STATUTORY INSTRUMENTS

1995 No. 2702

The Child Support (Northern Ireland) Order 1995

Miscellaneous

Deferral of right to apply for maintenance assessment

12.—(1) In Article 7 of the Order of 1991 (right of person with care or absent parent to apply for maintenance assessment), at the end there shall be inserted—

"(10) No application may be made at any time under this Article with respect to a qualifying child or any qualifying children if—

(a) there is in force a written maintenance agreement made before 5th April 1993, or a maintenance order, in respect of that child or those children and the person who is, at that time, the absent parent; or

(b) benefit is being paid to, or in respect of, a parent with care of that child or those children.

(11) In paragraph (10) "benefit" means any benefit which is mentioned in, or prescribed by regulations under, Article 9(1)."

[F1](2) In Article 10 of the Order of 1991 (role of the courts with respect to maintenance for children), after paragraph (3) there shall be inserted—

"(3A) In any case in which Article 7(10) prevents the making of an application for a maintenance assessment, and—

(a) no application has been made for a maintenance assessment under Article 9, or

(b) such an application has been made but no maintenance assessment has been made in response to it, paragraph (3) shall have effect with the omission of the word "vary"."

(3) In Article 11 of the Order of 1991 (maintenance agreements), at the beginning of paragraph (3) there shall be inserted "Subject to Article 7(10)(a)," and after paragraph (5) there shall be inserted—

"(6) In any case in which Article 7(10) prevents the making of an application for a maintenance assessment, and—

(a) no application has been made for a maintenance assessment under Article 9, or

(b) such an application has been made but no maintenance assessment has been made in response to it, paragraph (5) shall have effect with the omission of sub-paragraph (b)."

[F1](4) The Department may by order repeal any of the provisions of this Article.

(5) Article 7(10) of the Order of 1991 shall not apply in relation to a maintenance order made in the circumstances mentioned in paragraph (7) or (8) of Article 10 of the Order of 1991.

(6) The Department may by regulations make provision for Article 7(10) of the Order of 1991 not to apply in relation to such other cases as may be prescribed.

(7) Part I of the Schedule to the Child Support (1991 Order) (Commencement No. 3 and Transitional Provisions) Order (Northern Ireland) 1992[F2] (phased take-on of certain cases) is hereby revoked.

(8) At any time before 7th April 1997, neither Article 10(3), nor Article 11(5)(b), of the Order of 1991 shall apply in relation to any case which fell within paragraph 4(2) of the Schedule to the Order of 1992 (pending cases during the transitional period set by that order).

F1 prosp. in pt. rep. by 2000 c. 4 (NI)
F2 SR 1992 No. 467

[F3]Non-referral of applications for maintenance assessments

13. In Article 13 of the Order of 1991, after paragraph (1) (referral of application for maintenance assessment to child support officer) there shall be inserted—

"(1A) Where—

(a) an application for a maintenance assessment is made under Article 9, but

(b) the Department becomes aware, before referring the application to a child support officer, that the claim mentioned in paragraph (1) of that Article has been disallowed or withdrawn, the Department shall, subject of paragraph (1B), treat the application as if it had not been made.

(1B) If it appears to the Department that paragraph (10) of Article 7 would not have prevent the parent with care concerned from making an application for a maintenance assessment under that Article the Department shall—

(a) notify that parent of the effect of this paragraph, and

(b) if, before the end of the period of 28 days beginning with the day on which notice was sent to that parent, that parent asks the Department to do so, treat the application as having been made not under Article 9 but under Article 7.

(1C) Where the application is not preserved under paragraph (1B) (and so is treated as not having been made) the Department shall notify—

(a) the parent with care concerned; and

(b) the absent parent (or alleged absent parent), where it appears to him that that person is aware of the application."

F3 prosp. in pt. rep. by 2000 c. 4 (NI)

Fees for scientific tests

14. After Article 27 of the Order of 1991 there shall be inserted—

"**Recovery of fees for scientific tests**

27A.—(1) This Article applies in any case where—

(a) an application for a maintenance assessment has been made or a maintenance assessment is in force;

(b) scientific tests have been carried out (otherwise than under a direction) in relation to bodily samples obtained from a person who is alleged to be a parent of a child with respect to whom the application or assessment is made;

(c) the results of the tests do not exclude the alleged parent from being one of the child's parents; and

(d) one of the conditions set out in paragraph (2) is satisfied.

(2) The conditions are that—

(a) the alleged parent does not deny that he is one of the child's parents; or

(b) in proceedings under Article 28, a court has made a declaration that the alleged parent is a parent of the child in question.

(3) In any case to which this Article applies, any fee paid by the Department in connection with scientific tests may be recovered by it from the alleged parent as a debt due to the Crown.

(4) In this Article—

"bodily sample" means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;

"direction" means a direction given by a court under Article 8 of the Family Law Reform (Northern Ireland) Order 1977[F4] (tests to determine paternity); and

"scientific tests" means scientific tests made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.

(5) Any sum recovered by the Department under this Article shall be paid by the Department into the Consolidated Fund."

F4 1977 NI 17

Art. 15 rep. by 2000 c. 4 (NI)

Child support maintenance: arrears and overpayments

16. In the Order of 1991, after Article 38 there shall be inserted—

"**Arrears: alternative to interest payments**

38A.—(1) The Department may by regulations make provision for the payment by absent parents who are in arrears with payments of child support maintenance of sums determined in accordance with the regulations.

