

SCHEDULES

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

The Child Support (Northern Ireland) Order 1991 (NI 23)

5. In paragraph (2) of Article 2 (interpretation)—
- (a) the following definition shall be inserted at the appropriate place—
““appeal tribunal” means an appeal tribunal constituted under Chapter I of Part II of the Social Security (Northern Ireland) Order 1998;” and
 - (b) the definitions of “adjudication officer”, “Chief Child Support Officer”, “child support appeal tribunal” and “child support officer” shall cease to have effect.

6. In Article 6 (welfare of children: the general principle), the words—

- (a) “or any child support officer”;
- (b) “or the child support officer”; and
- (c) “or his”,

shall cease to have effect.

7. In paragraph (4) of Article 7 (child support maintenance), the words “or the child support officer” shall cease to have effect.

8. In paragraph (9) of Article 9 (applications by those receiving benefit), the words “or the child support officer” shall cease to have effect.

9. In paragraphs (1) and (2) of Article 10 (role of the courts with respect to maintenance for children), for the words “a child support officer” there shall be substituted the words “the Department”.

10.—(1) In paragraph (4)(a) of Article 12 (relationship between maintenance assessments and certain court orders and related matters)—

- (a) for the words “the child support officer concerned” there shall be substituted the words “the Department”; and
- (b) for the words “that officer” there shall be substituted the word “it”.

(2) In paragraph (5) of that Article, for the words “a child support officer” there shall be substituted the words “an officer of the Department”.

11.—(1) In paragraph (1) of Article 13 (maintenance assessments), for the words “referred by it to a child support officer whose duty it shall be to deal with the application” there shall be substituted the words “dealt with by it”.

(2) In paragraph (1A) of that Article, for the words “before referring the application to a child support officer” there shall be substituted the words “before determining the application”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

12.—(1) For paragraphs (1) and (1A) of Article 14 (interim maintenance assessments) there shall be substituted the following paragraph—

“(1) Where the Department—

- (a) is required to make a maintenance assessment; or
- (b) is proposing to make a decision under Article 18 or 19,

and (in either case) it appears to the Department that it does not have sufficient information to enable it to do so, the Department may make an interim maintenance assessment.”.

(2) In paragraph (4) of that Article—

- (a) for the words “a child support officer” there shall be substituted the words “the Department”; and
- (b) for the word “his” there shall be substituted the word “its”.

(3) In paragraph (5) of that Article—

- (a) for the words “a child support officer” there shall be substituted the words “the Department”; and
- (b) for the word “he” there shall be substituted the word “it”.

13. Article 15 (child support officers) shall cease to have effect.

14. In Article 16 (information required by the Department)—

- (a) paragraphs (2), (2A) and (4) shall cease to have effect; and
- (b) in paragraph (3), the words “or by child support officers” shall cease to have effect and for the word “them” there shall be substituted the word “it”.

15. In paragraph (1) of Article 17 (powers of inspectors), the words “or any child support officer” shall cease to have effect.

16.—(1) In paragraph (1) of Article 25 (appeal to Child Support Commissioner), for the words “a child support appeal tribunal, and any child support officer” there shall be substituted the words “an appeal tribunal, and the Department”.

(2) Paragraph (1A) of that Article shall cease to have effect.

(3) In paragraph (3) of that Article—

- (a) for the words “the child support appeal tribunal” there shall be substituted the words “the appeal tribunal”;
- (b) for the words “a child support appeal tribunal”, in both places where they occur, there shall be substituted the words “an appeal tribunal”; and
- (c) for the words “a child support officer” there shall be substituted the words “the Department”.

(4) For paragraph (4) of that Article there shall be substituted the following paragraph—

“(4) The reference under paragraph (3) to the Department shall, subject to any direction of the Child Support Commissioner, be to an officer of the Department, or to a person providing it with services, who has taken no part in the decision originally appealed against.”.

(5) In paragraph (5) of that Article, for the words “a child support appeal tribunal” there shall be substituted the words “an appeal tribunal”.

