
STATUTORY INSTRUMENTS

1991 No. 2628

The Child Support(Northern Ireland) Order 1991

Reviews and appeals

Periodical reviews

18.—(1) The Department shall make such arrangements as it considers necessary to secure that where any maintenance assessment has been in force for a prescribed period the amount of child support maintenance fixed by that assessment (“the original assessment”) is reviewed by a child support officer under this Article as soon as is reasonably practicable after the end of that prescribed period.

(2) Before conducting any review under this Article, the child support officer concerned shall give to such persons as may be prescribed, such notice of the proposed review as may be prescribed.

(3) A review shall be conducted under this Article as if a fresh application for a maintenance assessment had been made by the person in whose favour the original assessment was made.

(4) On completing any review under this Article, the child support officer concerned shall make a fresh maintenance assessment, unless he is satisfied that the original assessment has ceased to have effect or should be brought to an end.

(5) Where a fresh maintenance assessment is made under paragraph (4), it shall take effect—

(a) on the day immediately after the end of the prescribed period mentioned in paragraph (1);
or

(b) in such circumstances as may be prescribed, on such later date as may be determined in accordance with regulations made by the Department.

(6) The Department may by regulations prescribe circumstances (for example, where the maintenance assessment is about to terminate) in which a child support officer may decide not to conduct a review under this Article.

Reviews on change of circumstances

19.—(1) Where a maintenance assessment is in force the absent parent or person with care with respect to whom it was made may apply to the Department for the amount of child support maintenance fixed by that assessment (“the original assessment”) to be reviewed under this Article.

(2) An application under this Article may be made only on the ground that, by reason of a change of circumstance since the original assessment was made, the amount of child support maintenance payable by the absent parent would be significantly different if it were to be fixed by a maintenance assessment made by reference to the circumstances of the case as at the date of the application.

(3) The child support officer to whom an application under this Article has been referred shall not proceed unless, on the information before him, he considers that it is likely that he will be required by paragraph (6) to make a fresh assessment if he conducts the review applied for.

(4) Before conducting any review under this Article, the child support officer concerned shall give to such persons as may be prescribed, such notice of the proposed review as may be prescribed.

(5) A review shall be conducted under this Article as if a fresh application for a maintenance assessment had been made by the person in whose favour the original assessment was made.

(6) On completing any review under this Article, the child support officer concerned shall make a fresh maintenance assessment, unless—

- (a) he is satisfied that the original assessment has ceased to have effect or should be brought to an end; or
- (b) the difference between the amount of child support maintenance fixed by the original assessment and the amount that would be fixed if a fresh assessment were to be made as a result of the review is less than such amount as may be prescribed.

Reviews of decisions of child support officers

20.—(1) Where—

- (a) an application for a maintenance assessment is refused; or
- (b) an application, under Article 19, for the review of a maintenance assessment which is in force is refused,

the person who made that application may apply to the Department for the refusal to be reviewed.

(2) Where a maintenance assessment is in force the absent parent or person with care with respect to whom it was made may apply to the Department for the assessment to be reviewed.

(3) Where a maintenance assessment is cancelled, the appropriate person may apply to the Department for the cancellation to be reviewed.

(4) Where an application for the cancellation of a maintenance assessment is refused, the appropriate person may apply to the Department for the refusal to be reviewed.

(5) An application under this Article shall give the applicant's reasons (in writing) for making it.

(6) The Department shall refer to a child support officer any application under this Article which is duly made; and the child support officer shall conduct the review applied for unless in his opinion there are no reasonable grounds for supposing that the refusal, assessment or cancellation in question—

- (a) was made in ignorance of a material fact;
- (b) was based on a mistake as to a material fact;
- (c) was wrong in law.

(7) The Department shall arrange for a review under this Article to be conducted by a child support officer who played no part in taking the decision which is to be reviewed.

(8) Before conducting any review under this Article, the child support officer concerned shall give to such persons as may be prescribed, such notice of the proposed review as may be prescribed.

(9) If a child support officer conducting a review under this Article is satisfied that a maintenance assessment or (as the case may be) a fresh maintenance assessment should be made, he shall proceed accordingly.

