
STATUTORY INSTRUMENTS

1996 No. 2907

FAMILY LAW

CHILD SUPPORT

**The Child Support Departure Direction and
Consequential Amendments Regulations 1996**

Made - - - - 20th November 1996

Coming into force - - 2nd December 1996

Whereas a draft of this instrument was laid before Parliament in accordance with section 52(2) of the Child Support Act 1991(1) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 14(3), 21, 28A(3), 28B(2)(b), 28C, 28E(5), 28F, 28G, 28I(4)(c), 42, 51, 52(4) and 54(2) of, and paragraph 5 of Schedule 1, paragraphs 2, 4, 6, 7 and 9 of Schedule 4A and Schedule 4B to the Child Support Act 1991 and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(3), hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support Departure Direction and Consequential Amendments Regulations 1996 and shall come into force on 2nd December 1996.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the Child Support Act 1991;

(1) 1991.c.48. Section 28A to 28I of and Schedules 4A and 4B to the Child Support Act 1991 were inserted by the Child Support Act 1995 (1995 c. 34).

(2) Section 54 is cited because of the meaning ascribed to the words “maintenance assessment” and “prescribed”.

(3) 1992 c. 53.

“the Appeal Regulations” means the Child Support Appeal Tribunals (Procedure) Regulations 1992(4);

“applicant” has the same meaning as in Schedule 4B to the Act;

“application” means an application for a departure direction;

“Arrears Regulations” means the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations 1992(5);

“Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(6);

“Departure Direction Anticipatory Application Regulations” means the Child Support Departure Direction (Anticipatory Application) Regulations 1996(7);

“departure direction application form” means the form provided by the Secretary of State in accordance with regulation 4(1);

“effective date” in relation to a departure direction means the date on which that direction takes effect;

“Information, Evidence and Disclosure Regulations” means the Child Support (Information, Evidence and Disclosure) Regulations 1992(8);

“Maintenance Arrangements and Jurisdiction Regulations” means the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992(9);

“Maintenance Assessment Procedure Regulations” means the Child Support (Maintenance Assessment Procedure) Regulations 1992(10);

“Maintenance Assessments and Special Cases Regulations” means the Child Support (Maintenance Assessments and Special Cases) Regulations 1992(11);

“maintenance period” has the same meaning as in regulation 33 of the Maintenance Assessment Procedure Regulations;

“non-applicant” means—

- (a) where the application has been made by a person with care, the absent parent;
- (b) where the application has been made by an absent parent, the person with care;

“partner” has the same meaning as in paragraph (2) of regulation 1 of the Maintenance Assessments and Special Cases Regulations(12);

“relevant person” means—

- (a) an absent parent, or a person who is treated as an absent parent under regulation 20 of the Maintenance Assessments and Special Cases Regulations (persons treated as absent parents), whose liability under a maintenance assessment may be affected by any departure direction given following an application;
- (b) a person with care, or a child to whom section 7 of the Act applies, where the amount of child support maintenance payable under a maintenance assessment relevant to that

(4) S.I.1992/2641. Regulations 3 and 11 were amended by S.I. 1995/1045 and S.I. 1996/2450. Regulation 5, 6, and 7 were amended by S.I. 1996/2450 and regulation 13 by S.I. 1996/182 and 1996/2450.

(5) S.I. 1992/1816.

(6) 1992 c. 4. Regulation 10 was substituted by S.I. 1995/1045.

(7) S.I. 1996/635.

(8) S.I. 1992/1812. Regulation 9A was inserted by S.I. 1995/1045 and amended by S.I. 1995/3261, which also substituted regulation 10 and inserted regulation 10A.

(9) S.I. 1992/2645. Regulation 8 was amended by S.I. 1995/913.

(10) S.I. 1992/1813. Regulation 10 was amended by S.I. 1994/227, 1995/123, 1995/1045 and 1995/3261.

(11) S.I. 1992/1815. Regulation 9 was amended by S.I. 1995/1045 and 1996/1945 and regulation 22 by S.I. 1993/913 and 1995/1045.

(12) Paragraph (2) of regulation 1 has been amended by S.I. 1993/913, 1995/1045 and 3261.

person with care or that child may be affected by any departure direction given following an application.

- (3) In these Regulations, unless the context otherwise requires, a reference—
- (a) to the Schedule, is to the Schedule to these Regulations;
 - (b) to a numbered regulation is to the regulation in these Regulations bearing that number;
 - (c) in a regulation or the Schedule to a numbered paragraph is to the paragraph in that regulation or the Schedule bearing that number;
 - (d) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

Documents

2.—(1) Except where express provision is made to the contrary, where, under any provision of these Regulations—

- (a) any document is given or sent to the Secretary of State, that document shall, subject to paragraph (2), be treated as having been so given or sent on the date it is received by the Secretary of State; and
- (b) any document is given or sent to any other person, that document shall, if sent by post to that person's last known or notified address, and subject to paragraph (3), be treated as having been given or sent on the second day after the day of posting, excluding any Sunday or any day which is a Bank Holiday in England, Wales, Scotland or Northern Ireland under the Banking and Financial Dealings Act 1971(13).

(2) The Secretary of State may treat any document given or sent to him as given or sent on such day, earlier than the day it was received by him, as he may determine, if he is satisfied that there was unavoidable delay in his receiving the document in question.

(3) Where, by any provision of these Regulations, and in relation to a particular application, notice or notification—

- (a) more than one document is required to be given or sent to a person, and more than one such document is sent by post to that person but not all the documents are posted on the same day; or
- (b) documents are required to be given or sent to more than one person, and not all such documents are posted on the same day,

all those documents shall be treated as having been posted on the later or, as the case may be, the latest day of posting.

Determination of amounts

3.—(1) Where any amount is required to be determined for the purposes of these Regulations, it shall be determined as a weekly amount and, except where the context otherwise requires, any reference to such an amount shall be construed accordingly.

(2) Where any calculation made under these Regulations results in a fraction of a penny that fraction shall be treated as a penny if it is either one half or exceeds one half and shall be otherwise disregarded.

PART II

PROCEDURE ON AN APPLICATION FOR A DEPARTURE DIRECTION AND PRELIMINARY CONSIDERATION

Application for a departure direction

4.—(1) Every application shall be made in writing on a form (a “departure direction application form”) provided by the Secretary of State, or in such other manner, being in writing, as the Secretary of State may accept as sufficient in the circumstances of any particular case.

(2) Departure direction application forms shall be supplied without charge by such persons as the Secretary of State authorises for that purpose.

(3) Every application shall be given or sent to the Secretary of State or to such persons as he may authorise for that purpose.

(4) Where an application is defective at the date when it is received, or has been made in writing but not on the departure direction application form provided by the Secretary of State, the Secretary of State may refer that application to the person who made it or, as the case may be, supply him with a departure direction application form.

(5) In a case to which paragraph (4) applies, if the departure direction application form is received by the Secretary of State properly completed—

- (a) within the specified period, he shall treat the application as if it had been duly made in the first instance;
- (b) outside the specified period, unless he is satisfied that the delay has been unavoidable, he shall treat the application as a fresh application made on the date upon which the properly completed departure direction application form was received.

(6) An application which is made on a departure direction application form is, for the purposes of paragraph (5), properly completed if completed in accordance with the instructions on the form and defective if not so completed.

(7) In a case to which paragraph (4) applies, the specified period for the purposes of paragraph (5) shall be the period of 14 days commencing with the date upon which, in accordance with paragraph (4), the application is referred to the person who made the defective application or a departure direction application form is given or sent to the person who made a written application but not on a departure direction application form.

(8) For the purposes of paragraph (7), the provisions of regulation 2 shall apply to an application referred to in paragraph (4).

(9) A person applying for a departure direction may authorise a representative, whether or not legally qualified, to receive notices and other documents on his behalf, and to act on his behalf in relation to an application.

(10) Where a person has, under paragraph (9), authorised a representative who is not legally qualified, he shall confirm that authorisation in writing, or as otherwise required, to the Secretary of State, unless such authorisation has already been approved by the Secretary of State under regulation 53 of the Maintenance Assessment Procedure Regulations (authorisation of representative).

(11) This paragraph applies where a departure direction has effect, and a later application by the applicant in response to whose application that direction was given is made on grounds which are—

- (a) additional to the grounds in respect of which the earlier direction was given;
- (b) not additional to the grounds in respect of which the earlier direction was given but there has been a change of circumstances in respect of one or more but not all of those grounds.

(12) Where—

- (a) paragraph (11)(a) applies, the later application may be treated as an application in respect of which the earlier direction was given;
- (b) paragraph (11)(b) applies, the later application may be treated as an application in respect of which the earlier direction was given in relation to which there have been no changes of circumstances.

(13) Where a departure direction has effect and the Secretary of State is satisfied that a ground in respect of which the application for that direction was made no longer applies, he shall treat the applicant for that direction as having applied for a later direction in respect of the grounds which remain applicable.

(14) Regulation 8(1) shall apply to cases to which paragraph (11) applies but only in relation to the additional grounds or, as the case may be, those in relation to which there has been stated to be a change of circumstances and shall not apply to cases to which paragraph (13) applies.

Amendment or withdrawal of application

5. A person who has made an application may amend or withdraw his application by notice in writing to the Secretary of State at any time prior to a determination being made in relation to that application.

Provision of information

6.—(1) Where an application has been made, the Secretary of State may request further information or evidence from the applicant to enable that application to be determined.

(2) Any information or evidence requested by the Secretary of State in accordance with paragraph (1) shall be given within 14 days of the request for such information or evidence having been given or sent.

(3) Where the time limit specified in paragraph (2) is not complied with, the Secretary of State may determine that application, in the absence of that information or evidence.

Rejection of application on completion of a preliminary consideration

7.—(1) The Secretary of State may, on completing a preliminary consideration of an application, reject that application on the ground set out in section 28B(2)(b) of the Act if it appears to him that the difference between the current amount and the revised amount is less than £1.00.

(2) Where an application has been rejected in accordance with paragraph (1), the Secretary of State shall, as soon as reasonably practicable, give notice of that rejection to the relevant persons.

Procedure in relation to the determination of an application

8.—(1) Subject to paragraph (4), where an application has not failed within the meaning of section 28D of the Act, the Secretary of State shall—

- (a) give notice of that application to the relevant persons other than the applicant;
- (b) send to them details of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except details, information or evidence falling within paragraph (2);
- (c) invite representations in writing from the relevant persons other than the applicant on any matter relating to that application; and
- (d) set out the provisions of paragraphs (2), (5) and (6) in relation to such representations.

