
STATUTORY INSTRUMENTS

1996 No. 635

**The Child Support Departure Direction
(Anticipatory Application) Regulations 1996**

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 work place—

- (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⁽¹⁾ shall not constitute expenses for the purposes of paragraph (1).

(4) For the purposes of paragraph (1) “work place” means the normal place or places—

- (a) in which an applicant is employed in employed earner’s employment; or
- (b) in which an applicant carries out his business if he is a self-employed earner.

(5) For the purposes of paragraph (4), “employed earner” and “self-employed earner” have the same meaning as in the Contributions and Benefits Act.

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 (4), constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Act—

- (a) the cost of purchasing a ticket for such travel; or

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- (b) the cost of purchasing fuel, where such travel is by a vehicle which is not carrying fare-paying passengers,

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).

(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, 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 (4) shall apply to that application.

Illness or disability

15.—(1) Subject to paragraphs (2) and (3), the costs incurred in respect of the items listed in sub-paragraphs (a) to (m), which arise from long-term illness or disability of the 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 an application is made with respect to special expenses falling within paragraph (1), and the Secretary of State considers that the applicant 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, that application 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.

(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 in total 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(2).

Debts incurred before the absent parent became an absent parent

16.—(1) Subject to paragraphs (2) to (6), 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 wholly responsible for that repayment;
- (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 loan taken out for the purposes of any trade or business carried on by the applicant;
- (c) a gambling debt of the applicant;
- (d) a fine imposed on the applicant;
- (e) unpaid legal costs of the applicant in respect of separation or divorce from the non-applicant parent;
- (f) amounts due after use of a credit card by the applicant;
- (g) a loan taken out by the applicant to pay any of the items listed in sub-paragraphs (c) to (f);
- (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 any property which at the time the application is made 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⁽³⁾ (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 any property which, at the time the application is made, is the home of the parent with care and any child in respect of whom the current assessment was made;
- (j) bank overdrafts except where the overdraft was, at the time it was taken out, agreed to be for a specified amount repayable over a specified period;
- (k) a loan obtained by the applicant other than a loan obtained from a qualifying lender;
- (l) a debt in respect of which a departure direction has already been given and which has not been repaid during the period 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 given, 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) Repayment of a debt shall not constitute expenses for the purposes of paragraph (1) where the Secretary of State is satisfied that the applicant agreed with the non-applicant parent to take responsibility for repayment of that debt, as, or as part of, a financial settlement between them.

(4) Where a debt was incurred prior to the date upon which the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made, 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.

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

- (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(4).

Pre-1993 financial commitments

17.—(1) A financial commitment entered into by an absent parent before 5th April 1993, except any commitment falling within regulation 16, 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 a child in relation to whom the current assessment was made; 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.
- (2) For the purposes of paragraph (1)—
- (a) “court order” means an order made under an enactment 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) such costs were first incurred 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

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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) of the relevant 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 that regulation 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⁽⁵⁾, 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⁽⁶⁾.

(5) 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.

(6) 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.

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.