STATUTORY INSTRUMENTS

1998 No. 1506

The Social Security (Northern Ireland) Order 1998

PART II

DECISIONS AND APPEALS

CHAPTER III

CHILD SUPPORT DECISIONS AND APPEALS

Child support: cases of error

44. After Article 28ZB of the Child Support Order there shall be inserted the following Articles—

"Cases of error

Restrictions on liability in certain cases of error

28ZC.—(1) Subject to paragraph (2), this Article applies where—

(a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court ("the relevant determination") is that the adjudicating authority's decision out of which the appeal arose was erroneous in point of law; and

(b) after the date of the relevant determination a decision falls to be made by the Department in accordance with that determination (or would, apart from this Article, fall to be so made)—

(i) with respect to an application for a maintenance assessment (made after the commencement date);

(ii) as to whether to revise, under Article 18, a decision (made after the commencement date) with respect to such an assessment; or

(iii) on an application under Article 19 (made after the commencement date) for a decision with respect to such an assessment to be superseded.

(2) This Article does not apply where the decision of the Department mentioned in paragraph (1)(b)—

(a) is one which, but for Article 28ZA(2)(a), would have been made before the date of the relevant determination; or

(b) is one made in pursuance of Article 28ZB(3) or (5).

(3) In so far as the decision relates to a person's liability in respect of a period before the date of the relevant determination, it shall be made as if the adjudicating authority's decision had been found by the Commissioner or court not to have been erroneous in point of law.

(4) Paragraph (1)(a) shall be read as including a case where—

(a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and

(b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.

(5) It is immaterial for the purposes of paragraph (1)—

(a) where such a decision as is mentioned in sub-paragraph (b)(i) falls to be made; or

(b) where such a decision as is mentioned in sub-paragraph (b)(ii) or (iii) falls to be made on an application under Article 18 or (as the case may be) Article 19,

whether the application was made before or after the date of the relevant determination.

(6) In this Article—

"adjudicating authority" means the Department or a child support officer;

"the commencement date" means the date of the coming into operation of Article 44 of the Social Security (Northern Ireland) Order 1998;

"the court" means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in England and Wales, the House of Lords or the Court of Justice of the European Community.

(7) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this Article in accordance with any regulations made for that purpose.

(8) Regulations made under paragraph (7) may include provision—

(a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Child Support Commissioner; or

(b) for a determination of a lower court or a Child Support Commissioner to be treated as if it had been made on the date of a determination of a higher court.

Correction of errors and setting aside of decisions

28ZD.—(1) Regulations may make provision with respect to—

(a) the correction of accidental errors in any decision or record of a decision given under this Order; and

(b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—

(i) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative or was not received at an appropriate time by the person who gave the decision; or

(ii) a party to the proceedings or a party's representative was not present at a hearing related to the proceedings.

(2) Nothing in paragraph (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that paragraph.".