- (2) The details, information or evidence referred to in paragraphs (1)(b), (6) and (7) are—
- (a) medical evidence or medical advice that has not been disclosed to the applicant or a relevant person and which the Secretary of State considers would be harmful to the health of the applicant or that relevant person if disclosed to him;
 - (b) the address of a relevant person, or of any child in relation to whom the assessment was made in respect of which the application has been made, or any other information which could reasonably be expected to lead to that person or that child being located, where that person has not agreed to disclosure of that address or that information, it is not known to the other party to that assessment and—
 - (i) the Secretary of State is satisfied that that address or that information is not necessary for the determination of that application; or
 - (ii) the Secretary of State is satisfied that that address or that information is necessary for the determination of that application and that there would be a risk of harm or undue distress to that person or that child if disclosure were made.
- (3) Subject to paragraph (4), the notice referred to in paragraph (1)(a) shall be given as soon as reasonably practicable after—
- (a) completion of the preliminary consideration of that application under section 28B of the Act; or
 - (b) where the Secretary of State has requested information or evidence under regulation 6, receipt of that information or evidence or the expiry of the period of 14 days referred to in regulation 6(2).
- (4) The provisions of paragraphs (1) and (3) shall not apply where information or evidence requested in accordance with regulation 6 has not been received by the Secretary of State within the period specified in paragraph (2) of that regulation and the Secretary of State is satisfied on the information or evidence available to him that a departure direction should not be given.
- (5) Where the Secretary of State does not receive written representations from a relevant person within 14 days of the date on which representations were invited under paragraph (1), (6) or (7) he may, in the absence of written representations from that person, proceed to determine the application.
- (6) The Secretary of State may, if he considers it reasonable to do so, send to the applicant a copy of any written representations made following an invitation under paragraph (1)(c), whether or not they were received within the time specified in paragraph (5), except to the extent that the representations contain information or evidence which falls within paragraph (2), and invite him to submit representations in writing on any matters contained in those representations.
- (7) Where any information or evidence requested by the Secretary of State under regulation 6 is received after notification has been given under paragraph (1), the Secretary of State may, if he considers it reasonable to do so and except where that information or evidence falls within paragraph (2), send a copy of such information or evidence to the relevant persons and invite them to submit representations in writing on that information or evidence.
- (8) In deciding whether to give a departure direction, the Secretary of State shall take into account—
- (a) any information or evidence given by the applicant for that direction; and
 - (b) any written representations made by the applicant or by a relevant person and received by him at the date upon which he determines the application, and may in addition take into account—
 - (i) any relevant information or evidence received by him or by a child support officer, in relation to any application for a maintenance assessment or for a review of a maintenance assessment made in respect of the absent parent, person with care and any child in respect of whom the current assessment was made;

(ii) any relevant information or evidence acquired by him in connection with any of his functions under any of the benefit Acts or the Jobseekers Act 1995⁽¹⁴⁾.

(9) Where the Secretary of State has determined an application he shall, as soon as is reasonably practicable—

- (a) notify the relevant persons of that determination;
- (b) where a departure direction has been given, refer the case to a child support officer.

(10) A notification under paragraph (9)(a) shall set out—

- (a) the reasons for that determination;
- (b) where a departure direction has been given, the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of that direction.

(11) The Secretary of State may reconsider any application which has been determined by him or by a child support appeal tribunal under section 28D(1)(b) of the Act where, after the determination of that application, he receives further information or evidence which he is satisfied is relevant to that application.

Departure directions and persons in receipt of income support or income-based jobseeker's allowance

9.—(1) The costs referred to in regulations 13 to 18 shall not constitute special expenses where they are incurred by a person to or in respect of whom income support or income-based jobseeker's allowance is paid.

(2) A transfer shall not constitute a transfer of property for the purposes of paragraph 3(1)(b) or 4(1)(b) of Schedule 4B to the Act, or of regulations 21 and 22, where the application is made by an absent parent to or in respect of whom income support or income-based jobseeker's allowance is paid at the time that application is made.

(3) A case shall not constitute a case under regulations 23 to 29 where the application is made by an absent parent to or in respect of whom income support or income-based jobseeker's allowance is paid.

Departure directions and interim maintenance assessments

10.—(1) For the purposes of section 28A(1) of the Act, the term “maintenance assessment” does not include—

- (a) a Category A or Category C interim maintenance assessment;
- (b) a Category B interim maintenance assessment where the application is made under paragraph 2 of Schedule 4B to the Act in respect of expenses prescribed by regulation 18 and that Category B interim maintenance assessment was made because the applicant fell within paragraph (3)(b) of regulation 8 of the Maintenance Assessment Procedure Regulations⁽¹⁵⁾;
- (c) a Category D interim maintenance assessment, where the application is made under paragraph 3 or 4 of Schedule 4B to the Act or by an absent parent under paragraph 2 or 5 of that Schedule.

(2) For the purposes of this regulation, Category A, Category B, Category C and Category D interim maintenance assessments are defined in regulation 8(3) of the Maintenance Assessment Procedure Regulations (categories of interim maintenance assessment).

⁽¹⁴⁾ 1995 c. 18.

⁽¹⁵⁾ S.I. 1992/1813. Regulation 8 was substituted by S.I. 1995/3261.

Departure application and review under section 17 of the Act

11. Where the effective date of any fresh assessment made on completion of a review under section 17 of the Act⁽¹⁶⁾ is later than the effective date of any departure direction given in response to an application for a direction, the provisions of regulations 20, 21 and 22 of the Maintenance Assessment Procedure Regulations shall apply to that review as if for references in those regulations to the original assessment there were substituted references to the fresh assessment made in consequence of the departure direction.

Meaning of “benefit” for the purposes of section 28E of the Act

12. For the purposes of section 28E of the Act, “benefit” means income support, income-based jobseeker’s allowance, family credit, disability working allowance, housing benefit, and council tax benefit.

PART III**SPECIAL EXPENSES****Costs incurred in travelling to work**

13.—(1) Subject to paragraphs (2) and (3), the following costs shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act where they are incurred by the applicant for the purposes of travel between his home and his normal place of work—

- (a) the cost of purchasing a ticket for such travel;
- (b) the cost of purchasing fuel, where such travel is by a vehicle which is not carrying fare-paying passengers; or
- (c) in exceptional circumstances, the taxi fare for a journey which must unavoidably be undertaken during hours when no other reasonable mode of travel is available,

and any minor incidental costs, such as tolls or fees for the use of a particular road or bridge, incurred in connection with such travel.

(2) Where the Secretary of State considers any costs referred to in paragraph (1) to be unreasonably high or to have been unreasonably incurred he may substitute such lower amount as he considers reasonable, including a nil amount.

(3) Costs which can be set off against the income of the applicant under the Income and Corporation Taxes Act 1988⁽¹⁷⁾ shall not constitute expenses for the purposes of paragraph (1).

Contact costs

14.—(1) Where at the time a departure direction is applied for a set pattern has been established as to frequency of contact between the absent parent and a child in respect of whom the current assessment was made, the following costs, based upon that pattern and incurred by that absent parent for the purpose of maintaining contact with that child, shall, subject to paragraphs (2) to (6), constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act—

- (a) the cost of purchasing a ticket for travel for the purpose of maintaining that contact;
- (b) the cost of purchasing fuel, where travel is for the purpose of maintaining that contact and is by a vehicle which is not carrying fare-paying passengers; or

⁽¹⁶⁾ Section 17 of the Child Support Act 1991 was amended by section 12 of the Child Support Act 1995.

⁽¹⁷⁾ 1988 c. 1.

(c) the taxi fare for a journey or part of a journey to maintain that contact where the Secretary of State is satisfied that the disability of the absent parent makes it impracticable to use any other form of transport which might otherwise have been available to him, and any minor incidental costs, such as tolls or fees for the use of a particular road or bridge, incurred in connection with such travel.

(2) Subject to paragraph (3), where the Secretary of State considers any costs referred to in paragraph (1) to be unreasonably high or to have been unreasonably incurred he may substitute such lower amount as he considers reasonable, including a nil amount.

(3) Any lower amount substituted by the Secretary of State under paragraph (2) shall not be so low as to make it impossible, in the Secretary of State's opinion, for contact to be maintained at the frequency specified in any court order made in respect of the absent parent and the child mentioned in paragraph (1) where the absent parent is maintaining contact at that frequency.

(4) Paragraph (1) shall not apply where regulation 20 of the Maintenance Assessments and Special Cases Regulations (persons treated as absent parents) applies to the applicant.

(5) Where sub-paragraph (c) of paragraph (1) applies and the applicant has, at the date an application is made, received, or at that date is in receipt of, financial assistance from any source to meet, wholly or in part, costs of maintaining contact with the child who is referred to in paragraph (1), which arise wholly from his disability and which are in excess of the costs which would be incurred if that disability did not exist, only the net amount of the costs referred to in that sub-paragraph, after the deduction of that financial assistance, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

(6) For the purposes of this regulation, a person is disabled if he is blind, deaf or dumb or is substantially or permanently handicapped by illness, injury, mental disorder or congenital deformity.

(7) Where, at the time a departure direction is applied for, no set pattern has been established as to frequency of contact between the absent parent and a child in respect of whom the current assessment was made, but the Secretary of State is satisfied that that absent parent and the person with care of that child have agreed upon a pattern of contact for the future, the costs mentioned in paragraph (1) and which are based upon that intended pattern of contact shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act, and paragraphs (2) to (6) shall apply to that application.

Illness or disability

15.—(1) Subject to paragraphs (2) to (4), the costs being met by the applicant in respect of the items listed in sub-paragraphs (a) to (m), which arise from long-term illness or disability of that applicant or a dependant of that applicant and which are in excess of the costs which would be incurred if that illness or disability did not exist, 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 applicant's home;

- (k) day care;
- (l) rehabilitation; or
- (m) respite care.

(2) Where the Secretary of State considers any costs referred to in paragraph (1) to be unreasonably high or to have been unreasonably incurred he may substitute such lower amount as he considers reasonable, including a nil amount.

(3) Where—

- (a) an applicant or his dependant has, at the date an application is made, received, or at that date is in receipt of, financial assistance from any source in respect of his long-term illness or disability or that of his dependant; or
- (b) that applicant or his dependant is adjudged eligible for either of the allowances referred to in paragraph (4),

only the net amount of the costs incurred in respect of the items listed in paragraph (1), after the deduction of the financial assistance referred to in sub-paragraph (a) and, where applicable, the allowance referred to in sub-paragraph (b) shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act.

(4) Where the Secretary of State considers that a person who has made an application in respect of special expenses falling within paragraph (1) or his dependant may be entitled to disability living allowance under section 71 of the Contributions and Benefits Act or attendance allowance under section 64 of that Act—

- (a) if that applicant or his dependant has at the date of that application, or within a period of six weeks beginning with the giving or sending to him of notification of the possibility of entitlement to either of those allowances, applied for either of those allowances, the application made by that applicant shall not be determined until a decision has been made by the adjudicating authority on the eligibility for that allowance of that applicant or that dependant;
- (b) if that applicant or his dependant has failed to apply for either of those allowances within the six week period specified in sub-paragraph (a), the Secretary of State shall determine the application for a departure direction made by that applicant on the basis that that applicant has income equivalent to the highest rate prescribed in respect of that allowance by or under those sections.

(5) For the purposes of this regulation, a dependant of an applicant shall be—

- (a) where the applicant is an absent parent—
 - (i) the partner of that absent parent;
 - (ii) any child of whom that absent parent or his partner is a parent and who lives with them; or
- (b) where the applicant is a parent with care—
 - (i) the partner of that parent with care;
 - (ii) any child of whom that parent with care or her partner is a parent and who lives with them, except any child in respect of whom the absent parent against whom the current assessment is made is the parent.

(6) For the purposes of this regulation—

- (a) a person is disabled if he is blind, deaf or dumb or is substantially or permanently handicapped by illness, injury, mental disorder or congenital deformity;
- (b) “long-term illness” means an illness from which the applicant or his dependant is suffering at the date of the application 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 rest of the life of that applicant or his dependant;

- (c) “the health service” has the same meaning as in section 128 of the National Health Service Act 1977⁽¹⁸⁾ or in section 108(1) of the National Health Service (Scotland) Act 1978⁽¹⁹⁾.

Debts incurred before the absent parent became an absent parent

16.—(1) Subject to paragraphs (2) to (4), repayment of debts incurred—

- (a) for the joint benefit of the applicant and the non-applicant parent;
- (b) for the benefit of the non-applicant parent where the applicant remains legally liable to repay the whole or part of that debt;
- (c) for the benefit of any person who at the time the debt was incurred—
- (i) was a child;
 - (ii) lived with the applicant and non-applicant parent; and
 - (iii) of whom the applicant or the non-applicant parent is the parent, or both are the parents; or
- (d) for the benefit of any child with respect to whom the current assessment was made,

shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act where those debts were incurred before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made and at a time when the applicant and the non-applicant parent were a married or unmarried couple who were living together.

