

**1992 No. 342**

**FAMILY LAW**

**CHILD SUPPORT**

**The Child Support (Arrears, Interest and Adjustment  
of Maintenance Assessments) Regulations  
(Northern Ireland) 1992**

*Made* . . . . . 30th July 1992

*Coming into operation* . . . . . 5th April 1993

**ARRANGEMENT OF REGULATIONS**

**PART I**

**GENERAL**

1. Citation, commencement and interpretation

**PART II**

**ARREARS OF CHILD SUPPORT MAINTENANCE AND INTEREST ON ARREARS**

2. Applicability of provisions as to arrears and interest and arrears notices
3. Liability to make payments of interest with respect to arrears
4. Circumstances in which no liability to pay interest arises
5. Payment of arrears by agreement
6. Rate of interest and calculation of interest
7. Receipt and retention of interest paid
8. Retention of recovered arrears of child support maintenance by the Department

**PART III**

**ATTRIBUTION OF PAYMENTS AND ADJUSTMENT OF THE AMOUNT PAYABLE  
UNDER A MAINTENANCE ASSESSMENT**

9. Attribution of payments
10. Adjustment of the amount payable under a maintenance assessment

## MISCELLANEOUS

11. Notifications following an adjustment under the provisions of regulation 10
12. Review of adjustments under regulation 10 or of the calculation of arrears or interest
13. Procedure and notifications on applications and reviews under regulation 12
14. Non-disclosure of information to third parties
15. Applicability of regulations 1(6) and 51 to 54 of the Maintenance Assessment Procedure Regulations

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 38(2), (3) and (4) and 47 of the Child Support (Northern Ireland) Order 1991(a) and of all other powers enabling it in that behalf hereby makes the following regulations:

## PART I

## GENERAL

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 and shall come into operation on 5th April 1993.

(2) In these regulations—

“the Order” means the Child Support (Northern Ireland) Order 1991;

“absent parent” includes a person treated as an absent parent by virtue of regulation 20 of the Maintenance Assessments and Special Cases Regulations;

“arrears” means arrears of child support maintenance;

“arrears of child support maintenance” is to be construed in accordance with Article 38(1) and (2) of the Order;

“arrears notice” has the meaning prescribed in regulation 2;

“due date” has the meaning prescribed in regulation 3;

“Maintenance Assessments and Special Cases Regulations” means the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(b);

“Maintenance Assessment Procedure Regulations” means the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(c);

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(a) S.I. 1991/2628 (N.I. 23)

(b) S.R. 1992 No. 341

(c) S.R. 1992 No. 340

“parent with care” means a person who, in respect of the same child or children, is both a parent and a person with care;

“relevant person” has the same meaning as in regulation 1(2) of the Maintenance Assessment Procedure Regulations.

## PART II

### ARREARS OF CHILD SUPPORT MAINTENANCE AND INTEREST ON ARREARS

#### *Applicability of provisions as to arrears and interest and arrears notices*

2.—(1) The provisions of paragraphs (2) to (4) and regulations 3 to 9 shall apply where—

(a) a case falls within Article 38(1) of the Order; and

(b) the Department is arranging for the collection of child support maintenance under Article 29 of the Order.

(2) Where the Department is considering taking action with regard to a case falling within paragraph (1), the Department shall serve a notice (an “arrears notice”) on the absent parent.

(3) An arrears notice shall—

(a) itemize the payments of child support maintenance due and not paid;

(b) set out in general terms the provisions as to arrears and interest contained in this regulation and regulations 3 to 9; and

(c) request the absent parent to make payment of all outstanding arrears.

(4) Where an arrears notice has been served under paragraph (2), no duty to serve a further notice under that paragraph shall arise in relation to further arrears unless those further arrears have arisen after an intervening continuous period of not less than 12 weeks during the course of which all payments of child support maintenance due from the absent parent have been paid on time in accordance with regulations made under Article 29 of the Order.

#### *Liability to make payments of interest with respect to arrears*

3.—(1) Subject to paragraph (2) and regulations 4 and 5, interest shall be payable with respect to any amount of child support maintenance due in accordance with a maintenance assessment and not paid by the date specified by the Department in accordance with regulations made under Article 29 of the Order (the “due date”), and shall be payable in respect of the period commencing on that day and terminating on the date that amount is paid.

(2) Subject to paragraph (3), interest with respect to arrears shall only be payable if the Department has served an arrears notice in relation to those arrears, and shall not be payable in respect of any period terminating on a date earlier than 14 days prior to the date the arrears notice is served on the absent parent.

