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STATUTORY INSTRUMENTS

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**1991 No. 2628 (N.I. 23)**

**NORTHERN IRELAND**

**The Child Support(Northern Ireland) Order 1991**

*Made - - - - 19th November 1991*

*Laid before Parliament 27th November 1991*

*Coming into operation on a day or days to be  
appointed under Article 1(2)*

At the Court at Buckingham Palace, the 19th day of November 1991

Present,

The Queen's Most Excellent Majesty in Council

Whereas this Order is made only for purposes corresponding to those of the provisions of the Child Support Act 1991<sup>(1)</sup>, other than provisions which relate to the appointment of Child Support Commissioners for Northern Ireland:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974<sup>(2)</sup> (as modified by section 56(1) of the said Act of 1991) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Introductory*

**Title and commencement**

1.—(1) This Order may be cited as the Child Support (Northern Ireland) Order 1991.

(2) This Order shall come into operation on such day or days as may be appointed by order made by the Lord Chancellor or the Head of the Department or by both of them acting jointly.

(3) An order under paragraph (2) may make such supplemental, incidental or transitional provision as appears to the person making the order to be necessary or expedient in connection with the provisions brought into operation by the order, including such adaptations or modifications of—

- (a) the provisions so brought into operation;
- (b) any provisions of this Order then in operation; or

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(1) 1991 c. 48

(2) 1974 c. 28

- (c) any provision of any other statutory provision,  
as appear to him to be necessary or expedient.
- (4) Different provision may be made by virtue of paragraph (3) with respect to different periods.
- (5) Any provision made by virtue of paragraph (3) may, in particular, include provision for—
- (a) the enforcement of a maintenance assessment (including the collection of sums payable under the assessment) as if the assessment were a court order of a prescribed kind;
  - (b) the registration of maintenance assessments with the appropriate court in connection with any provision of a kind mentioned in sub-paragraph (a);
  - (c) the variation, on application made to a court, of the provisions of a maintenance assessment relating to the method of making payments fixed by the assessment or the intervals at which such payments are to be made;
  - (d) a maintenance assessment, or an order of a prescribed kind relating to one or more children, to be deemed, in prescribed circumstances, to have been validly made for all purposes or for such purposes as may be prescribed.

## Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

- “absent parent” has the meaning given in Article 4(2);
- “adjudication officer” has the same meaning as in the benefit Acts;
- “assessable income” has the meaning given in paragraph 5 of Schedule 1;
- “benefit Acts” means the Social Security (Northern Ireland) Acts 1975 to 1991;
- “child benefit” has the same meaning as in the Child Benefit (Northern Ireland) Order 1975<sup>(4)</sup>;
- “Chief Child Support Officer” has the meaning given in Article 15;
- “child support appeal tribunal” means a tribunal appointed under Article 23;
- “Child Support Commissioner” means a Child Support Commissioner for Northern Ireland appointed under section 23 of the Child Support Act 1991<sup>(5)</sup>;
- “child support maintenance” has the meaning given in Article 4(6);
- “child support officer” has the meaning given in Article 15;
- “deduction from earnings order” has the meaning given in Article 31(2);
- “the Department” means the Department of Health and Social Services;
- “disability living allowance” has the same meaning as in the Social Security (Northern Ireland) Act 1975<sup>(6)</sup>;
- “family credit” has the same meaning as in the benefit Acts;
- “income support” has the same meaning as in the benefit Acts;
- “interim maintenance assessment” has the meaning given in Article 14;
- “liability order” has the meaning given in Article 33(2);
- “maintenance agreement” has the meaning given in Article 11(1);

(3) 1954 c. 33 (N.I.)

(4) 1975 NI 16

(5) 1991 c. 48

(6) 1975 c. 15

“maintenance assessment” means an assessment of maintenance made under this Order and, except in prescribed circumstances, includes an interim maintenance assessment;

“maintenance order” has the meaning given in Article 10(11);

“maintenance requirement” means the amount calculated in accordance with paragraph 1 of Schedule 1;

“parent”, in relation to any child, means any person who is in law the mother or father of the child and, in the case of an illegitimate child, includes the father;

“parental responsibility”, as respects a particular child, means—

- (a) in the case of the parents of a legitimate child, or the mother of an illegitimate child, the rights and duties which by law each parent (or the mother, as the case may be) has in relation to the child, and
- (b) in any other case, the rights and duties which a person has in relation to the child as his guardian or by virtue of an order of a court giving him custody of the child (including actual or legal custody within the meaning of the Domestic Proceedings (Northern Ireland) Order 1980(7);

“person with care” has the meaning given in Article 4(3);

“prescribed”, except in Article 12(5), means prescribed by regulations made by the Department;

“qualifying child” has the meaning given in Article 4(1);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(8).

### **Meaning of “child”**

**3.—**(1) For the purposes of this Order a person is a child if—

- (a) he is under the age of 16;
- (b) he is under the age of 19 and receiving full-time education (which is not advanced education)—
  - (i) by attendance at a recognised educational establishment; or
  - (ii) elsewhere, if the education is recognised by the Department; or
- (c) he does not fall within sub-paragraph (a) or (b) but—
  - (i) he is under the age of 18, and
  - (ii) prescribed conditions are satisfied with respect to him.

(2) A person is not a child for the purposes of this Order if he—

- (a) is or has been married;
- (b) has celebrated a marriage which is void; or
- (c) has celebrated a marriage in respect of which a decree of nullity has been granted.

(3) In this Article—

“advanced education” means education of a prescribed description;

and “recognised educational establishment” means an establishment recognised by the Department for the purposes of this Article as being, or as comparable to, a university, college or school.

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(7) 1980 NI 5

(8) 1954 c. 33 (N.I.)

(4) Where a person has reached the age of 16, the Department may recognise education provided for him otherwise than at a recognised educational establishment only if the Department is satisfied that education was being so provided for him immediately before he reached the age of 16.

(5) The Department may provide that in prescribed circumstances education is or is not to be treated for the purposes of this Article as being full-time.

(6) In determining whether a person falls within paragraph (1)(b), no account shall be taken of such interruptions in his education as may be prescribed.

(7) The Department may by regulations provide that a person who ceases to fall within paragraph (1) shall be treated as continuing to fall within that paragraph for a prescribed period.

(8) No person shall be treated as continuing to fall within paragraph (1) by virtue of regulations made under paragraph (7) after the end of the week in which he reaches the age of 19.

### **Meaning of certain other terms used in this Order**

4.—(1) A child is a “qualifying child” if—

- (a) one of his parents is, in relation to him, an absent parent; or
- (b) both of his parents are, in relation to him, absent parents.

(2) The parent of any child is an “absent parent”, in relation to him, if—

- (a) that parent is not living in the same household with the child; and
- (b) the child has his home with a person who is, in relation to him, a person with care.

(3) A person is a “person with care”, in relation to any child, if he is a person—

- (a) with whom the child has his home;
- (b) who usually provides day to day care for the child (whether exclusively or in conjunction with any other person); and
- (c) who does not fall within a prescribed category of person.

(4) The Department shall not, under paragraph (3)(c), prescribe as a category—

- (a) parents;
- (b) guardians;
- (c) persons having, as respects a child, custody (including actual or legal custody within the meaning of the Domestic Proceedings (Northern Ireland) Order 1980<sup>(9)</sup>) by virtue of an order of a court.

(5) For the purposes of this Order there may be more than one person with care in relation to the same qualifying child.

(6) Periodical payments which are required to be paid in accordance with a maintenance assessment are referred to in this Order as “child support maintenance”.

(7) Expressions are defined in this Article only for the purposes of this Order.

### *The basic principles*

### **The duty to maintain**

5.—(1) For the purposes of this Order, each parent of a qualifying child is responsible for maintaining him.

(9) 1980 NI 5

(2) For the purposes of this Order, an absent parent shall be taken to have met his responsibility to maintain any qualifying child of his by making periodical payments of maintenance with respect to the child of such amount, and at such intervals, as may be determined in accordance with the provisions of this Order.

(3) Where a maintenance assessment made under this Order requires the making of periodical payments, it shall be the duty of the absent parent with respect to whom the assessment was made to make those payments.

### **Welfare of children: the general principle**

6. Where in any case which falls to be dealt with under this Order, the Department or any child support officer is considering the exercise of any discretionary power conferred by this Order, the Department or the child support officer shall have regard to the welfare of any child likely to be affected by its or his decision.

### **Child support maintenance**

7.—(1) A person who is, in relation to any qualifying child or any qualifying children, either the person with care or the absent parent may apply to the Department for a maintenance assessment to be made under this Order with respect to that child, or any of those children.

(2) Where a maintenance assessment has been made in response to an application under this Article the Department may, if the persons with care or absent parent with respect to whom the assessment was made applies to it under this paragraph, arrange for—

- (a) the collection of the child support maintenance payable in accordance with the assessment;
- (b) the enforcement of the obligation to pay child support maintenance in accordance with the assessment.

(3) Where an application under paragraph (2) for the enforcement of the obligation mentioned in paragraph (2)(b) authorises the Department to take steps to enforce that obligation whenever it considers it necessary to do so, the Department may act accordingly.

(4) A person who applies to the Department under this Article shall, so far as that person reasonably can, comply with such regulations as may be made by the Department with a view to the Department or the child support officer being provided with the information which is required to enable—

- (a) the absent parent to be traced (where that is necessary);
- (b) the amount of child support maintenance payable by the absent parent to be assessed; and
- (c) that amount to be recovered from the absent parent.

(5) Any person who has applied to the Department under this Article may at any time request it to cease acting under this Article.

(6) It shall be the duty of the Department to comply with any request made under paragraph (5) (but subject to any regulations made under paragraph (8)).

(7) The obligation to provide information which is imposed by paragraph (4)—

- (a) shall not apply in such circumstances as may be prescribed; and
- (b) may, in such circumstances as may be prescribed, be waived by the Department.

(8) The Department may by regulations make such incidental, supplemental or transitional provision as it thinks appropriate with respect to cases in which it is requested to cease to act under this Article.

(9) No application may be made under this Article if there is in force with respect to the person with care and absent parent in question a maintenance assessment made in response to an application under Article 9.

#### **Child support maintenance: supplemental provisions**

8.—(1) Where—

- (a) there is more than one person with care of a qualifying child; and
- (b) one or more, but not all, of them have parental responsibility for the child;

no application may be made for a maintenance assessment with respect to the child by any of those persons who do not have parental responsibility for the child.

(2) Where more than one application for a maintenance assessment is made with respect to the child concerned, only one of them may be proceeded with.

(3) The Department may by regulations make provision as to which of two or more applications for a maintenance assessment with respect to the same child is to be proceeded with.

