

2014 No. 193

FAMILY LAW

CHILD SUPPORT

**The Child Support (Modification, Consequential and
Miscellaneous Amendments) Regulations (Northern Ireland)
2014**

Made - - - -

27th June 2014

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 18(1), 29(2) and (3), 32(1) and (2)(n), 34(1), 40A, 47(1) and (2)(a) and (i) and 48(4) of, and paragraph 11 of Schedule 1 to, the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b), and section 36(1) and (2) of, and paragraphs 2 and 5 of Schedule 2 to the Child Maintenance Act (Northern Ireland) 2008(c).

Citation and commencement

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

(2) Regulation 3(5) comes into operation on 11 August 2014.

Modification of the Child Support (Collection and Enforcement) Regulations

2.—(1) The Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(d) are modified, in relation to 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, as if they had been amended as follows.

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- (a) S.I. 1991/2628 (N.I. 23); Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and paragraph (1) is amended by section 8(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) (“the 2000 Act”), Article 29(2) and (3) is amended by section 1(2) of the 2000 Act, Article 40A was inserted by section 29 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.)), Article 47(2) was amended by paragraph 31 of Schedule 6 to Social Security (Northern Ireland) Order 1998 and is amended by section 1(2) of, and paragraph 27 of Schedule 3 to, the 2000 Act and paragraph 11 of Schedule 1 is amended by section 1(2) of the 2000 Act
- (b) See Article 8(b) of S.R. 1999 No. 481
- (c) 2008 (c. 10 (N.I.))
- (d) S.R. 1992 No. 390; relevant amending Regulations are S.R. 1995 No. 162, S.R. 2001 No. 15, S.R. 2008 No. 409 and S.R. 2012 No. 438

- (2) In regulation 1 (citation, commencement and interpretation)—
- (a) in paragraph (2)(a)—
- (i) after the definition of “the Order” insert—
- ““collection fee” means a fee payable by a non-resident parent under regulation 3 of the Child Support Fees Regulations (Northern Ireland) 2014**(b)**;
- “enforcement fee” means a fee payable under regulation 6 of the Child Support Fees Regulations (Northern Ireland) 2014;” and
- (ii) in the definition of “liable person” after “maintenance” insert “or liable to make payment of a fee (or both)”, and
- (b) for paragraph (2A)(c) substitute—
- “(2A) Except in relation to regulation 8(3)(a) and Schedule 2, in these Regulations “fee” means a collection fee or an enforcement fee (or both).”.
- (3) In regulation 3 (method of payment)—
- (a) in paragraph (2)(d) after “paragraph (1)” insert “and from which payments of collection fees (where payable) may be made”; and
- (b) in paragraph (6)(b) and (c)(e) after “liability” insert “, that parent’s liability to pay a fee or the amount of a fee payable by that parent”.
- (4) In regulation 4(1)(f) (payments to be scheduled over reference period) after “payments of child support maintenance” insert “and any collection fees”.
- (5) In regulation 7 (notice to liable person as to requirements about payment)—
- (a) in paragraph (1)(g)—
- (i) in sub-paragraph (a) after “child support maintenance” insert “and any collection fees”,
- (ii) in sub-paragraph (b) for “it is” substitute “child support maintenance and any collection fees are”,
- (iii) in sub-paragraph (c) after “payment” insert “of child support maintenance and any collection fees”,
- (iv) in sub-paragraph (d) after “payments” insert “of child support maintenance and any collection fees”, and
- (v) in sub-paragraph (e) after “child support maintenance” insert “and any payment of a collection fee”;
- (b) in paragraph (1A)(h) for “, interest or fees”, in both places, substitute “or interest”;
- (c) after paragraph (1A) insert—
- “(1B) In the case of an enforcement fee, the Department shall send the liable person a notice stating—
- (a) the amount of the enforcement fee payable; and
- (b) the method of enforcement action in respect of which that fee is payable.”;
- (d) in paragraph (3)(i) for “, interest or fees” substitute “or interest”; and
- (e) after paragraph (3) add—

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- (a) To which there are amendments not relevant to these Regulations
- (b) S.R. 2014 No. 182
- (c) Paragraph (2A) was inserted by regulation 3(2)(b) of S.R. 2001 No. 15
- (d) Paragraph (2) is amended by regulation 3(4)(c) of S.R. 2001 No. 15
- (e) Paragraph (6) was inserted by regulation 3(2)(c) of S.R. 2008 No. 409
- (f) Regulation 4 is substituted by regulation 4(2) of S.R. 2012 No. 438
- (g) Paragraph (1) is amended by regulation 3(6)(a) of S.R. 2001 No. 15
- (h) Paragraph (1A) is inserted by regulation 3(6)(b) of S.R. 2001 No. 15
- (i) Paragraph (3) was added by regulation 3(6)(d) of S.R. 2001 No. 15

“(4) A notice under paragraph (1B) shall be sent to the liable person as soon as is reasonably practicable after an enforcement fee becomes payable.”.

(6) In regulation 17(1)(b)(a) (requirement to review deduction from earnings orders)—

- (a) after “any arrears” insert “of child support maintenance, arrears of collection fees”; and
- (b) for “or fees” substitute “or enforcement fee”.

