

1993 No. 98

FAMILY LAW

**The Child Support (Consequential Amendments) Order
(Northern Ireland) 1993**

Made 5th March 1993

Coming into operation 5th April 1993

To be laid before Parliament

The Lord Chancellor, in exercise of the powers conferred on him by Article 51(1) of the Child Support (Northern Ireland) Order 1991(a), hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Child Support (Consequential Amendments) Order (Northern Ireland) 1993 and shall come into operation on 5th April 1993.

Consequential amendments

2. The amendments set out in the Schedule (which are made in consequence of provision made by or under the Child Support (Northern Ireland) Order 1991) shall have effect.

Dated 5th March 1993

Mackay of Clashfern, C.

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

**Amendment to provisions consequent upon provision made by or under
the Child Support (Northern Ireland) Order 1991***Interpretation*

1. In this Schedule—

“the Order of 1978” means the Matrimonial Causes (Northern Ireland) Order 1978(a);

“the Order of 1980” means the Domestic Proceedings (Northern Ireland) Order 1980(b); and

“the Order of 1981” means the Magistrates’ Courts (Northern Ireland) Order 1981(c).

Matrimonial Causes (Northern Ireland) Order 1978

2. In Article 2 of the Order of 1978 (interpretation)(d), in paragraph (2), after the definition of “education” there shall be inserted the following definition—

“ “maintenance assessment” means an assessment of maintenance made under the Child Support (Northern Ireland) Order 1991 and includes, except in circumstances prescribed for the purposes of the definition of that expression in Article 2(2) of that Order, an interim maintenance assessment within the meaning of that Order;”.

3.—(1) In Article 31 of the Order of 1978 (duration of continuing financial provision orders in favour of children etc.)(e) in paragraph (2) after the words “any later date” there shall be inserted the words “or a date ascertained in accordance with paragraph (5) or (7)”.

(2) After paragraph (4) of that Article there shall be added the following paragraphs—

“(5) Where—

(a) a maintenance assessment (“the current assessment”) is in force with respect to a child; and

(b) before the end of the period of 6 months beginning with the date on which the current assessment was made, an application is made under this Part for a periodical payments or secured periodical payments order in favour of that child;

the term to be specified in any such order made on that application may be expressed to begin on or at any time after the earliest permitted date.

(6) For the purposes of paragraph (5), “the earliest permitted date” is the later of—

(a) the date six months before the application for the order was made; or

(a) S.I. 1978/1045 (N.I. 15)

(b) S.I. 1980/563 (N.I. 5)

(c) S.I. 1981/1675 (N.I. 26)

(d) Article 2 was amended by Part I of Schedule 5 to the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22))

(e) Article 31(2) was amended by Article 8(4) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 S.I. 1989/677 (N.I. 4)

(b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to that child, the first of those assessments took effect.

(7) Where—

- (a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support (Northern Ireland) Order 1991; and
- (b) before the end of the period of 6 months beginning with the relevant date, an application is made for a periodical payments or secured periodical payments order in favour of a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,

the term to be specified in any such order made on that application may begin with the relevant date or any later date.

(8) In paragraph (7) “the relevant date” means—

- (a) where the maintenance assessment ceased to have effect, the date on which it so ceased; and
- (b) where the maintenance assessment was cancelled, the later of—
 - (i) the date on which the person who cancelled it did so; or
 - (ii) the date from which the cancellation first had effect.”.

4. In Article 33 of the Order of 1978 (variation, discharge etc. of certain orders for financial relief)(a), after paragraph (10) there shall be added the following paragraphs—

“(11) Paragraph (12) applies where—

- (a) a periodical payments or secured periodical payments order in favour of more than one child (“the order”) is in force;
- (b) the order requires payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (c) a maintenance assessment (“the assessment”) is made with respect to one or more but not all of the children in whose favour the order is in force; and
- (d) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or discharge of the order.

(12) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the order, direct that the variation or discharge shall take effect from the date on which the assessment took effect or any later date.

(13) Paragraph (14) applies where—

- (a) an order (“the child order”) of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991 is affected by a maintenance assessment;
- (b) on the date on which the child order became so affected there was in force a periodical payments or secured periodical payments order (“the spousal order”) in favour of a party to a marriage having the care of the child in whose favour the child order was made; and

(a) Article 33(10) was inserted by Article 9(5) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 S.I. 1989/677 (N.I. 4)

(c) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance assessment was made, for the spousal order to be varied or discharged.

(14) Where this paragraph applies, the court may, in exercise of its powers under this Article to vary or discharge the spousal order, direct that the variation or discharge shall take effect from the date on which the child order became so affected or any later date.

(15) For the purposes of paragraphs (13) and (14), an order is affected if it ceases to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.

(16) Paragraphs (12) and (14) are without prejudice to any other power of the court to direct that the variation or discharge of an order under this Article shall take effect from a date earlier than that on which the order for variation or discharge was made.”.

Domestic Proceedings (Northern Ireland) Order 1980

5. In Article 2 of the Order of 1980 (interpretation)(a), in paragraph (2), after the definition of “legal custody” there shall be inserted the following definition—

“ “maintenance assessment” means an assessment of maintenance made under the Child Support (Northern Ireland) Order 1991 and includes, except in circumstances prescribed for the purposes of the definition of that expression in Article 2(2) of that Order, an interim maintenance assessment within the meaning of that Order;”.

6.—(1) In Article 7 of that Order (duration of orders for financial provision for children)(b), in paragraph (2), after the words “any later date” there shall be inserted the words “or a date ascertained in accordance with paragraphs (7) or (9)”.

