STATUTORY INSTRUMENTS

2012 No. 2677

The Child Support Maintenance Calculation Regulations 2012

PART 5

VARIATIONS

CHAPTER 1

GENERAL

Application for a variation

56.—(1) Where an application for a variation is made other than in writing it is treated as made on the date on which the applicant notifies the Secretary of State that the applicant wishes to make such an application.

(2) Where an application for a variation is made in writing it is treated as made on the date that the Secretary of State receives it.

(3) Two or more applications for a variation with respect to the same maintenance calculation or application for a maintenance calculation may be considered together.

(4) The Secretary of State may treat an application for a variation made on one ground as made on another ground if that other ground is more appropriate to the facts alleged in that case.

Rejection of an application following preliminary consideration

57.—(1) The circumstances prescribed for the purposes of section 28B(2)(c) of the 1991 Act(**1**) (other circumstances in which an application may be rejected after preliminary consideration) are—

(a) the applicant does not state a ground for the variation or provide sufficient information to enable a ground to be identified;

(b) although a ground is stated, the Secretary of State is satisfied that the application would not be agreed to because —

(i) the facts alleged do not bring the case within the ground; or

(ii) no facts are alleged that would support the ground or could reasonably form the basis of further enquiries;

(c) a default maintenance decision is in force;

(d) the non-resident parent is liable to pay the flat rate or nil rate because the non-resident parent or their partner is in receipt of a benefit listed in regulation 44(2) (flat rate);

(e) in the case of an application made by the non-resident parent on the grounds mentioned in Chapter 2 (special expenses)—

(i) the amount of the expenses does not exceed the relevant threshold;

(**1**) Section 28B was inserted by section 5(1) and (2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) .

(ii) the amount of maintenance for which the non-resident parent is liable is equal to or less than the flat rate referred to in paragraph 4(1) of Schedule 1 to the 1991 Act (or in that sub-paragraph as modified by regulations under paragraph 10A of Schedule 1);

(iii) the amount of the non-resident parent's gross weekly income would exceed the capped amount after deducting special expenses; or

(iv) the non resident parent's gross weekly income has been determined on the basis of regulation 42 (estimate of current income where insufficient information available); or

(f) in the case of an application on any of the grounds mentioned in Chapter 3 (additional income), the amount of the non-resident parent's gross weekly income (without taking that ground into account) is the capped amount.

(2) The circumstances set out in paragraph (1) are circumstances prescribed for the purposes of section 28F(3)(b) of the 1991 Act in which the Secretary of State must not agree to a variation.

Provision of information

58.—(1) Where the Secretary of State has received an application for a variation the Secretary of State may request further information or evidence from the applicant to enable that application to be determined.

(2) Any such information or evidence requested in accordance with paragraph (1) must be provided within 14 days after the date of notification of the request or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case.

(3) Where any information or evidence requested is not provided within the time specified in paragraph (2), the Secretary of State may, where able to do so, proceed to determine the application in the absence of the requested information or evidence.

Procedure in relation to a variation

59.—(1) Where the Secretary of State has given the preliminary consideration to an application for a variation and not rejected it, the Secretary of State—

(a) must give notice of the application to any other party informing them of the grounds on which the application has been made and any relevant information or evidence given by the applicant or obtained by the Secretary of State, except information or evidence falling within paragraph (5); and

(b) may invite representations (which need not be in writing but must be in writing if in any case the Secretary of State so directs) from the other party on any matter relating to that application, to be submitted to the Secretary of State within 14 days after the date of notification or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case.

(2) The Secretary of State need not act in accordance with paragraph (1) if—

(a) the Secretary of State is satisfied on the information or evidence available that the application would not be agreed to;

(b) in the case of an application for a variation on the ground mentioned in regulation 69 (non-resident parent with unearned income), the information from HMRC for the latest available tax year does not disclose unearned income exceeding the relevant threshold and the Secretary of State is not in possession of other information or evidence that would merit further enquiry; or

(c) regulation 75 (previously agreed variation may be taken into account notwithstanding that no further application has been made) applies;

(3) Where the Secretary of State receives representations from the other party—

(a) the Secretary of State may, if the Secretary of State is satisfied that it is reasonable to do so, inform the applicant of the representations concerned (excluding material falling within paragraph (5)) and invite comments within 14 days or such longer period as the Secretary of State is satisfied is reasonable in the circumstances of the case; and

(b) where the Secretary of State acts under sub-paragraph (a), the Secretary of State must not proceed to determine the application until such comments are received or the period referred to in that sub-paragraph has expired.