(10) In making a maintenance assessment by virtue of paragraph (9) a child support officer shall, if he is aware of any material change of circumstance since the decision being reviewed was taken, take account of that change of circumstance in making the assessment.

(11) The Department may make regulations—

- (a) as to the manner in which applications under this Article are to be made;
- (b) as to the procedure to be followed with respect to such applications; and
- (c) with respect to reviews conducted under this Article.

(12) In this Article “appropriate person” means the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force.

Reviews at instigation of child support officers

21.—(1) Where a child support officer is not conducting a review under Article 18, 19 or 20 but is nevertheless satisfied that a maintenance assessment which is in force is defective by reason of—

- (a) having been made in ignorance of a material fact;
- (b) having been based on a mistake as to a material fact; or
- (c) being wrong in law,

he may make a fresh maintenance assessment on the assumption that the person in whose favour the original assessment was made has made a fresh application for a maintenance assessment.

(2) Where a child support officer is not conducting such a review but is nevertheless satisfied that if an application were to be made under Article 19 or 20 it would be appropriate to make a fresh maintenance assessment, he may do so.

(3) Before making a fresh maintenance assessment under this Article, a child support officer shall give to such persons as may be prescribed, such notice of his proposal to make a fresh assessment as may be prescribed.

Appeals

22.—(1) Any person who is aggrieved by the decision of a child support officer—

- (a) on a review under Article 20;
- (b) to refuse an application for such a review,

may appeal to a child support appeal tribunal against that decision.

(2) Except with leave of the chairman of a child support appeal tribunal, no appeal under this Article shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.

(3) Where an appeal under this Article is allowed, the tribunal shall remit the case to the Department, which shall arrange for it to be dealt with by a child support officer.

(4) The tribunal may, in remitting any case under this Article, give such directions as it considers appropriate.

Child support appeal tribunals

23.—(1) There shall be tribunals to be known as child support appeal tribunals which shall, subject to any order made under Article 42, hear and determine appeals under Article 22.

(2) The Department may make such regulations with respect to proceedings before child support appeal tribunals as it considers appropriate.

(3) The regulations may in particular make provision—

- (a) as to procedure;
- (b) for the striking out of appeals for want of prosecution;
- (c) as to the persons entitled to appear and be heard on behalf of any of the parties;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) about evidence;
- (f) for authorising the administration of oaths;

- (g) as to confidentiality;
- (h) for notification of the result of an appeal to be given to such persons as may be prescribed.
- (4) Schedule 3 shall have effect with respect to child support appeal tribunals.

Matters concerning Child Support Commissioners

24. Schedule 4 shall have effect with respect to certain matters concerning Child Support Commissioners.

Appeal to Child Support Commissioner

25.—(1) Any person who is aggrieved by a decision of a child support appeal tribunal, and any child support officer, may appeal to a Child Support Commissioner on a question of law.

(2) Where, on an appeal under this Article, a Child Support Commissioner holds that the decision appealed against was wrong in law he shall set it aside.

- (3) Where a decision is set aside under paragraph (2), the Child Support Commissioner may—
- (a) if he can do so without making fresh or further findings of fact, give the decision which he considers should have been given by the child support appeal tribunal;
 - (b) if he considers it expedient, make such findings and give such decision as he considers appropriate in the light of those findings; or
 - (c) refer the case, with directions for its determination, to a child support officer or, if he considers it appropriate, to a child support appeal tribunal.

(4) Any reference under paragraph (3) to a child support officer shall, subject to any direction of the Child Support Commissioner, be to a child support officer who has taken no part in the decision originally appealed against.

(5) On a reference under paragraph (3) to a child support appeal tribunal, the tribunal shall, subject to any direction of the Child Support Commissioner, consist of persons who were not members of the tribunal which gave the decision which has been appealed against.

- (6) No appeal lies under this Article without the leave—
- (a) of the person who was the chairman of the child support appeal tribunal when the decision appealed against was given or of such other chairman of a child support appeal tribunal as may be determined in accordance with regulations made by the Lord Chancellor; or
 - (b) subject to and in accordance with regulations so made, of a Child Support Commissioner.