#### **Applications by those receiving benefit**

9.—(1) Where income support, family credit of any other benefit of a prescribed kind is claimed by or in respect of, or paid to or in respect of the parent of a qualifying child that parent shall, if—

- (a) that parent is a person with care of the child; and
- (b) that parent is required to do so by the Department,

authorise the Department to take action under this Order to recover child support maintenance from the absent parent.

(2) The Department shall not require a person (“the parent”) to give it the authorisation mentioned in paragraph (1) if it considers that there are reasonable grounds for believing that—

- (a) if the parent were to be required to give that authorisation; or
- (b) if that parent were to give it,

there would be a risk of that parent, or of any child living with that parent, suffering harm or undue distress as a result.

(3) Paragraph (2) shall not apply if the parent requests the Department to disregard it.

(4) The authorisation mentioned in paragraph (1) shall extend to all children of the absent parent in relation to whom the parent first mentioned in paragraph (1) is a person with care.

(5) That authorisation shall be given, without unreasonable delay, by completing and returning to the Department an application—

- (a) for the making of a maintenance assessment with respect to the qualifying child or qualifying children; and
- (b) for the Department to take action under this Order to recover, on that parent’s behalf, the amount of child support maintenance so assessed.

(6) Such an application shall be made on a form (“a maintenance application form”) provided by the Department.

(7) A maintenance application form shall indicate in general terms the effect of completing and returning it.

(8) Paragraph (1) has effect regardless of whether any of the benefits mentioned there is payable with respect to any qualifying child.

(9) A person who is under the duty imposed by paragraph (1) shall, so far as that person reasonably can, comply with such regulations as may be made by the Department with a view to the Department or the child support officer being provided with the information which is required to enable—

- (a) the absent parent to be traced;
- (b) the amount of child support maintenance payable by the absent parent to be assessed; and
- (c) that amount to be recovered from the absent parent.

(10) The obligation to provide information which is imposed by paragraph (9)—

- (a) shall not apply in such circumstances as may be prescribed; and
- (b) may, in such circumstances as may be prescribed, be waived by the Department.

(11) A person with care who has authorised the Department under paragraph (1) but who subsequently ceases to fall within that paragraph may request the Department to cease acting under this Article.

(12) It shall be the duty of the Department to comply with any request made under paragraph (11) (but subject to any regulations made under paragraph (13)).

(13) The Department may by regulations make such incidental or transitional provision as it thinks appropriate with respect to cases in which it is requested under paragraph (11) to cease to act under this Article.

(14) The fact that a maintenance assessment is in force with respect to a person with care shall not prevent the making of a new maintenance assessment with respect to that person in response to an application under this Article.

### **Role of the courts with respect to maintenance for children**

**10.—**(1) This paragraph applies in any case where a child support officer would have jurisdiction to make a maintenance assessment with respect to a qualifying child and an absent parent of his on an application duly made by a person entitled to apply for such an assessment with respect to that child.

(2) Paragraph (1) applies even though the circumstances of the case are such that a child support officer would not make an assessment if it were applied for.

(3) In any case where paragraph (1) applies, no court shall exercise any power which it would otherwise have to make, vary or revive any maintenance order in relation to the child and absent parent concerned.

(4) Paragraph (3) does not prevent a court from revoking a maintenance order.

(5) The Lord Chancellor may by order provide that, in such circumstances as may be specified by the order, this Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) a written agreement (whether or not enforceable) provides for the making, or securing, by an absent parent of the child of periodical payments to or for the benefit of the child; and
- (b) the maintenance order which the court makes is, in all material respects, in the same terms as that agreement.

(6) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) a maintenance assessment is in force with respect to the child;
- (b) the amount of the child support maintenance payable in accordance with the assessment was determined by reference to the alternative formula mentioned in paragraph 4(3) of Schedule 1; and

- (c) the court is satisfied that the circumstances of the case make it appropriate for the absent parent to make or secure the making of periodical payments under a maintenance order in addition to the child support maintenance payable by him in accordance with the maintenance assessment.

(7) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) the child is, will be or (if the order were to be made) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation (whether or not while in gainful employment); and
- (b) the order is made solely for the purposes of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of the expenses incurred in connection with the provision of the instruction or training.

(8) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if—

- (a) a disability living allowance is paid to or in respect of him; or
- (b) no such allowance is paid but he is disabled,

and the order is made solely for the purpose of requiring the person making or securing the making of periodical payments fixed by the order to meet some or all of any expenses attributable to the child's disability.

(9) For the purposes of paragraph (8), a child is disabled if he is blind, deaf or dumb or is substantially and permanently handicapped by illness, injury, mental disorder or congenital deformity or such other disability as may be prescribed.

(10) This Article shall not prevent a court from exercising any power which it has to make a maintenance order in relation to a child if the order is made against a person with care of the child.

(11) In this Order “maintenance order”, in relation to any child, means an order which requires the making or securing of periodical payments to or for the benefit of the child and which is made under—

- (a) the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924<sup>(10)</sup>;
- (b) Part III of the Matrimonial Causes (Northern Ireland) Order 1978<sup>(11)</sup>;
- (c) the Domestic Proceedings (Northern Ireland) Order 1980<sup>(12)</sup>;
- (d) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989<sup>(13)</sup>; or
- (e) any other prescribed statutory provision,

and includes any order varying or reviving such an order.

### **Agreements about maintenance**

**11.—**(1) In this Article “maintenance agreement” means any agreement for the making, or for securing the making, of periodical payments by way of maintenance to or for the benefit of any child.

(2) Nothing in this Order shall be taken to prevent any person from entering into a maintenance agreement.

(3) The existence of a maintenance agreement shall not prevent any party to the agreement, or any other person, from applying for a maintenance assessment with respect to any child to or for whose benefit periodical payments are to be made or secured under the agreement.

<sup>(10)</sup> 1924 c. 2 (N.I.)

<sup>(11)</sup> 1978 NI 15

<sup>(12)</sup> 1980 NI 5

<sup>(13)</sup> 1989 NI 4

(4) Where any agreement contains a provision which purports to restrict the right of any person to apply for a maintenance assessment, that provision shall be void.

(5) Where Article 10 would prevent any court from making a maintenance order in relation to a child and an absent parent of his, no court shall exercise any power that it has to vary any agreement so as—

- (a) to insert a provision requiring that absent parent to make or secure the making of periodical payments by way of maintenance to or for the benefit of that child; or
- (b) to increase the amount payable under such a provision.

### **Relationship between maintenance assessments and certain court orders and related matters**

**12.—**(1) Where an order of a kind prescribed for the purposes of this paragraph is in force with respect to any qualifying child with respect to whom a maintenance assessment is made, the order—

- (a) shall, so far as it relates to the making or securing of periodical payments, cease to have effect to such extent as may be determined in accordance with regulations made by the Department; or
- (b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.

(2) Where an agreement of a kind prescribed for the purposes of this paragraph is in force with respect to any qualifying child with respect to whom a maintenance assessment is made, the agreement—

- (a) shall, so far as it relates to the making or securing of periodical payments, be unenforceable to such extent as may be determined in accordance with regulations made by the Department; or
- (b) where the regulations so provide, shall, so far as it so relates, have effect subject to such modifications as may be so determined.

(3) Any regulations under this Article may, in particular, make such provision with respect to—

- (a) any case where any person with respect to whom an order or agreement of a kind prescribed for the purposes of paragraph (1) or (2) has effect applies to the prescribed court, before the end of the prescribed period, for the order or agreement to be varied in the light of the maintenance assessment and of the provisions of this Order;
- (b) the recovery of any arrears under the order or agreement which fell due before the coming into force of the maintenance assessment,

as the Department considers appropriate and may provide that, in prescribed circumstances, an application to any court which is made with respect to an order of a prescribed kind relating to the making or securing of periodical payments to or for the benefit of a child shall be treated by the court as an application for the order to be revoked.

(4) The Department may by regulations make provision for—

- (a) notification to be given by the child support officer concerned to the prescribed person in any case where that officer considers that the making of a maintenance assessment has affected, or is likely to affect, any order of a kind prescribed for the purposes of this paragraph;
- (b) notification to be given by the prescribed person to the Department in any case where a court makes an order which it considers has affected, or is likely to affect, a maintenance assessment.

(5) Magistrates' courts rules may be made requiring any person who, in prescribed circumstances, makes an application to a court of summary jurisdiction for a maintenance order to furnish the court with a statement in a prescribed form, and signed by a child support officer, as to whether or not,

at the time when the statement is made, there is a maintenance assessment in force with respect to that person or the child concerned.

(6) In paragraph (5)—

“maintenance order” means an order of a prescribed kind for the making or securing of periodical payments to or for the benefit of a child; and

“prescribed” means prescribed by the rules.

### *Maintenance assessments*

#### **Maintenance assessments**

**13.**—(1) Any application for a maintenance assessment made to the Department shall be referred by it to a child support officer whose duty it shall be to deal with the application in accordance with the provision made by or under this Order.

(2) The amount of child support maintenance to be fixed by any maintenance assessment shall be determined in accordance with the provisions of Part I of Schedule 1.

(3) Part II of Schedule 1 makes further provision with respect to maintenance assessments.

#### **Interim maintenance assessments**

**14.**—(1) Where it appears to a child support officer who is required to make a maintenance assessment that he does not have sufficient information to enable him to make an assessment in accordance with the provision made by or under this Order, he may make an interim maintenance assessment.

(2) The Department may by regulations make provision as to interim maintenance assessments.

(3) The regulations may, in particular, make provision as to—

(a) the procedure to be followed in making an interim maintenance assessment; and

(b) the basis on which the amount of child support maintenance fixed by an interim assessment is to be calculated.

(4) Before making any interim assessment a child support officer shall, if it is reasonably practicable to do so, give written notice of his intention to make such an assessment to—

(a) the absent parent concerned; and

(b) the person with care concerned.

(5) Where a child support officer serves notice under paragraph (4), he shall not make the proposed interim assessment before the end of such period as may be prescribed.

### *Child support officers*

#### **Child support officers**

**15.**—(1) The Department shall appoint persons (to be known as child support officers) for the purpose of exercising functions—

(a) conferred on them by this Order, or by any other statutory provision; or

(b) assigned to them by the Department.

(2) A child support officer may be appointed to perform only such functions as may be specified in his instrument of appointment.

(3) The Department shall appoint a Chief Child Support Officer.