(3) Where the Department has served an arrears notice, the provisions of paragraph (2) shall not apply in relation to further arrears unless the conditions mentioned in regulation 2(4) are satisfied.

(4) Subject to paragraph (6), where, following a review under Article 20 or 21 of the Order or an appeal under Article 22 of the Order, a fresh maintenance assessment is made with retrospective effect, interest in respect of the relevant retrospective period shall be payable with respect to the arrears calculated by reference to that fresh assessment.

(5) The provisions of paragraph (4) shall apply to a fresh assessment following a review under Article 20 or 21 of the Order or an appeal under Article 22 of the Order prior to any adjustment of that assessment under the provisions of regulation 10.

(6) For the purposes of paragraph (4), where the review under Article 20 or 21 of the Order or an appeal under Article 22 of the Order results in an increased assessment, and arrears in relation to that assessment arise, no interest shall be payable with respect to the arrears relating to the additional maintenance payable under that assessment in respect of any period prior to the date the absent parent is notified of the increased assessment.

#### *Circumstances in which no liability to pay interest arises*

4.—(1) An absent parent shall not be liable to make payments of interest with respect to arrears in respect of any period if the conditions set out in paragraph (2) are satisfied in relation to that period.

(2) The conditions referred to in paragraph (1) are—

- (a) the absent parent did not know, and could not reasonably have been expected to know, of the existence of the arrears; or
- (b) the arrears have arisen solely in consequence of an operational or administrative error on the part of the Department or a child support officer.

#### *Payment of arrears by agreement*

5.—(1) The Department may at any time enter into an agreement in writing with an absent parent (an “arrears agreement”) for the absent parent to pay all outstanding arrears.

(2) An arrears agreement shall specify the dates on which the payments of arrears shall be made and the amount to be paid on each such date.

(3) If an arrears agreement is entered into within 28 days of the due date, and the terms of that agreement are adhered to by the absent parent, there shall be no liability to make payments of interest under the provisions of regulation 3 with respect to the arrears in relation to which the arrears agreement was entered into.

(4) If an arrears agreement is entered into later than 28 days after the due date and the terms of that agreement are adhered to by the absent parent, there shall, with respect to the arrears in relation to which that agreement was entered into, be no liability to make payments of interest in respect of any period commencing on the date that agreement was entered into.

(5) The Department may at any time enter into a further arrears agreement with the absent parent in relation to all arrears then outstanding.

(6) Where the terms of any arrears agreement are not adhered to by an absent parent, interest shall be payable with respect to arrears in accordance with the provisions of regulation 3.

(7) It shall be an implied term of any arrears agreement that any payment of child support maintenance that becomes due whilst that agreement is in force shall be made by the due date.

#### *Rate of interest and calculation of interest*

6.—(1) The rate of interest payable where liability to pay interest under regulation 3 arises shall be one per centum per annum above the median base rate prevailing from time to time calculated on a daily basis.

(2) Interest shall be payable only with respect to arrears of child support maintenance and shall not be payable with respect to any interest that has already become due.

(3) For the purposes of paragraph (1)—

(a) the median base rate, in relation to a year or part of a year, is the base rate quoted by the reference banks; or, if different base rates are quoted, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

(b) the reference banks are the seven largest institutions—

(i) authorised by the Bank of England under the Banking Act 1987(a), and

(ii) incorporated in and carrying on a deposit-taking business within the United Kingdom,

which quote a base rate in sterling; and

(c) the size of an institution is to be determined by reference to its total consolidated gross assets in sterling, as shown in its audited end-year accounts last published.

(4) In paragraph (3)(c), the reference to the consolidated gross assets of an institution is a reference to the consolidated gross assets of that institution together with any subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986(b)).

#### *Receipt and retention of interest paid*

7.—(1) Payments of interest with respect to arrears shall be made in accordance with regulations under Article 29 of the Order as though they were payments of child support maintenance payable in accordance with a maintenance assessment, and shall be made within 14 days of being demanded by the Department.

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(a) 1987 c. 22

(b) S.I. 1986/1032 (N.I. 16); Article 4 was substituted by Article 62 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))

(2) Subject to paragraph (3), where the Department has been authorised to recover child support maintenance under Article 9 of the Order and income support is paid to or in respect of the parent with care, interest with respect to arrears relating to the period during which income support is paid shall be payable to the Department and may be retained by it.

(3) Where a case falls within paragraph (2), but the Department considers that, if the absent parent had made payments of child support maintenance due from him in accordance with that assessment, the parent with care would not have been entitled to income support, any interest shall be payable to the parent with care.