(6) In paragraph (6)(a) of that Article—

- (a) for the words “who was the chairman of the child support appeal tribunal” there shall be substituted the words “who constituted, or was the chairman of, the appeal tribunal”; and

(b) for the words “such other chairman of a child support appeal tribunal” there shall be substituted the words “such other person”.

(7) In paragraph (8) of that Article, for the words “a child support officer”, in both places where they occur, there shall be substituted the words “the Department”.

17. In paragraph (1) of Article 27 (disputes about parentage), for the words “the child support officer concerned” there shall be substituted the words “the Department”.

18. In paragraph (1)(b) of Article 28 (reference to court for declaration of parentage), for the words “a child support officer to whom the case is referred” there shall be substituted the words “the Department”.

19. For paragraph (4) of Article 28A (application for a departure direction) there shall be substituted the following paragraph—

“(4) An application may be made under this Article even though an application has been made under Article 18(1) or 19(1) with respect to the current assessment.”.

20.—(1) Paragraphs (4) and (5) of Article 28B (preliminary consideration of applications) shall cease to have effect.

(2) For paragraph (6) of that Article there shall be substituted the following paragraph—

“(6) Where a decision as to a maintenance assessment is revised or superseded under Article 18 or 19, the Department—

(a) shall notify the applicant and such other persons as may be prescribed that the decision has been revised or superseded; and

(b) may direct that the application is to lapse unless, before the end of such period as may be prescribed, the applicant notifies the Department that he wishes it to stand.”.

21. In paragraphs (1)(b) and (3) of Article 28D (determination of applications), for the words “a child support appeal tribunal” there shall be substituted the words “an appeal tribunal”.

22. In paragraph (6) of Article 28F (departure directions), for the words “a child support officer to make” there shall be substituted the words “the making of”.

23. Paragraph (1) of Article 28G (effect and duration of departure directions) shall cease to have effect.

24. For Article 28H there shall be substituted the following Article—

“Departure directions: decisions and appeals

28H. Schedule 4C shall have effect for applying Articles 18, 19, 22 and 28ZA to 28ZC to decisions with respect to departure directions.”.

25. After paragraph (2) of Article 40 (contribution to maintenance by deduction from benefit) there shall be added the following paragraph—

“(3) Schedule 4C shall have effect for applying Articles 18, 19, 22 and 28ZA to 28ZC to any decision with respect to a person’s liability under this Article, that is to say, his liability to make payments under regulations made by virtue of this Article.”.

26. In paragraph (1) of Article 41 (jurisdiction), for the words “A child support officer” there shall be substituted the words “The Department”.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

27.—(1) In paragraph (1)(a) of Article 42 (jurisdiction of courts in certain proceedings under this Order), for the words “a child support appeal tribunal” there shall be substituted the words “an appeal tribunal”.

(2) In paragraph (3) of that Article, for the words “child support appeal tribunals” there shall be substituted the words “appeal tribunals”.

28.—(1) In paragraph (2) of Article 43 (failure to comply with obligations imposed by Article 9)—

(a) for the words “A child support officer” there shall be substituted the words “The Department”; and

(b) for the word “him” there shall be substituted the words “the Department”.

(2) In paragraph (3) of that Article, for the words “the child support officer” there shall be substituted the words “the Department”.

(3) In paragraphs (4) to (6) of that Article—

(a) for the words “the child support officer” there shall be substituted the words “the Department”; and

(b) for the word “he” there shall be substituted the word “it”.

(4) For paragraphs (7) and (8) of that Article there shall be substituted the following paragraph—

“(7) Schedule 4C shall have effect for applying Articles 18, 19, 22 and 28ZA to 28ZC to decisions with respect to reduced benefit directions.”.

(5) In paragraph (11) of that Article, in the definition of “reduced benefit direction”, the words “, binding on the adjudication officer,” shall cease to have effect.

29. After Article 43 there shall be inserted the following Articles—

“Finality of decisions

43A.—(1) Subject to the provisions of this Order, any decision of the Department or an appeal tribunal made in accordance with the foregoing provisions of this Order shall be final.

