
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 541

**The Child Support Departure Direction and Consequential
Amendments Regulations (Northern Ireland) 1996**

Part II

Procedure on an Application for a Departure Direction and Preliminary Consideration

Application for a departure direction

4.—(1) Every application shall be made in writing on a form (a “departure direction application form”) provided by the Department, or in such other manner, being in writing, as the Department may accept as sufficient in the circumstances of any particular case.

(2) Departure direction application forms shall be supplied without charge by such persons as the Department authorises for that purpose.

(3) Every application shall be given or sent to the Department or to such persons as it may authorise for that purpose.

(4) Where an application is defective at the date when it is received, or has been made in writing but not on the departure direction application form provided by the Department, the Department may refer that application to the person who made it or, as the case may be, supply him with a departure direction application form.

(5) In a case to which paragraph (4) applies, if the departure direction application form is received by the Department properly completed—

- (a) within the specified period, it shall treat the application as if it had been duly made in the first instance;
- (b) outside the specified period, unless it is satisfied that the delay has been unavoidable, it shall treat the application as a fresh application made on the date upon which the properly completed departure direction application form was received.

(6) An application which is made on a departure direction application form is, for the purposes of paragraph (5), properly completed if completed in accordance with the instructions on the form and defective if not so completed.

(7) In a case to which paragraph (4) applies, the specified period for the purposes of paragraph (5) shall be the period of 14 days commencing with the date upon which, in accordance with paragraph (4), the application is referred to the person who made the defective application or a departure direction application form is given or sent to the person who made a written application but not on a departure direction application form.

(8) For the purposes of paragraph (7), the provisions of regulation 2 shall apply to an application referred to in paragraph (4).

(9) A person applying for a departure direction may authorise a representative, whether or not legally qualified, to receive notices and other documents on his behalf, and to act on his behalf in relation to an application.

(10) Where a person has, under paragraph (9), authorised a representative who is not legally qualified, he shall confirm that authorisation in writing, or as otherwise required, to the Department, unless such authorisation has already been approved by the Department under regulation 51 of the Maintenance Assessment Procedure Regulations (authorisation of representative).

(11) This paragraph applies where a departure direction has effect, and a later application by the applicant in response to whose application that direction was given is made on grounds which are—

- (a) additional to the grounds in respect of which the earlier direction was given;
- (b) not additional to the grounds in respect of which the earlier direction was given but there has been a change of circumstances in respect of one or more but not all of those grounds.

(12) Where—

- (a) paragraph (11)(a) applies, the later application may be treated as an application in respect of which the earlier direction was given;
- (b) paragraph (11)(b) applies, the later application may be treated as an application in respect of which the earlier direction was given in relation to which there have been no changes of circumstances.

(13) Where a departure direction has effect and the Department is satisfied that a ground in respect of which the application for that direction was made no longer applies, it shall treat the applicant for that direction as having applied for a later direction in respect of the grounds which remain applicable.

(14) Regulation 8(1) shall apply to cases to which paragraph (11) applies but only in relation to the additional grounds or, as the case may be, those in relation to which there has been stated to be a change of circumstances and shall not apply to cases to which paragraph (13) applies.

Amendment or withdrawal of application

5. A person who has made an application may amend or withdraw his application by notice in writing to the Department at any time prior to a determination being made in relation to that application.

Provision of information

6.—(1) Where an application has been made, the Department may request further information or evidence from the applicant to enable that application to be determined.

(2) Any information or evidence requested by the Department in accordance with paragraph (1) shall be given within 14 days of the request for such information or evidence having been given or sent.

(3) Where the time limit specified in paragraph (2) is not complied with, the Department may determine that application, in the absence of that information or evidence.

Rejection of application on completion of a preliminary consideration

7.—(1) The Department may, on completing a preliminary consideration of an application, reject that application on the ground set out in Article 28B(2)(b) of the Order if it appears to it that the difference between the current amount and the revised amount is less than £1·00.

(2) Where an application has been rejected in accordance with paragraph (1), the Department shall, as soon as reasonably practicable, give notice of that rejection to the relevant persons.

Procedure in relation to the determination of an application

8.—(1) Subject to paragraph (4), where an application has not failed within the meaning of Article 28D of the Order, the Department shall—

- (a) give notice of that application to the relevant persons other than the applicant;
- (b) send to them details of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except details, information or evidence falling within paragraph (2);
- (c) invite representations in writing from the relevant persons other than the applicant on any matter relating to that application; and
- (d) set out the provisions of paragraphs (2), (5) and (6) in relation to such representations.

(2) The details, information or evidence referred to in paragraphs (1)(b), (6) and (7) are—

- (a) medical evidence or medical advice that has not been disclosed to the applicant or a relevant person and which the Department considers would be harmful to the health of the applicant or that relevant person if disclosed to him;
- (b) the address of a relevant person, or of any child in relation to whom the assessment was made in respect of which the application has been made, or any other information which could reasonably be expected to lead to that person or that child being located, where that person has not agreed to disclosure of that address or that information, it is not known to the other party to that assessment and—
 - (i) the Department is satisfied that that address or that information is not necessary for the determination of that application, or
 - (ii) the Department is satisfied that that address or that information is necessary for the determination of that application and that there would be a risk of harm or undue distress to that person or that child if disclosure were made.