(7) In regulation 20 (discharge of deduction from earnings orders)—

- (a) in paragraph (1)(b)—
 - (i) after “where” insert “paragraph (1A) applies or”; and
 - (ii) in sub-paragraph (f) after “maintenance calculation” insert “and any requirement to pay collection fees”; and
- (b) after paragraph (1) insert—

“(1A) This paragraph applies where the Department—

- (a) has agreed with the liable person an alternative method of payment of the child support maintenance due under the maintenance calculation and an alternative method of payment of fees (where payable); and
- (b) considers it is reasonable to discharge the order in the circumstances of the case.”.

(8) In regulation 26(2)(c) (notice of intention to apply for a liability order) for “or fees” substitute “, collection fees or enforcement fees”.

(9) In Schedule 1 (liability order prescribed form) after “Part IV of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992” insert “and Parts 2 and 3 of the Child Support Fees Regulations (Northern Ireland) 2014”.

Modification of the Child Support (Management of Payments and Arrears) Regulations

3.—(1) The Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009(d) are modified, in relation to 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, as if they had been amended as follows.

(2) In regulation 2 (interpretation) after paragraph (2) add—

“(3) For the purposes of regulations 3 and 3A there are “arrangements for direct pay” where the Department has specified that payments of child support maintenance shall be made by the non-resident parent to the person caring for the child in question.”.

(3) In regulation 3(1) (arrears notices)—

- (a) in paragraph (a) for “; and” substitute “ or there are arrangements for direct pay;”; and
- (b) after paragraph (b) add—

“and

- (c) regulation 3A(1) does not apply or regulation 3A(1) does apply but the notice referred to in paragraph (2) of that regulation has not been given.”.

(a) Regulation 17 was substituted by regulation 4(8) of S.R. 1995 No. 162 and paragraph (1) is amended by regulation 3(13) of S.R. 2001 No. 15
(b) Paragraph (1) was substituted by regulation 4(9) of S.R. 1995 No. 162 and sub-paragraph (f) is amended by regulation 3(14) of S.R. 2001 No. 15
(c) Paragraph (2) is amended by regulation 3(17) of S.R. 2001 No. 15
(d) S.R. 2009 No. 422

(4) After regulation 3 insert—

“Notice of consequences of failure to pay child support maintenance due

3A.—(1) This paragraph applies to a case where—

- (a) either—
 - (i) there are arrangements for direct pay, or
 - (ii) the Department is arranging for the collection of child support maintenance under Article 29 of the Order but there are no arrangements for enforcement under that Order; and
- (b) the non-resident parent has failed to make one or more payments of child support maintenance due.

(2) Where paragraph (1) applies to a case, the Department may only start making arrangements for collection under Article 29 of the Order or arrangements for enforcement under that Order (or both) where the non-resident parent has been given a notice, within the preceding 12 month period, setting out that the Department will consider making such arrangements where there is a failure to make one or more payments of child support maintenance due.”.

(5) In regulation 11 (recovery of arrears from a deceased person’s estate) after “maintenance” insert “and collection fees (payable under regulation 3 of the Child Support Fees Regulations (Northern Ireland) 2014)”.

Amendment of the Child Support Maintenance Calculation Regulations

4.—(1) The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012(a) are amended as follows.

(2) In regulation 11 (notice of application)—

- (a) in paragraph (1) for “the Department must, as soon as reasonably practicable,” substitute “, and the requirement in paragraph (3) is satisfied, the Department must”;
- (b) in paragraph (2) after “parent” insert “(as ascertained and verified in accordance with paragraph (3))”; and
- (c) after paragraph (2) add—

“(3) The requirement is that the address of the non-resident parent in relation to the application has been ascertained and verified.

(4) Except where paragraph (5) or (6) applies to an application, notice must be given as soon as is reasonably practicable.

(5) Where—

- (a) there is an existing case related to the application; or
 - (b) the applicant—
 - (i) has been required to choose in an existing case whether or not to stay in the statutory scheme (under Schedule 2 to the 2008 Act (maintenance calculations: transfer of cases to new rules)), as a result of that applicant’s existing case being related to an application made under Article 7(1), and
 - (ii) has chosen, by way of the application, to remain in the statutory scheme,
- notice must be given as soon as is reasonable.

(6) Subject to paragraph (8), where the applicant—

(a) S.R. 2012 No. 427

- (a) has been required to choose in an existing case whether or not to stay in the statutory scheme (under Schedule 2 to the 2008 Act), in circumstances where the existing case is not related to an application made under Article 7(1); and
 - (b) has chosen, by way of the application, to remain in the statutory scheme,
- notice must be given in accordance with paragraph (7).

(7) Where paragraph (6) applies, notice must be given—

- (a) where the application is made and the requirement in paragraph (3) is satisfied before the day 39 days before the liability end date (which means the date determined in accordance with regulation 6 (liability end date) of the Ending Liability Regulations) in relation to the existing case has passed, as soon as is reasonable once that day has passed; or
- (b) where the application is made and the requirement in paragraph (3) is satisfied after the day 39 days before the liability end date has passed, as soon as is reasonable.