(4) Where the Secretary of State has not received representations from the other party notified in accordance with paragraph (1) within the time specified in sub-paragraph (b) of that paragraph, the Secretary of State may in their absence proceed to agree (or not, as the case may be) to the variation.

(5) The information or evidence referred to in paragraph (1)(a) is as follows—

(a) details of the nature of the long-term illness or disability of the relevant other child which forms the basis of a variation application on the ground in regulation 64 (illness or disability of a relevant other child) where the applicant requests they should not be disclosed and the Secretary of State is satisfied that disclosure is not necessary in order to be able to determine the application;

(b) medical evidence or medical advice which has not been disclosed to the applicant or the other party and which the Secretary of State considers would be harmful to the health of the applicant or that party if disclosed; or

(c) the address of the other party or qualifying child, or any other information which could reasonably be expected to lead to that party or child being located, where the Secretary of State considers that there would be a risk of harm or undue distress to that other party or that child or any other children living with that other party if the address or information were disclosed.

Factors not taken into account for the purposes of section 28F

60. The following factors are not to be taken into account in determining whether it would be just and equitable to agree to a variation in any case—

(a) the fact that the conception of the qualifying child was not planned by one or both of the parents;

(b) whether the non-resident parent or the person with care of the qualifying child was responsible for the breakdown of the relationship between them;

(c) the fact that the non-resident parent or the person with care of the qualifying child has formed a new relationship with a person who is not a parent of that child;

(d) the existence of particular arrangements for contact with the qualifying child, including whether any arrangements made are being adhered to;

(e) the income or assets of any person other than the non-resident parent;

(f) the failure by a non-resident parent to make payments of child support maintenance, or to make payments under a maintenance order or a maintenance agreement; or

(g) representations made by persons other than the parties.

Procedure on revision or supersession of a previously determined variation

61.—(1) Subject to paragraph (2), where the Secretary of State has received an application under section 16 or 17 of the 1991 Act(**2**) in connection with a previously determined variation which has effect on a maintenance calculation in force, regulations 58 to 60 apply in relation to that application as if it were an application for a variation that had not been rejected after preliminary consideration.

(2) The Secretary of State need not act in accordance with regulation 59(1) (procedure in relation to a variation) if—

(a) were the application to succeed, the decision as revised or superseded would be less advantageous to the applicant than the decision before it was so revised or superseded; or

(b) it appears to the Secretary of State that representations of the other party would not be relevant to the decision.

Regular payments condition

62.—(1) For the purposes of section 28C(2)(b) of the 1991 Act(**3**) (payments of child support maintenance less than those specified in the interim maintenance decision) the payments are those fixed by the interim maintenance decision or the maintenance calculation in force, as the case may be, adjusted to take account of the variation applied for by the non-resident parent as if that variation had been agreed.

(2) The Secretary of State may refuse to consider the application for a variation where a regular payments condition has been imposed and the non-resident parent fails to make such payments, which are due and unpaid, within one month after being required to do so by the Secretary of State or such other period as the Secretary of State may in the particular case decide.

CHAPTER 2

GROUNDS FOR VARIATION: SPECIAL EXPENSES

Contact costs

63.—(1) Subject to the following paragraphs of this regulation, and to regulation 68 (thresholds), the following costs incurred or reasonably expected to be incurred by the non-resident parent, whether in respect of the non-resident parent or the qualifying child or both, for the purpose of maintaining contact with that child, constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act(**4**)—

(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;

(**2**) Section 16 was substituted by section 40 of the Social Security Act 1998 (c. 14). Subsections (1A) and (1B) were inserted by section 8(1) and (3) of the Child Support, Pensions and Social Security Act 2000 (c. 19) ("the 2000 Act") and subsection (1A) was amended by Schedule 8 to the Child Maintenance and Other Payments Act 2008 (c. 6) ("the 2008 Act") and S.I. 2008/2833. Section 17 was substituted by section 41 of the Social Security Act 1998. Subsection (1) was substituted by section 41 of the Social Security Act 1998 and amended by section 9(1) and (2) of, and Schedule 9 to, the 2000 Act, Schedule 8 to the 2008 Act and S.I. 2008/2833. Subsections (2) and (3) were substituted by section 17 of the 2008 Act. Section 17(4) and (4A) were substituted by section 9(1) and (3) of the 2000 Act.