- (4) It shall be the duty of the Chief Child Support Officer to—
- (a) advise child support officers on the discharge of their functions in relation to making, reviewing or cancelling maintenance assessments;
  - (b) keep under review the operation of the provision made by or under this Order with respect to making, reviewing or cancelling maintenance assessments; and
  - (c) report to the Department annually, in writing, on the matters with which the Chief Child Support Officer is concerned.
- (5) The Department shall publish, in such manner as it considers appropriate, any report which it receives under paragraph (4)(c).

### *Information*

#### **Information required by the Department**

**16.**—(1) The Department may make regulations requiring any information or evidence needed for the determination of any application under this Order, or any question arising in connection with such an application, or needed in connection with the collection or enforcement of child support or other maintenance under this Order, to be furnished—

- (a) by such persons as may be determined in accordance with regulations made by the Department; and
- (b) in accordance with the regulations.

(2) Where the Department has in its possession any information acquired by it in connection with its functions under any of the benefit Acts, it may—

- (a) make use of that information for purposes of this Order; or
- (b) disclose it to the Secretary of State for purposes of the Child Support Act 1991<sup>(14)</sup>.

(3) The Department may by regulations make provision authorising the disclosure by it or by child support officers, in such circumstances as may be prescribed, of such information held by them for purposes of this Order as may be prescribed.

(4) The provisions of Schedule 2 (which relate to information held by the Department of the Environment or the Northern Ireland Housing Executive and required by the Department) shall have effect.

#### **Powers of inspectors**

**17.**—(1) Where, in a particular case, the Department considers it appropriate to do so for the purpose of acquiring information which it or any child support officer requires for purposes of this Order, it may appoint a person to act as an inspector under this Article.

(2) Every inspector shall be furnished with a certificate of his appointment.

(3) Without prejudice to his being appointed to act in relation to any other case, or being appointed to act for a further period in relation to the case in question, an inspector's appointment shall cease at the end of such period as may be specified.

(4) An inspector shall have power—

- (a) to enter at all reasonable times—
  - (i) any specified premises, other than premises used solely as a dwelling-house; and

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(14) 1991 c. 48

- (ii) any premises which are not specified but which are used by any specified person for the purpose of carrying on any trade, profession, vocation or business; and
  - (b) to make such examination and enquiry there as he considers appropriate.
- (5) An inspector exercising his powers may question any person aged 18 or over whom he finds on the premises.
- (6) If required to do so by an inspector exercising his powers, any person who is or has been—
- (a) an occupier of the premises in question;
  - (b) an employer or an employee working at or from those premises;
  - (c) carrying on at or from those premises any trade, profession, vocation or business;
  - (d) an employee or agent of any person mentioned in sub-paragraphs (a) to (c),
- shall furnish to the inspector all such information and documents as the inspector may reasonably require.
- (7) No person shall be required under this Article to answer any question or to give any evidence tending to incriminate himself or, in the case of a person who is married, his or her spouse.
- (8) On applying for admission to any premises in the exercise of his powers, an inspector shall, if so required, produce his certificate.
- (9) If any person—
- (a) intentionally delays or obstructs any inspector exercising his powers; or
  - (b) without reasonable excuse, refuses or neglects to answer any question or furnish any information or to produce any document when required to do so under this Article,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this Article—
- “certificate” means a certificate of appointment issued under this Article;
  - “inspector” means an inspector appointed under this Article;
  - “powers” means powers conferred by this Article; and
  - “specified” means specified in the certificate in question.

### *Reviews and appeals*

#### **Periodical reviews**

**18.—**(1) The Department shall make such arrangements as it considers necessary to secure that where any maintenance assessment has been in force for a prescribed period the amount of child support maintenance fixed by that assessment (“the original assessment”) is reviewed by a child support officer under this Article as soon as is reasonably practicable after the end of that prescribed period.

(2) Before conducting any review under this Article, the child support officer concerned shall give to such persons as may be prescribed, such notice of the proposed review as may be prescribed.

(3) A review shall be conducted under this Article as if a fresh application for a maintenance assessment had been made by the person in whose favour the original assessment was made.

(4) On completing any review under this Article, the child support officer concerned shall make a fresh maintenance assessment, unless he is satisfied that the original assessment has ceased to have effect or should be brought to an end.

- (5) Where a fresh maintenance assessment is made under paragraph (4), it shall take effect—
- (a) on the day immediately after the end of the prescribed period mentioned in paragraph (1); or
  - (b) in such circumstances as may be prescribed, on such later date as may be determined in accordance with regulations made by the Department.

(6) The Department may by regulations prescribe circumstances (for example, where the maintenance assessment is about to terminate) in which a child support officer may decide not to conduct a review under this Article.

### **Reviews on change of circumstances**

**19.—**(1) Where a maintenance assessment is in force the absent parent or person with care with respect to whom it was made may apply to the Department for the amount of child support maintenance fixed by that assessment (“the original assessment”) to be reviewed under this Article.

(2) An application under this Article may be made only on the ground that, by reason of a change of circumstance since the original assessment was made, the amount of child support maintenance payable by the absent parent would be significantly different if it were to be fixed by a maintenance assessment made by reference to the circumstances of the case as at the date of the application.

(3) The child support officer to whom an application under this Article has been referred shall not proceed unless, on the information before him, he considers that it is likely that he will be required by paragraph (6) to make a fresh assessment if he conducts the review applied for.

(4) Before conducting any review under this Article, the child support officer concerned shall give to such persons as may be prescribed, such notice of the proposed review as may be prescribed.

(5) A review shall be conducted under this Article as if a fresh application for a maintenance assessment had been made by the person in whose favour the original assessment was made.

(6) On completing any review under this Article, the child support officer concerned shall make a fresh maintenance assessment, unless—

- (a) he is satisfied that the original assessment has ceased to have effect or should be brought to an end; or
- (b) the difference between the amount of child support maintenance fixed by the original assessment and the amount that would be fixed if a fresh assessment were to be made as a result of the review is less than such amount as may be prescribed.

### **Reviews of decisions of child support officers**

**20.—**(1) Where—

- (a) an application for a maintenance assessment is refused; or
- (b) an application, under Article 19, for the review of a maintenance assessment which is in force is refused,

the person who made that application may apply to the Department for the refusal to be reviewed.

(2) Where a maintenance assessment is in force the absent parent or person with care with respect to whom it was made may apply to the Department for the assessment to be reviewed.

(3) Where a maintenance assessment is cancelled, the appropriate person may apply to the Department for the cancellation to be reviewed.

(4) Where an application for the cancellation of a maintenance assessment is refused, the appropriate person may apply to the Department for the refusal to be reviewed.

(5) An application under this Article shall give the applicant’s reasons (in writing) for making it.

(6) The Department shall refer to a child support officer any application under this Article which is duly made; and the child support officer shall conduct the review applied for unless in his opinion there are no reasonable grounds for supposing that the refusal, assessment or cancellation in question—

- (a) was made in ignorance of a material fact;
- (b) was based on a mistake as to a material fact;
- (c) was wrong in law.

(7) The Department shall arrange for a review under this Article to be conducted by a child support officer who played no part in taking the decision which is to be reviewed.

(8) Before conducting any review under this Article, the child support officer concerned shall give to such persons as may be prescribed, such notice of the proposed review as may be prescribed.

(9) If a child support officer conducting a review under this Article is satisfied that a maintenance assessment or (as the case may be) a fresh maintenance assessment should be made, he shall proceed accordingly.

(10) In making a maintenance assessment by virtue of paragraph (9) a child support officer shall, if he is aware of any material change of circumstance since the decision being reviewed was taken, take account of that change of circumstance in making the assessment.

(11) The Department may make regulations—

- (a) as to the manner in which applications under this Article are to be made;
- (b) as to the procedure to be followed with respect to such applications; and
- (c) with respect to reviews conducted under this Article.

(12) In this Article “appropriate person” means the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force.

### **Reviews at instigation of child support officers**

**21.—**(1) Where a child support officer is not conducting a review under Article 18, 19 or 20 but is nevertheless satisfied that a maintenance assessment which is in force is defective by reason of—

- (a) having been made in ignorance of a material fact;
- (b) having been based on a mistake as to a material fact; or
- (c) being wrong in law,

he may make a fresh maintenance assessment on the assumption that the person in whose favour the original assessment was made has made a fresh application for a maintenance assessment.

(2) Where a child support officer is not conducting such a review but is nevertheless satisfied that if an application were to be made under Article 19 or 20 it would be appropriate to make a fresh maintenance assessment, he may do so.

(3) Before making a fresh maintenance assessment under this Article, a child support officer shall give to such persons as may be prescribed, such notice of his proposal to make a fresh assessment as may be prescribed.

### **Appeals**

**22.—**(1) Any person who is aggrieved by the decision of a child support officer—

- (a) on a review under Article 20;
- (b) to refuse an application for such a review,

may appeal to a child support appeal tribunal against that decision.

(2) Except with leave of the chairman of a child support appeal tribunal, no appeal under this Article shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.

(3) Where an appeal under this Article is allowed, the tribunal shall remit the case to the Department, which shall arrange for it to be dealt with by a child support officer.

(4) The tribunal may, in remitting any case under this Article, give such directions as it considers appropriate.

### **Child support appeal tribunals**

**23.**—(1) There shall be tribunals to be known as child support appeal tribunals which shall, subject to any order made under Article 42, hear and determine appeals under Article 22.

(2) The Department may make such regulations with respect to proceedings before child support appeal tribunals as it considers appropriate.

(3) The regulations may in particular make provision—

- (a) as to procedure;
- (b) for the striking out of appeals for want of prosecution;
- (c) as to the persons entitled to appear and be heard on behalf of any of the parties;
- (d) requiring persons to attend and give evidence or to produce documents;
- (e) about evidence;
- (f) for authorising the administration of oaths;
- (g) as to confidentiality;
- (h) for notification of the result of an appeal to be given to such persons as may be prescribed.

(4) Schedule 3 shall have effect with respect to child support appeal tribunals.

### **Matters concerning Child Support Commissioners**

**24.** Schedule 4 shall have effect with respect to certain matters concerning Child Support Commissioners.

### **Appeal to Child Support Commissioner**

**25.**—(1) Any person who is aggrieved by a decision of a child support appeal tribunal, and any child support officer, may appeal to a Child Support Commissioner on a question of law.

(2) Where, on an appeal under this Article, a Child Support Commissioner holds that the decision appealed against was wrong in law he shall set it aside.

(3) Where a decision is set aside under paragraph (2), the Child Support Commissioner may—

- (a) if he can do so without making fresh or further findings of fact, give the decision which he considers should have been given by the child support appeal tribunal;
- (b) if he considers it expedient, make such findings and give such decision as he considers appropriate in the light of those findings; or
- (c) refer the case, with directions for its determination, to a child support officer or, if he considers it appropriate, to a child support appeal tribunal.