(8) Where an application to which paragraph (6) applies becomes an application to which paragraph (5) applies (because it becomes an existing case related to an application), paragraph (6) ceases to apply to that application.

(9) In this regulation—

- (a) “the 2008 Act” means the Child Maintenance Act (Northern Ireland) 2008(a);
- (b) “existing case” has the meaning given in paragraph 1(2) of Schedule 2 to the 2008 Act;
- (c) “the Ending Liability Regulations” means the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014(b);
- (d) an existing case is related to an application if—
 - (i) the non-resident parent in relation to that application is also the non-resident parent in relation to the existing case and the person with care in relation to that application is not the person with care in relation to the existing case, or
 - (ii) the non-resident parent in relation to that application is a partner of a non-resident parent in relation to the existing case and either or both are in receipt of a benefit prescribed by regulations made under paragraph 4(1)(c) (flat rate) of Schedule 1 to the Child Support Order(c).”.

(3) In regulation 12 (initial effective date)—

- (a) renumber the existing provision as paragraph (1) of that regulation;
- (b) in that paragraph for “on which notice is given to the non-resident parent in accordance with” substitute “provided as the initial effective date in the notice given to the non-resident parent under”; and
- (c) after that paragraph add—

“(2) The non-resident parent must be notified of the initial effective date—

 - (a) by written notice posted to the last known address of the non-resident parent at least two days prior to the initial effective date; or
 - (b) by telephone on or before the initial effective date and by written notice sent by ordinary post to the last known address of the non-resident parent.”.

(4) In regulation 14 (grounds for revision) after paragraph (3) insert—

“(3A) Where—

(a) 2008 (c.10 (N.I.))
 (b) S.R. 2014 No. 191
 (c) Part 1 of Schedule 1 is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

- (a) the Department makes a decision and there is an appeal;
 - (b) there is a further decision in relation to the appellant (“decision B”) after the appeal but before the appeal results in a decision by an appeal tribunal (“decision C”); and
 - (c) the Department would have made decision B differently if aware of decision C at the time of making decision B,
- decision B may be revised at any time.”.

Sealed with the Official Seal of the Department for Social Development on 27 June 2014

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments and amendments consequential on the Child Support Fees Regulations (Northern Ireland) 2014 (“the Fees Regulations”) to various Child Support Regulations.

Regulation 2 modifies the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 (“the 1992 Regulations”) in relation to cases administered under the 2012 scheme of child support. The modifications are consequential on the introduction of charging of collection fees (a fee payable in a case where the Department arranges for collection of child maintenance) and enforcement fees (a fee payable where the Department takes enforcement action) under the Fees Regulations. A new definition of “fee” is inserted into the 1992 Regulations, which means a collection fee or an enforcement fee payable under the Fees Regulations. Regulation 3 of the 1992 Regulations is modified so that the Department may specify a method of payment for collection and enforcement fees and so that the Department may require a person liable to pay child maintenance and fees (“the liable person”) to take reasonable steps to open an account from which payments of child maintenance and collection fees can be made. Regulation 3 is further modified so that, when the Department is considering specifying a deduction from earnings order as the method of payment, it is not relevant that a third party would become aware, or that the liable person prefers that their employer would not be informed, of that person’s liability to pay a fee or the amount of the fee payable. Regulation 4 of the 1992 Regulations is modified so that the Department may schedule payments of collection fees in the same way that child maintenance is scheduled. Regulation 7 of the 1992 Regulations is modified so that when a maintenance calculation is made the Department must send the liable person a notice stating, in relation to child maintenance and collection fees (where payable): the amount payable, to whom payments are to be made, the method of payment, the day and interval by reference to which payments are to be made and the amount of any overdue child maintenance or collection fees. Provision is also made so that when an enforcement fee becomes payable the liable person must be sent a notice stating the amount of the enforcement fee payable and the enforcement action in respect of which it is payable. In both scenarios, the notice must be sent as soon as is reasonably practicable. Paragraphs (6), (7)(a), (8) and (9) of Regulation 2 of the Regulations make modifications to provisions relating to enforcement so that, where relevant, reference is also made to fees. Paragraph (7)(b) modifies Regulation 20 of the 1992 Regulations so that a deduction from earnings order may be discharged where the Department agrees an alternative method of payment of fees and child maintenance with the liable person and considers that discharging the order reasonable.

Regulation 3 modifies the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 so that the modifications made apply only in relation to cases administered under the 2012 scheme of child support.

Regulation 4 amends the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012. Regulation 11 is amended so that the Department must send a notice under regulation 11 where: an application has been made; the address of the non-resident parent has been ascertained and verified. The notice must normally be sent as soon as is reasonably practicable, unless the provisions for cases affected by the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014 apply. Regulation 12 is amended so that the initial effective date is the date provided in the notice given under regulation 11. Notice of that date must be given to the non-resident parent either by post at least two days before the initial effective date or by phone on or before that date and by post. Regulation 14 is amended so that a new paragraph (3A) is inserted to provide for certain decisions to be revised at any time.

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