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STATUTORY INSTRUMENTS

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**1991 No. 2628**

**The Child Support (Northern Ireland) Order 1991**

*The basic principles*

**Role of the courts with respect to maintenance for children**

**10.**—(1) This paragraph applies in any case where<sup>[F1]</sup> the Department] would have jurisdiction to make a <sup>[F2]</sup>maintenance calculation] with respect to a qualifying child and <sup>[F3]</sup>a non-resident parent] of his on an application duly made<sup>[F4]</sup> or treated as made] by a person entitled to apply for such <sup>[F5]</sup>a calculation] with respect to that child.

(2) Paragraph (1) applies even though the circumstances of the case are such that<sup>[F1]</sup> the Department] would not make <sup>[F6]</sup>a calculation] if it were applied for.

(3) <sup>[F7]</sup>Except as provided in paragraph (3A),] in any case where paragraph (1) applies, no court shall exercise any power which it would otherwise have to make, vary or revive any maintenance order in relation to the child and <sup>[F8]</sup>non-resident parent] concerned.

<sup>[F9]</sup>(3A) Unless a maintenance calculation has been made with respect to the child concerned, paragraph (3) does not prevent a court from varying a maintenance order in relation to that child and the non-resident parent concerned—

- (a) if the maintenance order was made on or after the date prescribed for the purposes of Article 7(10)(a); or
- (b) where the order was made before then, in any case in which Article 7(10) prevents the making of an application for a maintenance calculation with respect to or by that child.]

(4) Paragraph (3) does not prevent a court from revoking a maintenance order.

(5) The Lord Chancellor may<sup>[F10]</sup>, with the concurrence of the Lord Chief Justice,] by order provide that, in such circumstances as may be specified by the order, this Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) a written agreement (whether or not enforceable) provides for the making, or securing, by <sup>[F11]</sup>a non-resident parent] of the child of periodical payments to or for the benefit of the child; and
- (b) the maintenance order which the court makes is, in all material respects, in the same terms as that agreement.

<sup>[F12]</sup>(5A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (5)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]

(6) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) a [<sup>F13</sup>maintenance calculation] is in force with respect to the child;
- [<sup>F14</sup>(b) the non-resident parent's net weekly income exceeds the figure referred to in paragraph 10(3) of Schedule 1 (as it has effect from time to time pursuant to regulations made under paragraph 10A(1)(b)); and]
- (c) the court is satisfied that the circumstances of the case make it appropriate for the [<sup>F15</sup>non-resident parent] to make or secure the making of periodical payments under a maintenance order in addition to the child support maintenance payable by him in accordance with the [<sup>F16</sup>maintenance calculation].
- (7) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
- (a) the child is, will be or (if the order were to be made) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation (whether or not while in gainful employment); and
- (b) the order is made solely for the purposes of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of the expenses incurred in connection with the provision of the instruction or training.
- (8) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—
- (a) a disability living allowance is paid to or in respect of him; or
- (b) no such allowance is paid but he is disabled,
- and the order is made solely for the purpose of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of any expenses attributable to the child's disability.
- (9) For the purposes of paragraph (8), a child is disabled if he is blind, deaf or dumb or is substantially and permanently handicapped by illness, injury, mental disorder or congenital deformity or such other disability as may be prescribed.
- (10) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if the order is made against a person with care of the child.
- (11) In this Order “maintenance order”, in relation to any child, means an order which requires the making or securing of periodical payments to or for the benefit of the child and which is made under—
- Sub#para.(a) rep. by 1995 NI 2*
- (b) Part III of the Matrimonial Causes (Northern Ireland) Order 1978<sup>F17</sup>;
- (c) the Domestic Proceedings (Northern Ireland) Order 1980<sup>F18</sup>;
- (d) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989<sup>F19, F20</sup> . . . .
- [<sup>F21</sup>(da) Schedule 15, 16 or 17 to the Civil Partnership Act 2004; or]
- [<sup>F20</sup>(dd) Schedule 1 to the Children (Northern Ireland) Order 1995;<sup>F22</sup> . . . ]
- (e) any other prescribed statutory provision,
- and includes any order varying or reviving such an order.

**Annotations:**

**F1** 1998 NI 10

**F2** Words in [art. 10\(1\)](#) substituted (3.3.2003 for certain purposes otherwise prosp.) by [Child Support, Pensions and Social Security Act \(Northern Ireland\) 2000 \(c. 4\), ss. 1\(2\)\(a\), 68\(2\); S.R. 2003/53, art. 3\(1\), Sch.](#)

