

2014 No. 182

FAMILY LAW

CHILD SUPPORT

SOCIAL SECURITY

The Child Support Fees Regulations (Northern Ireland) 2014

Made - - - - *24th June 2014*

Coming into operation in accordance with regulation 1

Approved by resolution of the Assembly on 24th November 2014

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 5(1)(q) and 165(4) of the Social Security Administration (Northern Ireland) Act 1992(a), Articles 40(1) and 47(1) of the Child Support (Northern Ireland) Order 1991(b) and now vested in it(c) and sections 3(1) to (4) and 36(1) and (2) of the Child Maintenance Act (Northern Ireland) 2008(d).

PART 1

Citation, commencement and interpretation

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support Fees Regulations (Northern Ireland) 2014 and subject to paragraph (2) shall come into operation on 30th June 2014.

(2) Regulations 2, 3, 4 and 10 shall come into operation on 11th August 2014.

(3) In these Regulations—

“the 2008 Act” means the Child Maintenance Act (Northern Ireland) 2008;

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

“non-resident parent” has the meaning given in Article 4(2) of the Child Support Order(e).

(a) 1992 c. 8 (N.I.)

(b) S.I. 1991/2628 (N.I. 23); Article 40 was amended by paragraph 25 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I.10)) and is substituted by section 20 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) (“the 2000 Act”)

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

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

(e) The term “non-resident parent” is substituted for the definition of “absent parent” by paragraph 11 of Schedule 3 to the 2000 Act

PART 2

Collection fee

Interpretation of this Part

2. For the purposes of this Part—

“child support maintenance” means child support maintenance calculated under Part 1 of Schedule 1 to the Child Support Order^(a) as amended by Schedule 1 to the 2008 Act, which has accrued on or after the date on which this regulation comes into operation;

“person with care” has the meaning given in Article 4(3) of the Child Support Order.

The collection fee

3.—(1) A collection fee is payable to the Department by—

- (a) the non-resident parent; and
- (b) the person with care,

in relation to a case where there are arrangements for collection.

(2) The amount of the collection fee payable by a non-resident parent in respect of each day is—

- (a) subject to sub-paragraph (b), 20% of the daily amount;
- (b) where there is more than one person with care in relation to that non-resident parent, in respect of each person with care, 20% of the alternative daily amount.

(3) The amount of the collection fee payable by a person with care is 4% of any payment of child support maintenance in relation to which there are arrangements for collection, which the Department has collected and which would otherwise be paid to that person.

(4) In this regulation—

“alternative daily amount” means the alternative weekly amount divided by 7;

“alternative weekly amount” means the weekly amount of child support maintenance that the non-resident parent is liable to pay in respect of the person with care in question and in relation to which there are arrangements for collection;

“daily amount” means the weekly amount divided by 7;

“weekly amount” means the weekly amount of child support maintenance that the non-resident parent is liable to pay and in relation to which there are arrangements for collection.

(5) Where a calculation carried out under this regulation results in a fraction of a penny, that is to be treated as a penny if it is either one half or exceeds one half, and otherwise it is to be disregarded.

(6) For the purposes of this regulation, there are arrangements for collection where the Department is making arrangements in accordance with paragraph (7) to collect child support maintenance under Article 29(1) of the Child Support Order^(b) and the payments of child support maintenance are transmitted through the Department.

(7) Arrangements for the collection of child support maintenance payable may be made where—

- (a) the non-resident parent agrees to the arrangements; or
- (b) the Department is satisfied that without the arrangements child support maintenance is unlikely to be paid in accordance with the calculation.

(a) Part 1 of Schedule 1 is substituted by section 1(3) of and Schedule 1 to the 2000 Act and amended by Schedule 1 to the Child Support Maintenance Act (Northern Ireland) 2008

(b) Article 29(1) was amended by section 1(2)(a) of the 2000 Act and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

Recovery of the collection fee

4.—(1) Any amount of the collection fee payable by a non-resident parent under regulation 3 (the collection fee) may be recovered by the Department from any payment made by that non-resident parent to the Department.

(2) Any amount of the collection fee payable by a person with care under regulation 3 may be recovered by the Department from any payment of child support maintenance which would otherwise be paid to that person by the Department.

