

1994 No. 37

FAMILY LAW

CHILD SUPPORT

**The Child Support (Miscellaneous Amendments and
Transitional Provisions) Regulations
(Northern Ireland) 1994**

Made 3rd February 1994

Coming into operation 7th February 1994

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 18, 19(6), 32(1) and (2), 39(3) and (4), 44, 47 and 48(4) of, and paragraphs 1(3), 4(1), 6(6) and 8(a) of Schedule 1 to, 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 (Miscellaneous Amendments and Transitional Provisions) Regulations (Northern Ireland) 1994 and shall come into operation on 7th February 1994.

(2) In these regulations—

“Collection and Enforcement Regulations” means the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(b);

“Fees Regulations” means the Child Support Fees Regulations (Northern Ireland) 1993(c);

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

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

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

(b) S.R. 1992 No. 390

(c) S.R. 1993 No. 73

(d) S.R. 1992 No. 340; relevant amending regulations are S.R. 1993 No. 164

(e) S.R. 1992 No. 341; to which there are amendments not relevant to these regulations

PART II

AMENDMENT OF REGULATIONS

Amendment of the Collection and Enforcement Regulations

2. In regulation 9(e) of the Collection and Enforcement Regulations (deduction from earnings orders) at the beginning there shall be inserted “except in the case of a Category A or Category B interim maintenance assessment within the meaning of regulation 8(1A) and (1B) of the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992,”(a).

Amendment of the Fees Regulations

3.—(1) The Fees Regulations shall be amended in accordance with paragraphs (2) to (4).

(2) In Regulation 1(2) (citation, commencement and interpretation) for the definition of “collection fee” there shall be substituted the following definition—

“ “collection fee” means a fee in respect of services provided by the Department for the collection of child support maintenance or for enforcing payment of such maintenance or both such collection and such enforcement;”.

(3) In regulation 3 (liability to pay fees) for paragraph (3) there shall be substituted the following paragraph—

“(3) In a case falling within paragraph (1)(b) the fee payable shall be the assessment fee and if, but only if, collection or enforcement services (or both) are provided by the Department, the collection fee.”.

(4) In regulation 4 (fees) for paragraph (2) there shall be substituted the following paragraph—

“(2) Where a collection fee is payable under regulation 3(2) or (3) the first such fee shall become payable on the date the Department first takes action to collect or enforce payment of child support maintenance, and any subsequent fee which becomes so payable shall be payable on the date the assessment fee becomes payable.”.

Amendment of the Maintenance Assessment Procedure Regulations

4.—(1) The Maintenance Assessment Procedure Regulations shall be amended in accordance with paragraphs (2) to (5).

(2) In regulation 10(4) (notification of a new or a fresh maintenance assessment) for sub-paragraph (c) there shall be substituted the following sub-paragraphs—

“(c) where a fresh maintenance assessment is made following a review under Article 20 of the Order, Articles 18, 19 and 22 of the Order;

(a) Regulation 8 (1A) and (1B) was inserted by regulation 4(3)(a) of S.R. 1993 No. 164

(d) where a fresh maintenance assessment is made following a review under Article 21 of the Order, Articles 18, 19 and 20 of the Order.”.

(3) In regulation 19(2) (fresh assessments following a review on a change of circumstances) for the words after “the provisions of paragraph 6 of Schedule 1 to the Order would apply to that assessment,” there shall be substituted—

“he shall not make a fresh assessment if—

- (a) where the amount fixed by the original assessment is less than the amount that would be fixed by the fresh assessment, the difference between the two amounts is less than £5.00 a week, and
- (b) where the amount fixed by the original assessment is more than the amount that would be fixed by the fresh assessment, the difference between the two amounts is less than £1.00 a week.”.

(4) In regulation 20(2) (fresh assessments following a review on a change of circumstances: special case) for “that difference is less than £1.00 per week” there shall be substituted—

“that difference is less than—

- (a) where the aggregate amount fixed by the original assessments is less than the aggregate amount that would be fixed by the fresh assessments, £5.00 a week, and
- (b) where the aggregate amount fixed by the original assessments is more than the aggregate amount that would be fixed by the fresh assessments, £1.00 a week”.

(5) In regulation 30(1) (effective dates of maintenance assessments following a review under Articles 18 to 21 of the Order) at the end there shall be added “disregarding any previous assessment made following a review made under Article 20 or 21 of the Order”.

