

2013 No. 182

FAMILY LAW

CHILD SUPPORT

**The Child Support (Miscellaneous Amendments) Regulations
(Northern Ireland) 2013**

Made - - - - - 3rd July 2013

*Coming into operation in accordance with regulation 1(2) to
(4)*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 3(1)(b), 28G(3), 39, 47(1) and 48(4) of and paragraphs 10(1) and (2)(b) and 10C(2)(b) of Schedule 1 to, the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b), and sections 36(1) and 38(2) of the Child Maintenance Act (Northern Ireland) 2008(c).

Citation and commencement

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2013.

(2) This regulation and regulations 2, 3, 5 to 7, 8(4), (5), (7) and (8), 9 and 10 come into operation on 30th September 2013.

(3) Regulation 4 comes into operation in relation to a case to which the new calculation rules apply on 30th September 2013.

(4) Regulation 8(1) to (3) and (6) comes into operation in relation to a case to which the new calculation rules apply on the day on which paragraph 2 of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008 (calculation by reference to gross weekly income) comes into operation for all purposes.

(5) In this regulation, “a case to which the new calculation rules apply” means a case in which liability to pay child support maintenance is calculated in accordance with Part 1 of Schedule 1 to the Child Support (Northern Ireland) Order 1991 as amended by paragraph 2 of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008.

(a) S.I. 1991/2628 (N.I. 23); Article 3 was substituted by section 26 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.)); Article 28G was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and is substituted by section 7 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); Article 39 is amended by paragraph 11 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and is amended by section 28 of the Child Maintenance Act (Northern Ireland) 2008; Part 1 of Schedule 1 is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 10(1) is amended by paragraph 2 of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008

(b) See Article 8(b) of S.R. 1999 No. 481

(c) 2008 c. 10 (N.I.)

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

2.—(1) The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(a) are amended as follows.

(2) In Schedule 1 (meaning of “child” for the purposes of the Order)—

(a) for the heading to paragraph 1(b) substitute—

“**Conditions prescribed for the purposes of Article 3(1)**”; and

(b) after paragraph 7 (education otherwise than at a recognised educational establishment) (c) add—

“**Person in respect of whom child benefit is payable**

8. For the purposes of paragraphs 1(3) and 4(2), a person in respect of whom child benefit is payable includes a person in respect of whom an election has been made under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992(d) for payments of child benefit not to be made.”

(3) After paragraph 2(11) of Schedule 2(e) (multiple applications), add—

“(12) For the purposes of sub-paragraph (9)(c), where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made in respect of a child, that person is to be treated as the person to whom child benefit is being paid in respect of that child.”.

Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations

3. In regulation 1 of the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(f) (citation, commencement and interpretation), after paragraph (2A)(g) insert—

“(2B) For the purposes of these Regulations, where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made—

(a) that person is to be treated as being in receipt of child benefit; and

(b) the amount of child benefit that would be otherwise paid in respect of the relevant child is to be treated as being in payment.”.

Amendment of the Child Support (Collection and Enforcement) Regulations

4.—(1) The Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(h) are amended as follows.

(2) In regulation 25A(1)(i) (interpretation of Parts IIIA to IIID)—

(a) after the definition of “attachment of debts order” insert—

““current income” has the meaning given in regulation 36 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012(j);”;

(b) after the definition of “deduction period” insert—

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- (a) S.R. 1992 No. 340; relevant amending Regulations are S.R. 1999 No. 167, S.R. 2008 No. 404 and S.R. 2012 No. 438
(b) Paragraph 1 was substituted by regulation 2(a) of S.R. 2012 No. 438
(c) Paragraph 7 was substituted by regulation 2(e) of S.R. 2012 No. 438
(d) 1992 c. 8 (N.I.); section 11A was inserted by paragraph 4 of Schedule 1 to, the Finance Act 2012 (c. 14 (N.I.))
(e) Paragraph 2 was amended by regulation 2(26)(a) of S.R. 1999 No. 167 and regulation 2(10)(b) of S.R. 2008 No. 404
(f) S.R. 1992 No. 341; relevant amending Regulations are S.R. 1993 No. 164
(g) Paragraph (2A) was inserted by regulation 5(2)(h) of S.R. 1993 No. 164
(h) S.R. 1992 No. 390; relevant amending Regulations are S.R. 2009 No. 286 and S.R. 2012 No. 438
(i) Regulation 25A was inserted by regulation 2 of S.R. 2009 No. 286
(j) S.R. 2012 No. 427

““gross weekly income” means income calculated under Chapter 1 of Part 4 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012;”;

- (c) omit the definition of “net weekly income”.
- (3) In regulation 25A omit paragraph (6)(b).
- (4) In regulation 25C(1)(a)(a) (maximum deduction rate), omit “in respect of that period”.
- (5) In regulation 25G(2)(d)(b) (review of a regular deduction order), for “gross weekly” substitute “current”.