PART 3

Enforcement fee

Interpretation of this Part

5. For the purposes of this Part—

“armed forces” means the naval, military and air forces of the Crown;

“child support maintenance” means child support maintenance calculated under Part 1 of Schedule 1 to the Child Support Order as amended by Schedule 1 to the 2008 Act;

“committed to operations” means deployed on an operational tour of duty and includes pre-operational training and leave, rest and recuperation during an operational tour of duty and post-operational leave;

“deduction from earnings order” means an order made under Article 31(2) of the Child Support Order^(a) and, with the exception of where it appears in regulation 8(4)(b) (waiver of an enforcement fee), includes a deduction from earnings request;

“deduction from earnings request” means a request from the Department in respect of a non-resident parent, who is a member of the armed forces and who is liable to pay child support maintenance, for a sum to be deducted from that non-resident parent’s pay and appropriated in or towards satisfaction of the non-resident parent’s obligation to pay child support maintenance;

“liability order” means an order made under Article 33(3) of the Child Support Order;

“lump sum deduction order” means an order made under Article 32E(1) of the Child Support Order^(b); and

“regular deduction order” means an order made under Article 32A(1) of the Child Support Order^(c).

(a) Article 31(2) was amended by section 1(2)(a) of the 2000 Act

(b) Article 32E(1) was inserted by section 15 of the Child Maintenance Act (Northern Ireland) 2008

(c) Article 32A(1) was inserted by section 14 of the Child Maintenance Act (Northern Ireland) 2008

Enforcement fee

6. An enforcement fee of an amount set out in column (2) of the table is payable to the Department by a non-resident parent when the Department takes a method of enforcement action specified in column (1) of the table to secure payment of child support maintenance.

| Column (1) <i>Enforcement Action</i> | Column (2) <i>Fee Payable</i> |
|--|----------------------------------|
| (i) Making a deduction from earnings order | £50 |
| (ii) Making a regular deduction order | £50 |
| (iii) Making a lump sum deduction order | £200 |
| (iv) Making an application for a liability order | £300 |

Recovery of an enforcement fee

7. An enforcement fee payable by a non-resident parent under regulation 6 (enforcement fee) may be recovered by the Department from any payment made by that non-resident parent to the Department.

Waiver of an enforcement fee

8.—(1) An enforcement fee payable under regulation 6 may be waived by the Department in the circumstances specified in paragraphs (2) to (6).

(2) The circumstances specified in this paragraph are where an additional enforcement fee is payable with respect to concurrent or subsequent action of the same type taken by the Department in circumstances where—

- (a) the non-resident parent has more than one employer at the same time and the Department makes two or more deduction from earnings orders; or
- (b) the non-resident parent holds more than one account with a deposit-taker and the Department makes more than one regular deduction order or lump sum deduction order simultaneously.

(3) The circumstances specified in this paragraph are where an additional enforcement fee is payable with respect to action taken to make an additional deduction from earnings order or additional regular deduction order in circumstances where—

- (a) the non-resident parent has changed employer;
- (b) the non-resident parent has changed their account held with a deposit-taker; or
- (c) the amount being collected under a prior deduction from earnings order or a prior regular deduction order has changed.

(4) The circumstances specified in this paragraph are where—

- (a) an application for a liability order is made to a court, but no liability order results from the application;
- (b) a successful appeal or a successful challenge by way of judicial review has been made against the making of a deduction from earnings order, a regular deduction order or a lump sum deduction order; or
- (c) a deduction from earnings order, a regular deduction order or a lump sum deduction order has lapsed or been discharged due to an error or maladministration by the Department.

(5) The circumstances specified in this paragraph are where a non-resident parent elects to pay child support maintenance by way of a deduction from earnings order.

(6) The circumstances specified in this paragraph are where a deduction from earnings request is made when the non-resident parent to which it relates is committed to operations.

PART 4

Miscellaneous

Collection and enforcement of fees

9.—(1) Subject to paragraph (2), the provisions of the Child Support Order with respect to—

- (a) the collection of child support maintenance;
- (b) the enforcement of any obligation to pay child support maintenance,

shall apply equally to the collection and enforcement of fees payable under one or both of Parts 2 and 3 of these Regulations.

(2) The following provisions of the Child Support Order do not apply where those provisions would be used solely to enforce payment of a fee payable by virtue of one or both of Parts 2 and 3—

- (a) Article 36A(a) (commitment to prison and disqualification from driving);
- (b) Article 37(b) (commitment to prison); and
- (c) Article 37A(c) (disqualification from driving: further provision).