(**3**) Section 28C was inserted by section 5(1) and (2) of the 2000 Act.

(**4**) Schedule 4B was substituted by section 6 of, and Schedule 2 to, the 2000 Act and amended by Schedule 8 to the 2008 Act and S.I. 2008/2833.

(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) are expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 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) are —

(i) where sub-paragraph (a)(i) applies and such contact is continuing, calculated as an average weekly amount based on the expenses actually incurred during 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 day from which a variation agreed on this ground would take effect;

(ii) where sub-paragraph (a)(i) applies and such contact has ceased, calculated as an average weekly amount based on the expenses actually incurred during the period from the day from which a variation agreed on this ground would take effect to the last day on which the variation would take effect; or

(iii) where sub-paragraph (a)(ii) applies, calculated as an average weekly amount based on anticipated costs during such period as the Secretary of State considers appropriate.

(4) Where, at the date on which the variation application is made, the non-resident parent has received, is in receipt of, or 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, constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act.

Illness or disability of relevant other child

64.—(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 constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 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 63 (contact costs)—

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

(i) a disability living allowance is paid to or in respect of that person;

(ii) that person would receive a disability living allowance if it were not for the fact that the person is a patient, though remaining part of the applicant's family; or

(iii) that person is registered blind,

and "disability" is to be construed accordingly;

(b) "disability living allowance" means the care component of a disability living allowance, payable under section 72 of the Social Security Contributions and Benefits Act 1992;

(c) "the health service" has the same meaning as in section 275 of the National Health Service Act 2006(**5**) or in section 108(1) of the National Health Service (Scotland) Act 1978(**6**);

(d) "long-term illness" means an illness from which the 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 12 months after that date, or, if likely to be shorter than 12 months, for the remainder of their life; and

(e) "relevant other child" has the meaning given in paragraph 10C(2) of Schedule 1 to the 1991 Act(**7**);

(f) a person is "registered blind" where that person is—

(i) registered as blind in a register maintained by or on behalf of a local authority in England or Wales under section 29 of the National Assistance Act 1948(**8**) (welfare services); or

(ii) registered as blind in a register maintained by or on behalf of a local authority in Scotland.

(3) Where, at the date on which the non-resident parent makes the variation application—

(**5**) 2006 c. 41.
(**6**) 1978 c. 29.
(**7**) Paragraph 10C was amended by paragraph 1(1) and (31) of Schedule 7 to the 2008 Act.
(**8**) 1948 c. 29. Subsection (1) was amended by Schedule 4 to the Mental Health (Scotland) Act 1960 (c. 61) and by paragraph 2(4) of Schedule 23 to the Local Government Act 1972 (c. 70).

(a) the non-resident parent or a member of the non-resident parent's household has received, is in receipt of, or will receive any financial assistance from any source in respect of the long-term illness or disability of the relevant other child; or

(b) a disability living allowance is received by the non-resident parent or the member of the non-resident parent's household 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, constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act.

(4) For the purposes of paragraph (2)(a)—

(a) "patient" means a person (other than a person who is serving a sentence of imprisonment within the meaning of section 163 of the Powers of Criminal Courts (Sentencing) Act 2000(**9**) or of detention in a young offender institution within the meaning of section 96 of that Act or, in Scotland, a sentence of imprisonment or detention within the meaning of section 307 of the Criminal Procedure (Scotland) Act 1995) who is regarded as receiving free in-patient treatment within the meaning of regulation 2(4) and (5) of the Social Security (Hospital In-Patients) Regulations 2005(**10**); and

(b) where a person has ceased to be registered in a register as referred to in paragraph (2)(f), having regained their eyesight, that person is to be treated as though they were registered blind, for a period of 28 days after the day on which that person ceased to be registered in such a register.

Prior debts

65.—(1) Subject to the following paragraphs of this regulation and regulation 68 (thresholds), the repayment of debts to which paragraph (2) applies constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 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.

(**9**) 2000 c. 6.
(**10**) S.I. 2005/3360.