(4) Any reference under paragraph (3) to a child support officer shall, subject to any direction of the Child Support Commissioner, be to a child support officer who has taken no part in the decision originally appealed against.

(5) On a reference under paragraph (3) to a child support appeal tribunal, the tribunal shall, subject to any direction of the Child Support Commissioner, consist of persons who were not members of the tribunal which gave the decision which has been appealed against.

(6) No appeal lies under this Article without the leave—

(a) of the person who was the chairman of the child support appeal tribunal when the decision appealed against was given or of such other chairman of a child support appeal tribunal as may be determined in accordance with regulations made by the Lord Chancellor; or

(b) subject to and in accordance with regulations so made, of a Child Support Commissioner.

(7) The Lord Chancellor may by regulations make provision as to the manner in which and the time within which appeals under this Article are to be brought and applications for leave under this Article are to be made.

(8) Where a question which would otherwise fall to be determined by a child support officer first arises in the course of an appeal to a Child Support Commissioner, he may, if he thinks fit, determine it even though it has not been considered by a child support officer.

### **Appeal from Child Support Commissioner on question of law**

**26.—**(1) An appeal on a question of law shall lie to the Court of Appeal from any decision of a Child Support Commissioner.

(2) No such appeal may be brought except—

(a) with leave of the Child Support Commissioner who gave the decision or, where regulations made by the Lord Chancellor so provide, of a Child Support Commissioner selected in accordance with the regulations; or

(b) if the Child Support Commissioner refuses leave, with the leave of the Court of Appeal.

(3) An application for leave to appeal under this Article against a decision of a Child Support Commissioner (“the appeal decision”) may only be made by—

(a) a person who was a party to the proceedings in which the original decision, or appeal decision, was given;

(b) the Department; or

(c) any other person who is authorised to do so by regulations made by the Lord Chancellor.

(4) In this Article “original decision” means the decision to which the appeal decision in question relates.

(5) The Lord Chancellor may by regulations make provision with respect to—

(a) the manner in which and the time within which applications must be made to a Child Support Commissioner for leave under this Article; and

(b) the procedure for dealing with such applications.

### **Disputes about parentage**

**27.—**(1) Where a person who is alleged to be a parent of the child with respect to whom an application for a maintenance assessment has been made (“the alleged parent”) denies that he is one of the child’s parents, the child support officer concerned shall not make a maintenance assessment on the assumption that the alleged parent is one of the child’s parents unless the case falls within one of those set out in paragraph (2).

(2) The Cases are—

#### *Case A*

Where the alleged parent is a parent of the child in question by virtue of having adopted him.

*Case B*

Where the alleged parent is a parent of the child in question by virtue of an order under section 30 of the Human Fertilisation and Embryology Act 1990<sup>(15)</sup> (parental orders in favour of gamete donors).

*Case C*

Where—

- (a) either—
  - (i) a declaration that the alleged parent is a parent of the child in question (or a declaration which has that effect) is in force under section 56 of the Family Law Act 1986<sup>(16)</sup> (declarations of parentage); or
  - (ii) a declarator by a court in Scotland that the alleged parent is a parent of the child in question (or a declarator which has that effect) is in force; and
- (b) the child has not subsequently been adopted.

*Case D*

Where—

- (a) a declaration to the effect that the alleged parent is one of the parents of the child in question has been made under Article 28; and
- (b) the child has not subsequently been adopted.

*Case E*

Where—

- (a) the alleged parent has been found or adjudged to be the father of the child in question—
    - (i) in affiliation proceedings before any court in the United Kingdom; or
    - (ii) in proceedings before any court in England and Wales which are relevant proceedings for the purposes of section 12 of the Civil Evidence Act 1968<sup>(17)</sup>,  
(whether or not he offered any defence to the allegation of paternity) and that finding or adjudication still subsists; and
  - (b) the child has not subsequently been adopted.
- (3) In this Article—
- “adopted” means adopted within the meaning of Part V of the Adoption (Northern Ireland) Order 1987<sup>(18)</sup>; and
- “affiliation proceedings”, in relation to Scotland, means any action of affiliation and aliment.

## **Reference to court for declaration of parentage**

**28.—**(1) Where—

- (a) a child support officer is considering whether to make a maintenance assessment with respect to a person who is alleged to be a parent of the child, or one of the children, in question (“the alleged parent”);
- (b) the alleged parent denies that he is one of the child’s parents; and
- (c) the child support officer is not satisfied that the case falls within one of those set out in Article 27(2),

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<sup>(15)</sup> 1990 c. 37

<sup>(16)</sup> 1986 c. 55

<sup>(17)</sup> 1968 c. 64

<sup>(18)</sup> 1987 NI 22

the Department or the person with care may apply to a court of summary jurisdiction for a declaration as to whether or not the alleged parent is one of the child's parents.

(2) If, on hearing any application under paragraph (1), the court is satisfied that the alleged parent is, or is not, a parent of the child in question it shall make a declaration to that effect.

(3) A declaration under this Article shall have effect only for the purposes of this Order.

### *Collection and enforcement*

#### **Collection of child support maintenance**

**29.**—(1) The Department may arrange for the collection of any child support maintenance payable in accordance with a maintenance assessment where—

- (a) the assessment is made by virtue of Article 9; or
- (b) an application has been made to the Department under Article 7(2) for the Department to arrange for its collection.

(2) Where a maintenance assessment is made under this Order, payments of child support maintenance under the assessment shall be made in accordance with regulations made by the Department.

(3) The regulations may, in particular, make provision—

- (a) for payments of child support maintenance to be made—
  - (i) to the person caring for the child or children in question;
  - (ii) to, or through, the Department; or
  - (iii) to, or through, such other person as the Department may specify;
- (b) as to the method by which payments of child support maintenance are to be made;
- (c) as to the intervals at which such payments are to be made;
- (d) as to the method and timing of the transmission of payments which are made to or through the Department or any other person, in accordance with the regulations;
- (e) empowering the Department to direct any person liable to make payments in accordance with the assessment—
  - (i) to make them by standing order or by any other method which requires one person to give his authority for payments to be made from an account of his to an account of another's on specific dates during the period for which the authority is in force and without the need for any further authority from him;
  - (ii) to open an account from which payments under the assessment may be made in accordance with the method of payment which that person is obliged to adopt;
- (f) providing for the making of representations with respect to matters with which the regulations are concerned.

#### **Collection and enforcement of other forms of maintenance**

**30.**—(1) Where the Department is arranging for the collection of any payments under Article 29 or paragraph (2), it may also arrange for the collection of any periodical payments, or secured periodical payments, of a prescribed kind which are payable to or for the benefit of any person who falls within a prescribed category.

(2) The Department may arrange for the collection of any periodical payments or secured periodical payments of a prescribed kind which are payable for the benefit of a child even though it is not arranging for the collection of child support maintenance with respect to that child.

(3) Where—

- (a) the Department is arranging, under this Order, for the collection of different payments (“the payments”) from the same absent parent;
- (b) an amount is collected by the Department from the absent parent which is less than the total amount due in respect of the payments; and
- (c) the absent parent has not stipulated how that amount is to be allocated by the Department as between payments,

the Department may allocate that amount as it sees fit.

(4) The Department may by regulations make provision for Articles 29 and 31 to 37 to apply, with such modifications (if any) as it considers necessary or expedient, for the purpose of enabling it to enforce any obligation to pay any amount which it is authorised to collect under this Article.

### **Deduction from earnings orders**

**31.**—(1) This Article applies where any person (“the liable person”) is liable to make payments of child support maintenance.

(2) The Department may make an order (“a deduction from earnings order”) against a liable person to secure the payment of any amount due under the maintenance assessment in question.

(3) A deduction from earnings order may be made so as to secure the payment of—

- (a) arrears of child support maintenance payable under the assessment;
- (b) amounts of child support maintenance which will become due under the assessment; or
- (c) both such arrears and such future amounts.

(4) A deduction from earnings order—

- (a) shall be expressed to be directed at a person (“the employer”) who has the liable person in his employment; and
- (b) shall have effect from such date as may be specified in the order.

(5) A deduction from earnings order shall operate as an instruction to the employer to—

- (a) make deductions from the liable person’s earnings; and
- (b) pay the amounts deducted to the Department.

(6) The Department shall serve a copy of any deduction from earnings order which it makes under this Article on—

- (a) the person who appears to the Department to have the liable person in question in his employment; and
- (b) the liable person.

(7) Where—

- (a) a deduction from earnings order has been made; and
- (b) a copy of the order has been served on the liable person’s employer,

it shall be the duty of that employer to comply with the order; but he shall not be under any liability for non-compliance before the end of the period of 7 days beginning with the date on which the copy was served on him.

(8) In this Article and in Article 32 “earnings” has such meaning as may be prescribed.

**Regulations about deduction from earnings orders**

**32.—**(1) The Department may by regulations make provision with respect to deduction from earnings orders.

(2) The regulations may, in particular, make provision—

- (a) as to the circumstances in which one person is to be treated as employed by another;
- (b) requiring any deduction from earnings under an order to be made in the prescribed manner;
- (c) requiring an order to specify the amount or amounts to which the order relates and the amount or amounts which are to be deducted from the liable person's earnings in order to meet his liabilities under the maintenance assessment in question;
- (d) requiring the intervals between deductions to be made under an order to be specified in the order;
- (e) as to the payment of sums deducted under an order to the Department;
- (f) allowing the person who deducts and pays any amount under an order to deduct from the liable person's earnings a prescribed sum towards his administrative costs;
- (g) with respect to the notification to be given to the liable person of amounts deducted, and amounts paid, under the order;
- (h) requiring any person on whom a copy of an order is served to notify the Department in the prescribed manner and within a prescribed period if he does not have the liable person in his employment or if the liable person ceases to be in his employment;
- (i) as to the operation of an order where the liable person is in the employment of the Crown;
- (j) for the variation of orders;
- (k) similar to that made by Article 31(7), in relation to any variation of an order;
- (l) for an order to lapse when the employer concerned ceases to have the liable person in his employment;
- (m) as to the revival of an order in such circumstances as may be prescribed;
- (n) allowing or requiring an order to be discharged;
- (o) as to the giving of notice by the Department to the employer concerned that an order has lapsed or has ceased to have effect.

