

Incapacitated children. ITA67 s141(1) to (6); FA86 s4; FA91 s126; FA96 s3 and Sch1 par1(c) 465.—(1) Where a claimant proves that he or she has living at any time during a year of assessment any child who—

(a) is under the age of 16 years and is permanently incapacitated by reason of mental or physical infirmity, or

(b) if over the age of 16 years at the commencement of the year, is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of full-time instruction at any university, college, school or other educational establishment, the claimant shall, subject to this section, be entitled in respect of each such child to a deduction of £700.

(2) (a) A child under the age of 16 years shall be regarded as permanently incapacitated by reason of mental or physical infirmity only if the infirmity is such that there would be a reasonable expectation that if the child were over the age of 16 years the child would be incapacitated from maintaining himself or herself.

(b) In the case of a child to whom subsection (1)(b) applies, the deduction shall be £700 or the amount expended by the claimant in the year of assessment on the maintenance of the child, whichever is the lesser.

(c) Any deduction under this section shall be in substitution for and not in addition to any deduction to which the claimant might be entitled in respect of the same child under section 466.

(3) Where the claimant proves for the year of assessment—

(a) that the claimant has the custody of and maintains at his or her own expense any child who, but for the fact that that child is not a child of the claimant, would be a child referred to in subsection (1), and

(b) that neither the claimant nor any other individual is entitled to a deduction in respect of the same child under subsection (1) or under any other provision of this Part, or, if any other individual is entitled to such a deduction, that such other individual has relinquished his or her claim to that deduction,

the claimant shall be entitled to the same deduction in respect of the child as if the child were a child of the claimant.

(4) (a) The reference in subsection (1) to a child receiving fulltime instruction at an education establishment shall include a reference to a child undergoing training by any person (in this subsection referred to as “the employer”) for any trade or profession in such circumstances that the child is required to devote the whole of his or her time to the training for a period of not less than 2 years.

(b) For the purpose of a claim in respect of a child undergoing training, the inspector may require the employer to furnish particulars with respect to the training of the child in such form as may be prescribed

by the Revenue Commissioners.

(5) (a) No deduction shall be allowed under this section in respect of any child entitled in his or her own right to an income exceeding £2,100 a year except that, if the amount of the excess is less than the deduction which would be allowable apart from this subsection, a deduction reduced by that amount shall be allowed.

(b) In calculating the income of the child for the purposes of paragraph (a), no account shall be taken of any income to which the child is entitled as the holder of a scholarship, bursary, or other similar educational endowment.

(6) Where any question arises as to whether any person is entitled to an allowance under this section in respect of a child over the age of 21 years as being a child who had become permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself after attaining that age but while in receipt of full-time instruction referred to in this section, the Revenue Commissioners may consult the Minister for Education and Science.

(7) Where for any year of assessment 2 or more individuals are or would but for this subsection be entitled under this section to relief in respect of the same child, the following provisions shall apply:

(a) only one deduction under this section shall be allowed in respect of the child;

(b) where the child is maintained by one parent only, that parent only shall be entitled to claim such deduction;

(c) where the child is maintained jointly by both parents, each parent shall be entitled to claim such part of such deduction as is proportionate to the amount expended by him or her on the maintenance of the child;

(d) in ascertaining for the purposes of this subsection whether a parent maintains a child and, if so, to what extent, any payment made by the parent for or towards the maintenance of the child which the parent is entitled to deduct in computing his or her total income for the purposes of the Income Tax Acts shall be deemed not to be a payment for or towards the maintenance of the child.