(4) Where the child support maintenance payable under a maintenance assessment is payable to more than one person, any interest in respect of arrears under that assessment shall be apportioned in the same ratio as the child support maintenance that is payable, and the provisions of paragraphs (1) to (3) shall apply to each amount of interest so apportioned.

#### *Retention of recovered arrears of child support maintenance by the Department*

8. Where the Department recovers arrears from an absent parent and income support is paid to or in respect of the person with care, the Department may retain such amount of those arrears as is equal to the difference between the amount of income support that was paid to or in respect of the person with care and the amount of income support that it is satisfied would have been paid had the absent parent paid the child support maintenance due in accordance with the maintenance assessment in force by the due dates.

### PART III

#### ATTRIBUTION OF PAYMENTS AND ADJUSTMENT OF THE AMOUNT PAYABLE UNDER A MAINTENANCE ASSESSMENT

##### *Attribution of payments*

9. Where a maintenance assessment is or has been in force and there are arrears of child support maintenance, the Department may attribute any payment of child support maintenance made by an absent parent to child support maintenance due as it thinks fit.

##### *Adjustment of the amount payable under a maintenance assessment*

10.—(1) Where a new or a fresh maintenance assessment has retrospective effect, the amount payable under that assessment may be adjusted by a child support officer for the purpose of taking account of the retrospective effect of the assessment by such amount as, subject to the provisions of paragraph (4), he considers appropriate in the circumstances of the case.

(2) Subject to paragraph (3), where the payments of child support maintenance have been overpayments or under-payments, the amount payable under a maintenance assessment may be adjusted by a child support officer for the purpose of taking account of such overpayments or

under-payments by such amount as, subject to the provisions of paragraph (5), he considers appropriate in the circumstances of the case.

(3) The provisions of paragraph (2) shall not apply to any case falling within Article 38 of the Order.

(4) Where a case falls within paragraph (1), the child support officer shall—

(a) in the case of a new assessment, not increase the amount payable under that assessment by an amount greater than 1.5 multiplied by that assessment;

(b) in the case of a fresh assessment, not adjust the amount payable under that assessment by an amount greater than 1.5 multiplied by the difference between the amount payable under the earlier assessment and the amount payable under the fresh assessment.

(5) Where a case falls within paragraph (2), the child support officer shall not adjust the amount payable under a maintenance assessment by an amount greater than 1.5 multiplied by the mean overpayment or the mean under-payment, as the case may be.

(6) For the purposes of paragraph (5), the mean overpayment or the mean under-payment shall be the total net overpayment or the total net under-payment divided by the number of occasions on which, in respect of the period being taken into account for the purposes of paragraph (2), there have been overpayments or, as the case may be, under-payments of child support maintenance.

#### PART IV

##### MISCELLANEOUS

###### *Notifications following an adjustment under the provisions of regulation 10*

11.—(1) Where a child support officer has, under the provisions of regulation 10, adjusted the amount payable under a maintenance assessment, he shall immediately notify the relevant persons, so far as that is reasonably practicable, of the amount and period of the adjustment, and the amount payable during the period of the adjustment.

(2) A notification under paragraph (1) shall include information as to the provisions of regulation 12(1) and regulation 13(1) in so far as it relates to time limits for an application for a review under regulation 12(1).

###### *Review of adjustments under regulation 10 or of the calculation of arrears or interest*

12.—(1) Where the amount payable under a maintenance assessment has been adjusted under the provisions of regulation 10, a relevant person may apply to the Department for a review of that adjustment as if it were a case falling within Article 20 of the Order and, subject to the modifications set out in paragraph (2), Article 20(5) to (9) and (11) of the Order shall apply to such a review.

(2) The modifications referred to in paragraph (1) are—

- (a) Article 20(6) of the Order shall have effect as if for “the refusal, assessment or cancellation in question” there is substituted “the adjustment of the amount payable under regulation 10 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992”;
- (b) Article 20(9) of the Order shall have effect as if for “a maintenance assessment or (as the case may be) a fresh maintenance assessment” there is substituted “a revised adjustment of the amount payable under regulation 10 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992”.

(3) Where there has been a calculation of arrears due under a maintenance assessment or a calculation of the interest payable with respect to arrears, a relevant person may apply to the Department for a review of that calculation as if it were a case falling within Article 20 of the Order and, subject to the modifications set out in paragraph (4), Article 20(5) to (9) and (11) of the Order shall apply to such a review.