(2) Paragraph (1) shall not apply to repayment of—

- (a) a debt which would otherwise fall within paragraph (1) where the applicant has retained for his own use and benefit the asset the purchase of which 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 applicant;
- (e) unpaid legal costs in respect of separation or divorce from the non-applicant parent;
- (f) amounts due after use of a credit card;
- (g) a debt incurred by the applicant to pay any of the items listed in sub-paragraphs (c) to (f) and (j);
- (h) amounts payable by the applicant 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 parent with care and any child in respect of whom the current assessment was made;
- (i) amounts payable by the applicant in respect of a policy of insurance of a kind referred to in paragraph 3(4) or (5) of Schedule 3 to the Maintenance Assessments and Special Cases Regulations⁽²⁰⁾ (eligible housing costs) 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 parent with care and any child in respect of whom the current assessment was made;
- (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;

⁽¹⁸⁾ 1977 c. 49.

⁽¹⁹⁾ 1978 c. 29.

⁽²⁰⁾ Paragraph 3(4) was amended by S.I. 1995/1045 and paragraph 3(5) by S.I. 1994/227.

- (k) a loan obtained by the applicant, other than a loan obtained from a qualifying lender or the applicant's current or former employer;
- (l) a debt in respect of which a departure direction has already been given and which has not been repaid during the period for which that direction was in force except where the maintenance assessment in respect of which that direction was given was cancelled or ceased to have effect and, during the period for which that direction was in force, a further maintenance assessment was made in respect of the same applicant, non-applicant and qualifying child with respect to whom the earlier assessment was made; or
- (m) any other debt which the Secretary of State is satisfied it is reasonable to exclude.

(3) 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 (2), repayment of a debt shall not constitute expenses for the purposes of paragraph (1) where the Secretary of State is satisfied that the applicant has taken responsibility for repayment of that debt, as, or as part of, a financial settlement with the non-applicant parent or by virtue of a court order.

(4) Where an applicant has incurred a debt partly to repay a debt or debts repayment of which would have fallen within paragraph (1), the repayment of that part of the debt incurred which is referable to the debts 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.

(5) For the purposes of this regulation—

- (a) “married or unmarried couple” has the meaning set out in regulation 1 of the Maintenance Assessments and Special Cases Regulations;
- (b) “non-applicant parent” means—
 - (i) where the applicant is the person with care, the absent parent;
 - (ii) where the applicant is the absent parent, the partner of that absent parent at the time the debt in respect of which the application is made was entered into;
- (c) “qualifying lender” has the meaning given to it in section 376(4) of the Income and Corporation Taxes Act 1988⁽²¹⁾;
- (d) “repairs and improvements” means major repairs necessary to maintain the fabric of the home and any of the measures set out in sub-paragraphs (a) to (j) of paragraph 2 of Schedule 3 to the Maintenance Assessments and Special Cases Regulations (eligible housing costs) and other improvements which the Secretary of State considers reasonable in the circumstances where those measures or other improvements are undertaken with a view to improving fitness for occupation of the home.

Pre-1993 financial commitments

17.—(1) A financial commitment entered into by an absent parent before 5th April 1993, except any commitment of a kind listed in paragraph (2)(b) to (g) and (j) of regulation 16 or which has been wholly or partly taken into account in the calculation of a maintenance assessment shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act where—

- (a) there was in force on 5th April 1993 and at the date that commitment was entered into, a court order or maintenance agreement made before 5th April 1993 in respect of that absent parent and every child in respect of whom, before that date, he was, or was found, or adjudged to be, the parent; and
- (b) the Secretary of State is satisfied that it is impossible for the absent parent to withdraw from that commitment or unreasonable to expect him to do so.

(21) 1988 c. 1.

- (2) For the purposes of paragraph (1)—
- (a) “court order” means an order made under the enactments listed in or prescribed under section 8(11) of the Act, for the making or securing the making of financial provision for the benefit of a child in respect of whom the current assessment was made;
 - (b) “maintenance agreement” means an agreement in writing for the making or securing the making of financial provision for the benefit of a child in respect of whom the current assessment was made.

Costs incurred in supporting certain children

18.—(1) The costs incurred by a parent in supporting a child who is not his child but who is part of his family (a “relevant child”) shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act if the conditions set out in paragraph (2) are satisfied and shall, if those conditions are satisfied, equal the amount specified in paragraph (3).

- (2) The conditions referred to in paragraph (1) are—
- (a) the child became a relevant child prior to 5th April 1993;
 - (b) subject to paragraph (7), the liability of the absent parent of a relevant child to pay maintenance to or for the benefit of that child under a court order, a written maintenance agreement or a maintenance assessment is less than the amount specified in paragraph (4), or there is no such liability; and
 - (c) the net income of the parent’s current partner where the relevant child is the child of that partner, calculated in accordance with paragraph (5), is less than the amount calculated in accordance with paragraph (6) (“the partner’s outgoings”).

(3) The amount referred to in paragraph (1) constituting special expenses for a case falling within this regulation is the difference between the amount specified in paragraph (4) and, subject to paragraph (7), the liability of the absent parent of a relevant child to pay maintenance of a kind mentioned in paragraph (2)(b), and if there is no such liability is the amount specified in paragraph (4).

- (4) The amount referred to in paragraphs (2)(b) and (3) is the aggregate of—
- (a) an amount in respect of each relevant child equal to the personal allowance for that child specified in column (2) of paragraph 2 of the relevant Schedule (income support personal allowance);
 - (b) if the conditions set out in paragraph 14(b) and (c) that Schedule (income support disabled child premium) are satisfied in respect of a relevant child, an amount equal to the amount specified in column (2) of paragraph 15(6) of that Schedule in respect of each such child;
 - (c) an amount equal to the income support family premium specified in paragraph 3 of that Schedule that would be payable if the parent were a claimant, except where the family includes other children of the parent; and
 - (d) an amount equal to the income support lone parent premium specified in column (2) of paragraph 15(1) of that Schedule that would be payable, if the parent were a claimant, except where the family includes children of the parent.

(5) For the purposes of paragraph (2)(c), the net income of the parent’s partner shall be the aggregate of—

- (a) the income of that partner, calculated in accordance with regulation 7(1) of the Maintenance Assessments and Special Cases Regulations (but excluding the amount mentioned in sub-paragraph (d) of that regulation) as if that partner were an absent parent to whom that regulation applied;
- (b) the child benefit payable in respect of each relevant child; and

- (c) any income, other than earnings, in excess of £10.00 per week in respect of each relevant child.
- (6) For the purposes of paragraph (2)(c), a current partner's outgoings shall be the aggregate of—
- (a) an amount equal to the amount specified in column (2) of paragraph 1(1)(e) of the relevant Schedule (income support personal allowance for a single claimant aged not less than 25);
 - (b) where a departure direction has already been given in a case falling within regulation 27 in respect of the housing costs attributable to the partner, the amount determined in accordance with regulation 40(7) as the housing costs the partner is able to contribute;
 - (c) the amount of any reduction in the parent's exempt income, calculated under paragraph (1) of regulation 9 of the Maintenance Assessments and Special Cases Regulations⁽²²⁾, in consequence of the application of paragraph (2) of that regulation; and
 - (d) the amount specified in paragraph (3).
- (7) The Secretary of State may, if he is satisfied that it is appropriate in the particular circumstances of the case, treat a liability of a kind mentioned in paragraph (2)(b) as not constituting a liability for the purposes of that paragraph and of paragraph (3).
- (8) For the purposes of this regulation—
- (a) a child who is not the child of a particular person is a part of that person's family where that child is the child of a current or former partner of that person;
 - (b) "relevant Schedule" means Schedule 2 to the Income Support (General) Regulations 1987⁽²³⁾.

Special expenses for a case falling within regulation 13, 14, 16 or 17

19.—(1) This regulation applies where the expenses of an applicant fall within one or more of the descriptions of expenses falling within regulation 13 (travel to work costs), 14 (contact costs), 16 (debts incurred before the absent parent became an absent parent) or 17 (pre-1993 financial commitments).

(2) Special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act in respect of the expenses mentioned in paragraph (1) shall be—

- (a) where the expenses fall within only one description of expenses, those expenses in excess of £15.00;
- (b) where the expenses fall within more than one description of expenses, the aggregate of those expenses in excess of £15.00.

Application for a departure direction in respect of special expenses other than those with respect to which a direction has already been given

20. Where a departure direction with respect to special expenses falling within one or more of the descriptions of expenses falling within regulation 13, 14, 16 or 17 has already been given and an application with respect to special expenses falling within one or more of those descriptions of expenses is made where none of those expenses are ones with respect to which the earlier direction has been given, the special expenses with respect to which any later direction is given shall be the expenses, determined in accordance with regulation 13, 14, 16 or 17, as the case may be, with respect to which the later application is made, and the provisions of regulation 19 shall not apply.

⁽²²⁾ Paragraph (1) of regulation 9 was amended by regulation 44(2) of S.I. 1995/1045. Paragraph (2) was amended by regulation 9(2)(c) of S.I. 1993/913 and regulation 44(3) of S.I. 1995/1045.

⁽²³⁾ S.I. 1987/1967. Paragraphs 1 and 2 of Schedule 2 were substituted by Schedule 4 to S.I. 1995/559; paragraph 15 was substituted by Schedule 5 to that instrument.

PART IV

PROPERTY OR CAPITAL TRANSFERS

Prescription of certain terms for the purposes of paragraphs 3 and 4 of Schedule 4B to the Act

- 21.**—(1) For the purposes of paragraphs 3(1)(a) and 4(1)(a) of Schedule 4B to the Act—
- (a) a court order means an order made—
 - (i) under one or more of the enactments listed in or prescribed under section 8(11) of the Act; and
 - (ii) in connection with the transfer of property of a kind defined in paragraph (2);
 - (b) an agreement means a written agreement made in connection with the transfer of property of a kind defined in paragraph (2).

(2) Subject to paragraphs (3) to (5), for the purposes of paragraph 3(1)(b) and 4(1)(b) of Schedule 4B to the Act, a transfer of property is a transfer by the absent parent of his beneficial interest in any asset to the person with care, to a child in respect of whom the current assessment was made, or to trustees where the object or one of the objects of the trust is the provision of maintenance.

(3) Where a transfer of property would not originally have fallen within paragraph (2) but the Secretary of State is satisfied that some or all of the amount of that property transferred was subsequently transferred to the person currently with care of a child in respect of whom the current assessment was made, the transfer of that property to the person currently with care shall count as a transfer of property for the purposes of paragraph 3(1)(b) and 4(1)(b) of Schedule 4B to the Act.

(4) Where, if the Act had been in force at the time a transfer of property falling within paragraph (2) was made, the person who, at the time the application is made is the person with care would have been the absent parent and the person who, at the time the application is made is the absent parent would have been the person with care, that transfer shall not count as a transfer of property for the purposes of this regulation.

(5) For the purposes of paragraph 3(3) of Schedule 4B to the Act, the effect of a transfer of property is properly reflected in the current assessment if—

- (a) the amount of child support maintenance payable under any fresh maintenance assessment which would be made in consequence of a departure direction differs from the amount of child support maintenance payable under that current assessment by less than £1.00; or
- (b) the transfer referred to in paragraph (2) was for a specified period only and that period ended before the effective date of any departure direction which would otherwise have been given.

Value of a transfer of property and its equivalent weekly value for a case falling within paragraph 3 of Schedule 4B to the Act

22.—(1) Where the conditions specified in paragraph 3(1) of Schedule 4B to the Act are satisfied, the value of a transfer of property for the purposes of that paragraph shall be that part of the transfer made by the absent parent (making allowance for any transfer by the person with care to the absent parent) which the Secretary of State is satisfied is in lieu of maintenance.