(3) Paragraph (1) does not apply to repayment of—

(a) a debt which would otherwise fall within paragraph (1) where the non-resident parent has retained for the non-resident parent's own use and benefit the asset in connection with the purchase of which the debt was incurred;

(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—

(i) separation from the person with care;

(ii) divorce from the person with care; or

(iii) dissolution of a civil partnership that had been formed with the person with care;

(f) amounts due after use of a credit card;

(g) a debt incurred by the non-resident parent to pay for 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 was, and continues to be, 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 was, and continues to be, 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; or

(l) any other debt which the Secretary of State is satisfied 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 does 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, constitutes expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act.

(6) In paragraph (3)(h) "repairs or improvements" means repairs that the Secretary of State considers are major repairs necessary to maintain the fabric of the home and any of the following measures—

(a) installation of a fixed bath, shower, wash basin or lavatory, and necessary associated plumbing;

(b) damp-proofing measures;

(c) provision or improvement of ventilation and natural light;

(d) provision of electric lighting and sockets;

(e) provision or improvement of drainage facilities;

(f) improvement of the structural condition of the home;

(g) improvements to the facilities for the storing, preparation and cooking of food;

(h) provision of heating, including central heating;

(i) provision of storage facilities for fuel and refuse;

(j) improvements to the insulation of the home; or

(k) other improvements which the Secretary of State considers reasonable in the circumstances.

Boarding school fees

66.—(1) Subject to the following paragraphs of this regulation and regulation 68 (thresholds), the maintenance element of boarding school fees, incurred or reasonably expected to be incurred by the non-resident parent, constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act.

(2) Where the Secretary of State considers that the maintenance element of the boarding school fees cannot be distinguished with reasonable certainty from the total fees, the Secretary of State may instead determine the amount of the maintenance element and any such determination is not to exceed 35% of the total fees.

(3) Where—

(a) the non-resident parent has, at the date on which 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 expenses incurred by the non-resident parent in respect of the boarding school fees, calculated in accordance with paragraph (4), constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act.

(4) For the purposes of paragraph (3), the portion in question is calculated as follows—

(a) find the amount (A) that results from deducting from the amount of the boarding school fees the financial assistance, or the amount that another person is paying, as referred to in paragraph (3);

(b) find the amount that bears the same proportion to A as the maintenance element of the fees referred to in paragraph (1) bears to the total fees referred to in that paragraph, and that amount is the portion in question.

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

(6) 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 20 and where some or all of the pupils, including the qualifying child, are resident during term time.

(7) For the purposes of paragraph (6)—

"recognised educational establishment" means an establishment recognised by the Secretary of State for the purposes of that paragraph as being, or as comparable to, a university, college or school;

"advanced education" means education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma including a national diploma or national certificate of Edexcel, a general certificate of education (advanced level) or Scottish national qualifications at higher or advanced higher level.

Payments in respect of certain mortgages, loans or insurance policies

67.—(1) Subject to regulation 68 (thresholds), the payments to which paragraph (2) applies constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 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 a loan from a qualifying lender 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 and do not arise out of any other legal liability of the non-resident parent 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

68.—(1) Subject to paragraphs (3) and (4), the costs or repayments referred to in regulations 63 (contact costs) and 65 to 67 (prior debts, boarding school fees and payments in respect of certain mortgages etc.) are to be special expenses for the purposes of paragraph 2(2) of Schedule 4B to the 1991 Act only where they are equal to or exceed the threshold amount of £10 per week.

(2) Where the expenses fall within more than one description of expense referred to in paragraph (1), the threshold amount applies separately in respect of each description.

(3) Subject to paragraph (4), where the Secretary of State considers any expenses referred to in this Chapter to be unreasonably high or to have been unreasonably incurred the Secretary of State may substitute such lower amount as the Secretary of State considers to be reasonable, including an amount which is below the threshold amount or a nil amount.

(4) Any lower amount substituted by the Secretary of State under paragraph (3) in relation to contact costs under regulation 63 (contact costs) must 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.

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(**11**) (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,

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.

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

(**11**) 2007 c. 3.

(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 equal to or 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.).

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.

CHAPTER 4

EFFECT OF VARIATION ON THE MAINTENANCE CALCULATION

Effect on the maintenance calculation – special expenses

72.—(1) Subject to paragraph (2) and regulation 74 (effect on maintenance calculation – general), where the variation agreed to is one falling within Chapter 2 (variation grounds: special expenses), effect is to be given to the variation in the maintenance calculation by deducting from the gross weekly income of the non-resident parent the weekly amount of the expenses referred to in Chapter 2.