(4) The modifications referred to in paragraph (3) are—

(a) Article 20(6) of the Order shall have effect as if—

- (i) for “the refusal, assessment or cancellation in question” there is substituted “the calculation of arrears due under a maintenance assessment or the calculation of the interest payable with respect to arrears”;

(ii) after “law” in Article 20(6)(c) of the Order there is inserted—  
“; or

(d) involved an arithmetical error”;

(b) Article 20(9) of the Order shall have effect as if for “a maintenance assessment or (as the case may be) a fresh maintenance assessment” there is substituted “a fresh calculation of the arrears due under a maintenance assessment or a fresh calculation of the interest payable with respect to arrears”.

(5) Where the amount payable under a maintenance assessment has been adjusted under the provisions of regulation 10 a child support officer may revise that adjustment if he is satisfied that one or more of the circumstances set out in Article 21(1)(a) to (c) of the Order apply to that adjustment.

(6) Where there has been a calculation of the arrears due under a maintenance assessment or a calculation of interest payable with respect to arrears, a child support officer may re-calculate the arrears or the interest if he is satisfied that one or more of the circumstances set out in Article 21(1)(a) to (c) of the Order apply or that there has been an arithmetical error in the calculation.

*Procedure and notifications on applications and reviews under regulation 12*

13.—(1) The provisions of regulations 24 to 26 of the Maintenance Assessment Procedure Regulations shall apply to an application for a review under regulation 12(1) or (3).



(2) Where a child support officer refuses an application for a review under regulation 12(1) or (3) on the grounds set out in Article 20(6) of the Order (as applied by regulation 12), he shall immediately notify the applicant, so far as that is reasonably practicable, and shall give the reasons for his refusal in writing.

(3) Where a child support officer adjusts the amount payable under a maintenance assessment following a review under regulation 12(1) or (5), he shall immediately notify the relevant persons, so far as that is reasonably practicable, of the amount and period of the adjustment, and the amount payable during the period of adjustment.

(4) Where a child support officer refuses to adjust the amount payable under a maintenance assessment following a review under regulation 12(1), he shall immediately notify the relevant persons, so far as that is reasonably practicable, of the refusal, and shall give the reasons for his refusal in writing.

(5) Where a child support officer has conducted a review under regulation 12(3), or has revised the calculation of the arrears due or the interest payable with respect to arrears following a review under regulation 12(6), he shall immediately notify the relevant persons, so far as that is reasonably practicable, of his decision.

(6) A notification under paragraphs (2) to (5) shall include information as to the provisions of Article 22 of the Order.

*Non-disclosure of information to third parties*

**14.** The provisions of regulation 10(3) of the Maintenance Assessment Procedure Regulations shall apply to any document given or sent under the provisions of regulation 11 or 13.

*Applicability of regulations 1(6) and 51 to 54 of the Maintenance Assessment Procedure Regulations*

**15.** Regulations 1(6) and 51 to 54 of the Maintenance Assessment Procedure Regulations shall apply to the provisions of these Regulations.

Sealed with the Official Seal of the Department of Health and Social Services on 30th July 1992.

(L.S.)

C. Davie

Assistant Secretary

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations make provision in relation to arrears of child support maintenance payable under the Child Support (Northern Ireland) Order 1991 ("the Order"), interest on such arrears, and the adjustment of maintenance assessments.

Regulation 1 contains interpretation provisions.

Regulations 2 and 3 provide for the service of an arrears notice where arrears of child support maintenance have arisen, and prescribe the circumstances where liability to make payments of interest with respect to arrears arises. Regulation 4 prescribes the circumstances in which no liability to pay interest arises.

Regulation 5 provides for the payment of arrears by agreement and contains provisions as to interest where such an agreement has been entered into.

Regulation 6 prescribes the rate of interest payable on arrears, and how interest is to be calculated.

Regulation 7 makes provision as to the payment of interest and for the retention of interest by the Department.

Regulation 8 prescribes circumstances where the Department may retain recovered arrears of child support maintenance.

Regulation 9 provides for the attribution of payments where there are arrears of child support maintenance.

Regulation 10 provides for the adjustment of amounts payable under a maintenance assessment, and regulation 11 makes provision in respect of notifications following such an adjustment.

Regulation 12 provides for reviews of adjustments under regulation 10 and of the calculation of arrears and of interest payable with respect to arrears. Regulation 13 makes provision as to procedure and notifications on applications and reviews under regulation 12.

Regulations 14 and 15 apply certain provisions of the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 to the provisions of these regulations.

Articles 38(2), (3) and (4) and 47 of the Order are the enabling provisions under which these regulations are made. They are brought into operation on 18th June 1992 by the Child Support (1991 Order) (Commencement No. 1) Order (Northern Ireland) 1992 (S.R. 1992 No. 278 (C. 13)).