(2) The Secretary of State shall, in determining the value of a transfer of property in accordance with paragraph (1), assume that, unless evidence to the contrary is provided to him—

- (a) the person with care and the absent parent had equal beneficial interests in the assets in relation to which the court order or agreement was made;

- (b) where the person with care was married to the absent parent, one half of the value of the transfer was a transfer for the benefit of the person with care; and
 - (c) where the person with care has never been married to the absent parent, none of the value of the transfer was a transfer for the benefit of the person with care.
- (3) The equivalent weekly value of a transfer of property shall be determined in accordance with the provisions of the Schedule.
- (4) For the purposes of regulation 21 and this regulation, the term “maintenance” means the normal day-to-day living expenses of the child with respect to whom the current assessment was made.

PART V

ADDITIONAL CASES

Assets capable of producing income or higher income

23.—(1) Subject to paragraphs (2) and (3), a case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the Secretary of State is satisfied that any asset in which the non-applicant has a beneficial interest, or which he has the ability to control—
 - (i) is capable of being utilised to produce income but has not been so utilised;
 - (ii) has been invested in such a way that the income obtained from it is less than might reasonably be expected;
 - (iii) is a chose in action which has not been enforced where the Secretary of State is satisfied that such enforcement would be reasonable;
 - (iv) 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 the implementation of the obligation would be reasonable; or
 - (v) has not been sold where the Secretary of State is satisfied that the sale of the asset would be reasonable;
 - (b) any asset has been transferred by the non-applicant to trustees and the non-applicant is a beneficiary of the trust so created; or
 - (c) any asset has become subject to a trust created by legal implication of which the non-applicant is a beneficiary.
- (2) Paragraph (1) shall not apply where—
- (a) the total value of the asset or assets referred to in that paragraph does not exceed £10,000.00 after deduction of the amount owing under any mortgage or charge on that asset; or
 - (b) the Secretary of State is satisfied that any asset referred to in that paragraph is being retained by the non-applicant to be used for a purpose which the Secretary of State considers reasonable in all the circumstances of the case.
- (3) No application may be made under this regulation where income support or income-based jobseeker’s allowance is paid to or in respect of the non-applicant.
- (4) For the purposes of this regulation the term “asset” means—
- (a) money, whether in cash or on deposit;

- (b) a beneficial interest in land and rights in or over land;
- (c) shares as defined in section 744 of the Companies Act 1985⁽²⁴⁾, stock and unit trusts as defined in section 6 of the Charging Orders Act 1979⁽²⁵⁾, gilt edged securities as defined in paragraph 1 of Schedule 2 to the Capital Gains Tax Act 1979⁽²⁶⁾, and other similar financial instruments.

(5) For the purposes of paragraph (4) the term “asset” includes any asset falling within that paragraph which is located outside Great Britain.

Diversion of income

24. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the non-applicant has the ability to control the amount of income he receives, including earnings from employment or self-employment and dividends from shares, 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-applicant has unreasonably reduced the amount of his income which would otherwise fall to be taken into account under regulation 7 or 8 of the Maintenance Assessments and Special Cases Regulations by diverting it to other persons or for purposes other than the provision of such income for himself.

Life-style inconsistent with declared income

25.—(1) Subject to paragraph (2), a case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where the Secretary of State is satisfied that the current maintenance assessment is based upon a level of income of the non-applicant which is substantially lower than the level of income required to support the overall life-style of that non-applicant.

(2) Paragraph (1) shall not apply where—

- (a) income support or income-based jobseeker’s allowance is paid to or in respect of the non-applicant;
- (b) the Secretary of State is satisfied that the life-style of the non-applicant is paid for—
 - (i) out of capital belonging to him; or
 - (ii) by his partner unless the non-applicant is able to influence or control the amount of income received by that partner.

(3) Where the Secretary of State is satisfied in a particular case that the provisions of paragraph (1) would apply but for the provisions of paragraph (2)(b)(ii), he may, whether or not any application on that ground has been made, consider whether the case falls within regulation 27.

Unreasonably high housing costs

26. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) the housing costs of the non-applicant exceed the limits set out in paragraph (1) of regulation 18 of the Maintenance Assessments and Special Cases Regulations (excessive housing costs);

⁽²⁴⁾ 1985 c. 6.

⁽²⁵⁾ 1979 c. 53.

⁽²⁶⁾ 1979 c. 14.

- (b) the non-applicant falls within paragraph (2) of that regulation or would fall within that paragraph if it applied to parents with care; and
- (c) the Secretary of State is satisfied that the housing costs of the non-applicant are substantially higher than is necessary taking into account any special circumstances applicable to that non-applicant.

Partner's contribution to housing costs

27. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where a partner of the non-applicant occupies the home with him and the Secretary of State considers that it is reasonable for that partner to contribute to the payment of the housing costs of the non-applicant.

Unreasonably high travel costs

28. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where an amount in respect of travel to work costs has been included in the calculation of exempt income of the non-applicant under regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations⁽²⁷⁾ (exempt income: calculation or estimation of E) or, as the case may be, under regulation 10 of those Regulations (exempt income: calculation or estimation of F)⁽²⁸⁾ applying regulation 9(1)(i), and the Secretary of State is satisfied that, in all the circumstances of the case, that amount is unreasonably high.

Travel costs to be disregarded

29. A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Act where—

- (a) an amount in respect of travel to work costs has, in the calculation of a maintenance assessment, been included in the calculation of the exempt income of the non-applicant under regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or, as the case may be, under regulation 10 of those Regulations applying regulation 9(1)(i); and
- (b) the Secretary of State is satisfied that the non-applicant has sufficient income remaining after the deduction of the amount that would be payable under that assessment, had the amount referred to in sub-paragraph (a) not been included in its calculation, for it to be inappropriate for all or part of that amount to be included in the exempt income of the non-applicant.

PART VI

FACTORS TO BE TAKEN INTO ACCOUNT FOR THE PURPOSES OF SECTION 28F OF THE ACT

Factors to be taken into account and not to be taken into account in determining whether it would be just and equitable to give a departure direction

30.—(1) The factors to be taken into account in determining whether it would be just and equitable to give a departure direction in any case shall include—

- (a) where the application is made on any ground—

⁽²⁷⁾ Sub-paragraph (1) was added to regulation 9(1) by regulation 44(2)(b) of S.I. 1995/1045.

⁽²⁸⁾ Regulation 10 was amended by regulation 45 of S.I. 1995/1045.

- (i) whether, in the opinion of the Secretary of State, the giving of a departure direction would be likely to result in a relevant person ceasing paid employment;
 - (ii) if the applicant is the absent parent, the extent, if any, of his liability to pay child maintenance under a court order or other agreement in the period prior to the effective date of the maintenance assessment;
 - (b) where an application is made on the ground that the case falls within regulations 13 to 20 (special expenses), whether, in the opinion of the Secretary of State—
 - (i) the financial arrangements made by the applicant could have been such as to enable the whole or part of the expenses cited to be paid without a departure direction being given;
 - (ii) the applicant has at his disposal financial resources which are currently utilised for the payment of expenses other than those arising from essential everyday requirements and which could be used to pay the whole or part of the expenses cited.
- (2) The following factors are not to be taken into account in determining whether it would be just and equitable to give a departure direction in any case—
- (a) the fact that the conception of a child in respect of whom the current assessment was made was not planned by one or both of the parents;
 - (b) whether the parent with care or the absent parent was responsible for the breakdown of the relationship between them;
 - (c) the fact that the parent with care or the absent parent has formed a new relationship with a person who is not a parent of the child in respect of whom the current assessment was made;
 - (d) the existence of particular arrangements for contact with the child in respect of whom the current assessment was made, including whether any arrangements made are being adhered to by the parents;
 - (e) the failure by an absent parent to make payments under a maintenance order, a written maintenance agreement, or a maintenance assessment;
 - (f) representations made by persons other than the relevant persons.

PART VII

EFFECTIVE DATE AND DURATION OF A DEPARTURE DIRECTION

Refusal to give a departure direction under section 28F(4) of the Act

31. The Secretary of State shall not give a departure direction in accordance with section 28F of the Act if he is satisfied that the difference between the current amount and the revised amount is less than £1.00.

Effective date of a departure direction

32.—(1) Where an application is made on the grounds set out in section 28A(2)(a) of the Act (the effect of the current assessment) and that application is given or sent within 28 days of the date of notification of the current assessment (whether or not that assessment has been made following an interim maintenance assessment), a departure direction given in response to that application shall take effect—

- (a) where it is given on grounds that relate to the whole of the period between the effective date of the current assessment and the date on which that assessment is made, on the effective date of that assessment;
 - (b) in a case not falling within sub-paragraph (a), on the first day of the maintenance period following the date upon which the circumstances giving rise to that application first arose.
- (2) Where an application is made on the grounds set out in section 28A(2)(a) of the Act (the effect of the current assessment) and that application is given or sent later than 28 days after the date of notification of the current assessment (whether or not that assessment has been made following an interim maintenance assessment)—
- (a) subject to sub-paragraph (b), a departure direction given in response to that application shall take effect on the first day of the maintenance period during which that application is received;
 - (b) where the Secretary of State is satisfied that there was unavoidable delay, he may, for the purposes of determining the date on which a departure direction takes effect, treat the application as if it were given or sent within 28 days of the date of notification of the current assessment.
- (3) The provisions of paragraphs (1) and (2) are subject to the provisions of paragraph (6) and of regulations 47 to 50.
- (4) Subject to paragraph (6), where an application for a departure direction is made on the grounds set out in section 28A(2)(b) of the Act (a material change in the circumstances of the case since the current assessment was made), any departure direction given shall take effect on the first day of the maintenance period during which the application was received.
- (5) An application may be made on the grounds set out in section 28A(2)(b) of the Act only if the material change in the circumstances on which it is based has already occurred.
- (6) Where—
- (a) an application has been determined in accordance with regulation 15(4)(b);
 - (b) a subsequent application is made with respect to special expenses falling within regulation 15(1) each of which is an expense in respect of which the earlier application was made; and
 - (c) the Secretary of State is satisfied that there was good cause for the applicant or his dependant not applying for disability living allowance or, as the case may be, attendance allowance within the six week period specified in regulation 15(4)(a),
- any departure direction given in response to the later application shall take effect from the date that the earlier direction had effect, or would have had effect if an earlier direction had been given.
- (7) Where, under the provisions of regulation 4(12), a later application is treated as an application in respect of grounds for which the earlier direction was given, or in respect of grounds for which the earlier direction was given in relation to which there have been no changes of circumstances, and a direction is given, that direction shall take effect in accordance with the provisions of paragraphs (1), (2) and (4) as applied to the additional grounds or, as the case may be, the grounds in respect of which there has been a change of circumstances, and the earlier direction shall cease to have effect immediately before the coming into force of that direction.
- (8) Where a direction is given following an application that is treated as having been made by virtue of the provisions of regulation 4(13), that direction shall take effect on the first day of the maintenance period during which the Secretary of State is satisfied that a ground in respect of which the application for the earlier direction was made no longer applies, and the earlier direction shall cease to have effect immediately before the direction that is given takes effect.

Cancellation of a departure direction following a review under section 16, 17, 18 or 19 of the Act or on a change of circumstances

33.—(1) Where the Secretary of State is satisfied that, following a review under section 16, 17, 18 or 19 of the Act or a change in the circumstances of the case, it is no longer appropriate for a departure direction to continue to have effect, he shall cancel that direction.

(2) A departure direction that is cancelled under the provisions of paragraph (1) shall cease to have effect on the first day of the maintenance period during which the Secretary of State is given or sent, or becomes aware of, the information which leads him to become satisfied that it is no longer appropriate for the departure direction to continue to have effect.

(3) Where a departure direction has effect and the applicant in respect of whom the direction was given applies for a further departure direction in respect of the same grounds, any departure direction given in response to that application shall take effect in accordance with the provisions of paragraphs (1), (2) and (4) of regulation 32, and the earlier direction shall cease to have effect immediately prior to the coming into effect of the later direction.