(3) The regulations may include provision that while a deduction from earnings order is in force—

- (a) the liable person shall notify the Department, in the prescribed manner and within a prescribed period, of each occasion on which he leaves any employment or becomes employed, or re-employed, and shall include in such a notification a statement of his earnings and expected earnings from the employment concerned and of such other matters as may be prescribed;
- (b) any person who becomes the liable person's employer and knows that the order is in force shall notify the Department, in the prescribed manner and within a prescribed period, that he is the liable person's employer, and shall include in such a notification a statement of the liable person's earnings and expected earnings from the employment concerned and of such other matters as may be prescribed.

(4) The regulations may include provision with respect to the priority as between a deduction from earnings order and—

- (a) any other deduction from earnings order;
- (b) any order under any other statutory provision which provides for deductions from the liable person's earnings.

(5) The regulations may include a provision that a liable person may appeal to a court of summary jurisdiction if he is aggrieved by the making of a deduction from earnings order against him, or by the terms of any such order, or there is a dispute as to whether payments constitute earnings or as to any other prescribed matter relating to the order.

(6) On an appeal under paragraph (5) the court shall not question the maintenance assessment by reference to which the deduction from earnings order was made.

(7) Regulations made by virtue of paragraph (5) may include provision as to the powers of a court of summary jurisdiction in relation to an appeal (which may include provision as to the quashing of a deduction from earnings order or the variation of the terms of such an order).

(8) If any person fails to comply with the requirements of a deduction from earnings order or with any regulation under this Article which is designated for the purposes of this paragraph, he shall be guilty of an offence.

(9) In paragraph (8) “designated” means designated by the regulations.

(10) It shall be a defence for a person charged with an offence under paragraph (8) to prove that he took all reasonable steps to comply with the requirements in question.

(11) Any person guilty of an offence under paragraph (8) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Liability orders**

**33.—**(1) This Article applies where—

- (a) a person who is liable to make payments of child support maintenance (“the liable person”) fails to make one or more of those payments; and
- (b) it appears to the Department that—
  - (i) it is inappropriate to make a deduction from earnings order against him (because, for example, he is not employed); or
  - (ii) although such an order has been made against him, it has proved ineffective as a means of securing that payments are made in accordance with the maintenance assessment in question.

(2) The Department may apply to a court of summary jurisdiction for an order (“a liability order”) against the liable person.

(3) Where the Department applies for a liability order, the court of summary jurisdiction shall make the order if satisfied that the payments in question have become payable by the liable person and have not been paid.

(4) On an application under paragraph (2), the court shall not question the maintenance assessment under which the payments of child support maintenance fell to be made.

### **Regulations about liability orders**

**34.—**(1) The Department may make regulations—

- (a) prescribing the procedure to be followed in dealing with an application by the Department for a liability order;
- (b) prescribing the form and contents of a liability order; and
- (c) providing that where a court of summary jurisdiction has made a liability order, the person against whom it is made shall, during such time as the amount in respect of which the order was made remains wholly or partly unpaid, be under a duty to supply relevant information to the Department.

(2) In paragraph (1) “relevant information” means any information of a prescribed description which is in the possession of the liable person and which the Department has asked him to supply.

### **Enforcement of liability orders**

**35.**—(1) Where a liability order has been made against a person (“the liable person”)—

- (a) the order shall be enforceable by the Enforcement of Judgments Office on an application to it by the Department; and
- (b) the Judgments Enforcement (Northern Ireland) Order 1981<sup>(19)</sup> (“the Order of 1981”) shall apply in relation to the amount in respect of which the order was made, to the extent that it remains unpaid, as a money judgment, but subject to paragraphs (2) and (3).

(2) Without prejudice to Article 141 of the Order of 1981 (power to make Judgment Enforcement Rules), the Department may, with the consent of the Lord Chancellor, make such regulations with respect to the enforcement of liability orders by the Enforcement of Judgments Office as it considers appropriate.

(3) Regulations made under paragraph (2) may, in particular, provide for the modification of any provision made by or under the Order of 1981 in its application to liability orders.

(4) In paragraph (3) “modification” includes the making of additions, omissions or amendments.

### **Enforcement in Northern Ireland of English and Scottish liability orders**

**36.**—(1) The Department may by regulations make provision for, or in connection with, the enforcement in Northern Ireland of—

- (a) any liability order made by a court in England and Wales; or
- (b) any liability order made by the sheriff in Scotland,

as if it had been made by a court of summary jurisdiction in Northern Ireland.

(2) Regulations under paragraph (1) may, in particular, make provision for the registration of any such order as is referred to in that paragraph in connection with its enforcement in Northern Ireland.

### **Commitment to prison**

**37.**—(1) Where the Department has sought to recover an amount by virtue of Article 35 and that amount, or any portion of it, remains unpaid the Department may apply to a court of summary jurisdiction for the issue of a warrant committing the liable person to prison.

(2) On any such application the court shall (in the presence of the liable person) inquire as to—

- (a) the liable person’s means; and
- (b) whether there has been wilful refusal or culpable neglect on his part.

(3) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person it may—

- (a) issue a warrant of commitment against him; or
- (b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as it thinks just.

(4) Any such warrant—

- (a) shall be made in respect of an amount equal to the aggregate of—

- (i) the amount in respect of which the liability order was made or so much of that amount as remains outstanding; and
  - (ii) an amount (determined in accordance with regulations made by the Department) in respect of the costs of commitment; and
- (b) shall state that amount.
- (5) No warrant may be issued under this Article against a person who is under the age of 18.
- (6) A warrant issued under this Article shall order the liable person—
  - (a) to be imprisoned for a specified period; but
  - (b) to be released (unless he is in custody for some other reason) on payment of the amount stated in the warrant.
- (7) The maximum period of imprisonment which may be imposed by virtue of paragraph (6) shall be calculated in accordance with Schedule 3 to the Magistrates' Courts (Northern Ireland) Order 1981<sup>(20)</sup> (maximum periods of imprisonment in default of payment) but shall not exceed six weeks.
- (8) The Department may by regulations make provision for the period of imprisonment specified in any warrant issued under this Article to be reduced where there is part payment of the amount in respect of which the warrant was issued.
- (9) A warrant issued under this Article may be directed to such person or persons as the court issuing it thinks fit.
- (10) Article 110 of the Magistrates' Courts (Northern Ireland) Order 1981 (application of money found on defaulter) shall apply in relation to a warrant issued under this Article against a liable person as it applies in relation to the enforcement of a sum mentioned in paragraph (1) of that Article.
- (11) The Department may by regulations make provision—
  - (a) as to the form of any warrant issued under this Article;
  - (b) allowing an application under this Article to be renewed where no warrant is issued or term of imprisonment is fixed;
  - (c) that a statement in writing to the effect that wages of any amount have been paid to the liable person during any period, purporting to be signed by or on behalf of his employer, shall be evidence of the facts stated;
  - (d) that, for the purposes of enabling an inquiry to be made as to the liable person's conduct and means, a justice of the peace may issue a summons to him to appear before a court of summary jurisdiction and (if he does not obey) may issue a warrant for his arrest;
  - (e) that for the purpose of enabling such an inquiry, a justice of the peace may issue a warrant for the liable person's arrest without issuing a summons;
  - (f) as to the execution of a warrant for arrest.

### **Arrears of child support maintenance**

**38.**—(1) This Article applies where—

- (a) the Department is authorised under Article 7 or 9 to recover child support maintenance payable by an absent parent in accordance with a maintenance assessment; and
- (b) the absent parent has failed to make one or more payments of child support maintenance due from him in accordance with that assessment.

(2) Where the Department recovers any such arrears it may, in such circumstances as may be prescribed and to such extent as may be prescribed, retain them if it is satisfied that the amount of

any benefit paid to the person with care of the child or children in question would have been less had the absent parent not been in arrears with his payments of child support maintenance.

(3) In such circumstances as may be prescribed, the absent parent shall be liable to make such payments of interest with respect to the arrears of child support maintenance as may be prescribed.

(4) The Department may by regulations make provision—

- (a) as to the rate of interest payable by virtue of paragraph (3);
- (b) as to the time at which, and person to whom, any such interest shall be payable;
- (c) as to the circumstances in which, in a case where the Department has been acting under Article 9, any such interest may be retained by it;
- (d) for the Department, in a case where it has been acting under Article 9 and in such circumstances as may be prescribed, to waive any such interest (or part of any such interest).

(5) The provisions of this 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 interest payable by virtue of this Article.

(6) Any sums retained by the Department by virtue of this Article shall be paid by it into the Consolidated Fund.

### *Special cases*

#### **Special cases**

**39.**—(1) The Department may by regulations provide that in prescribed circumstances a case is to be treated as a special case for the purposes of this Order.

(2) Those regulations may, for example, provide for the following to be special cases—

- (a) each parent of a child is an absent parent in relation to the child;
- (b) there is more than one person who is a person with care in relation to the same child;
- (c) there is more than one qualifying child in relation to the same absent parent but the person who is the person with care in relation to one of those children is not the person who is the person with care in relation to all of them;
- (d) a person is an absent parent in relation to more than one child and the other parent of each of those children is not the same person;
- (e) the person with care has care of more than one qualifying child and there is more than one absent parent in relation to those children;
- (f) a qualifying child has his home in two or more separate households.

(3) The Department may by regulations make provision with respect to special cases.

(4) Regulations made under paragraph (3) may, in particular—

- (a) modify any provision made by or under this Order, in its application to any special case or any special case falling within a prescribed category;
- (b) make new provision for any such case; or
- (c) provide for any prescribed provision made by or under this Order not to apply to any such case.

### **Contribution to maintenance by deduction from benefit**

**40.**—(1) This Article applies where—

- (a) by virtue of paragraph 5(4) of Schedule 1, an absent parent is taken for the purposes of that Schedule to have no assessable income; and
- (b) such conditions as may be prescribed for the purposes of this Article are satisfied.

(2) The power of the Department to make regulations under Article 52 of the Social Security (Northern Ireland) Order 1986<sup>(21)</sup> by virtue of paragraph (1)(q) (deductions from benefits) may be exercised in relation to cases to which this Article applies with a view to securing that—

- (a) payments of prescribed amounts are made with respect to qualifying children in place of payments of child support maintenance; and
- (b) arrears of child support maintenance are recovered.

### *Jurisdiction*

#### **Jurisdiction**

**41.**—(1) A child support officer shall have jurisdiction to make a maintenance assessment with respect to a person who is—

- (a) a person with care;
- (b) an absent parent; or
- (c) a qualifying child,

only if that person is habitually resident in the United Kingdom.

(2) Where the person with care is not an individual, paragraph (1) shall have effect as if subparagraph (a) were omitted.