- F3** Words in art. 10(1) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 11**; S.R. 2003/53, art. 3(1), **Sch.**
- F4** Words in art. 10(1) inserted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) (N.I.), ss. 25, 68(2)(a), Sch. 3 para. 14(a); S.R. 2003/53, art. 3(1), **Sch.**
- F5** Words in art. 10(1) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), **ss. 1(2)(b)**, 68(2); S.R. 2003/53, art. 3(1), **Sch.**
- F6** Words in art. 10(2) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), **ss. 1(2)(b)**, 68(2); S.R. 2003/53, art. 3(1), **Sch.**
- F7** Words in art. 10(3) inserted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) (N.I.), ss. 25, 68(2)(a), Sch. 3 para. 14(b); S.R. 2003/53, art. 3(1), **Sch.**
- F8** Words in art. 10(3) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 11**; S.R. 2003/53, art. 3(1), **Sch.**
- F9** Art. 10(3A) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) (N.I.), ss. 25, 68(2)(a), Sch. 3 para. 14(c); S.R. 2003/53, art. 3(1), **Sch.**
- F10** Words in art. 10(5) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 86(2); S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(a)
- F11** Words in art. 10(5)(a) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 11**; S.R. 2003/53, art. 3(1), **Sch.**
- F12** Art. 10(5A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 86(3); S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(a)
- F13** Words in art. 10(6)(a) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), **ss. 1(2)(a)**, 68(2); S.R. 2003/53, art. 3(1), **Sch.**
- F14** Art. 10(6)(b) substituted (3.3.2003 for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4) (N.I.), ss. 25, 68(2)(a), Sch. 3 para. 14(d); S.R. 2003/53, art. 3(1), **Sch.**
- F15** Words in art. 10(6)(c) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 25, 68(2), **Sch. 3 para. 11**; S.R. 2003/53, art. 3(1), **Sch.**
- F16** Words in art. 10(6)(c) substituted (3.3.2003 for certain purposes otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), **ss. 1(2)(a)**, 68(2); S.R. 2003/53, art. 3(1), **Sch.**
- F17** 1978 NI 15
- F18** 1980 NI 5
- F19** 1989 NI 4
- F20** 1995 NI 2
- F21** 2004 c.33
- F22** 2004 c.33

### Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Child Support (Northern Ireland) Order 1991. Any changes that have already been made by the team appear in the content and are referenced with annotations.

#### Changes and effects yet to be applied to :

- art. 10(1) words repealed by 2008 c. 10 (N.I.) Sch. 5
- art. 10(6)(b) word substituted by 2008 c. 10 (N.I.) Sch. 4 para. 1(4)
- art. 10(8)(a) words inserted by S.I. 2015/2006 (N.I.) Sch. 9 para. 1
- art. 10(8)(a) words repealed by S.I. 2015/2006 (N.I.) Sch. 12 Pt. 8

#### Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

- Order applied by S.R. 2014/191 reg. 7(1)
- Order applied in part (with modifications) by S.R. 2010/312 reg. 16 Sch. 2
- Order power to apply (with modifications) conferred by 2008 c. 10 (N.I.) s. 3(4)
- Order transfer of functions by S.I. 2010/976 Sch. 17 para. 42
- Order words substituted by 2009 c. 1 (N.I.) Sch. 6 para. 1(1)(a)
- Order words substituted by 2009 c. 1 (N.I.) Sch. 6 para. 1(1)(b)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 1 para. 9(1) Sch. 1 para. 9 renumbered as Sch. 1 para. 9(1) by 2008 c. 10 (N.I.) Sch. 1 para. 8(1)
- Sch. 1 para. 9(2) added by 2008 c. 10 (N.I.) Sch. 1 para. 8(4)
- Sch. 1 para. 5A and cross-heading inserted by 2008 c. 10 (N.I.) Sch. 1 para. 5(2)
- Sch. 1 para. 9(1)(za) inserted by 2008 c. 10 (N.I.) Sch. 1 para. 8(2)
- Sch. 1 para. 9(1)(ba) inserted by 2008 c. 10 (N.I.) Sch. 1 para. 8(3)
- Sch. 1 para. 5A(2) modified by S.R. 2012/428 reg. 3
- Sch. 1 para. 5A(2) modified by S.R. 2013/190 reg. 2
- art. 2(3) added by 2008 c. 10 (N.I.) Sch. 4 para. 1(3)
- art. 7(2A) inserted by S.I. 2015/2006 (N.I.) art. 127(2)(b)
- art. 11(2A) inserted by S.I. 2015/2006 (N.I.) art. 126(1)
- art. 11A inserted by S.I. 2015/2006 (N.I.) art. 128
- art. 16A(3A) inserted by 2008 c. 10 (N.I.) s. 27(1)
- art. 16A(3A) substituted by 2010 c. 13 (N.I.) s. 32(2)
- art. 16A(6) added by 2010 c. 13 (N.I.) s. 32(3)
- art. 22(1)(ba) inserted by 2008 c. 10 (N.I.) Sch. 4 para. 1(5)
- art. 22(2)(aa) inserted by 2008 c. 10 (N.I.) Sch. 4 para. 1(6)
- art. 22(2A)-(2C) inserted by S.I. 2015/2006 (N.I.) Sch. 11 para. 2
- art. 22(3A)-(3C) inserted by S.I. 2015/2006 (N.I.) Sch. 11 para. 3
- art. 22(5A) inserted by 2008 c. 10 (N.I.) Sch. 4 para. 1(7)
- art. 22(7A) inserted by 2008 c. 10 (N.I.) Sch. 4 para. 1(8)
- art. 28D(2A) (2B) inserted by 2008 c. 10 (N.I.) s. 10(2)
- art. 28F(4)(a) words repealed by 2008 c. 10 (N.I.) Sch. 5
- art. 29(3)(c) (ca) substituted for art. 29(3)(c) by 2010 c. 13 (N.I.) s. 31(2)
- art. 29(3A) inserted by 2010 c. 13 (N.I.) s. 31(3)
- art. 29(4)-(7) added by 2008 c. 10 (N.I.) s. 12
- art. 29(4)-(7) excluded by S.R. 2016/390 reg. 6(1)
- art. 31(8) (9) substituted for art. 31(8) by 2008 c. 10 (N.I.) s. 13
- art. 32A-32D inserted by 2008 c. 10 (N.I.) s. 14
- art. 32E-32K inserted by 2008 c. 10 (N.I.) s. 15
- art. 32G(1) restricted by SR 1992/390 reg. 25N (as inserted) by S.R. 2009/286 reg. 2
- art. 32H(2)(b) restricted by SR 1992/390 reg. 25N (as inserted) by S.R. 2009/286 reg. 2
- art. 32L inserted by 2008 c. 10 (N.I.) s. 16