Amendment of the Child Support Departure Direction and Consequential Amendments Regulations

5. After regulation 18(8)(b) of the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996(c) (costs incurred in supporting certain children), add—

“(c) where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made, the amount of child benefit that would be otherwise paid in respect of the relevant child is to be treated as being payable.”

Amendment of the Child Support (Maintenance Calculation Procedure) Regulations

6.—(1) The Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(d) are amended as follows.

(2) In Schedule 1 (meaning of “child” for the purposes of the Order)—

(a) for the heading to paragraph 1(e) substitute—

“**Conditions prescribed for the purposes of Article 3(1)**”; and

(b) after paragraph 7(f) (education otherwise than at a recognised educational establishment) add—

“Person in respect of whom child benefit is payable

8. For the purposes of paragraphs 1(3) and 4(2), a person in respect of whom child benefit is payable includes a person in respect of whom an election has been made under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made.”

(3) After paragraph 2(11) of Schedule 2(g) (multiple applications), add—

“(12) For the purposes of sub-paragraph (8), where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made in respect of a child, that person is to be treated as the person to whom child benefit is being paid in respect of that child.”.

(4) After paragraph 2(11)(h) of Schedule 3 (multiple applications – transitional provisions), add—

“(12) For the purposes of sub-paragraph (8), where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for

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- (a) Regulation 25C was inserted by 2 of S.R. 2009 No. 286 and is amended by regulation 4(6) of S.R. 2012 No. 438
 - (b) Regulation 25G was inserted by 2 of S.R. 2009 No. 286 and is amended by regulation 4(6) of S.R. 2012 No. 438
 - (c) S.R. 1996 No. 541; regulation 18(8) was amended by regulation 9(8)(i) of S.R. 1998 No. 8
 - (d) S.R. 2001 No. 17; relevant amending Regulations are S.R. 2008 No. 404 and S.R. 2012 No. 438
 - (e) Paragraph 1 was substituted by regulation 3(a) of S.R. 2012 No. 438
 - (f) Paragraph 7 was substituted by regulation 3(e) of S.R. 2012 No. 438
 - (g) Paragraph 2 was amended by regulation 5(11)(b) of S.R. 2008 No. 404
 - (h) Paragraph 2 was amended by regulation 5(12)(b) of S.R. 2008 No. 404

payments of child benefit not to be made in respect of a child, that person is to be treated as the person to whom child benefit is being paid in respect of that child.”.

Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations

7.—(1) The Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001^(a) are amended as follows.

(2) For regulation 1(3) (citation, commencement and interpretation) substitute—

“(3) For the purposes of paragraph 10C(2)(b) of Schedule 1 to the Order (which provides for other descriptions of relevant children to be prescribed) “relevant other children” includes a child, other than a qualifying child, in respect of whom the non-resident parent or the non-resident parent’s partner—

- (a) would receive child benefit under Part IX of the Contributions and Benefits Act, but in respect of whom they do not do so, solely because the conditions set out in section 142 of that Act are not met; or
- (b) has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made.”.

(3) In regulation 8(3)^(b) (persons treated as non-resident parents), the words from ““child benefit”” to the end become sub-paragraph (a), and after that sub-paragraph add—

“; and

- (b) where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made, that person is to be treated as being in receipt of child benefit.”.

Amendment of the Child Support Maintenance Calculation Regulations

8.—(1) The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012^(c) are amended as follows.

(2) In regulation 33 (the general rule for determining gross weekly income)—

(a) in paragraph (2)—

- (i) in sub-paragraph (b) omit “the amount of historic income is nil or”;
- (ii) after sub-paragraph (b), add—

“; or

- (c) the Department is unable, for whatever reason, to request or obtain the information from HMRC.”;

(b) after paragraph (2), insert—

“(2A) For the purposes of paragraph (2)(a), current income is treated as differing from historic income by an amount that is at least 25 per cent. of historic income where

- (a) the amount of historic income is nil; and
- (b) the amount of current income is greater than nil.”.