(3) The Department may by regulations make provision for the cancellation of any maintenance assessment where—

- (a) the person with care, absent parent or qualifying child with respect to whom it was made ceases to be habitually resident in the United Kingdom;
- (b) in a case falling within paragraph (2), the absent parent or qualifying child with respect to whom it was made ceases to be habitually resident in the United Kingdom; or
- (c) in such circumstances as may be prescribed, a maintenance order of a prescribed kind is made with respect to any qualifying child with respect to whom the maintenance assessment was made.

#### **Jurisdiction of courts in certain proceedings under this Order**

**42.**—(1) The Lord Chancellor may by order make such provision as he considers necessary to secure that appeals, or such class of appeals as may be specified in the order—

- (a) shall be made to a court instead of being made to a child support appeal tribunal; or
- (b) shall be so made in such circumstances as may be so specified.

(2) In paragraph (1) “court” means the High Court, a county court or a court of summary jurisdiction.

(3) Where the effect of any order under paragraph (1) is that there are no longer any appeals which fall to be dealt with by child support appeal tribunals, the Lord Chancellor may by order provide for the abolition of those tribunals.

(4) Any order under paragraph (1) or (3) may make—

- (a) such modifications of any provision of this Order or of any other statutory provision; and
- (b) such transitional provision,

as the Lord Chancellor considers appropriate in consequence of any provision made by the order.

### *Miscellaneous and supplemental*

#### **Failure to comply with obligations imposed by Article 9**

**43.**—(1) This Article applies where any person (“the parent”)—

- (a) fails to comply with a requirement imposed on the parent by the Department under Article 9(1); or
- (b) fails to comply with any regulation made under Article 9(9).

(2) A child support officer may serve written notice on the parent requiring the parent, before the end of the specified period, either to comply or to give him reasons for failing to do so.

(3) When the specified period has expired, the child support officer shall consider whether, having regard to any reasons given by the parent, there are reasonable grounds for believing that, if the parent were to be required to comply, there would be a risk of the parent or of any children living with the parent suffering harm or undue distress as a result of complying.

(4) If the child support officer considers that there are such reasonable grounds, he shall—

- (a) take no further action under this Article in relation to the failure in question; and
- (b) notify the parent, in writing, accordingly.

(5) If the child support officer considers that there are no such reasonable grounds, he may give a reduced benefit direction with respect to the parent.

(6) Where the child support officer gives a reduced benefit direction he shall send a copy of it to the parent.

(7) Any person who is aggrieved by a decision of a child support officer to give a reduced benefit direction may appeal to a child support appeal tribunal against that decision.

(8) Articles 22(2) to (4) and 23 shall apply in relation to appeals under paragraph (7) as they apply in relation to appeals under Article 22.

(9) A reduced benefit direction shall take effect on such date as may be specified in the direction.

(10) Reasons given in response to a notice under paragraph (2) may be given either in writing or orally.

(11) In this Article—

“comply” means to comply with the requirement or with the regulation in question;

“reduced benefit direction” means a direction, binding on the adjudication officer, that the amount payable by way of any relevant benefit to, or in respect of, the parent concerned be reduced by such amount, and for such period, as may be prescribed;

“relevant benefit” means income support, family credit or any other benefit of a kind prescribed for the purposes of Article 9; and

“specified”, in relation to any notice served under this Article, means specified in the notice; and the period to be specified shall be determined in accordance with regulations made by the Department.

## **Fees**

**44.**—(1) The Department may by regulations provide for the payment, by the absent parent or the person with care (or by both), of such fees as may be prescribed in cases where the Department takes any action under Article 7 or 9.

(2) Regulations made under this Article—

- (a) may require any information which is needed for the purpose of determining the amount of any such fee to be furnished, in accordance with the regulations, by such person as may be prescribed;
- (b) shall provide that no such fees shall be payable by any person to or in respect of whom income support, family credit or any other benefit of a prescribed kind is paid; and
- (c) may, in particular, make provision with respect to the recovery by the Department of any fees payable under the regulations.

## **Conduct of proceedings**

**45.** Any person authorised by the Department for the purposes of this Article may, although not of counsel or a solicitor, prosecute or conduct before a court of summary jurisdiction any proceedings under this Order.

## **Unauthorised disclosure of information**

**46.**—(1) Any person who is, or has been, employed in employment to which this Article applies is guilty of an offence if, without lawful authority, he discloses any information which—

- (a) was acquired by him in the course of that employment; and
- (b) relates to a particular person.

(2) It is not an offence under this Article—

- (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it; or
- (b) to disclose information which has previously been disclosed to the public with lawful authority.

(3) It is a defence for a person charged with an offence under this Article to prove that at the time of the alleged offence—

- (a) he believed that he was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise; or
- (b) he believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(4) A person guilty of an offence under this Article shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(5) This Article applies to employment as—

- (a) the Chief Child Support Officer;

- (b) any other child support officer;
  - (c) any clerk to, or other officer of, a child support appeal tribunal;
  - (d) any member of the staff of such a tribunal;
  - (e) a civil servant in connection with the carrying out of any functions under this Order,
- and to employment of any other kind which is prescribed for the purposes of this Article.
- (6) For the purposes of this Article a disclosure is to be regarded as made with lawful authority if, and only if, it is made—
- (a) by a civil servant in accordance with his official duty; or
  - (b) by any other person either—
    - (i) for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the responsible person; or
    - (ii) to, or in accordance with an authorisation duly given by, the responsible person;
  - (c) in accordance with any statutory provision or order of a court;
  - (d) for the purpose of instituting, or otherwise for the purposes of, any proceedings before a court or before any tribunal or other body or person mentioned in this Order; or
  - (e) with the consent of the appropriate person.
- (7) “The responsible person” means—
- (a) the Lord Chancellor;
  - (b) the Department;
  - (c) any person authorised by the Lord Chancellor, or the Department, for the purposes of this paragraph; or
  - (d) any other prescribed person, or person falling within a prescribed category.
- (8) “The appropriate person” means the person to whom the information in question relates, except that if the affairs of that person are being dealt with—
- (a) under a power of attorney;
  - (b) by a controller appointed under Article 101 of the Mental Health (Northern Ireland) Order 1986<sup>(22)</sup>;
  - (c) by a mental health appointee, that is to say—
    - (i) a person directed or authorised as mentioned in sub-paragraph (a) of rule 38(1) of Order 109 of the Rules of the Supreme Court (Northern Ireland) 1980<sup>(23)</sup>;
    - (ii) a controller ad interim appointed under sub-paragraph (b) of that rule;
- the appropriate person is the attorney, controller or appointee (as the case may be) or, in a case falling within sub-paragraph (a), the person to whom the information relates.

### **Supplementary powers to make regulations**

- 47.**—(1) The Department may by regulations make such incidental, supplemental and transitional provision as it considers appropriate in connection with any provision made by or under this Order.
- (2) The regulations may, in particular, make provision—
- (a) as to the procedure to be followed with respect to—
    - (i) the making of applications for maintenance assessments;

<sup>(22)</sup> 1986 NI 4

<sup>(23)</sup> SR 1980 No. 346

- (ii) the making, cancellation or refusal to make maintenance assessments;
  - (iii) reviews under Articles 18 to 21;
  - (b) extending the categories of case to which Article 20 or 21 applies;
  - (c) as to the date on which an application for a maintenance assessment is to be treated as having been made;
  - (d) for attributing payments made under maintenance assessments to the payment of arrears;
  - (e) for the adjustment, for the purpose of taking account of the retrospective effect of a maintenance assessment, of amounts payable under the assessment;
  - (f) for the adjustment, for the purpose of taking account of overpayments or under payments of child support maintenance, of amounts payable under a maintenance assessment;
  - (g) as to the evidence which is to be required in connection with such matters as may be prescribed;
  - (h) as to the circumstances in which any official record or certificate is to be conclusive evidence;
  - (i) with respect to the giving of notices or other documents;
  - (j) for the rounding up or down of any amounts calculated, estimated or otherwise arrived at in applying any provision made by or under this Order.
- (3) No power to make regulations conferred by any other provision of this Order shall be taken to limit the powers given to the Department by this Article.

### **Regulations and orders**

**48.**—(1) Any regulations or any order made by the Lord Chancellor under this Order (except an order made under Article 1(2)) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946(24) shall apply accordingly.

(2) A statutory rule containing (whether alone or with other provisions) regulations made under Article 7(7), 8(3), 9(1), (9) or (10), 14(2), 38(2), (3) or (4), 39, 40(1), 43 or 44 or Part I of Schedule 1 shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(3) The following statutory rules—

- (a) any regulations made by the Department under this Order (except regulations to which paragraph (2) applies); and
- (b) any order made by the Department under this Order (except an order made under Article 1(2));

shall be subject to negative resolution.

(4) Any power to make a statutory rule shall be exercisable so to provide for a person to exercise a discretion in dealing with any matter.

### Co-ordination with Great Britain

**49.**—(1) The Department may make arrangements with the Secretary of State with a view to securing, to the extent allowed for in the arrangements, that—

- (a) the provision made by or under this Order (“the provision made for Northern Ireland”); and
- (b) the provision made by or under the Child Support Act 1991<sup>(25)</sup> (“the provision made for Great Britain”),

provide for a single system within the United Kingdom.

(2) The Department may make regulations for giving effect to any such arrangements.

(3) The regulations may, in particular—

- (a) adapt legislation (including subordinate legislation) for the time being in force in Northern Ireland so as to secure its reciprocal operation with the provision made for Great Britain; and
- (b) make provision to secure that acts, omissions and events which have any effect for the purposes of the provision made for Great Britain have a corresponding effect for the purposes of the provision made for Northern Ireland.

### Application to Crown

**50.**—(1) The power of the Department to make regulations under Article 16 requiring prescribed persons to furnish information may be exercised so as to require information to be furnished by persons employed in the service of the Crown or otherwise in the discharge of Crown functions.

(2) In such circumstances, and subject to such conditions, as may be prescribed, an inspector appointed under Article 17 may enter any Crown premises for the purpose of exercising any powers conferred on him by that Article.

(3) Where such an inspector duly enters any Crown premises for those purposes, Article 17 shall apply in relation to persons employed in the service of the Crown or otherwise in the discharge of Crown functions as it applies in relation to other persons.

(4) Where a liable person is in the employment of the Crown, a deduction from earnings order may be made under Article 31 in relation to that person; but in such a case paragraph (8) of Article 32 shall apply only in relation to the failure of that person to comply with any requirement imposed on him by regulations made under Article 32.

### Amendments, etc.

**51.**—(1) The Lord Chancellor or the Department may by order make such amendments or repeals in, or such modifications of, such statutory provisions as may be specified in the order, as appear to the Lord Chancellor or the Department to be necessary or expedient in consequence of any provision made by or under this Order (including any provision made by virtue of Article 1(3)).