(2) A sum payable under any such regulations is referred to in this Article as an "additional sum".

(3) Any liability of an absent parent to pay an additional sum shall not affect any liability of his to pay the arrears of child support maintenance concerned.

(4) The Department shall exercise its powers under this Article and those under Article 38(3) in such a way as to ensure that no absent parent is liable to pay both interest and an additional sum in respect of the same period (except by reference to different maintenance assessments).

(5) Regulations under paragraph (1) may, in particular, make provision—

(a) as to the calculation of any additional sum;

(b) as to the time at which, and person to whom, any additional sum shall be payable;

(c) as to the circumstances in which, in a case where the Department has been acting under Article 9, any additional sum may be retained by it;

(d) for the Department, in a case where it has been acting under Article 9 and in such circumstances as may be prescribed, to waive any additional sum (or part of any additional sum).

(6) The provisions of this Order with respect to—

(a) the collection of child support maintenance;

(b) the enforcement of any obligation to pay child support maintenance,

shall apply equally to additional sums payable by virtue of regulations made under this Article.

(7) Any sum retained by the Department by virtue of this Article shall be paid by the Department into the Consolidated Fund.

Repayment of overpaid child support maintenance

38B.—(1) This Article applies where it appears to the Department that an absent parent has made a payment by way of child support maintenance which amounts to an overpayment by him of that maintenance and that—

(a) it would not be possible for the absent parent to recover the amount of overpayment by way of an adjustment of the amount payable under a maintenance assessment; or

(b) it would be inappropriate to rely on an adjustment of the amount payable under a maintenance assessment as the means of enabling the absent parent to recover the amount of the overpayment.

(2) The Department may make such payment to the absent parent by way of reimbursement, or partial reimbursement, of the overpayment as the Department considers appropriate.

(3) Where the Department has made a payment under this Article the Department may, in such circumstances as may be prescribed, require the relevant person to pay to it the whole, or a specified proportion, of the amount of that payment.

(4) Any such requirement shall be imposed by giving the relevant person a written demand for the amount which the Department wishes to recover from him.

(5) Any sum which a person is required to pay to the Department under this Article shall be recoverable from him by the Department as a debt due to the Crown.

(6) The Department may by regulations make provision in relation to any case in which—

(a) one or more overpayments of child support maintenance are being reimbursed to the Department by the relevant person; and

(b) child support maintenance has continued to be payable by the absent parent concerned to the person with care concerned, or again becomes so payable.

(7) For the purposes of this Article any payments made by a person under a maintenance assessment which was not validly made shall be treated as overpayment of child support maintenance made by an absent parent.

(8) In this Article "relevant person", in relation to an overpayment, means the person with care to whom the overpayment was made.

(9) Any sum recovered by the Department under this Article shall be paid by the Department into the Consolidated Fund."

Art. 17 rep. by 2000 c. 4 (NI)

Payment of benefit where maintenance payments collected by the Department

18. In the Social Security Administration (Northern Ireland) Act 1992, after section 72 (income support and other payments), there shall be inserted—

"**Payment of benefit where maintenance payments collected by Department.**

72A.—(1) This section applies where—

(a) a person ("the claimant") is entitled to a benefit to which this section applies;

(b) the Department is collecting periodical payments of child or spousal maintenance made in respect of the claimant or a member of the claimant's family; and

(c) the inclusion of any such periodical payment in the claimant's relevant income would, apart from this section, have the effect of reducing the amount of the benefit to which the claimant is entitled.

(2) The Department may, to such extent as it considers appropriate, treat any such periodical payment as not being relevant income for the purposes of calculating the amount of benefit to which the claimant is entitled.

(3) The Department may, to the extent that any periodical payment collected by it is treated as not being relevant income for those purposes, retain the whole or any part of that payment.

(4) Any sum retained by the Department under subsection (3) shall be paid by the Department into the Consolidated Fund.

(5) In this section—

"child" means a person under the age of 16.

"child maintenance", "spousal maintenance" and "relevant income" have such meaning as may be prescribed;

"family" means—

(a) a married or unmarried couple;

(b) a married or unmarried couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;

(c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

"married couple" means a man and woman who are married to each other and are members of the same household; and

"unmarried couple" means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances.

(6) For the purposes of this section, the Department may by regulations make provision as to the circumstances in which—

(a) persons are to be treated as being or not being members of the same household;

(b) one person is to be treated as responsible or not responsible for another.

(7) The benefits to which this section applies are income support, an income-based jobseeker's allowance and such other benefits (if any) as may be prescribed."

Changes to legislation:
The Child Support (Northern Ireland) Order 1995, Miscellaneous is up to date with all changes known to be in force on or before 14 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- Instrument am. (GB) by S.I. 1997/645 reg.2(1)Sch. paras.24 of memorandim
- power to am. (prosp.) by 1998 c. 47 s.87

Commencement Orders yet to be applied to the The Child Support (Northern Ireland) Order 1995
Commencement Orders bringing legislation that affects this Order into force:

- S.R. 2009/216 art. 2 commences (2008 c. 10 (N.I.))