

1993 No. 50

FAMILY LAW

CHILD SUPPORT

**The Child Support Appeal Tribunals (Procedure) Regulations
(Northern Ireland) 1993**

Made 9th February 1993

Coming into operation 5th April 1993

ARRANGEMENT OF REGULATIONS

1. Citation, commencement and interpretation
2. Service of notices or documents
3. Making an appeal or application and time limits
4. Lack of jurisdiction
5. Directions
6. Striking out of proceedings
7. Withdrawal of appeals and applications
8. Postponement
9. Representation of parties to the proceedings
10. Summoning of witnesses
11. Hearings
12. Adjournments
13. Decisions
14. Corrections
15. Setting aside
16. Provisions common to regulations 14 and 15
17. Confidentiality

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 23(2) and (3) and 47(1) of the Child Support (Northern Ireland) Order 1991(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:

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

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Support Appeal Tribunals (Procedure) Regulations (Northern Ireland) 1993 and shall come into operation on 5th April 1993.

(2) In these regulations—

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

“appropriate office” means either the Independent Tribunal Service, Child Support Appeal Tribunals, 2nd Floor Cleaver House, 3 Donegal Square North, Belfast BT1 3GA or the Independent Tribunal Service, Child Support Appeal Tribunals, 12-14 Dublin Road, Omagh, Co. Tyrone, BT78 1BR;

“chairman”, subject to paragraph (3), means a person nominated under paragraph 3 of Schedule 3 to the Order and includes the President and any full-time chairman;

“clerk to the tribunal” means a person appointed under paragraph 6 of Schedule 3 to the Order;

“Commissioner” means the Chief or any other Child Support Commissioner appointed under section 23 of the Child Support Act 1991(a);

“full-time chairman” means a full-time chairman of a child support appeal tribunal appointed under paragraph 4 of Schedule 3 to the Order;

“party to the proceedings” means—

(a) the person with care;

(b) the absent parent;

(c) the child support officer;

(d) any other person, who on an application made by him, appears to the chairman of the tribunal to be interested in the proceedings;

“President” has the meaning assigned to it in paragraph 1(1) of Schedule 3 to the Order;

“proceedings” means proceedings on an appeal or application to which these regulations apply; and

“tribunal” means a child support appeal tribunal constituted in accordance with Article 23 of the Order.

(3) Unless otherwise provided, where by these regulations anything is required to be done by, or any power is conferred on, a chairman, then—

(a) if that thing is to be done or the power is to be exercised at the hearing of an appeal or application, it shall be done or exercised by the chairman of the tribunal hearing the appeal or application; and

(b) otherwise, shall be done or exercised by a person who is eligible to be nominated to act as a chairman of a child support appeal tribunal under paragraph 3(2) of Schedule 3 to the Order.

Service of notices or documents

2.—(1) Where by any provision of the Order or of these regulations any notice or other document is required to be given or sent to the clerk to the tribunal that notice or document shall be treated as having been so given or sent on the day that it is received by the clerk to the tribunal.

(2) Where by any provision of the Order or of these regulations any notice or other document is required to be given or sent to any person other than the clerk to the tribunal that notice or document shall, if sent by post to that person's last known address, be treated as having been given or sent on the day that it was posted.

Making an appeal or application and time limits

3.—(1) An appeal to a tribunal under Article 22(1) of the Order or an application to a tribunal to set aside its decision under regulation 15 shall be by notice in writing signed by the person making it or by his representative where it appears to a chairman that he was unable to sign personally, or by a barrister or solicitor on his behalf.

(2) The notice shall be made or given by sending or delivering it to the clerk to the tribunal at the appropriate office.

(3) An appeal under Article 22(1) of the Order shall be brought within the period of 28 days beginning with the date on which notification of the decision in question was given or sent to the appellant.

(4) An application under regulation 15 shall be made within the period of 3 months beginning with the date when a copy of the record of the decision was given or sent to the applicant.

(5) In paragraphs (6) and (7) "the specified time" means the time specified in paragraph (3) or, as the case may be, paragraph (4).