Cancellation of a departure direction on recognition of an error

34.—(1) Where the Secretary of State is satisfied that a departure direction was given in error, he shall cancel that direction.

(2) The cancellation of a departure direction under paragraph (1) shall take effect from the date on which that direction took effect.

Termination and suspension of departure directions

35.—(1) Subject to paragraphs (2), (3) and (4), where a departure direction has effect in relation to the amount of child support maintenance fixed by a maintenance assessment which is cancelled or ceases to have effect, that departure direction shall cease to have effect and shall not subsequently take effect.

(2) Where a child support officer ceases to have jurisdiction to make a maintenance assessment and subsequently acquires jurisdiction to make a maintenance assessment in respect of the same absent parent, person with care and any child with respect to whom the earlier assessment was made, a departure direction for a case falling within paragraph 3 or 4 of Schedule 4B to the Act shall again take effect from the effective date of the fresh maintenance assessment.

(3) Where a departure direction had effect in relation to the amount of child support maintenance fixed by a maintenance assessment which is, under regulation 8(2) of the Maintenance Arrangements and Jurisdiction Regulations (maintenance assessments and maintenance orders made in error), treated as not having been cancelled or not having ceased to have effect, that departure direction shall again take effect from the date that maintenance assessment was cancelled or ceased to have effect, except where there has, since that maintenance assessment was cancelled or ceased to have effect, been a material change of circumstances relevant to that departure direction.

(4) Where—

- (a) a departure direction is in force in respect of an interim maintenance assessment or a maintenance assessment made in accordance with the provisions of Part I of Schedule 1 to the Act;
- (b) that interim maintenance assessment is replaced by another (“the later interim maintenance assessment”) or, as the case may be, that maintenance assessment is replaced by an interim maintenance assessment; and
- (c) by virtue of regulation 10 a departure direction would not be given if that interim maintenance assessment or that later interim maintenance assessment had been in force at the time that departure direction was given, that departure direction shall be suspended

until that interim maintenance assessment or that later interim maintenance assessment has been cancelled or has ceased to have effect and shall again take effect from the effective date of an interim maintenance assessment to which regulation 10 does not apply, or of a maintenance assessment made in accordance with the provisions of Part I of Schedule 1 to the Act, which follows the interim maintenance assessment referred to in sub-paragraph (c).

(5) For the purposes of paragraph (4), a departure direction which is in force shall include a departure direction which is suspended.

PART VIII

MAINTENANCE ASSESSMENT FOLLOWING A DEPARTURE DIRECTION

Effect of a departure direction—general

36.—(1) Except where a case falls within regulation 22, 41, 42 or 43, a departure direction shall specify, as the basis on which the amount of child support maintenance is to be fixed by any fresh assessment made in consequence of the direction, that the amount of net income or exempt income of the parent with care or absent parent or the amount of protected income of the absent parent be increased or, as the case may be, decreased in accordance with those provisions of regulations 37, 38 and 40 which are applicable to the particular case.

(2) Where the provisions of paragraph (1) apply to a departure direction, the amount of child support maintenance fixed by a fresh maintenance assessment shall be determined in accordance with the provisions of Part I of Schedule 1 to the Act, but with the substitution of the amounts changed in consequence of the direction for the amounts determined in accordance with those provisions.

Effect of a departure direction in respect of special expenses—exempt income

37.—(1) Subject to paragraph (2), where a departure direction is given in respect of special expenses, the exempt income of the absent parent or, as the case may be, the parent with care shall be increased by the amount constituting the special expenses or the aggregate of the special expenses determined in accordance with regulations 13 to 20.

(2) Where a departure direction is given with respect to costs incurred in travelling to work or expenses which include such costs, and a component of exempt income has been determined in accordance with regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or regulation 10 of those Regulations applying regulation 9(1)(i), the increase in exempt income determined in accordance with paragraph (1) shall be reduced by that component of exempt income.

(3) A departure direction with respect to special expenses for a case falling within regulation 16 shall be given only for the repayment period remaining applicable to that debt at the date on which that direction takes effect except—

- (a) where in consequence of the applicant's unemployment or incapacity for work, the repayment period of that debt has been extended by agreement with the creditor, a departure direction may be given to cover the additional weeks allowed for repayment; or
- (b) where the Secretary of State is satisfied that, as a consequence of the income of the applicant having been substantially reduced the repayment period of that debt has been extended by agreement with the creditor, a departure direction may be given for such repayment period as the Secretary of State considers is reasonable.

(4) Where paragraph (4) of regulation 16 applies, a departure direction may be given in respect only of repayment of that part of the debt incurred which is referable to the debt, repayment of which

would have fallen within paragraph (1) of that regulation, based upon the amount, rate of repayment and repayment period agreed in respect of that part at the time it was taken out.

Effect of a departure direction in respect of special expenses—protected income

38.—(1) Subject to paragraphs (2) and (3), where a departure direction is given with respect to special expenses in response to an absent parent's application, his protected income shall be determined in accordance with paragraph (1) of regulation 11 of the Maintenance Assessments and Special Cases Regulations⁽²⁹⁾ with the modification that the increase of exempt income as determined in accordance with regulation 37 shall be added to the aggregate of the amounts mentioned in sub-paragraphs (a) to (kk) of paragraph (1) of regulation 11 of the Maintenance Assessments and Special Cases Regulations.

(2) Protected income shall not be increased in accordance with paragraph (1) on account of special expenses constituted by costs falling within regulation 18 (costs incurred in supporting certain children).

(3) Where a departure direction is given with respect to costs which include costs incurred in travelling to work, the absent parent's protected income shall be determined in accordance with paragraph (1), but without inclusion of the amount determined in accordance with sub-paragraph (kk) of regulation 11(1) of the Maintenance Assessments and Special Cases Regulations within the aggregate of the amounts mentioned in that regulation.

Effect of a departure direction in respect of a transfer of property

39.—(1) Where a departure direction is given in respect of a transfer of property for a case falling within paragraph 3 of Schedule 4B to the Act—

- (a) where the exempt income of an absent parent includes a component of exempt income determined in accordance with regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations⁽³⁰⁾, the exempt income of the absent parent shall be reduced by that component of exempt income;
- (b) subject to sub-paragraph (c) and paragraphs (2) and (3), the fresh maintenance assessment made in consequence of the direction shall be the maintenance assessment calculated in accordance with the provisions of paragraphs 1 to 5 and 7 to 10 of Part I of Schedule 1 to the Act, as modified by sub-paragraph (a) where that sub-paragraph is applicable to the case in question, reduced by the equivalent weekly value of the property transferred as determined in accordance with regulation 22;
- (c) where the equivalent weekly value is nil, the fresh maintenance assessment made in consequence of the direction shall be the maintenance assessment calculated in accordance with the provisions of Part I of Schedule 1 to the Act, as modified by sub-paragraph (a), where that sub-paragraph is applicable to the case in question.

(2) The amount of child support maintenance fixed by an assessment made in consequence of a direction falling within paragraph (1) shall not be less than the amount prescribed by regulation 13 of the Maintenance Assessments and Special Cases Regulations.

(3) Where there has been a transfer by the applicant of property to trustees as set out in regulation 21(2) and the equivalent weekly value is greater than nil, any monies paid to the parent with care out of that trust fund for maintenance of a child with respect to whom the current assessment was made shall be disregarded in calculating the assessable income of that parent with care in accordance with the provisions of Part I of Schedule 1 to the Act.

⁽²⁹⁾ Sub-paragraphs (a) to (k) of paragraph (1) have been amended by regulation 4(4) of S.I. 1994/227, by regulation 46(2)(a), (b) and (c) of S.I. 1995/1045, and by regulation 43(1), (2) and (3) of S.I. 1995/3261. Sub-paragraph (kk) was added to paragraph (1) of regulation 11 by regulation 46(2)(d) of S.I. 1995/1045.

⁽³⁰⁾ Sub-paragraph (bb) was added to paragraph (1) of regulation 9 by regulation 44(2)(a) of 1995/1045.

(4) A departure direction falling within paragraph (1) shall cease to have effect at the end of the number of years of liability, as defined in paragraph 1 of the Schedule, for the case in question.

(5) Where a departure direction has ceased to have effect under the provisions of paragraph (4), the exempt income of an absent parent shall be determined as if regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations were omitted.

(6) Where a departure direction is given in respect of a transfer of property for a case falling within paragraph 4 of Schedule 4B to the Act, the exempt income of the absent parent shall be reduced by the component of exempt income determined in accordance with regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations.

(7) This regulation is subject to regulation 42.

Effect of a departure direction in respect of additional cases

40.—(1) This regulation applies where a departure direction is given for an additional case falling within paragraph 5 of Schedule 4B to the Act.

(2) In a case falling within paragraph (1)(a) of regulation 23 (assets capable of producing income or higher income), subject to paragraph (4), the net income of the non-applicant shall be increased by an amount calculated by applying interest at the statutory rate prescribed for a judgment debt⁽³¹⁾ or, in Scotland, at the statutory rate in respect of interest included in or payable under a decree in the Court of Session⁽³²⁾ at the date on which the departure direction is given to—

- (a) any monies falling within that paragraph;
- (b) the net value of any asset, other than monies, falling within that paragraph, after deduction of the amount owing on any mortgage or charge on that asset,

less any income received in respect of that asset which has been taken into account in the calculation of the current assessment.

(3) In a case falling within paragraph (1)(b) or (c) of regulation 23, subject to paragraph (4), the net income of the non-applicant shall be increased by an amount calculated by applying interest at the statutory rate prescribed for a judgment debt, or, in Scotland, at the statutory rate in respect of interest included in or payable under a decree in the Court of Session at the date of the application to the value of the asset subject to the trust less any income received from the trust which has been taken into account in the calculation of the current assessment.

(4) In a case to which regulation 24 (diversion of income) applies, the net income of the non-applicant who is a parent of a child in respect of whom the current assessment is made shall be increased by the amount by which the Secretary of State is satisfied that that parent has reduced his income.

(5) In a case to which regulation 25 (life-style inconsistent with declared income) applies, the net income of the non-applicant who is a parent of a child in respect of whom the current assessment is made shall be increased by the difference between the two levels of income referred to in paragraph (1) of that regulation.

(6) In a case to which regulation 26 applies (unreasonably high housing costs) the amount of housing costs included in exempt income and the amount referred to in regulation 11(1)(b) of the Maintenance Assessments and Special Cases Regulations shall not exceed the amounts set out in regulation 18(1)(a) or (b), as the case may be, of the Maintenance Assessments and Special Cases Regulations (excessive housing costs) and the provisions of regulation 18(2) of those Regulations shall not apply.

⁽³¹⁾ See Order 42, rule 1 of the Rules of the Supreme Court, S.I. 1965/1776.

⁽³²⁾ See Act of Sederunt (Rules of the Court of Session 1994) 1994.

(7) In a case to which regulation 27 applies (partner's contribution to housing costs) that part of the exempt income constituted by the eligible housing costs determined in accordance with regulation 14 of the Maintenance Assessments and Special Cases Regulations (eligible housing costs) shall, subject to paragraphs (8) and (9), be reduced by the percentage of the housing costs which the Secretary of State considers appropriate, taking into account the income of that parent and the income or estimated income of that partner.

(8) Where paragraph (7) applies, the housing costs determined in accordance with regulation 11(1)(b) of the Maintenance Assessments and Special Cases Regulations (protected income) shall remain unchanged.

(9) Where a Category B interim maintenance assessment is in force in respect of a non-applicant, the whole of the eligible housing costs may be deducted from the exempt income of that non-applicant.

(10) In a case to which regulation 28 (unreasonably high travel costs) or regulation 29 (travel costs to be disregarded) applies, for the component of exempt income determined in accordance with regulation 9(1)(i) of the Maintenance Assessments and Special Cases Regulations or in accordance with that regulation as applied by regulation 10 of those Regulations and, in the case of an absent parent, for the amount determined in accordance with regulation 11(1)(kk) of those Regulations, there shall be substituted such amount, including a nil amount, as the Secretary of State considers to be appropriate in all the circumstances of the case.