(2) Where the income which is taken into account in the maintenance calculation is the capped amount, then—

(a) the weekly amount of the expenses is first to be deducted from the actual gross weekly income of the non-resident parent;

(b) the amount by which the capped amount exceeds the figure calculated under sub-paragraph (a) is to be calculated; and

(c) effect is to be given to the variation in the maintenance calculation by deducting from the capped amount the amount calculated under sub-paragraph (b).

Effect on the maintenance calculation – additional income grounds

73.—(1) Subject to paragraph (2) and regulation 74 (effect on maintenance calculation – general), where the variation agreed to is one falling within Chapter 3 (grounds for variation : additional income) effect is to be given to the variation by increasing the gross weekly income of the non-resident parent which would otherwise be taken into account by the weekly amount of the additional income except that, where the amount of gross weekly income calculated in this way would exceed the capped amount, the amount of the gross weekly income taken into account is to be the capped amount.

(2) Where a variation is agreed to under this Chapter and the non-resident parent's liability would, apart from the variation, be the flat rate (or an amount equivalent to the flat rate), the amount of child support maintenance which the non-resident parent is liable to pay is a weekly amount calculated by adding an amount equivalent to the flat rate to the amount calculated by applying Schedule 1 to the 1991 Act to the additional income arising under the variation.

Effect on maintenance calculation – general

74.—(1) Subject to paragraph (5), where more than one variation is agreed to in respect of the same period, regulations 72 and 73 apply and the results are to be aggregated as appropriate.

(2) Paragraph 7(2) to (7) of Schedule 1 to the 1991 Act(**12**) (shared care) applies where the rate of child support maintenance is affected by a variation which is agreed to and paragraph 7(2) is to be read as if after the words "as calculated in accordance with the preceding paragraphs of this Part of this Schedule" there were inserted the words, ", Schedule 4B and regulations made under that Schedule".

(3) Subject to paragraphs (4) and (5), where the non-resident parent shares the care of a qualifying child within the meaning in Part 1 of Schedule 1 to the 1991 Act, or where the care of such a child is shared with a local authority, the amount of child support maintenance that the non-resident parent is liable to pay to the person with care, calculated to take account of any variation, is to be reduced in accordance with the provisions of paragraph 7 of that Part or regulation 53 (care provided in part by a local authority), as the case may be.

(4) If the application of paragraph (3) would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to the person with care (or all of them) to less than a figure equivalent to the flat rate referred to in paragraph 4(1) of Schedule 1 to the 1991 Act (or in that sub-paragraph as modified by regulations under paragraph 10A of Schedule 1), the non-resident parent is instead liable to pay child support maintenance at a rate equivalent to that flat rate apportioned if appropriate as provided in paragraph 6 of Schedule 1 to that Act.

(5) The effect of a variation is not to be applied for any period during which a circumstance referred to in regulation 57(1)(d) to (f) (rejection of an application following preliminary consideration) applies.

Situations in which a variation previously agreed to may be taken into account in calculating maintenance liability

75.—(1) This regulation applies where—

(**12**) Paragraph 7(2) was amended by paragraphs 1 and 6 of Schedule 4 to the Child Maintenance and Other Payments Act 2008 (c. 6) ("the 2008 Act").

(a) a variation that has been agreed to has ceased to have effect in relation to the weekly amount of the non-resident parent's liability for child support maintenance because—

(i) the non-resident parent has become liable to pay child support maintenance at the nil rate, or another rate which means that the variation cannot be taken into account; or

(ii) the decision as to the maintenance calculation has been replaced with a default maintenance decision under section 12(1)(b) of the 1991 Act; and

(b) the non-resident parent has subsequently become liable to pay a rate of child support maintenance which can be adjusted to take account of the variation by virtue of a decision under section 16(1B) or 17 of the 1991 Act.

(2) Where this regulation applies and the Secretary of State is satisfied, on the information or evidence available, that there has been no material change of circumstances relating to the variation since the date from which the variation ceased to have effect, the Secretary of State may, when making the decision referred to in paragraph (1)(b), take into account the effect of the variation upon the amount of liability for child support maintenance notwithstanding the fact that an application has not been made.