(2) Until Schedule 1 to the Disability Living Allowance and Disability Working Allowance (Northern Ireland) Order 1991<sup>(26)</sup> comes into operation, paragraph 1(1) of Schedule 3 shall have effect with the omission of “and disability appeal tribunals” and the insertion, after “social security appeal tribunals”, of “and”.

(3) The consequential amendments set out in Schedule 5 shall have effect.

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<sup>(25)</sup> 1991 c. 48

<sup>(26)</sup> 1991 NI 17

*G. I. de Deney*  
Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

Article 13.

#### MAINTENANCE ASSESSMENTS

#### PART I

#### CALCULATION OF CHILD SUPPORT MAINTENANCE

##### *The maintenance requirement*

1.—(1) In this Schedule “the maintenance requirement” means the amount, calculated in accordance with the formula set out in sub-paragraph (2), which is to be taken as the minimum amount necessary for the maintenance of the qualifying child or, where there is more than one qualifying child, all of them.

(2) The formula is—

$$MR = AG - CB$$

where—

MR is the amount of the maintenance requirement;

AG is the aggregate of the amounts to be taken into account under sub-paragraph (3); and

CB is the amount payable by way of child benefit (or which would be so payable if the person with care of the qualifying child were an individual) or, where there is more than one qualifying child, the aggregate of the amounts so payable with respect to each of them.

(3) The amounts to be taken into account for the purpose of calculating AG are—

(a) such amount or amounts (if any), with respect to each qualifying child, as may be prescribed;

(b) such amount or amounts (if any), with respect to the person with care of the qualifying child or qualifying children, as may be prescribed; and

(c) such further amount or amounts (if any) as may be prescribed.

(4) For the purposes of calculating CB it shall be assumed that child benefit is payable with respect to any qualifying child at the basic rate.

(5) In sub-paragraph (4) “basic rate” has the meaning for the time being prescribed.

##### *The general rule*

2.—(1) In order to determine the amount of any maintenance assessment, first calculate—

$$(A + C) \times P$$

where—

A is the absent parent’s assessable income;

C is the assessable income of the other parent, where that parent is the person with care, and otherwise has such value (if any) as may be prescribed; and

P is such number greater than zero but less than 1 as may be prescribed.

(2) Where the result of the calculation made under sub-paragraph (1) is an amount which is equal to, or less than, the amount of the maintenance requirement for the qualifying child or qualifying children, the amount of maintenance payable by the absent parent for that child or those children shall be an amount equal to—

$$A \times P$$

where

A and P have the same values as in the calculation made under sub-paragraph (1).

(3) Where the result of the calculation made under sub-paragraph (1) is an amount which exceeds the amount of the maintenance requirement for the qualifying child or qualifying children, the amount of maintenance payable by the absent parent for that child or those children shall consist of—

- (a) a basic element calculated in accordance with the provisions of paragraph 3; and
- (b) an additional element calculated in accordance with the provisions of paragraph 4.

#### *The basic element*

3.—(1) The basic element shall be calculated by applying the formula—

$$BE = A \times G \times P$$

where—

BE is the amount of the basic element;

A and P have the same values as in the calculation made under paragraph 2(1); and

G has the value determined under sub-paragraph (2).

(2) The value of G shall be determined by applying the formula—

$$G = \frac{MR}{(A + C) \times P}$$

where—

MR is the amount of the maintenance requirement for the qualifying child or qualifying children; and

A, C and P have the same values as in the calculation made under paragraph 2(1).

#### *The additional element*

4.—(1) Subject to sub-paragraph (2), the additional element shall be calculated by applying the formula—

$$AE = (1 - G) \times A \times R$$

where—

AE is the amount of the additional element;

A has the same value as in the calculation made under paragraph 2(1);

G has the value determined under paragraph 3(2); and R

is such number greater than zero but less than 1 as may be prescribed.

*Status: This is the original version (as it was originally made).*

(2) Where applying the alternative formula set out in sub-paragraph (3) would result in a lower amount for the additional element, that formula shall be applied in place of the formula set out in sub-paragraph (1).

(3) The alternative formula is—

$$AE = Z \times Q \times \left( \frac{A}{A + C} \right)$$

where—

A and C have the same values as in the calculation made under paragraph 2(1);

Z is such number as may be prescribed; and

Q is the aggregate of—

- (a) any amount taken into account by virtue of paragraph 1(3)(a) in calculating the maintenance requirement; and
- (b) any amount which is both taken into account by virtue of paragraph 1(3)(c) in making that calculation and is an amount prescribed for the purposes of this paragraph.

#### *Assessable income*

5.—(1) The assessable income of an absent parent shall be calculated by applying the formula—

$$A = N - E$$

where—

A is the amount of that parent's assessable income;

N is the amount of that parent's net income, calculated or estimated in accordance with regulations made by the Department for the purposes of this sub-paragraph; and

E is the amount of that parent's exempt income, calculated or estimated in accordance with regulations made by the Department for those purposes.

(2) The assessable income of a parent who is a person with care of the qualifying child or children shall be calculated by applying the formula—

$$C = M - F$$

where—

C is the amount of that parent's assessable income;

M is the amount of that parent's net income, calculated or estimated in accordance with regulations made by the Department for the purposes of this sub-paragraph; and

F is the amount of that parent's exempt income, calculated or estimated in accordance with regulations made by the Department for those purposes.

(3) Where the preceding provisions of this paragraph would otherwise result in a person's assessable income being taken to be a negative amount his assessable income shall be taken to be nil.

(4) Where income support or any other benefit of a prescribed kind is paid to or in respect of a parent who is an absent parent or a person with care that parent shall, for the purposes of this Schedule, be taken to have no assessable income.

#### *Protected income*

6.—(1) This paragraph applies where—

- (a) one or more maintenance assessments have been made with respect to an absent parent; and
  - (b) payment by him of the amount, or the aggregate of the amounts, so assessed would otherwise reduce his disposable income below his protected income level.
- (2) The amount of the assessment, or (as the case may be) of each assessment, shall be adjusted in accordance with such provisions as may be prescribed with a view to securing so far as is reasonably practicable that payment by the absent parent of the amount, or (as the case may be) aggregate of the amounts, so assessed will not reduce his disposable income below his protected income level.
- (3) Regulations made under sub-paragraph (2) shall secure that, where the prescribed minimum amount fixed by regulations made under paragraph 7 applies, no maintenance assessment is adjusted so as to provide for the amount payable by an absent parent in accordance with that assessment to be less than that amount.
- (4) The amount which is to be taken for the purposes of this paragraph as an absent parent's disposable income shall be calculated, or estimated, in accordance with regulations made by the Department.
- (5) Regulations made under sub-paragraph (4) may, in particular, provide that, in such circumstances and to such extent as may be prescribed—
- (a) income of any child who is living in the same household with the absent parent; and
  - (b) where the absent parent is living together in the same household with another adult of the opposite sex (regardless of whether or not they are married), income of that other adult,
- is to be treated as the absent parent's income for the purposes of calculating his disposable income.
- (6) In this paragraph "the protected income level" of a particular absent parent means an amount of income calculated, by reference to the circumstances of that parent, in accordance with regulations made by the Department.

#### *The minimum amount of child support maintenance*

- 7.—(1) The Department may prescribe a minimum amount for the purposes of this paragraph.
- (2) Where the amount of child support maintenance which would be fixed by a maintenance assessment but for this paragraph is nil or less than the prescribed minimum amount, the amount to be fixed by the assessment shall be the prescribed minimum amount.
- (3) In any case to which Article 40 applies, and in such other cases (if any) as may be prescribed, sub-paragraph (2) shall not apply.

#### *Housing costs*

8. Where regulations under this Schedule require a child support officer to take account of the housing costs of any person in calculating, or estimating, his assessable income or disposable income, those regulations may make provision—
- (a) as to the costs which are to be treated as housing costs for the purpose of the regulations;
  - (b) for the apportionment of housing costs; and
  - (c) for the amount of housing costs to be taken into account for prescribed purposes not to exceed such amount (if any) as may be prescribed by, or determined in accordance with, the regulations.

*Status: This is the original version (as it was originally made).*

*Regulations about income and capital*

9. The Department may by regulations provide that, in such circumstances and to such extent as may be prescribed—

- (a) income of a child shall be treated as income of a parent of his;
- (b) where the child support officer concerned is satisfied that a person has intentionally deprived himself of a source of income with a view to reducing the amount of his assessable income, his net income shall be taken to include income from that source of an amount estimated by the child support officer;
- (c) a person is to be treated as possessing capital or income which he does not possess;
- (d) capital or income which a person does possess is to be disregarded;
- (e) income is to be treated as capital;
- (f) capital is to be treated as income.

*References to qualifying children*

10. References in this Part to “qualifying children” are to those qualifying children with respect to whom the maintenance assessment falls to be made.

## PART I

### I GENERAL PROVISIONS ABOUT MAINTENANCE ASSESSMENTS

*Effective date of assessment*

11.—(1) A maintenance assessment shall take effect on such date as may be determined in accordance with regulations made by the Department.

(2) That date may be earlier than the date on which the assessment is made.

*Form of assessment*

12. Every maintenance assessment shall be made in such form and contain such information as the Department may direct.

*Assessments where amount of child support is nil*

13. A child support officer shall not decline to make a maintenance assessment only on the ground that the amount of the assessment is nil.

*Consolidated applications and assessments*

14. The Department may by regulations provide—

- (a) for two or more applications for maintenance assessments to be treated, in prescribed circumstances, as a single application; and
- (b) for the replacement, in prescribed circumstances, of a maintenance assessment made on the application of one person by a later maintenance assessment made on the application of that or any other person.

*Separate assessments for different periods*

15. Where a child support officer is satisfied that the circumstances of a case require different amounts of child support maintenance to be assessed in respect of different periods, he may make separate maintenance assessments each expressed to have effect in relation to a different specified period.

*Termination of assessments*

16.—(1) A maintenance assessment shall cease to have effect—

- (a) on the death of the absent parent, or of the person with care, with respect to whom it was made;
- (b) on there no longer being any qualifying child with respect to whom it would have effect;
- (c) on the absent parent with respect to whom it was made ceasing to be a parent of—
  - (i) the qualifying child with respect to whom it was made; or
  - (ii) where it was made with respect to more than one qualifying child, all of the qualifying children with respect to whom it was made;
- (d) where the absent parent and the person with care with respect to whom it was made have been living together for a continuous period of six months;
- (e) where a new maintenance assessment is made with respect to any qualifying child with respect to whom the assessment in question was in force immediately before the making of the new assessment.