Amendment of the Maintenance Assessments and Special Cases Regulations

5.—(1) The Maintenance Assessments and Special Cases Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 3(1) (calculation of AG) for sub-paragraph (b) there shall be substituted the following sub-paragraph—

“(b) with respect to a person with care of one or more qualifying children—

- (i) where one or more of those children is aged less than 11, an amount equal to the amount specified in column (2) of paragraph 1(1)(e) of the relevant Schedule (income support personal allowance for a single claimant aged not less than 25);
- (ii) where none of those children are aged less than 11 but one or more of them is aged less than 14, an amount equal to 75 per centum of the amount specified in sub-paragraph (b)(i), and

- (iii) where none of those children are aged less than 14 but one or more of them is aged less than 16, an amount equal to 50 per centum of the amount specified in sub-paragraph (b)(i);”.

(3) In regulation 6 (additional element) for paragraph (1) there shall be substituted the following paragraph—

“(1) For the purposes of the formula in paragraph 4(1) of Schedule 1 to the Order, the value of R is—

- (a) where the maintenance assessment in question relates to one qualifying child, 0·15;
 (b) where the maintenance assessment in question relates to two qualifying children, 0·20, and
 (c) where the maintenance assessment in question relates to three or more qualifying children, 0·25.”.

(4) In regulation 11 (protected income)—

- (a) in paragraph (1)(k) for “£8·00” there shall be substituted “£30·00”;
 (b) in paragraph 1(l) for “10 per centum” there shall be substituted “15 per centum”.

(5) In regulation 23 (person caring for children of more than one absent parent)—

- (a) in paragraph (2) at the beginning there shall be inserted “Subject to paragraph (2A),”;
 (b) after paragraph (2) there shall be inserted the following paragraph—
 “(2A) In applying the provisions of paragraph (2) to the amount which is to be included in the maintenance requirements under regulation 3(1)(b)—

- (a) first take the amount specified in regulation 3(1)(b)(i) and divide it by the relevant number;
 (b) then apply the provisions of regulation 3(1)(b) as if the references to the amount specified in column (2) of paragraph 1(1)(e) of the relevant Schedule were references to the amount which is the product of the calculation required by sub-paragraph (a) above, and as if, in relation to an absent parent, the only qualifying children to be included in the assessment were those qualifying children in relation to whom he is the absent parent.”;

(c) in paragraph (3) for “in paragraph (2)” there shall be substituted “In paragraphs (2) and (2A)”.

(6) In Schedule 3 (eligible housing costs) in paragraph 3 for sub-paragraph (5) there shall be substituted the following sub-paragraph—

“(5) Where a policy of insurance has been obtained and retained for the purpose of discharging a mortgage or charge on the home of the parent in question and also for the purpose of accruing profits on the maturity of the policy, there shall be eligible to be taken into account as a housing cost—

- (a) where the sum secured by the mortgage or charge does not exceed £60,000, the whole of the premiums paid under that policy, and
- (b) where the sum secured by the mortgage or charge exceeds £60,000, the part of the premiums paid under that policy which are necessarily incurred for the purpose of discharging the mortgage or charge or, where that part cannot be ascertained, 0.0277 per centum of the amount secured by the mortgage or charge."

PART III

TRANSITIONAL PROVISIONS

Interpretation

6.—(1) In this Part and Part IV—

- “the Order” means the Child Support (Northern Ireland) Order 1991;
- “excess” means the amount by which the formula amount exceeds the old amount;
- “existing case” means a case in which before the date when these regulations come into operation, a maintenance assessment has been made which has an effective date which also falls before that date;
- “formula amount” means the amount of child support maintenance that would, but for the provisions of this Part, be payable under the maintenance assessment in force on the date these regulations come into operation or, if there is no such assessment, under the first assessment to come into force on or after that date;
- “new case” means a case in which the effective date of the maintenance assessment falls on or after the date when these regulations come into operation;
- “old amount” means, subject to paragraph (2), the aggregate weekly amount which was payable under the orders, agreements or arrangements mentioned in regulation 7(1)(a);
- “pending case” means a case in which an application for a maintenance assessment has been made before the date when these regulations come into operation but no maintenance assessment has been made before that date;
- “transitional amount” means an amount determined in accordance with regulation 8, and
- “transitional period” means a period of, where the formula amount does not exceed £60, 52 weeks, and in any other case 78 weeks, beginning with—
 - (a) in relation to an existing case, the day that the maintenance assessment in that case is reviewed following an application under regulation 9(1) to (3);

- (b) in relation to a new case, the effective date of the maintenance assessment in that case;
- (c) in relation to a pending case, the effective date of the maintenance assessment in that case or the date when these regulations come into operation, whichever is the later.