- art. 32M 32N inserted by 2008 c. 10 (N.I.) s. 17
- art. 36B-36F inserted by 2008 c. 10 (N.I.) s. 18
- art. 36G-36O inserted by 2008 c. 10 (N.I.) s. 19
- art. 37(2A)-(2C) inserted by 2008 c. 10 (N.I.) s. 20(1)
- art. 37(10)-(10C) substituted for art. 37(10) by 2008 c. 10 (N.I.) s. 20(2)
- art. 37(12) added by 2008 c. 10 (N.I.) Sch. 4 para. 1(14)
- art. 37A(A1)-(A4) (1) substituted for art. 37A(1) by 2008 c. 10 (N.I.) s. 21(1)
- art. 37A(10)-(10C) substituted for art. 37A(10) by 2008 c. 10 (N.I.) s. 21(2)
- art. 37A(12) added by 2008 c. 10 (N.I.) Sch. 4 para. 1(17)
- art. 38A(5)(c) (d) repealed by 2008 c. 10 (N.I.) Sch. 4 para. 1(29)(a)
- art. 38C inserted by 2008 c. 10 (N.I.) s. 22
- art. 38D inserted by 2008 c. 10 (N.I.) s. 23
- art. 38E inserted by 2008 c. 10 (N.I.) s. 24
- art. 39(2)(g) added by 2008 c. 10 (N.I.) s. 28
- art. 40A inserted by 2008 c. 10 (N.I.) s. 29
- art. 41(4)(5) inserted by S.I. 2011/1484 Sch. 7 para. 22
- art. 45A inserted by 2008 c. 10 (N.I.) s. 25
- art. 45B 45C inserted by 2008 c. 10 (N.I.) s. 30
- art. 45D inserted by 2008 c. 10 (N.I.) s. 31
- art. 46(1A)-(1C) inserted by 2008 c. 10 (N.I.) Sch. 4 para. 1(19)
- art. 47A inserted by 2008 c. 10 (N.I.) s. 32
- art. 47A(6) inserted by S.I. 2015/2006 (N.I.) Sch. 11 para. 4
- art. 48(2B) inserted by 2008 c. 10 (N.I.) Sch. 4 para. 1(22)

### **Commencement Orders yet to be applied to the The Child Support (Northern Ireland) Order 1991**

Commencement Orders bringing legislation that affects this Order into force:

- S.I. 2009/479 art. 2-6 commences (2008 c. 22)
- S.I. 2009/1604 art. 2 commences (2005 c. 4)
- S.I. 2010/987 art. 2 commences (2008 c. 22)
- S.R. 2008/276 art. 2 commences (2007 c. 2 (N.I.))
- S.R. 2008/291 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2008/399 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2008/402 art. 2 commences (2000 c. 4 (N.I.))
- S.R. 2008/419 art. 2 3 commences (2008 c. 10 (N.I.))
- S.R. 2008/489 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2009/216 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2009/380 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2010/370 art. 2 Sch. commences (S.I. 2007/916 (N.I.))
- S.R. 2010/416 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2012/423 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2012/424 art. 2 commences (2010 c. 13 (N.I.))
- S.R. 2012/440 art. 2 3 commences (2008 c. 10 (N.I.))
- S.R. 2013/201 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2013/276 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2014/138 art. 2 commences (2000 c. 4 (N.I.))
- S.R. 2015/57 art. 2 commences (2008 c. 10 (N.I.))
- S.R. 2016/215 art. 2 3 commences (S.I. 2015/2006 (N.I.))