(6) When an appeal or application is made after the specified time has expired, that time may for special reasons be extended by the chairman to the date of the making of the appeal or application.

(7) Any appeal or application made after the specified time has expired which does not include an application for an extension of time shall be deemed to include such an application, and if it appears to a chairman that an application for an extension of time does not state reasons for the appeal or application being made after the specified time the chairman may before determining it give the person making the application for an extension of time a reasonable opportunity to provide reasons.

(8) An application for an extension of time which has been refused may not be renewed, but any chairman may set aside a refusal if it appears to him just to do so on any of the grounds set out in regulation 15(1).

(9) In the case of an appeal the notice shall contain sufficient particulars of the decision under appeal to enable that decision to be identified.

(10) Any notice of appeal or application other than an application for an extension of time shall state the grounds on which it is made.

(11) If it appears to a chairman that the notice of appeal does not enable the decision under appeal to be identified or that the notice of appeal or

application does not state the grounds on which it is made the chairman may direct the person making it to provide such particulars as the chairman may reasonably require.

Lack of jurisdiction

4. When a chairman is satisfied that the tribunal does not have jurisdiction to entertain a purported appeal he may make a declaration to that effect and such declaration shall dispose of the purported appeal.

Directions

5. At any stage of the proceedings a chairman may either of his own motion or on a written application made to the clerk to the tribunal by any party to the proceedings give such directions as he may consider necessary or desirable for the just, effective and efficient conduct of the proceedings and may direct any party to provide such further particulars or to produce such documents as may reasonably be required.

Striking out of proceedings

6.—(1) Subject to paragraph (2), a chairman may, either of his own motion or on the application of any party to the proceedings, order that the appeal or application be struck out because of the failure of the appellant or applicant to comply with a direction under regulation 3(11) or 5 or to reply to an enquiry from the clerk to the tribunal about his availability to attend a hearing.

(2) Before making an order under paragraph (1) the chairman shall send notice to the person against whom it is proposed that any such order should be made and any other party to the proceedings giving each of them a reasonable opportunity to show cause why such an order should not be made.

(3) The chairman may, on application by any party to the proceedings made not later than one year beginning with the date of the order made under paragraph (1), give leave to reinstate any appeal or application which has been struck out in accordance with that order.

Withdrawal of appeals and applications

7.—(1) Any appeal to a tribunal may be withdrawn by the person making the appeal—

- (a) at a hearing with the leave of the chairman; or
- (b) at any other time, by giving written notice of intention to withdraw to the clerk to the tribunal and either—
 - (i) with the consent in writing of every other party to the proceedings, or
 - (ii) with the leave of the chairman after every other party to the proceedings has had a reasonable opportunity to make representations.

(2) A person who has made an application to a tribunal to set aside their decision under regulation 15 may withdraw it any time before the application is determined by giving written notice of withdrawal to the clerk to the tribunal.

Postponement

8.—(1) Where a person to whom notice of a hearing has been given wishes to request a postponement of that hearing he shall give notice in writing to the clerk to the tribunal stating his reasons for the request and a chairman may grant or refuse the request as he thinks fit.

(2) A chairman may of his own motion at any time before the beginning of the hearing postpone the hearing.

Representation of parties to the proceedings

9. Any party to the proceedings may be accompanied and (whether or not the party himself attends) may be represented by another person whether having a professional qualification or not, and for the purposes of any proceedings any such representative shall have all the rights and powers to which the person represented is entitled under these regulations, except, subject to regulation 3, that a representative who is not a barrister or solicitor shall not have the power to sign the notice of appeal or application.

Summoning of witnesses

10.—(1) A chairman may by summons require any person in Northern Ireland to attend as a witness at a hearing of an appeal or application at such time and place as shall be specified in the summons and, subject to paragraph (2), at the hearing to answer any question or produce any documents in his custody or under his control which relate to any matter in question in the appeal or application, but—

(a) no person shall be required to attend in obedience to such a summons unless he has been given at least 10 days' notice of the hearing or, if less than 10 days' notice is given, he has informed the tribunal that he accepts that notice as sufficient; and

(b) no person shall be required to attend and give evidence or to produce any document in obedience to such a summons unless the necessary expenses of attendance are paid or tendered to him.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in Northern Ireland.