(3) Subject to paragraph (4), the notice referred to in paragraph (1)(a) shall be given as soon as reasonably practicable after—

- (a) completion of the preliminary consideration of that application under Article 28B of the Order; or
- (b) where the Department has requested information or evidence under regulation 6, receipt of that information or evidence or the expiry of the period of 14 days referred to in regulation 6(2).

(4) The provisions of paragraphs (1) and (3) shall not apply where the information or evidence requested in accordance with regulation 6 has not been received by the Department within the period specified in paragraph (2) of that regulation and the Department is satisfied on the information or evidence available to it that a departure direction should not be given.

(5) Where the Department does not receive written representations from a relevant person within 14 days of the date on which representations were invited under paragraph (1), (6) or (7) it may, in the absence of written representations from that person, proceed to determine the application.

(6) The Department may, if it considers it reasonable to do so, send to the applicant a copy of any written representations made following an invitation under paragraph (1)(c), whether or not they were received within the time specified in paragraph (5), except to the extent that the representations contain information or evidence which falls within paragraph (2), and invite him to submit representations in writing on any matters contained in those representations.

(7) Where any information or evidence requested by the Department under regulation 6 is received after notification has been given under paragraph (1), the Department may, if it considers it reasonable to do so and except where that information or evidence falls within paragraph (2),

send a copy of such information or evidence to the relevant persons and invite them to submit representations in writing on that information or evidence.

(8) In deciding whether to give a departure direction, the Department shall take into account—

- (a) any information or evidence given by the applicant for that direction; and
- (b) any written representations made by the applicant or by a relevant person and received by it at the date upon which it determines the application,

and may in addition take into account—

- (i) any relevant information or evidence received by it or by a child support officer, in relation to any application for a maintenance assessment or for a review of a maintenance assessment made in respect of the absent parent, person with care and any child in respect of whom the current assessment was made;
- (ii) any relevant information or evidence acquired by it in connection with any of its functions under any of the benefit Acts or the Jobseekers (Northern Ireland) Order 1995(1).

(9) Where the Department has determined an application it shall, as soon as is reasonably practicable—

- (a) notify the relevant persons of that determination;
- (b) where a departure direction has been given, refer the case to a child support officer.

(10) A notification under paragraph (9)(a) shall set out—

- (a) the reasons for that determination;
- (b) where a departure direction has been given, the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of that direction.

(11) The Department may reconsider any application which has been determined by it or by a child support appeal tribunal under Article 28D(1)(b) of the Order where, after the determination of that application, it receives further information or evidence which it is satisfied is relevant to that application.

Departure directions and persons in receipt of income support or income-based jobseeker's allowance

9.—(1) The costs referred to in regulations 13 to 18 shall not constitute special expenses where they are incurred by a person to or in respect of whom income support or income-based jobseeker's allowance is paid.

(2) A transfer shall not constitute a transfer of property for the purposes of paragraph 3(1)(b) or 4(1)(b) of Schedule 4B to the Order, or of regulations 21 and 22, where the application is made by an absent parent to or in respect of whom income support or income-based jobseeker's allowance is paid at the time that application is made.

(3) A case shall not constitute a case under regulations 23 to 29 where the application is made by an absent parent to or in respect of whom income support or income-based jobseeker's allowance is paid.

Departure directions and interim maintenance assessments

10.—(1) For the purposes of Article 28A(1) of the Order, the term “maintenance assessment” does not include—

- (a) a Category A or Category C interim maintenance assessment;

- (b) a Category B interim maintenance assessment where the application is made under paragraph 2 of Schedule 4B to the Order in respect of expenses prescribed by regulation 18 and that Category B interim maintenance assessment was made because the applicant fell within regulation 8(3)(b) of the Maintenance Assessment Procedure Regulations⁽²⁾;
- (c) a Category D interim maintenance assessment, where the application is made under paragraph 3 or 4 of Schedule 4B to the Order or by an absent parent under paragraph 2 or 5 of that Schedule.

(2) For the purposes of this regulation, Category A, Category B, Category C and Category D interim maintenance assessments are as defined in regulation 8(3) of the Maintenance Assessment Procedure Regulations (categories of interim maintenance assessment).

Departure application and review under Article 19 of the Order

11. Where the effective date of any fresh assessment made on completion of a review under Article 19 of the Order⁽³⁾ is later than the effective date of any departure direction given in response to an application for a direction, the provisions of regulations 19, 20 and 21 of the Maintenance Assessment Procedure Regulations shall apply to that review as if for references in those regulations to the original assessment there were substituted references to the fresh assessment made in consequence of the departure direction.

Meaning of “benefit” for the purposes of Article 28E of the Order

12. For the purposes of Article 28E of the Order, “benefit” means income support, income-based jobseeker’s allowance, family credit, disability working allowance and housing benefit.

(2) Regulation 8 was substituted by regulation 3(3) of [S.R. 1995 No. 475](#)

(3) Article 19 was amended by Article 6 of the Child Support (Northern Ireland) Order 1995