Amendment of the Social Security (Claims and Payments) Regulations

10.—(1) Schedule 8C to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (deductions from benefit in respect of child support maintenance and payment to persons with care)(d) is amended as follows.

(2) In paragraph 1 (interpretation) after the definition of “beneficiary” insert—

““fee” means any collection fee under Part 2 of the Child Support Fees Regulations (Northern Ireland) 2014 which is payable by the non-resident parent;”.

(3) In paragraph 2(e) (deductions)—

- (a) in sub-paragraph (1)—
 - (i) after “an amount equal to the amount of maintenance” insert “and any fee”; and
 - (ii) at the end insert “, and retain any amount deducted in discharge of any liability to pay a fee”;
- (b) in sub-paragraph (2) after “A deduction” insert “for maintenance and fees”.

(4) In paragraph 3(1)(f) (arrears) —

- (a) for “£1” substitute “£1.20”;
- (b) at the end insert “, and retain any amount deducted in discharge of any liability to pay a fee”.

(5) In paragraph 4 (apportionment) after “the amount deducted” insert “in respect of maintenance”.

(6) In paragraph 5(2)(g) (flat rate maintenance)—

- (a) before the words “may be deducted” insert “and any fee”;
- (b) after “both partners’ liability to pay maintenance” insert “and any fee”; and
- (c) at the end insert “or retained in discharge of any liability to pay a fee”.

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- (a) Article 36A was inserted by section 16(1) of the 2000 Act
 - (b) Article 37 was amended by section 16(2) of, and Schedule 9 to, the 2000 Act
 - (c) Article 37A was inserted by section 16(3) of the 2000 Act
 - (d) S.R. 1987 No. 465; Schedule 8C was inserted by regulation 2(3) of S.R. 2001 No. 22
 - (e) Paragraph 2(1) was amended by regulation 14(3)(a) of S.R. 2003 No. 191 and regulation 13(20)(a) of S.R. 2008 No. 286
 - (f) Paragraph 3(1) was amended by regulation 14(3)(a) of S.R. 2003 No. 191 and regulation 13(20)(b) of S.R. 2008 No. 286
 - (g) Paragraph 5(2) was amended by regulation 3 of S.R. 2013 No. 190

(7) In paragraph 6(2)(a) (flat rate maintenance (polygamous marriage))—

- (a) before the words “may be deducted” insert “and any fee”;
- (b) after “all the members’ liability to pay maintenance” insert “and any fee”; and
- (c) at the end insert “or retained in discharge of any liability to pay a fee”.

Sealed with the Official Seal of the Department for Social Development on 24th June 2014

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

(a) Paragraph 6(2) was amended by regulation 3 of S.R. 2013 No. 190

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the charging of fees by the Department in connection with the exercise of the Department's functions with regards to child support maintenance.

Regulation 3 provides that a collection fee is payable in a case where arrangements for collection are made by the Department. A collection fee is payable by both the non-resident parent and the person with care. The collection fee is only payable in a case where child support maintenance is calculated under the 2012 scheme and in respect of child support maintenance that has accrued since the coming into operation of Regulation 2.

The collection fee payable by a non-resident parent is normally 20% of the daily amount of child support maintenance that the non-resident parent is liable to pay. The collection fee payable by a person with care is 4% of the child support maintenance that is collected by the Department and which would otherwise be paid to that person.

Regulation 4 makes provision for the recovery of the collection fee. The collection fee payable by the non-resident parent may be recovered from any payment made by that non-resident parent to the Department. The collection fee payable by the person with care may be recovered from any payment of child support maintenance which would be otherwise paid to that person.

Regulation 6 makes provision for the payment of an enforcement fee by a non-resident parent where the Department makes a deduction from earnings order, a regular deduction order, a lump sum deduction order or an application for a liability order. An enforcement fee is only payable in a case where child support maintenance is calculated under the 2012 scheme.

Regulation 7 allows the Department to recover the enforcement fee from any payment made by the non-resident parent to the Department.

Regulation 8 prescribes circumstances in which an enforcement fee payable under regulation 6 may be waived.

Regulation 9 provides that the provisions of the Child Support (Northern Ireland) Order 1991 with respect to the collection and enforcement of child support maintenance shall apply to the collection and enforcement of fees payable under these Regulations with certain exceptions.

Regulation 10 makes supplemental amendments to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987. These amendments enable the Department to make deductions from prescribed benefits to include the collection fee payable under these Regulations by the non-resident parent.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.

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