(3) In exercising the powers conferred by this regulation, the chairman shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(4) Every summons issued under this regulation shall contain a statement to the effect that the person in question may apply in writing to a chairman to vary or set aside the summons.

Hearings

11.—(1) A tribunal shall hold an oral hearing of every appeal, and may hold an oral hearing of an application, and subject to the provisions of the Order and of these regulations the procedure in connection with the hearing shall be such as the chairman shall determine.

(2) Not less than 10 days' notice (beginning with the day on which it is given and ending on the day before the hearing) of the time and place of any hearing shall be given to every party to the proceedings, and if such notice has not been given to a person to whom it should have been given under the provisions of this paragraph the hearing may proceed only with the consent of that person.

(3) At any hearing any party to the proceedings shall be entitled to be present and be heard.

(4) Any person entitled to be heard at a hearing may address the tribunal, give evidence, call witnesses and put questions directly to any other party to the proceedings, to any representative of the child support officer or to any other person called as a witness.

(5) A tribunal may require any witness to give evidence on oath and for that purpose there may be administered an oath in due form.

(6) If a party to the proceedings to whom notice has been given under paragraph (2) fails to appear at the hearing the tribunal may, having regard to all the circumstances including any explanation offered for the absence, proceed with the appeal notwithstanding his absence or give such directions with a view to the determination of the appeal as it may think proper.

(7) Any hearing before the tribunal shall be in private unless the chairman directs that the hearing, or part of it, shall be in public.

(8) The following persons shall also be entitled to be present at a hearing even though it is in private—

- (a) the President, any full-time chairman and the clerk to the tribunal;
- (b) any person undergoing training as a chairman or other member of a tribunal or as a clerk to a tribunal;
- (c) any person acting on behalf of the President in the training or supervision of clerks to tribunals;
- (d) any person undergoing training as a child support officer or as the representative of a child support officer and any person acting on behalf of the Chief Child Support Officer or the Department in the training or supervision of child support officers or representatives of child support officers or in the monitoring of standards of adjudication by child support officers;
- (e) with leave of the chairman and the consent of every party to the proceedings actually present, any other person.

(9) For the purposes of arriving at its decision a tribunal shall, and for the purposes of discussing any question of procedure may, notwithstanding anything contained in these regulations, order all persons to withdraw from the sitting of the tribunal other than the members of the tribunal, any of the persons mentioned in paragraph (8)(a) and (b) and, with the leave of the chairman and if no party to the proceedings actually present objects, any of the persons mentioned in paragraph (8)(c) and (e).

(10) None of the persons mentioned in paragraph (8) shall take any part in the hearing or (where entitled or permitted to remain) in the deliberations of the tribunal.

Adjournments

12.—(1) A hearing may be adjourned by the tribunal at any time on the application of any party to the proceedings or of its own motion.

(2) Where a hearing has been adjourned and it is not practicable, or would cause undue delay, for it to be resumed before a tribunal consisting of the same members, the appeal or application shall be heard by a tribunal none of the members of which was a member of the original tribunal and the proceedings shall be by way of a complete re-hearing of the case.

Decisions

13.—(1) A decision of the tribunal may be taken by a majority.

(2) The chairman shall—

(a) record in writing the decision of the tribunal;

(b) include in the record of every decision a statement of the reasons for it, the findings of the tribunal on questions of fact material to the decision and the terms of any direction given under Article 22(4) of the Order; and

(c) if a decision is not unanimous, record a statement that one of the members dissented and the reasons given by him for so dissenting.

(3) As soon as may be practicable after the decision of the tribunal a copy of the record of the decision made in accordance with this regulation shall be sent to every party to the proceedings who shall also be informed of the conditions governing appeals to a Commissioner.