(7) The Lord Chancellor may by regulations make provision as to the manner in which and the time within which appeals under this Article are to be brought and applications for leave under this Article are to be made.

(8) Where a question which would otherwise fall to be determined by a child support officer first arises in the course of an appeal to a Child Support Commissioner, he may, if he thinks fit, determine it even though it has not been considered by a child support officer.

Appeal from Child Support Commissioner on question of law

26.—(1) An appeal on a question of law shall lie to the Court of Appeal from any decision of a Child Support Commissioner.

- (2) No such appeal may be brought except—
- (a) with leave of the Child Support Commissioner who gave the decision or, where regulations made by the Lord Chancellor so provide, of a Child Support Commissioner selected in accordance with the regulations; or

- (b) if the Child Support Commissioner refuses leave, with the leave of the Court of Appeal.
- (3) An application for leave to appeal under this Article against a decision of a Child Support Commissioner (“the appeal decision”) may only be made by—
 - (a) a person who was a party to the proceedings in which the original decision, or appeal decision, was given;
 - (b) the Department; or
 - (c) any other person who is authorised to do so by regulations made by the Lord Chancellor.
- (4) In this Article “original decision” means the decision to which the appeal decision in question relates.
- (5) The Lord Chancellor may by regulations make provision with respect to—
 - (a) the manner in which and the time within which applications must be made to a Child Support Commissioner for leave under this Article; and
 - (b) the procedure for dealing with such applications.

Disputes about parentage

27.—(1) Where a person who is alleged to be a parent of the child with respect to whom an application for a maintenance assessment has been made (“the alleged parent”) denies that he is one of the child’s parents, the child support officer concerned shall not make a maintenance assessment on the assumption that the alleged parent is one of the child’s parents unless the case falls within one of those set out in paragraph (2).

(2) The Cases are—

Case A

Where the alleged parent is a parent of the child in question by virtue of having adopted him.

Case B

Where the alleged parent is a parent of the child in question by virtue of an order under section 30 of the Human Fertilisation and Embryology Act 1990(1) (parental orders in favour of gamete donors).

Case C

Where—

- (a) either—
 - (i) a declaration that the alleged parent is a parent of the child in question (or a declaration which has that effect) is in force under section 56 of the Family Law Act 1986(2) (declarations of parentage); or
 - (ii) a declarator by a court in Scotland that the alleged parent is a parent of the child in question (or a declarator which has that effect) is in force; and
- (b) the child has not subsequently been adopted.

Case D

Where—

- (a) a declaration to the effect that the alleged parent is one of the parents of the child in question has been made under Article 28; and
- (b) the child has not subsequently been adopted.

(1) 1990 c. 37
(2) 1986 c. 55

Case E

Where—

- (a) the alleged parent has been found or adjudged to be the father of the child in question—
 - (i) in affiliation proceedings before any court in the United Kingdom; or
 - (ii) in proceedings before any court in England and Wales which are relevant proceedings for the purposes of section 12 of the Civil Evidence Act 1968⁽³⁾, (whether or not he offered any defence to the allegation of paternity) and that finding or adjudication still subsists; and
 - (b) the child has not subsequently been adopted.
- (3) In this Article—
- “adopted” means adopted within the meaning of Part V of the Adoption (Northern Ireland) Order 1987⁽⁴⁾; and
- “affiliation proceedings”, in relation to Scotland, means any action of affiliation and aliment.

Reference to court for declaration of parentage

28.—(1) Where—

- (a) a child support officer is considering whether to make a maintenance assessment with respect to a person who is alleged to be a parent of the child, or one of the children, in question (“the alleged parent”);
- (b) the alleged parent denies that he is one of the child’s parents; and
- (c) the child support officer is not satisfied that the case falls within one of those set out in Article 27(2),

the Department or the person with care may apply to a court of summary jurisdiction for a declaration as to whether or not the alleged parent is one of the child’s parents.

(2) If, on hearing any application under paragraph (1), the court is satisfied that the alleged parent is, or is not, a parent of the child in question it shall make a declaration to that effect.

(3) A declaration under this Article shall have effect only for the purposes of this Order.

(3) 1968 c. 64
(4) 1987 NI 22