

## 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;

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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.

(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—

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- (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.

*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.

(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>(1)</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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(1) 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>(2)</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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(2) 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.

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(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”.