(2) After paragraph (6) of that Article there shall be added the following paragraphs—

“(7) Where—

(a) a maintenance assessment (“the current assessment”) is in force with respect to a child; and

(b) before the end of the period of 6 months beginning with the date on which the current assessment was made, an application is made for an order under Article 4(1)(c);

the term to be specified in any such order, or in any interim order under Article 20, made on that application, may be expressed to begin on, or any time thereafter, the earliest permitted date.

(8) For the purposes of paragraph (7), “the earliest permitted date”, is the later of—

(a) the date six months before the application for the order was made; or

(b) the date on which the current assessment took effect or, where successive maintenance assessments have been continuously in force with respect to that child, the first of those assessments took effect.

(a) S.I. 1980/563 (N.I. 5); Article 2(2) was amended by Part I of Schedule 5 to the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) and by Schedule 3 to the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4))

(b) Article 7(2) was amended by Article 12(2) of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4))

(9) Where—

- (a) a maintenance assessment ceases to have effect or is cancelled by or under any provision of the Child Support (Northern Ireland) Order 1991; and
- (b) before the end of the period of 6 months beginning with the relevant date, an application is made for an order under Article 4(1)(c) in relation to a child with respect to whom that maintenance assessment was in force immediately before it ceased to have effect or was cancelled,

the term to be specified in any such order, or in any interim order under Article 20, made on that application, may begin with the relevant date or any later date.

(10) In paragraph (9) “the relevant date” means—

- (a) where the maintenance assessment has ceased to have effect, the date on which it so ceased;
- (b) where the maintenance assessment was cancelled, the later of—
 - (i) the date on which the person who cancelled it did so, or
 - (ii) the date from which the cancellation first had effect.”.

7. In Article 20 of the Order of 1980 (interim maintenance orders and interim custody, etc. orders), in paragraph (3) for the words “, not being” there shall be substituted the words “except that, subject to Article 7(7) and 7(8) the date shall not be”.

8.—(1) In Article 22 of the Order of 1980 (effective date of variation of orders for periodical payments), in paragraph (9), for the words “ not being” there shall be substituted the words “except that, subject to paragraphs (9A) and (9B), the date shall not be”.

(2) After paragraph (9) of that Article there shall be inserted the following paragraph:—

“(9A) Paragraph (9B) applies where—

- (a) a relevant order is in force requiring payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;
- (b) a maintenance assessment (“the assessment”) is made with respect to one or more, but not all, of the children in whose favour the order is in force; and
- (c) an application is made, before the end of the period of 6 months beginning with the date on which the assessment was made, for the variation or revocation of the order.

(9B) Where this paragraph applies the court may, in exercise of its powers under this Article to vary or revoke the relevant order, direct that the variation or revocation shall take effect from the date on which the assessment took effect or any later date.

(9C) In paragraphs (9A) and (9B) “relevant order” means—

- (a) an order under Article 4(1)(c),
- (b) an order under paragraph (1) of Article 8 making provision of a kind mentioned in sub-paragraph (c) of paragraph (2) of that Article (regardless of whether it makes provision of any other kind mentioned in paragraph (2) of that Article),
- (c) an order under Article 9(2)(b), or

(d) an order which is an interim maintenance order under which the payments are to be made to a child or to the applicant for the benefit of a child.

(9D) Paragraph (9E) applies where—

(a) a child order is affected by a maintenance assessment and, on the date on which the child order became so affected, there was in force a spousal order; and

(b) an application is made, before the end of the period of 6 months beginning with the date on which the maintenance assessment was made, for the spousal order to be varied or revoked.

(9E) Where this paragraph applies the court may, in exercise of its powers under this Article to vary or revoke the spousal order, direct that the variation or revocation shall take effect from the date on which the child order became so affected or any later date.

(9F) In paragraphs (9D) and (9E)—

“child order” means an order of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991; and

“spousal order” means—

- (i) an order under Article 4(1)(a),
- (ii) an order under paragraph (1) of Article 8 making provision of a kind mentioned in sub-paragraph (a) of paragraph (8) of that Article (regardless of whether it makes provision of any other kind mentioned in paragraph (2) of that Article),
- (iii) an order under Article 9(2)(a), or
- (iv) an order which is an interim maintenance order under which the payments are to be made to the applicant (otherwise than for the benefit of a child).

(9G) For the purposes of paragraphs (9D) and (9E), an order is affected if it ceased to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.”

Magistrates' Courts (Northern Ireland) Order 1981

9. In Article 88 of the Order of 1981 (nature of domestic proceedings)(a) the following paragraphs shall be inserted after paragraph (d)—

“(dd) under Article 22 of the Child Support (Northern Ireland) Order 1991 (so far as appeals under that Article are, by virtue of Article 2 of the Child Support Appeals (Jurisdiction of Courts) Order (Northern Ireland) 1993, to be made to a court of summary jurisdiction) or under Article 28 of the Child Support (Northern Ireland) Order 1991;

(de) under the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992;”.

(a) Article 88 was amended by Parts I and III of Schedule 12 to the Civil Jurisdiction and Judgments Act 1982 (c. 27), Article 15 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677) (N.I. 4) and by paragraph 25 of Schedule 2 to the Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9)

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order amends certain statutory provisions in consequence of provision made by or under the Child Support (Northern Ireland) Order 1991. The Matrimonial Causes (Northern Ireland) Order 1978 and the Domestic Proceedings (Northern Ireland) Order 1980 are amended so as to allow maintenance orders to be backdated for up to six months where a related maintenance assessment has been made or cancelled under the Child Support (Northern Ireland) Order 1991.

The Order also amends the definition of 'domestic proceedings' in Article 88 of the Magistrates' Courts (Northern Ireland) Order 1981 to include proceedings under Article 22 and 28 of the Child Support (Northern Ireland) Order 1991 and the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992.