PART IX

MAINTENANCE ASSESSMENT FOLLOWING A DEPARTURE DIRECTION: PARTICULAR CASES

Child support maintenance payable where effect of a departure direction would be to decrease an absent parent's assessable income but case still fell within paragraph 2(3) of Schedule 1 to the Act

41.—(1) Subject to regulation 42 and paragraph (8), where the effect of a departure direction would, but for the following provisions of this regulation, be to reduce an absent parent's assessable income and his assessable income following that direction would be such that the case fell within paragraph 2(3) of Schedule 1 to the Act (additional element of maintenance payable), the amount of child support maintenance payable shall be determined in accordance with paragraphs (2) to (5).

(2) There shall be calculated the amount equal to $A \times P$, where A is equal to the amount that would be the absent parent's assessable income if the departure direction referred to in paragraph (1) had been given and P has the value prescribed in regulation 5 of the Maintenance Assessments and Special Cases Regulations.

(3) There shall be determined the amount that would be payable under a maintenance assessment calculated by reference to the circumstances at the time the application is made, in accordance with the provisions of Part I of Schedule 1 to the Act.

(4) The lower of the amounts calculated in accordance with paragraph (2) and determined in accordance with paragraph (3) shall constitute the revised amount for the purposes of regulation 7 (rejection of application on completion of a preliminary consideration) and regulation 31 (refusal to give a departure direction under section 28F(4) of the Act), and the Secretary of State may apply regulation 7 and shall apply regulation 31 in relation to the current amount and the revised amount as so construed.

(5) Subject to paragraph (7), where the application of the provisions of paragraph (4) results in a departure direction being given, the amount of child support maintenance payable following that

direction shall be determined by the child support officer as being the revised amount as defined in paragraph (4).

(6) Where the assessable income of an absent parent changes following a review under section 16, 17, 18 or 19 of the Act, the provisions of paragraphs (2) to (5) shall be applied to—

- (a) the amount calculated under paragraph (2) which takes account of the change in assessable income; and
- (b) the amount that would be payable under the maintenance assessment calculated in accordance with the provisions of Part I of Schedule 1 to the Act which takes account of that change in assessable income.

(7) Where the provisions of paragraph 6 of Schedule 1 to the Act (protected income) as modified by the provisions of regulation 38 apply following a departure direction, and the amount of child support maintenance payable under those provisions is lower than that payable under paragraph (5), the amount of child support maintenance payable shall be that payable under those provisions.

(8) Where a departure direction given in accordance with the provisions of paragraphs (1) to (7) has effect, those provisions shall apply, subject to the modifications set out in paragraph (9), where—

- (a) the effect of a later direction would, but for the provisions of paragraphs (2) to (5), be to change the absent parent's assessable income and his assessable income following the direction would be such that the case fell within paragraph 2(3) of Schedule 1 to the Act (additional element of maintenance payable); and
- (b) that assessable income following the later direction would be less than the assessable income would be if it were calculated in accordance with the provisions of Part I of Schedule 1 to the Act by reference to the circumstances at the time the application for the later direction is made.

(9) The modifications referred to in paragraph (8) are—

- (a) in paragraph (2), A would be the absent parent's assessable income following the later direction but for the provisions of paragraphs (3) to (5);
- (b) the references to regulation 7 in paragraph (4) are omitted.

Application of regulation 41 where there is a transfer of property falling within paragraph 3 of Schedule 4B to the Act

42.—(1) Where the application of regulation 41 to a case would result in a change in the amount of child support maintenance payable and a direction is given in respect of a transfer of property falling within paragraph 3 of Schedule 4B to the Act, regulation 41 shall be applied subject to the modifications set out in paragraphs (2) and (3).

(2) Where the exempt income of an absent parent includes a component of exempt income determined in accordance with regulation 9(1)(bb) of the Maintenance Assessments and Special Cases Regulations, that amount shall be excluded—

- (a) in calculating the amount A defined in paragraph (2) of regulation 41;
- (b) in calculating the maintenance assessment specified in paragraph (3) of regulation 41.

(3) For the purposes of this regulation, the revised amount for the purposes of regulations 7 and 31 shall be the amount as defined in paragraph (4) of regulation 41, subject to paragraph (2) of this regulation, less the amount determined in accordance with regulation 22 (the value of a transfer of property and its equivalent weekly value for a case falling within paragraph 3 of Schedule 4B to the Act).

(4) Where the application of the provisions of paragraph (3) results in a departure direction being given, the amount of child support maintenance payable following that direction shall be the revised amount as defined in paragraph (3).

Maintenance assessment following a departure direction for certain cases falling within regulation 22 of the Maintenance Assessments and Special Cases Regulations

43.—(1) Where the provisions of regulation 41 or 42 are applicable to a case falling within regulation 22 of the Maintenance Assessments and Special Cases Regulations(33) (multiple applications relating to an absent parent), those provisions shall apply for the purposes of determining the total maintenance payable in consequence of a departure direction.

(2) In a case falling within paragraph (1), the amount of child support maintenance payable in respect of each application for child support maintenance following the direction shall be the lower of—

- (a) the amount as determined in accordance with paragraph (3) of regulation 41, subject to the modification that regulation 22 of the Maintenance Assessments and Special Cases Regulations is applied in determining the amount that would be payable (“Y”);
- (b) the amount calculated by the formula—

$$(A \times P) \times \frac{Y}{Q}$$

where A and P have the same meanings as in regulation 41(2) and Q is the sum of the amounts calculated in accordance with sub-paragraph (a) for each assessment.

(3) Where, in a case falling within regulation 22 of the Maintenance Assessments and Special Cases Regulations, a departure direction has been given in respect of an absent parent in a case falling within paragraph 3 of Schedule 4B to the Act (property or capital transfers), the equivalent weekly value of the transfer of property as calculated in accordance with regulation 22 of these Regulations shall be deducted from the amount of the maintenance assessment in respect of the person with care or child to or in respect of whom the property transfer was made.

Maintenance assessment following a departure direction where there is a phased maintenance assessment

44.—(1) Where a departure direction is given in a case falling within a relevant enactment, the assessment made in consequence of that direction shall be the assessment that fixes the amount of child support maintenance that would be payable but for the provisions of that enactment (“the unadjusted departure amount”).

(2) Where a departure direction takes effect on the effective date of a maintenance assessment to which the provisions of a relevant enactment become applicable, those provisions shall remain applicable to that case following the departure direction.

(3) Where a departure direction takes effect on a date later than the date on which the provisions of a relevant enactment become applicable to a maintenance assessment, the amount of child support maintenance payable in consequence of that direction shall be—

- (a) where the unadjusted departure amount is more than the formula amount, the phased amount plus the difference between the unadjusted departure amount and the formula amount;
- (b) where the unadjusted departure amount is more than the phased amount but less than the formula amount, the phased amount;
- (c) where the unadjusted departure amount is less than the phased amount, the unadjusted departure amount.

(4) Regulation 31 shall have effect for cases falling within paragraphs (1) to (3) as if “current amount” referred to the amount payable under the maintenance assessment that would be in force

(33) Regulation 22 was amended by regulation 23 of S.I. 1993/913, regulation 51 of S.I. 1995/1045 and regulation 45 of S.I. 1995/3261.

when the departure direction is given but for the provisions of the relevant enactment and “revised amount” referred to the unadjusted departure amount.

(5) Where a child support officer determines that, were a fresh maintenance assessment to be made as a result of a review under section 17, 18 or 19 of the Act in relation to a case to which the provisions of paragraphs (1) to (3) have been applied, and the amount payable under it (“the reviewed unadjusted departure amount”) would be—

- (a) more than the unadjusted departure amount, the amount of child support maintenance payable shall be the amount determined in accordance with paragraph (3), plus the difference between the unadjusted departure amount and the reviewed unadjusted departure amount;
- (b) less than the unadjusted departure amount but more than the phased amount, the amount of child support maintenance payable shall be the phased amount;
- (c) less than the phased amount, the amount of child support maintenance payable shall be the reviewed unadjusted departure amount.

(6) In this regulation—

“the 1992 enactment” means Part II of the Schedule to the Child Support Act 1991 (Commencement No.3 and Transitional Provisions) Order 1992⁽³⁴⁾ (modification of maintenance assessment in certain cases);

“the 1994 enactment” means Part III of the Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations 1994⁽³⁵⁾ (transitional provisions);

“formula amount” has the same meaning as in the relevant enactment;

“phased amount” means—

- (a) where the 1992 enactment is applicable to the particular case, the modified amount as defined in paragraph 6 of that enactment;
- (b) where the 1994 enactment is applicable to the particular case, the transitional amount as defined in regulation 6(1) of that enactment;

“relevant enactment” means—

- (a) the 1992 enactment where that enactment is applicable to the particular case;
- (b) the 1994 enactment where that enactment is applicable to the particular case.

PART X

MISCELLANEOUS

Regular payments condition

45.—(1) For the purposes of section 28C(2)(b) of the Act (regular payments condition—reduced payments), reduced payments shall, subject to paragraph (3), be such payments as would be equal to the payments of child support maintenance fixed by the fresh maintenance assessment that would be made if the circumstances of the case were those set out in paragraph (2).

(2) The circumstances referred to in paragraph (1) are—

- (a) the Secretary of State is satisfied that the case is one which falls within paragraph 2 of Schedule 4B to the Act (special expenses);

⁽³⁴⁾ S.I. [1992/2644](#). The relevant amending instrument is S.I. [1993/966](#).

⁽³⁵⁾ S.I. [1994/227](#). The relevant amending instrument is S.I. [1995/1045](#).

- (b) the Secretary of State is satisfied that the expenses claimed by the absent parent are both being incurred and, for a case falling within regulation 13 (costs incurred in travelling to work), 14 (contact costs) or 15 (illness or disability), are neither unreasonably high nor being unreasonably incurred, and that it is just and equitable to give a departure direction in respect of the whole of those expenses; and
- (c) a departure direction is given in response to the application.

(3) Where the Secretary of State considers it likely that the expenses incurred by the absent parent are lower than those claimed by him or are not reasonably incurred, he may fix such amount as he considers to be reasonable in all the circumstances of the case.

(4) Where the absent parent, following written notice under section 28C(8) of the Act, fails within 28 days of that notice to comply with the regular payments condition that was imposed on him, the application shall lapse.

Special case—departure direction having effect from date earlier than effective date of current assessment

46.—(1) A case shall be treated as a special case for the purposes of the Act if the conditions specified in paragraph (2) are satisfied.

(2) The conditions are—

- (a) liability to pay child support maintenance commenced earlier than the effective date of the maintenance assessment in force (“the current assessment”);
- (b) an application is made or treated as made in relation to the current assessment which results in a departure direction being given in respect of that assessment;
- (c) the applicant was unable to make an application on a date falling within a period in respect of which an earlier assessment had effect because he had not been notified of that earlier assessment during that period; and
- (d) if the applicant had been able to make such an application and had done so, the Secretary of State is satisfied that a departure direction would have been given in response to that application.

(3) Where a case falls within paragraph (2), references to “the current assessment” and “the current amount” in these Regulations shall be construed as including references to an earlier assessment falling within paragraph (2)(c) and to the amount of child support maintenance fixed by it, and these Regulations shall be applied to such an earlier assessment accordingly.

PART XI

TRANSITIONAL PROVISIONS

Transitional provisions—application before 2nd December 1996

47.—(1) This paragraph applies in any case where an application for a departure direction has been made before 2nd December 1996⁽³⁶⁾.