(2) A maintenance assessment made in response to an application under Article 7 shall be cancelled by a child support officer if the person on whose application the assessment was made asks him to do so.

(3) A maintenance assessment made in response to an application under Article 9 shall be cancelled by a child support officer if—

- (a) the person on whose application the assessment was made (“the applicant”) asks him to do so; and
- (b) he is satisfied that the applicant has ceased to fall within paragraph (1) of that Article.

(4) Where a child support officer is satisfied that the person with care with respect to whom a maintenance assessment was made has ceased to be a person with care in relation to the qualifying child, or any of the qualifying children, with respect to whom the assessment was made, he may cancel the assessment with effect from the date on which, in his opinion, the change of circumstances took place.

(5) Where—

- (a) at any time a maintenance assessment is in force but a child support officer would no longer have jurisdiction to make it if it were to be applied for at that time; and
- (b) the assessment has not been cancelled, or has not ceased to have effect under or by virtue of any other provision made by or under this Order,

it shall be taken to have continuing effect unless cancelled by a child support officer in accordance with such prescribed provision (including provision as to the effective date of cancellation) as the Department considers it appropriate to make.

(6) Where both the absent parent and the person with care with respect to whom a maintenance assessment was made request a child support officer to cancel the assessment, he may do so if he is satisfied that they are living together.

*Status: This is the original version (as it was originally made).*

(7) Any cancellation of a maintenance assessment under sub-paragraph (5) or (6) shall have effect from such date as may be determined by the child support officer.

(8) Where a child support officer cancels a maintenance assessment, he shall immediately notify the absent parent and person with care, so far as that is reasonably practicable.

(9) Any notice under sub-paragraph (8) shall specify the date with effect from which the cancellation took effect.

(10) A person with care with respect to whom a maintenance assessment is in force shall provide the Department with such information, in such circumstances, as may be prescribed, with a view to assisting the Department or a child support officer in determining whether the assessment has ceased to have effect, or should be cancelled.

(11) The Department may by regulations make such supplemental, incidental or transitional provision as it thinks necessary or expedient in consequence of the provisions of this paragraph.

## SCHEDULE 2

Article 16(4).

### PROVISION OF INFORMATION TO THE DEPARTMENT

1. This Schedule applies where—

- (a) the Department requires relevant information in connection with the discharge by it, or by any child support officer, of functions under this Order; or
- (b) the Secretary of State requires relevant information in connection with the discharge of any functions under the Child Support Act 1991<sup>(27)</sup>.

2. The Department of the Environment or the Northern Ireland Housing Executive, as the case may be, shall, at the request of the Department, give to the Department such relevant information in connection with any housing benefit to which an absent parent or person with care is entitled as the Department considers necessary in connection with the Department's determination of—

- (a) that person's income of any kind;
- (b) the amount of housing costs to be taken into account in determining that person's income of any kind; or
- (c) the amount of that person's protected income.

3. The Department may also make a request under paragraph 2 for the purposes of enabling the Secretary of State to obtain such information for the purposes of the Child Support Act 1991.

4. In this Schedule "relevant information" means information of such a description as may be prescribed.

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(27) 1991 c. 48

## SCHEDULE 3

Article 23(4).

### CHILD SUPPORT APPEAL TRIBUNALS

#### *The President*

1.—(1) The person appointed under Schedule 10 to the Social Security (Northern Ireland) Act 1975<sup>(28)</sup> as President of the social security appeal tribunals, medical appeal tribunals and disability appeal tribunals shall, by virtue of that appointment, also be President of the child support appeal tribunals.

(2) It shall be the duty of the President to arrange such meetings of the chairmen and members of child support appeal tribunals, and such training for them, as he considers appropriate.

(3) The President may, with the consent of the Department as to numbers, remuneration and other terms and conditions of service, appoint such officers and staff as he thinks fit for the child support appeal tribunals and their full-time chairmen.

#### *Membership of child support appeal tribunals*

2.—(1) A child support appeal tribunal shall consist of a chairman and 2 other persons.

(2) The chairman and the other members of the tribunal must not all be of the same sex.

(3) Sub-paragraph (2) shall not apply to any proceedings before a child support appeal tribunal if the chairman of the tribunal rules that it is not reasonably practicable to comply with that sub-paragraph in those proceedings.

#### *The chairmen*

3.—(1) The chairman of a child support appeal tribunal shall be nominated by the President.

(2) The President may nominate himself or a person drawn—

(a) from a panel appointed by the Lord Chancellor;

(b) from among those appointed under paragraph 4 to act as full-time chairmen; or

(c) from among those appointed under paragraph 1A of Schedule 10 to the Social Security Act (Northern Ireland) 1975 to act as full-time chairmen of social security appeal tribunals.

(3) Subject to any regulations made by the Lord Chancellor, no person shall be nominated as a chairman of a child support appeal tribunal by virtue of sub-paragraph (2) unless he is a barrister or solicitor of at least 5 years' standing.

4.—(1) The Lord Chancellor may appoint for Northern Ireland full-time chairmen for child support appeal tribunals.

(2) A person is qualified to be appointed as a full-time chairman if he is a barrister or solicitor of at least 7 years' standing.

(3) A person appointed to act as a full-time chairman shall hold and vacate office in accordance with the terms of his appointment, except that he must vacate his office at the end of the completed year of service in which he reaches the age of 72 unless his appointment is continued under sub-paragraph (4).

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(28) 1975 c. 15

(4) Where the Lord Chancellor considers it desirable in the public interest to retain a full-time chairman in office after the end of the completed year of service in which he reaches the age of 72, he may authorise the continuance of that person in office until any date not later than that on which that person reaches the age of 75.

(5) A person appointed as a full-time chairman may be removed from office by the Lord Chancellor on the ground of misbehaviour or incapacity.

(6) Any person appointed as a full-time chairman under this Schedule shall not, so long as he holds office as such, practise as a barrister or act for any remuneration to himself as arbitrator or referee or be directly or indirectly concerned in any matter as a conveyancer, notary public or solicitor.

(7) The Department may pay, or make such payment towards the provision of, such remuneration, pensions, allowances or gratuities to or in respect of persons appointed as full-time chairmen under this paragraph as the Department may determine with the consent of the Department of Finance and Personnel.

#### *Other members of child support appeal tribunals*

5.—(1) The members of a child support appeal tribunal other than the chairman shall be drawn from the appropriate panel constituted under this paragraph.

(2) The panels shall be constituted by the President for the whole of Northern Ireland, and shall—

- (a) act for such areas; and
- (b) be composed of such persons,

as the President thinks fit.

(3) The panel for an area shall be composed of persons appearing to the President to have knowledge or experience of conditions in the area and to be representative of persons living or working in the area.

(4) Before appointing members of a panel, the President shall take into consideration any recommendations from such organisations or persons as he considers appropriate.

(5) The members of the panels shall hold office for such period as the President may direct.

(6) The President may at any time terminate the appointment of any member of a panel.

#### *Clerks of tribunals*

6.—(1) Each child support appeal tribunal shall be serviced by a clerk appointed by the President.

(2) The duty of summoning members of a panel to serve on a child support appeal tribunal shall be performed by the clerk to the tribunal.

#### *Expenses of tribunal members and others*

7.—(1) The Department may pay—

- (a) to any member of a child support appeal tribunal, such remuneration and travelling and other allowances as the Department may determine with the consent of the Department of Finance and Personnel;
- (b) to any person required to attend at any proceedings before a child support appeal tribunal, such travelling and other allowances as may be so determined; and
- (c) such other expenses in connection with the work of any child support appeal tribunal as may be so determined.

(2) In sub-paragraph (1), references to travelling and other allowances include references to compensation for loss of remunerative time.

(3) No compensation for loss of remunerative time shall be paid to any person under this paragraph in respect of any time during which he is in receipt of other remuneration so paid.

#### SCHEDULE 4

Article 24.

### MATTERS CONCERNING CHILD SUPPORT COMMISSIONERS

#### *Proceedings before Child Support Commissioners*

**1.—**(1) The Lord Chancellor may make such regulations with respect to proceedings before Child Support Commissioners as he considers appropriate.

(2) The regulations—

- (a) may, in particular, make any provision of a kind mentioned in Article 23(3); and
- (b) shall provide that any hearing before a Child Support Commissioner shall be in public except in so far as the Commissioner for special reasons directs otherwise.

#### *Tribunal of 2 or 3 Commissioners*

**2.—**(1) If it appears to the Chief Child Support Commissioner (or, in the case of his inability to act, to such other of the Child Support Commissioners as he may have nominated to act for the purpose) that an appeal falling to be heard by one of the Child Support Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with, not by that Commissioner alone, but by a tribunal consisting of any 2 or 3 of the Child Support Commissioners.

(2) If the decision of such a tribunal is not unanimous, the decision of the majority or, in the case of a tribunal consisting of 2 Commissioners, the decision of the presiding member shall be the decision of the tribunal.

#### *Finality of decisions*

**3.—**(1) Subject to Article 26 the decision of any Child Support Commissioner shall be final.

(2) Sub-paragraph (1) shall not be taken to make any finding of fact or other determination embodied in or necessary to a decision, or on which it is based, conclusive for the purposes of any further decision.

#### *Pensions*

**4.** The Lord Chancellor may pay, or make such payments towards the provision of, such pensions to or in respect of persons appointed as Child Support Commissioners as he may, with the consent of the Treasury, determine.

## SCHEDULE 5

Article 51(3).

### CONSEQUENTIAL AMENDMENTS

#### *The Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

1. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) insert the following entry at the appropriate place—

“Full-time chairman of a child support appeal tribunal established under Article 23 of the Child Support (Northern Ireland) Order 1991”.

#### *The Insolvency (Northern Ireland) Order 1989 (NI 19)*

2. In Article 255(5)(b) of the Insolvency (Northern Ireland) Order 1989 (effect of discharge of bankrupt), “after domestic proceedings” insert “or under a maintenance assessment made under the Child Support (Northern Ireland) Order 1991”.

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made only for purposes corresponding to those of the provisions of the Child Support Act 1991, other than provisions which relate to the appointment of Child Support Commissioners for Northern Ireland. The Order makes provision for Northern Ireland with regard to the assessment, collection and enforcement of periodical maintenance payable by certain parents with respect to children of theirs who are not in their care.

The Order—

- (a) makes provision with respect to the duty of each parent to maintain a qualifying child within the meaning of the Order;
- (b) introduces a new method of assessing child support maintenance by a non-discretionary formula; and
- (c) empowers the Department of Health and Social Services to trace absent parents, to assess child support maintenance and to collect and enforce child support maintenance and certain other kinds of maintenance.