(4) If a child support officer to whom a case is referred by the Department under Article 22(3) of the Order (procedure following a successful appeal) is uncertain, having regard to the terms of the decision and of any directions contained in it, how he should deal with the case, he may apply to the tribunal or another tribunal for directions or further directions, and the tribunal may give such directions or further directions as it thinks fit.

(5) Upon receiving an application from a child support officer under paragraph (4) the clerk to the tribunal shall send a copy of it to all the other parties to the case, and the tribunal shall not give any directions or further directions on the application until those other parties have had a reasonable opportunity of making representations on it.

Corrections

14.—(1) Subject to regulation 16 (provisions common to regulations 14 and 15) accidental errors (whether of omission or commission) in any decision or record of any decision may at any time be corrected by the tribunal who gave the decision or by another tribunal.

(2) A correction made to a decision or to the record of a decision shall be deemed to be part of the decision or of the record thereof and written notice of it shall be given as soon as practicable to every party to the proceedings.

Setting aside

15.—(1) Subject to regulation 16 (provisions common to regulations 14 and 15) on an application made by a party to the proceedings a decision may

be set aside by the tribunal who gave the decision or by another tribunal in a case where it appears just to do so on the grounds that—

- (a) 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 the party's representative or was not received at an appropriate time by the tribunal who gave the decision;
- (b) a party to the proceedings in which the decision was given or the party's representative was not present at the hearing notice of which had been given under regulation 11(2); or
- (c) there has been some other procedural irregularity or mishap.

(2) An application under this regulation shall be made in accordance with regulation 3.

(3) Where an application to set aside a decision is made under paragraph (1) every party to the proceedings shall be sent a copy of the application and shall be afforded a reasonable opportunity of making representations on it before the application is decided.

(4) Notice in writing of a decision on an application to set aside a decision shall be given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the decision.

(5) For the purpose of deciding an application to set aside a decision under these regulations there shall be disregarded regulation 2 and any provision in any statutory provision to the effect that any notice or other document required or authorised to be given or sent to any person shall be deemed to have been given or sent if it was sent by post to the person's last known address.

Provisions common to regulations 14 and 15

16.—(1) In calculating time under regulation 2(1) of the Child Support Commissioners (Procedure) Regulations (Northern Ireland) 1993(a) (applications for leave to appeal to a Commissioner) there shall be disregarded any day falling before the day on which notice was given of a correction of a decision or record thereof pursuant to regulation 14 or on which notice is given of a decision that a prior decision shall not be set aside following an application made under regulation 15, as the case may be.

(2) Notwithstanding anything contained in these regulations, there shall be no appeal against a correction made under regulation 14, or a refusal to make such a correction, or against a decision given under regulation 15.

(3) Nothing in these regulations shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from these regulations.

Confidentiality

17.—(1) No information such as is mentioned in paragraph (2), and which has been provided for the purposes of any proceedings to which these

(a) S.R. 1993 No. 42

regulations apply, shall be disclosed except with the written consent of the person to whom the information relates.

- (2) The information referred to in paragraph (1) is—
- (a) any address, other than the address of the clerk to the tribunal and the place where the oral hearing is to be held; and
 - (b) any other information the use of which could reasonably be expected to lead to a person being located.

Sealed with the Official Seal of the Department of Health and Social Services on 9th February 1993.

(L.S.)

A. Devlin

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations provide for the procedure to be followed by child support appeal tribunals constituted in accordance with Article 23 of the Child Support (Northern Ireland) Order 1991.

The principal matters dealt with include the service of notices or other documents (regulation 2); the time and manner of making an appeal or application (regulation 3); the powers of a chairman of a tribunal to give directions for the conduct or disposal of proceedings and to strike out proceedings (regulations 4, 5 and 6); the summoning of witnesses to hearings and the conduct of hearings (regulations 10 and 11) and the giving of decisions and the correction and setting aside of decisions (regulations 13 to 16).

Articles 23(2) and (3) and 47(1) of the Child Support (Northern Ireland) Order 1991 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)).