.13) (coming into force in accordance with reg. 1(2)(3) of the amending S.I.) by virtue of The Child Support and Claims and Payments (Miscellaneous Amendments and Change to the Minimum Amount of Liability) Regulations 2013 by (S.I. 2013/1654), reg. 1(2)(3),5(4)

**Commencement Information**

**I2** Reg. 70 wholly in force; reg. 70 not in force at made date; reg. 70 in force at 29.7.2013 for certain purposes and reg. 70 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

**Diversion of income**

**71.—**(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B to the 1991 Act where—

- (a) the non-resident parent (“P”) has the ability to control, whether directly or indirectly, the amount of income that—
  - (i) P receives, or
  - (ii) is taken into account as P's gross weekly income; and
- (b) the Secretary of State is satisfied that P has unreasonably reduced the amount of P's income which would otherwise fall to be taken into account as gross weekly income or as unearned income under regulation 69 by diverting it to other persons or for purposes other than the provision of such income for P.

(2) Where a variation is agreed to under this regulation, the additional income to be taken into account is the whole of the amount by which the Secretary of State is satisfied that P has reduced the amount that would otherwise be taken into account as P's income.

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**Commencement Information**

- I3** Reg. 71 wholly in force; reg. 71 not in force at made date; reg. 71 in force at 29.7.2013 for certain purposes and reg. 71 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and [S.I. 2013/2947](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Child Support Maintenance Calculation Regulations 2012, CHAPTER 3.