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STATUTORY INSTRUMENTS

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**1991 No. 2628**

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

*Miscellaneous and supplemental*

**Failure to comply with obligations imposed by Article 9**

**43.**—(1) This Article applies where any person (“the parent”)—

- (a) fails to comply with a requirement imposed on the parent by the Department under Article 9(1); or
- (b) fails to comply with any regulation made under Article 9(9).

(2) A child support officer may serve written notice on the parent requiring the parent, before the end of the specified period, either to comply or to give him reasons for failing to do so.

(3) When the specified period has expired, the child support officer shall consider whether, having regard to any reasons given by the parent, there are reasonable grounds for believing that, if the parent were to be required to comply, there would be a risk of the parent or of any children living with the parent suffering harm or undue distress as a result of complying.

(4) If the child support officer considers that there are such reasonable grounds, he shall—

- (a) take no further action under this Article in relation to the failure in question; and
- (b) notify the parent, in writing, accordingly.

(5) If the child support officer considers that there are no such reasonable grounds, he may give a reduced benefit direction with respect to the parent.

(6) Where the child support officer gives a reduced benefit direction he shall send a copy of it to the parent.

(7) Any person who is aggrieved by a decision of a child support officer to give a reduced benefit direction may appeal to a child support appeal tribunal against that decision.

(8) Articles 22(2) to (4) and 23 shall apply in relation to appeals under paragraph (7) as they apply in relation to appeals under Article 22.

(9) A reduced benefit direction shall take effect on such date as may be specified in the direction.

(10) Reasons given in response to a notice under paragraph (2) may be given either in writing or orally.

(11) In this Article—

“comply” means to comply with the requirement or with the regulation in question;

“reduced benefit direction” means a direction, binding on the adjudication officer, that the amount payable by way of any relevant benefit to, or in respect of, the parent concerned be reduced by such amount, and for such period, as may be prescribed;

“relevant benefit” means income support, family credit or any other benefit of a kind prescribed for the purposes of Article 9; and

“specified”, in relation to any notice served under this Article, means specified in the notice; and the period to be specified shall be determined in accordance with regulations made by the Department.

### **Fees**

**44.**—(1) The Department may by regulations provide for the payment, by the absent parent or the person with care (or by both), of such fees as may be prescribed in cases where the Department takes any action under Article 7 or 9.

(2) Regulations made under this Article—

- (a) may require any information which is needed for the purpose of determining the amount of any such fee to be furnished, in accordance with the regulations, by such person as may be prescribed;
- (b) shall provide that no such fees shall be payable by any person to or in respect of whom income support, family credit or any other benefit of a prescribed kind is paid; and
- (c) may, in particular, make provision with respect to the recovery by the Department of any fees payable under the regulations.

### **Conduct of proceedings**

**45.** Any person authorised by the Department for the purposes of this Article may, although not of counsel or a solicitor, prosecute or conduct before a court of summary jurisdiction any proceedings under this Order.

### **Unauthorised disclosure of information**

**46.**—(1) Any person who is, or has been, employed in employment to which this Article applies is guilty of an offence if, without lawful authority, he discloses any information which—

- (a) was acquired by him in the course of that employment; and
- (b) relates to a particular person.

(2) It is not an offence under this Article—

- (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or
- (b) to disclose information which has previously been disclosed to the public with lawful authority.

(3) It is a defence for a person charged with an offence under this Article to prove that at the time of the alleged offence—

- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
- (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(4) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(5) This Article applies to employment as—

- (a) the Chief Child Support Officer;

- (b) any other child support officer;
  - (c) any clerk to, or other officer of, a child support appeal tribunal;
  - (d) any member of the staff of such a tribunal;
  - (e) a civil servant in connection with the carrying out of any functions under this Order, and to employment of any other kind which is prescribed for the purposes of this Article.
- (6) For the purposes of this Article a disclosure is to be regarded as made with lawful authority if, and only if, it is made—
- (a) by a civil servant in accordance with his official duty; or
  - (b) by any other person either—
    - (i) for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the responsible person; or
    - (ii) to, or in accordance with an authorisation duly given by, the responsible person;
  - (c) in accordance with any statutory provision or order of a court;
  - (d) for the purpose of instituting, or otherwise for the purposes of, any proceedings before a court or before any tribunal or other body or person mentioned in this Order; or
  - (e) with the consent of the appropriate person.
- (7) “The responsible person” means—
- (a) the Lord Chancellor;
  - (b) the Department;
  - (c) any person authorised by the Lord Chancellor, or the Department, for the purposes of this paragraph; or
  - (d) any other prescribed person, or person falling within a prescribed category.
- (8) “The appropriate person” means the person to whom the information in question relates, except that if the affairs of that person are being dealt with—
- (a) under a power of attorney;
  - (b) by a controller appointed under Article 101 of the Mental Health (Northern Ireland) Order 1986(1);
  - (c) by a mental health appointee, that is to say—
    - (i) a person directed or authorised as mentioned in sub-paragraph (a) of rule 38(1) of Order 109 of the Rules of the Supreme Court (Northern Ireland) 1980(2);
    - (ii) a controller ad interim appointed under sub-paragraph (b) of that rule;
- the appropriate person is the attorney, controller or appointee (as the case may be) or, in a case falling within sub-paragraph (a), the person to whom the information relates.