(2) If and to the extent that regulations so provide, any finding of fact or other determination embodied in or necessary to such a decision, or on which such a decision is based, shall be conclusive for the purposes of—

(a) further such decisions;

(b) decisions made in accordance with Articles 9 to 16 of the Social Security (Northern Ireland) Order 1998 or section 22 of the Social Security Administration (Northern Ireland) Act 1992, or with regulations under Article 12 of that Order; and

(c) decisions made under the Vaccine Damage Payments Act 1979.

Matters arising as respects decisions

43B.—(1) Regulations may make provision as respects matters arising pending—

(a) any decision of the Department under Article 13, 14 or 19;

(b) any decision of an appeal tribunal under Article 22; or

(c) any decision of a Child Support Commissioner under Article 25.

(2) Regulations may also make provision as respects matters arising out of the revision under Article 18, or on appeal, of any such decision as is mentioned in paragraph (1).

(3) Any reference in this Article to Article 18, 19 or 22 includes a reference to that Article as extended by Schedule 4C.”.

30. In paragraph (5) of Article 46 (unauthorised disclosure of information), in sub-paragraph (c), after the words “other officer of,” there shall be inserted the words “an appeal tribunal or”.

31. In paragraph (2) of Article 47 (supplementary powers to make regulations)—

(a) in sub-paragraph (a), for head (iii) there shall be substituted the following head—

“(iii) the making of decisions under Article 18 or 19;”;

(b) in sub-paragraph (b), for the words “Article 20 or 21” there shall be substituted the words “Schedule 4C”.

32.—(1) In paragraph 8 of Schedule 1 (housing costs), for the words “a child support officer” there shall be substituted the words “the Department”.

(2) In paragraph 9(b) of that Schedule (regulations about income and capital), for the words “the child support officer concerned” and the words “the child support officer” there shall be substituted the words “the Department”.

(3) In paragraph 13 of that Schedule (assessments where amount of child support is nil), for the words “A child support officer” there shall be substituted the words “The Department”.

(4) In paragraph 15 of that Schedule (separate assessments for different periods)—

(a) for the words “a child support officer” there shall be substituted the words “the Department”; and

(b) for the word “he” there shall be substituted the word “it”.

(5) In paragraph 16 of that Schedule (termination of assessments), for sub-paragraphs (2) to (11) there shall be substituted the following sub-paragraphs—

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

(3) A maintenance assessment made in response to an application under Article 9 shall be cancelled by the Department if—

(a) the person on whose application the assessment was made (“the applicant”) asks it to do so; and

(b) the Department is satisfied that the applicant has ceased to fall within paragraph (1) of that Article.

(4) Where the Department 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, the Department may cancel the assessment with effect from the date on which, in its opinion, the change of circumstances took place.

(5) A maintenance assessment may be cancelled by the Department if it is proposing to make a decision under Article 18 or 19 and it appears to the Department—

(a) that the person with care with respect to whom the maintenance assessment in question was made has failed to provide the Department with sufficient information to enable it to make the decision; and

(b) where the maintenance assessment in question was made in response to an application under Article 9, that the person with care with respect to whom the assessment was made has ceased to fall within paragraph (1) of that Article.

(6) Where—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) at any time a maintenance assessment is in force but the Department 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 any other provision made by or under this Order,

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

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

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

(9) Where the Department cancels a maintenance assessment, it shall immediately notify the absent parent and person with care, so far as that is reasonably practicable.

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

(11) 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 in determining whether the assessment has ceased to have effect, or should be cancelled.

(12) 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.”.

33. Schedule 2 (provision of information to the Department) shall cease to have effect.

34. Schedule 3 (child support appeal tribunals) shall cease to have effect.

35.—(1) In paragraph 1(2)(a) of Schedule 4 (proceedings before Child Support Commissioners), for the words “Article 23(3)” there shall be substituted the words “Schedule 4 to the Social Security (Northern Ireland) Order 1998”.