(2) In determining the old amount the child support officer shall disregard any payments in kind and any payments made to a third party on behalf of or for the benefit of the qualifying child or qualifying children or the person with care.

Scope of this Part

7.—(1) Subject to paragraph (2), this Part applies to cases where—

- (a) on 4th April 1993, and at all times thereafter until the date when a maintenance assessment was or is made under the Order, there was in force, in respect of one or more of the qualifying children in respect of whom an application for a maintenance assessment was or is made under the Order and the absent parent concerned, one or more—
 - (i) maintenance orders;
 - (ii) orders under section 151 of the Army Act 1955(a) (deductions from pay for maintenance of wife or child) or section 151 of the Air Force Act 1955(b) (deductions from pay for maintenance of wife or child) or arrangements corresponding to such an order and made under Article 1(b) or 3 of the Naval and Marine Pay and Pensions (Deductions for Maintenance) Order 1959(c), or
 - (iii) maintenance agreements (being agreements which are made or evidenced in writing), and
- (b) the absent parent was on the relevant date and continues to be a member of a family, as defined in regulation 1(2) of the Maintenance Assessments and Special Cases Regulations, which includes one or more children;
- (c) the formula amount exceeds the old amount.

(2) Nothing in this Part applies to—

- (a) a Category A interim maintenance assessment within the meaning of regulation 8(1B) of the Maintenance Assessment Procedure Regulations(d) and made under Article 14 of the Order, or
- (b) a case falling within the provisions of Part II of the Schedule to the Child Support (1991 Order) (Commencement No. 3 and Transitional Provisions) Order (Northern Ireland) 1992(e) (modification of maintenance assessment in certain cases).

(a) 1955 c. 18

(b) 1955 c. 19

(c) This Order in Council is not a statutory instrument but is published in the London Gazette 31 July 1959 page 4801

(d) Regulation 8(1B) was inserted by regulation 4(3)(a) of S.R. 1993 No. 164

(e) S.R. 1992 No. 467 (C. 20); relevant amending rules are S.R. 1993 No. 174 (C. 9)

- (3) In paragraph 1(b) “the relevant date” means—
- (a) in an existing case, the date these regulations come into operation;
 - (b) in a new case, the effective date of the maintenance assessment in that case, and
 - (c) in a pending case, the effective date of the maintenance assessment in that case or the date on which these regulations come into operation, whichever is the later.

Transitional amount of child support maintenance

8.—(1) In a case to which this Part applies the amount of child support maintenance payable under a maintenance assessment during the transitional period shall, instead of being the formula amount, be the transitional amount.

- (2) The transitional amount is—
- (a) where the formula amount is not more than £60, an amount which is £20 greater than the old amount;
 - (b) where the formula amount is more than £60—
 - (i) during the first 26 weeks of the transitional period, the old amount plus either 25 per centum of the excess or £20·00, whichever is the greater;
 - (ii) during the next 26 weeks of the transitional period, the old amount plus either 50 per centum of the excess or £40·00, whichever is the greater, and
 - (iii) during the last 26 weeks of the transitional period, the old amount plus either 75 per centum of the excess or £60·00, whichever is the greater.

(3) If in any case the application of the provisions of this Part would result in an amount of child support maintenance becoming payable which is greater than the formula amount, then those provisions shall not apply or, as the case may be, shall cease to apply to that case and the amount of child support maintenance payable in that case shall be the formula amount.

PART IV

PROCEDURE ETC.

Procedure

9.—(1) The provisions of Part III shall not apply to a case in which there is a maintenance assessment in force on the date they come into operation unless the absent parent in relation to whom that assessment was made makes an application for a review of that assessment under Article 19 of the Order.