(2) Where paragraph (1) applies, the Secretary of State shall request the applicant to inform him in writing before 2nd December 1997—

- (a) whether he wishes the application to be treated as an application under these Regulations in respect of the maintenance assessment in force on 2nd December 1996; and

⁽³⁶⁾ Section 28A of the Act and other provisions of the Act relating to departure directions come fully into force on 2nd December 1996.

- (b) whether there have been any changes in the circumstances which are relevant for the determination or, as the case may be, redetermination of the application which have occurred since his application and, if so, what those changes are.
- (3) Where the applicant fully complies with the request set out in paragraph (2), and states that he wishes the application to be treated as described in paragraph (2)(a), the Secretary of State shall treat the application as an application under these Regulations which contains the statement mentioned in section 28A(2)(a) of the Act, and paragraphs (4) to (10) and regulation 48 shall apply.
- (4) Where the applicant informs the Secretary of State that there have not been any changes of the kind mentioned in paragraph (2)(b), the Secretary of State shall nevertheless invite representations in writing from the relevant persons other than the applicant.
- (5) Where the applicant informs the Secretary of State that there have been changes in the circumstances of the kind mentioned in paragraph (2)(b), the Secretary of State shall—
- (a) give notice that he has been informed of such changes to the relevant persons other than the applicant;
 - (b) send to them the information as to such changes which the applicant has given except where the Secretary of State considers that information to be information of the kind falling within paragraph (2) of regulation 8;
 - (c) invite representations in writing from the relevant persons other than the applicant as to such changes; and
 - (d) set out the provisions of paragraph (6) in relation to such representations.
- (6) The following provisions shall apply to information provided under paragraph (2)(b) or representations made following an invitation made in accordance with paragraph (4) or (5)(c)—
- (a) paragraphs (2) to (11) of regulation 8, subject to the modification set out in paragraph (7);
 - (b) in relation to an applicant, regulations 6 and 7.
- (7) The modification of regulation 8 mentioned in paragraph (6)(a) is that for the references to paragraph (1) or, as the case may be, paragraph (1)(c) of that regulation, there were substituted references to paragraph (5) or, as the case may be, paragraph (5)(c) of this regulation.
- (8) Where the Secretary of State has not determined the application in accordance with the Departure Direction Anticipatory Application Regulations, a determination shall be made in accordance with these Regulations.
- (9) Where the Secretary of State has determined the application in accordance with the Departure Direction Anticipatory Application Regulations, he shall determine whether there have been any changes in—
- (a) the circumstances referred to in paragraph (2)(b);
 - (b) the relevant provisions of these Regulations compared with the corresponding provisions of the Departure Direction Anticipatory Application Regulations.
- (10) Where the Secretary of State determines that there have been no changes of the kind referred to in paragraph (9)(a) or (b), and the relevant persons other than the applicant have not made any representations in accordance with paragraph (4), his determination of the application in accordance with the Departure Direction Anticipatory Application Regulations shall take effect.
- (11) Where the Secretary of State determines that there have been changes of the kind referred to in paragraph (9)(a) or (b), or where the relevant persons other than the applicant have made representations, he shall make a determination of the application, taking those changes and representations into account, in accordance with these Regulations.

Effective date of departure direction for a case falling within regulation 47

48.—(1) Where the determination made by the Secretary of State by application of the provisions of paragraphs (1) to (10) of regulation 47 is to give a departure direction, that direction shall take effect on the first day of the first maintenance period commencing on or after 2nd December 1996.

(2) Where a case falls within paragraph (1) of regulation 47, and the applicant complies with the request for information mentioned in paragraph (2) of that regulation but not by the date mentioned in that paragraph, his response shall be treated as an application for a departure direction.

Transitional provisions—no application before 2nd December 1996

49.—(1) Where—

- (a) a maintenance assessment was in force on 2nd December 1996;
- (b) no application has been made before that date by any of the persons with respect to whom that assessment was made; and
- (c) an application is made by one of those persons on the grounds set out in section 28A(2)(a) of the Act (the effect of the current assessment) on or after that date and before 2nd December 1997,

any departure direction given in response to that application shall take effect on the first day of the first maintenance period commencing on or after 2nd December 1996.

Transitional provisions—new maintenance assessment made before 2nd December 1996 whose effective date is on or after 2nd December 1996

50. Where a new maintenance assessment is made before 2nd December 1996 but the effective date of that assessment is a date on or after 2nd December 1996—

- (a) the provisions of paragraph (1) of regulation 32 shall apply as if for the reference to an application being given or sent within 28 days of the date of notification of the current assessment there were substituted a reference to an application being given or sent before 30th December 1996;
- (b) the provisions of paragraph (2) of regulation 32 shall apply as if for the reference to an application being given or sent later than 28 days after the date of notification of the current assessment there were substituted a reference to an application being given or sent after 29th December 1996.

PART XII

REVOCATION

Revocation of the Departure Direction Anticipatory Application Regulations

51. The Departure Direction Anticipatory Application Regulations are hereby revoked.

PART XIII

CONSEQUENTIAL AMENDMENTS

Amendment of regulation 1 of the Appeals Regulations

52. In paragraph (2) of regulation 1 of the Appeals Regulations (citation, commencement and interpretation)—

- (a) in the definition of “party to the proceedings”—
 - (i) in sub-paragraph (d), after the word “officer” there shall be inserted the words “except where the proceedings relate only to an appeal under section 28H of the Act or to a referral;”;
 - (ii) after sub-paragraph (d) there shall be added the following sub-paragraph—
 - “(dd) the Secretary of State where the proceedings relate to an appeal under section 28H of the Act;”;
- (b) in the definition of “proceedings”, for the words “or application” there shall be substituted the words “, application or referral”;
- (c) after the definition of “proceedings”, there shall be inserted the following definition—
 - ““referral” means a reference by the Secretary of State to a tribunal under section 28D(1)(b) of the Act;”;
- (d) in the definition of “tribunal”, after the words “section 21 of” there shall be inserted the words “or regulations made under paragraph 9 of Schedule 4A to,”.

Amendment of regulation 3 of the Appeals Regulations

53.—(1) Regulation 3 of the Appeals Regulations (making an appeal or application and time limits), shall be amended in accordance with the following provisions of this regulation.

(2) In sub-paragraph (a) of paragraph (1), after the words “section 20(1)” there shall be inserted the words “, 28H(1)”.

(3) In paragraph (5), for the words “as the case may be, paragraph (4)” there shall be substituted the words “(4) or in section 20(2) or 28H(3) of the Act, as the case may be”.

Amendment of regulation 5 of the Appeals Regulations

54.—(1) Regulation 5 of the Appeals Regulations (directions) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1), after the words “a chairman may” there shall be inserted the words “, subject to paragraph (3),”.

(3) In paragraph (2), after the word “may” there shall be inserted the words “, subject to paragraph (3),”.

(4) After paragraph (2), there shall be added the following paragraphs—

“(3) In the case of an appeal under section 28H of the Act or of a referral, as the case may be, a direction requiring the Secretary of State to provide information shall have effect only if that information is information of which he is aware or which he has in his possession in connection with his functions under the Act.

(4) Where a chairman is considering whether to give a direction under paragraph (1) or the terms of any direction, he may direct that an oral hearing be held by a tribunal to

determine whether a direction shall be given under that paragraph and the terms of any direction which may be given.

(5) The provisions of these Regulations shall apply to a hearing held under the provisions of paragraph (4).”.

Amendment of regulation 6 of the Appeals Regulations

55. After paragraph (1B) of regulation 6 of the Appeals Regulations (striking out of proceedings), there shall be inserted the following paragraph—

“(1C) In the case of an appeal under section 28H of the Act, no direction shall be given under paragraph (1B) requiring the Secretary of State to provide information other than information of which he is aware or which he has in his possession in connection with his functions under the Act.”.

Amendment of regulation 7 of the Appeals Regulations

56.—(1) Regulation 7 of the Appeals Regulations (withdrawal of appeals and applications), shall be amended in accordance with the following provisions of this regulation.

(2) In heads (i) and (ii) of sub-paragraph (b) of paragraph (1), after the words “child support officer” there shall be added the words “or, in the case of an appeal under section 28H of the Act, the Secretary of State”.

(3) In paragraph (1A), after the words “child support officer” there shall be inserted the words “or, in the case of an appeal under section 28H of the Act, the Secretary of State”.

Amendment of regulation 10 of the Appeals Regulations

57. In paragraph (1) of regulation 10 of the Appeals Regulations (summoning of witnesses), for the words “appeal or application” wherever they appear there shall be substituted the words “appeal, application or referral”.

Amendment of regulation 11 of the Appeals Regulations

58.—(1) Regulation 11 of the Appeals Regulations (hearings) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraphs (1), (2A) and (2B), for the words “appeal or application” wherever they appear there shall be substituted the words “appeal, application or referral”.

(3) In paragraph (8), after sub-paragraph (e), there shall be inserted the following sub-paragraph—

“(ee) any person undergoing training to enable him to act in the name of the Secretary of State in relation to applications for a departure direction under section 28A of the Act and any person acting on behalf of the Secretary of State in the training or supervision of persons undergoing that training or in the monitoring of standards of decisions made by persons on behalf of the Secretary of State in relation to those applications;”.

Insertion of regulations 11A and 11B into the Appeals Regulations

59. After regulation 11 of the Appeals Regulations there shall be inserted the following regulations—

“Hearing by chairman sitting alone

11A.—(1) The prescribed circumstances for the purpose of paragraph 9 of Schedule 4A to the Act (child support appeal tribunals) are—

- (a) in relation to a referral, where an application has been made on the grounds set out in paragraph 3 or 4 of Schedule 4B to the Act;
- (b) in relation to an appeal under section 28H of the Act, where that appeal is against the rejection of an application by the Secretary of State under section 28B(2) of the Act or a decision of the Secretary of State on an application made on the grounds set out in paragraph 3 or 4 of Schedule 4B to the Act; or
- (c) in relation to an appeal under section 28H of the Act or to any referral, where a chairman has directed that an oral hearing be held by a tribunal under regulation 5(4).

(2) Where the circumstances set out in sub-paragraph (a), (b) or (c) of paragraph (1) apply, a chairman may decide that the appeal or referral shall be dealt with by a tribunal constituted by the chairman of the tribunal sitting alone.

Consideration of more than one appeal under section 28H of the Act

11B. A tribunal which is considering an appeal under section 28H of the Act in respect of a departure direction which relates to a maintenance assessment may, if it considers it appropriate to do so, consider at the same time any appeal under that section in respect of another departure direction which relates to the same maintenance assessment.”.

Amendment of regulation 13 of the Appeals Regulations

60.—(1) Regulation 13 of the Appeals Regulations (decisions) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (3A), for the words “and of the terms of any direction under section 20(4) of the Act” there shall be substituted the words “, of the terms of any direction under section 20(4) of the Act and of the terms of any decision made by the tribunal under section 28H(4)(c) of the Act or on a referral”.

(3) After paragraph (3E), there shall be inserted the following paragraph—

“(3F) Paragraphs (1) and (3D) shall not apply where the tribunal is constituted in accordance with the provisions of regulation 11A.”.

(4) For paragraph (4), there shall be substituted the following paragraph—

“(4) A child support officer may apply to the tribunal or another tribunal for directions or further directions and the tribunal may give such directions or further directions as it thinks fit where the child support officer—

- (a) to whom a case is referred by the Secretary of State under section 20(3) of the Act (procedure following a successful appeal) is uncertain, having regard to the terms of the decision and of any directions contained in it, how he should deal with the case; or
- (b) who has been notified of a decision of a tribunal on an appeal under section 28H of the Act or on a referral is uncertain, having regard to the terms of that decision or of any departure direction given by that tribunal, how he should deal with the case.”.

Amendment of regulation 14 of the Appeals Regulations

61.—(1) Regulation 14 of the Appeals Regulations (corrections) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1), after the words “Subject to” there shall be inserted the words “paragraph (3) and”.