### **Supplementary powers to make regulations**

- 47.**—(1) The Department may by regulations make such incidental, supplemental and transitional provision as it considers appropriate in connection with any provision made by or under this Order.
- (2) The regulations may, in particular, make provision—
- (a) as to the procedure to be followed with respect to—
    - (i) the making of applications for maintenance assessments;

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(1) 1986 NI 4  
(2) SR 1980 No. 346

- (ii) the making, cancellation or refusal to make maintenance assessments;
  - (iii) reviews under Articles 18 to 21;
  - (b) extending the categories of case to which Article 20 or 21 applies;
  - (c) as to the date on which an application for a maintenance assessment is to be treated as having been made;
  - (d) for attributing payments made under maintenance assessments to the payment of arrears;
  - (e) for the adjustment, for the purpose of taking account of the retrospective effect of a maintenance assessment, of amounts payable under the assessment;
  - (f) for the adjustment, for the purpose of taking account of overpayments or under payments of child support maintenance, of amounts payable under a maintenance assessment;
  - (g) as to the evidence which is to be required in connection with such matters as may be prescribed;
  - (h) as to the circumstances in which any official record or certificate is to be conclusive evidence;
  - (i) with respect to the giving of notices or other documents;
  - (j) for the rounding up or down of any amounts calculated, estimated or otherwise arrived at in applying any provision made by or under this Order.
- (3) No power to make regulations conferred by any other provision of this Order shall be taken to limit the powers given to the Department by this Article.

### **Regulations and orders**

**48.**—(1) Any regulations or any order made by the Lord Chancellor under this Order (except an order made under Article 1(2)) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946(3) shall apply accordingly.

(2) A statutory rule containing (whether alone or with other provisions) regulations made under Article 7(7), 8(3), 9(1), (9) or (10), 14(2), 38(2), (3) or (4), 39, 40(1), 43 or 44 or Part I of Schedule 1 shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(3) The following statutory rules—

- (a) any regulations made by the Department under this Order (except regulations to which paragraph (2) applies); and
- (b) any order made by the Department under this Order (except an order made under Article 1(2));

shall be subject to negative resolution.

(4) Any power to make a statutory rule shall be exercisable so to provide for a person to exercise a discretion in dealing with any matter.

### **Co-ordination with Great Britain**

**49.**—(1) The Department may make arrangements with the Secretary of State with a view to securing, to the extent allowed for in the arrangements, that—

- (a) the provision made by or under this Order (“the provision made for Northern Ireland”); and
- (b) the provision made by or under the Child Support Act 1991<sup>(4)</sup> (“the provision made for Great Britain”),

provide for a single system within the United Kingdom.

(2) The Department may make regulations for giving effect to any such arrangements.

(3) The regulations may, in particular—

- (a) adapt legislation (including subordinate legislation) for the time being in force in Northern Ireland so as to secure its reciprocal operation with the provision made for Great Britain; and
- (b) make provision to secure that acts, omissions and events which have any effect for the purposes of the provision made for Great Britain have a corresponding effect for the purposes of the provision made for Northern Ireland.

### **Application to Crown**

**50.**—(1) The power of the Department to make regulations under Article 16 requiring prescribed persons to furnish information may be exercised so as to require information to be furnished by persons employed in the service of the Crown or otherwise in the discharge of Crown functions.

(2) In such circumstances, and subject to such conditions, as may be prescribed, an inspector appointed under Article 17 may enter any Crown premises for the purpose of exercising any powers conferred on him by that Article.

(3) Where such an inspector duly enters any Crown premises for those purposes, Article 17 shall apply in relation to persons employed in the service of the Crown or otherwise in the discharge of Crown functions as it applies in relation to other persons.

(4) Where a liable person is in the employment of the Crown, a deduction from earnings order may be made under Article 31 in relation to that person; but in such a case paragraph (8) of Article 32 shall apply only in relation to the failure of that person to comply with any requirement imposed on him by regulations made under Article 32.

### **Amendments, etc.**

**51.**—(1) The Lord Chancellor or the Department may by order make such amendments or repeals in, or such modifications of, such statutory provisions as may be specified in the order, as appear to the Lord Chancellor or the Department to be necessary or expedient in consequence of any provision made by or under this Order (including any provision made by virtue of Article 1(3)).

(2) Until Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991<sup>(5)</sup> comes into operation, paragraph 1(1) of Schedule 3 shall have effect with the omission of “and disability appeal tribunals” and the insertion, after “social security appeal tribunals”, of “and”.

(3) The consequential amendments set out in Schedule 5 shall have effect.

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(4) 1991 c. 48  
(5) 1991 NI 17