(2) Such an application must be made not later than 3 months after the date when these regulations come into operation, but if an application is made after that period it may be accepted if the Department is satisfied that there is good reason for its being made late.

(3) Where a maintenance assessment is reviewed solely because of the coming into operation of Part III the provisions of regulations 10(2) and 18 of the Maintenance Assessment Procedure Regulations shall not apply in relation to that review but instead the child support officer shall notify to the relevant persons (as defined in regulation 1(2) of those Regulations) details of how the provisions of Part III have been applied in that case.

Reviews on change of circumstances

10.—(1) The provisions of paragraphs (2) and (3) shall apply where there is a review of a previous assessment under Article 19 of the Order (reviews on change of circumstances) at any time when the amount payable under that assessment is the transitional amount.

(2) Where the child support officer determines that, were a fresh assessment to be made as a result of the review, the amount payable under it (disregarding the provisions of Part III) (in this regulation called “the reviewed formula amount”) would be—

- (a) more than the formula amount, the amount of child support maintenance payable shall be the transitional amount plus the difference between the formula amount and the reviewed formula amount;
- (b) less than the formula amount but more than the transitional amount, the amount of child support maintenance payable shall be the transitional amount;
- (c) less than the transitional amount, the amount of child support maintenance payable shall be the reviewed formula amount.

(3) The child support officer shall, in determining the reviewed formula amount, apply the provisions of regulations 19 to 21 of the Maintenance Assessment Procedure Regulations.

Reviews consequent on the amendments made by Part II

11.—(1) Where a child support officer reviews a maintenance assessment in consequence only of the amendments made by Part II he shall not make a fresh assessment if the difference between the amount of child support maintenance fixed by the assessment currently in force and the amount that would be fixed if a fresh assessment were to be made as a result of the review is less than £1.00 a week.

(2) For the purposes of regulations 16(2)(a) (intervals between periodical reviews and notice of a periodical review) and 30 (effective dates of maintenance assessments following a review under Articles 18 to 21 of the Order) of the Maintenance Assessment Procedure Regulations, a review such as is mentioned in paragraph (1) shall be disregarded.

(3) Except in relation to the amendment made by regulation 5(6), notwithstanding anything in regulation 30 of the Maintenance Assessment Procedure Regulations the effective date of a maintenance assessment such as is mentioned in paragraph (1) shall be the date when these regulations come into operation.

Reviews consequent on the provisions of Part III

12. For the purposes of regulations 16(1) and 30 of the Maintenance Assessment Procedure Regulations a review made following an application under regulation 9 shall be disregarded.

Notification

13. Regulations 16(4) to (7) and 18(1) and (2)(a) of the Maintenance Assessment Procedure Regulations shall not apply to a review such as is mentioned in regulations 11(1) and 12 above.

Sealed with the Official Seal of the Department of Health and Social Services on 3rd February 1994.

(L.S.)

W. G. Purdy

Assistant Secretary

(a) Regulation 18(2) was amended by regulation 4(7)(a) of S.R. 1993 No. 164

EXPLANATORY NOTE

(This note is not part of the Regulations.)

Part I of these Regulations contains the normal citation, commencement and interpretation provisions.

Part II makes amendments to various regulations concerned with child support maintenance under the Child Support (Northern Ireland) Order 1991 ("the Order"). Part III makes transitional provisions and Part IV makes provision for the procedure to be followed in consequence of the other provisions of the regulations.

In Part II amendments are made to the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 to exclude interim maintenance assessments from the scope of regulation 9(e) of those regulations which requires a deduction from earnings order to state the level of protected earnings (regulation 2). The Child Support Fees Regulations (Northern Ireland) 1993 are amended to provide that a collection fee is payable in relation to an assessment made under the Order only where the Department of Health and Social Services is providing services for the collection or enforcement of payment of child support maintenance (regulation 3). The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 are amended to alter the amount by which a fresh assessment must differ from the original assessment before it has effect and to make drafting changes (regulation 4). The Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992 are amended so as to alter the amounts which are to be taken into account in assessing child support maintenance (regulation 5).

Part III makes further provision for those cases where on 4th April 1993 there was already in force a maintenance order or agreement. For cases fulfilling specified conditions transitional relief is provided for a period of up to 78 weeks.

Part IV makes provision about reviews of maintenance assessments to give effect to the other provisions of the regulations and for notification of such reviews.