(3) After paragraph (2), there shall be added the following paragraph—

“(3) Paragraphs (1) and (2) shall not apply to referrals.”.

Amendment of regulation 10 of the Arrears Regulations

62. In paragraph (2) of regulation 10 of the Arrears Regulations (adjustment of the amount payable under a maintenance assessment), after the word “subsequently” there shall be inserted the words “revised as a result of a departure direction having been given or”.

Amendment of regulation 8 of the Information, Evidence and Disclosure Regulations

63. Regulation 8 of the Information, Evidence and Disclosure Regulations (disclosure of information to a court or tribunal) shall be numbered paragraph (1) of that regulation and after paragraph (1) there shall be added the following paragraph—

“(2) For the purposes of this regulation “proceedings” includes the determination of an application referred to a child support appeal tribunal under section 28D(1)(b) of the Act.”.

Amendment of regulation 9A of the Information, Evidence and Disclosure Regulations

64. For sub-paragraph (c) of paragraph (2) of regulation 9A of the Information, Evidence and Disclosure Regulations (disclosure of information to other persons), there shall be substituted the following sub-paragraph—

“(c) the personal representative of a relevant person where—

(i) a review or appeal was pending at the date of death of that person and the personal representative is dealing with that review or appeal on behalf of that person; or

(ii) an application for a departure direction had been made but not determined at the date of death of that person and the personal representative is dealing with that application on behalf of that person.”.

Amendment of regulation 10 of the Information, Evidence and Disclosure Regulations

65. In paragraph (1) of regulation 10 of the Information, Evidence and Disclosure Regulations (disclosure of information by the Secretary of State), for the words “or in connection with an assessment which is or has been in force” there shall be substituted the words “,an assessment which is or has been in force or in connection with a departure direction.”.

Amendment of regulation 10A of the Information, Evidence and Disclosure Regulations

66. In paragraph (2) of regulation 10A of the Information, Evidence and Disclosure Regulations (disclosure of information by a child support officer), the words “or in connection with” shall be omitted and at the end, there shall be added the words “or in connection with a departure direction”.

Amendment of regulation 10 of the Maintenance Assessment Procedure Regulations

67.—(1) Regulation 10 of the Maintenance Assessment Procedure Regulations (notification of a new or a fresh maintenance assessment), shall be amended in accordance with the following provisions of this regulation.

(2) For sub-paragraphs (a) and (b) of paragraph (1), there shall be substituted the following sub-paragraphs—

- “(a) makes a new or fresh maintenance assessment following an application under section 4, 6 or 7 of the Act, a review under section 16, 17, 18 or 19 of the Act, or the giving or cancellation of a departure direction;
- (b) makes a new interim maintenance assessment under section 12 of the Act, substitutes an interim maintenance assessment for one which is in force in accordance with regulation 8 or 9, or gives or cancels a departure direction; or”.

(3) In paragraph (2), after sub-paragraph (h), there shall be added the following sub-paragraph—

- “(i) where the notification under paragraph (1)(a) or (b) follows the giving, or cancellation of a departure direction, the amounts calculated in accordance with Part I of Schedule 1 to the Act, or in accordance with regulation 8A, which have been changed as a result of the giving or cancellation of that departure direction.”.

(4) After paragraph (2A), there shall be added the following paragraph—

- “(2AA) where a fresh Category D interim maintenance assessment is made following the giving or cancellation of a departure direction, a notification under paragraph (1) shall set out in relation to that interim maintenance assessment the amounts calculated in accordance with regulation 8A which have changed as a result of the giving or cancellation of that departure direction.”.

(5) For sub-paragraphs (a) and (b) of paragraph (2B) there shall be substituted the following sub-paragraphs—

- “(a) the matters listed in sub-paragraphs (a), (b) and (d) to (f) of paragraph (2);
- (b) where known, the absent parent’s assessable income; and
- (c) where the Category B interim maintenance assessment is made following the giving or cancellation of a departure direction, the amounts calculated in accordance with regulation 8A which have changed as a result of the giving or cancellation of that departure direction.”.

(6) In paragraph (4) for sub-paragraph (d) there shall be substituted the following sub-paragraphs—

- “(d) where a fresh maintenance assessment is made following a review under section 19 of the Act, sections 16, 17 and 18 of the Act;
- (e) where a fresh maintenance assessment is made following the giving of a departure direction, sections 16, 17 and 18 of the Act.”.

(7) After paragraph (5) there shall be added the following paragraph—

- “(6) Where a fresh Category D interim maintenance assessment is made following the giving or cancellation of a departure direction, a notification under paragraph (1) shall include information as to sections 16 and 19(1) of the Act.”.

Amendment of the Maintenance Assessments and Special Cases Regulations

68.—(1) The Maintenance Assessments and Special Cases Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) of regulation 1, after the definition of “day to day care” there shall be inserted the following definition—

““Departure Direction and Consequential Amendments Regulations” means the Child Support Departure Direction and Consequential Amendments Regulations 1996(37);”.

(3) In paragraph (4) of regulation 1, there shall be inserted at the beginning the words “These Regulations are subject to the provisions of Parts VIII and IX of the Departure Direction and Consequential Amendments Regulations and”.

(4) In paragraph (2)(c) of regulation 9, after head (iv) there shall be added the following head—

“(v) where a departure direction has been given on the grounds that a case falls within regulation 27 of the Departure Direction and Consequential Amendments Regulations (partner’s contribution to housing costs), the amount of the housing costs which corresponds to the percentage of the housing costs mentioned in regulation 40(7) of those Regulations.”.

(5) In regulation 22—

(a) in paragraph (2), after the words “and in these Regulations” there shall be inserted the words “, and subject to paragraph (2ZA),”; and

(b) after paragraph (2), there shall be inserted the following paragraph—

“(2ZA) Where a case falls within regulation 39(1)(a) of the Departure Direction and Consequential Amendment Regulations, for the purposes of assessing the amount of child support maintenance payable in respect of an application for child support maintenance before a departure direction in respect of the maintenance assessment in question is given, for references to the assessable income of an absent parent in the Act and in these Regulations there shall be substituted references to the amount calculated by the formula—

$$(A + T) \times \frac{B}{D}$$

where A, T, B and D have the same meanings as in paragraph (2).”.

Signed by authority of the Secretary of State for Social Security.

Department of Social Security
20th November 1996

A.J.B. Mitchell
Parliamentary Under-Secretary of State,

SCHEDULE

Regulation 22

EQUIVALENT WEEKLY VALUE OF A TRANSFER OF A PROPERTY

1.—(1) Subject to paragraphs 3 and 4, the equivalent weekly value of a transfer of property shall be calculated by multiplying the value of a transfer of property determined in accordance with regulation 22(1) and (2) by the relevant factor specified in the Table set out in paragraph 2 (“the Table”).

(2) For the purposes of sub-paragraph (1), the relevant factor is the number in the Table at the intersection of the column for the statutory rate and of the row for the number of years of liability.

(3) In sub-paragraph (2)—

- (a) “the statutory rate” means interest at the statutory rate prescribed for a judgment debt⁽³⁸⁾ or, in Scotland, the statutory rate in respect of interest included in or payable under a decree in the Court of Session⁽³⁹⁾, which in either case applies at the date of the court order or written agreement relating to the transfer of the property;
- (b) “the number of years of liability” means the number of years, beginning on the date of the court order or written agreement relating to the transfer of property and ending on—
- (i) the date specified in that order or agreement as the date on which maintenance for the youngest child in respect of whom that order or agreement was made shall cease; or
- (ii) if no such date is specified, the date on which the youngest child specified in the order or agreement reaches the age of 18,

and where that period includes a fraction of a year, that fraction shall be treated as a full year if it is either one half or exceeds one half of a year, and shall otherwise be disregarded.

2. The Table referred to in paragraph 1(1) is set out below—

THE TABLE

<i>Number of years of liability</i>	<i>Statutory rate</i>					
	<i>8.0%</i>	<i>10.0%</i>	<i>12.0%</i>	<i>12.5%</i>	<i>14.0%</i>	<i>15.0%</i>
1	.02077	.02115	.02154	.02163	.02192	.02212
2	.01078	.01108	.01138	.01145	.01168	.01183
3	.00746	.00773	.00801	.00808	.00828	.00842
4	.00581	.00607	.00633	.00640	.00660	.00674
5	.00482	.00507	.00533	.00540	.00560	.00574
6	.00416	.00442	.00468	.00474	.00495	.00508
7	.00369	.00395	.00421	.00428	.00448	.00462
8	.00335	.00360	.00387	.00394	.00415	.00429
9	.00308	.00334	.00361	.00368	.00389	.00403
10	.00287	.00313	.00340	.00347	.00369	.00383
11	.00269	.00296	.00324	.00331	.00353	.00367

(38) See Order 42, rule 1 of the Rules of the Supreme Court, S.I. 1965/1776.

(39) See Act of Sederunt (Rules of the Court of Session 1994) 1994.

<i>Number of years of liability</i>	<i>Statutory rate</i>					
	<i>8.0%</i>	<i>10.0%</i>	<i>12.0%</i>	<i>12.5%</i>	<i>14.0%</i>	<i>15.0%</i>
12	.00255	.00282	.00310	.00318	.00340	.00355
13	.00243	.00271	.00299	.00307	.00329	.00344
14	.00233	.00261	.00290	.00298	.00320	.00336
15	.00225	.00253	.00282	.00290	.00313	.00329
16	.00217	.00246	.00276	.00283	.00307	.00323
17	.00211	.00240	.00270	.00278	.00302	.00318
18	.00205	.00234	.00265	.00273	.00297	.00314

3. The equivalent weekly value of the property transferred shall be nil if the value of the transfer of the property is less than £5,000.

4. The Secretary of State may determine a lower equivalent weekly value than that determined in accordance with paragraphs 1 and 2 where the amount of child support maintenance that would be payable in consequence of a departure direction specifying that value is lower than the amount of maintenance that was payable under the court order or written agreement referred to in regulation 21.

5. In this Schedule, “maintenance” has the same meaning as in paragraph 3(2) of Schedule 4B to the Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for an application for a departure direction to be made, the effect of which, if given, would be to vary a child support maintenance assessment determined in accordance with the formula provisions of Part I of Schedule 1 to the Child Support Act 1991, and the regulations made under it.

Regulations 1 to 3 contain interpretation provisions, provisions relating to documents and rounding provisions.

Regulations 4 to 12 contain provisions relating to the manner in which an application is to be made, to the Secretary of State’s preliminary consideration of an application, where income support or income-based jobseeker’s allowance is payable, interim maintenance assessments, and reviews under section 17 of the Child Support Act 1991.

Regulations 13 to 29 and the Schedule make provision in relation to cases in which a departure direction may be given: regulations 13 to 20 relate to special expenses, regulations 21 and 22 and the Schedule to property or capital transfers and regulations 23 to 29 to additional cases where a departure direction may be given.

The Schedule contains a table for calculating the equivalent weekly value of a transfer of property. The factors in the table are derived from the standard formula used in annuity calculations.

Status: This is the original version (as it was originally made).

Regulation 30 prescribes factors to be taken into account and not to be taken into account in determining whether it would be just and equitable to give a departure direction.

Regulations 31 to 35 contain provisions as to the effective date and the duration of a departure direction.

Regulations 36 to 44 contain provisions as to the maintenance assessment which is to be made in consequence of a departure direction.

Regulations 45 and 46 contain provisions as to the imposition of a regular payments condition, and a departure direction having effect from a date earlier than the effective date of the current assessment.

Regulations 47 to 50 contain transitional provisions and regulation 51 revokes the Child Support Departure Direction (Anticipatory Application) Regulations 1996.

Regulations 52 to 68 provide for amendments to be made to five sets of Child Support Regulations which are consequential on the introduction of the departures system.

These Regulations impose no costs on business.