(3) In regulation 41(1)(a) (estimate of current income where insufficient information available)—

- (a) after “by virtue of” insert “regulation 33(2)(a) where the amount of historic income is nil or by virtue of”; and
- (b) after “33(2)(b)” insert “or (c)”.

(4) After regulation 49(3) (parent treated as a non-resident parent in shared cases), add—

(a) S.R. 2001 No. 18; relevant amending Regulations are S.R. 2003 No. 84 and S.R. 2008 No. 404

(b) Regulation 8 was amended by regulation 9(3) of S.R. 2003 No. 84 and by Regulation 6(3) of S.R. 2008 No. 404

(c) S.R. 2012 No. 427

“(4) For the purposes of paragraph (3), where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made, that person is to be treated as receiving child benefit.”

(5) In regulation 53 (care provided for relevant other child by an authority), the existing provision becomes paragraph (1), and after that paragraph add—

“(2) For the purposes of paragraph (1), where a person has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made, that person is to be treated as receiving child benefit.”

(6) In regulation 74(2) (situations in which a variation previously agreed to may be taken into account in calculating maintenance liability) omit from “and the Department is satisfied” to “ceased to have effect,”.

(7) In regulation 76 (relevant other child outside Northern Ireland), for the heading substitute “Meaning of “relevant other child” for the purposes of the Child Support Order”, and the words from “would receive” to the end become paragraph (a), and after that paragraph add—

“; or

(b) has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 for payments of child benefit not to be made.”.

Amendment of the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations

9. In regulation 1(2) of the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2012^(a) (citation, commencement and interpretation), for the definition of “arrears of child maintenance” substitute—

““arrears of child support maintenance” means any payment of child support maintenance—

- (a) which has become due in relation to a maintenance assessment, or a maintenance calculation made under 2003 scheme rules, and not paid; and
- (b) in respect of which the Department is arranging collection under Article 29 of the Child Support (Northern Ireland) Order 1991;”.

Sealed with the Official Seal of the Department for Social Development on 3rd July 2013

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

(a) S.R. 2012 No. 438

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992, the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992, the Child support Departure Direction and Consequential Amendments Regulations 1996, the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001 (“the 2001 Regulations”), the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 (“the 2012 Regulations”) and the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2012.

Some of the provisions in these Regulations make amendments to child support provisions following changes to legislation allowing a person to make an election for payments of child benefit not to be made in cases where the person or their partner have income of over £50,000 per year.

Regulations 2(2)(b) and 2(3), 3, 5, 6(2)(b), (3) and (4), 7(3) and 8(4) and (5) make amendments to child support provisions to ensure that the effect is that a person who has made an election under section 11A(1) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8 (N.I)) for payments of child benefit not to be made is treated as receiving child benefit (or child benefit is treated as being payable) for the purposes of calculating child maintenance.

Regulation 7(2) amends the prescription of relevant other child which applies to the 2003 scheme of child support, so that it includes a child in respect of whom an election not to receive child benefit has been made. Regulation 8(7) makes the same amendment to the 2012 Regulations for the purposes of the 2012 scheme.

Regulation 2(2)(a) amends the heading of paragraph 1 of Schedule 1 to the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 to more accurately reflect the contents of that paragraph. Regulation 6(2)(a) makes the same amendment to the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2000.

Regulation 4 makes amendments to the Child Support (Collection and Enforcement) Regulations 1992 which are consequential on a change made in the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations (Northern Ireland) 2012 (“the Consequential Regulations”), for the purposes of the 2012 scheme of child support. Regulation 4(2) inserts a definition of “gross weekly income” and “current income” and paragraph (3) omits a paragraph referring to net weekly income. Regulation 4(4) amends regulation 25C so that the maximum deduction rate is 40% of the person’s gross weekly income as calculated for the purposes of the current maintenance calculation or, where it is an arrears only case, the most recent previous calculation. Regulation 4(5) amends regulation 25G so that in an arrears only case the liable person can request a review of the deduction order where there has been a change to current gross income.

Regulation 8(2) amends regulation 33 of the 2012 Regulations so that the non-resident parent’s gross weekly income can be (a) based on historic income in cases where the amount of historic income is nil, and (b) based on current income where the Department is unable to request or obtain information from Her Majesty’s Revenue and Customs. Regulation 8(3) makes changes consequential on this.

Regulation 8(6) amends regulation 74 of the 2012 Regulations so that a variation previously agreed to which has ceased to have effect for specified reasons can be taken into account again without the need for an application or needing to consider whether there has been a material change of circumstances.

Regulation 9 makes a technical amendment to a definition in the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2012.

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