(2) For paragraph 2 of that Schedule there shall be substituted the following paragraph—

“Tribunal of 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—

- (a) an application for leave under Article 25(6)(b); or
- (b) 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 application or appeal be dealt with, not by that Commissioner alone, but by a tribunal consisting of any 2 or more of the Child Support Commissioners.

(2) If the decision of such a tribunal is not unanimous, the decision of the majority shall be the decision of the tribunal; and the presiding Child Support Commissioner shall have a casting vote if the votes are equally divided.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Where a direction is given under sub-paragraph (1)(a), Article 25(6)(b) shall have effect as if the reference to a Child Support Commissioner were a reference to such a tribunal as is mentioned in sub-paragraph (1).”.

(3) In paragraph 3 of that Schedule (finality of decisions), for sub-paragraph (2) there shall be substituted the following sub-paragraph—

“(2) If and to the extent that regulations so provide, any finding of fact or other determination which is embodied in or necessary to a decision, or on which a decision is based, shall be conclusive for the purposes of any further decision.”.

(4) In paragraph 3A of that Schedule (expenses of persons required to attend proceedings), for sub-paragraph (1) there shall be substituted the following sub-paragraph—

“(1) The Lord Chancellor may pay to any person who attends any proceedings before a Child Support Commissioner such travelling and other allowances as he may determine.”.

36.—(1) In paragraph 1 of Schedule 4A (interpretation), the definition of “review” shall cease to have effect.

(2) In paragraph 2 of that Schedule (applications for departure directions)—

(a) in sub-paragraph (b), for the words “a child support appeal tribunal” there shall be substituted the words “an appeal tribunal”; and

(b) in sub-paragraph (c), for the words “a departure application and a review are to be dealt with” there shall be substituted the words “a decision on a departure application and a decision under Article 18 or 19 are to be made”.

(3) In paragraph 4(1)(b) of that Schedule (information), the words “a child support officer or” shall cease to have effect.

(4) Paragraph 6 of that Schedule (reviews and departure directions) shall cease to have effect.

(5) In paragraph 8(2) of that Schedule (joint consideration of departure applications and appeals), for the words “A child support appeal tribunal” there shall be substituted the words “An appeal tribunal”.

(6) In paragraph 9 of that Schedule (child support appeal tribunals)—

(a) in the heading, for the words “Child support appeal tribunals” there shall be substituted the words “Appeal tribunals”; and

(b) in sub-paragraph (1)(a), for the words “a child support appeal tribunal” there shall be substituted the words “an appeal tribunal”.

37. After Schedule 4B there shall be inserted the following Schedule—

“SCHEDULE 4C

DECISIONS AND APPEALS: DEPARTURE DIRECTIONS AND REDUCED BENEFIT DIRECTIONS

Revision of decisions

1. Article 18 shall apply in relation to—

(a) any decision of the Department with respect to a departure direction, a reduced benefit direction or a person’s liability under Article 40;

(b) any decision of the Department under Article 19 as extended by paragraph 2; and

(c) any decision of an appeal tribunal on a referral under Article 28D(1)(b),

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

as it applies in relation to any decision of the Department under Article 13, 14 or 19.

Decisions superseding earlier decisions

2.—(1) Article 19 shall apply in relation to—

- (a) any decision of the Department with respect to a departure direction, a reduced benefit direction or a person’s liability under Article 40;
- (b) any decision of the Department under Article 19 as extended by this sub-paragraph; and
- (c) any decision of an appeal tribunal on a referral under Article 28D(1)(b),

whether as originally made or as revised under Article 18 as extended by paragraph 1, as it applies in relation to any decision of the Department under Article 13, 14 or 19, whether as originally made or as revised under Article 18.

(2) Article 19 shall apply in relation to any decision of an appeal tribunal under Article 22 as extended by paragraph 3 as it applies in relation to any decision of an appeal tribunal under Article 22.

Appeals to appeal tribunals

3.—(1) Subject to sub-paragraphs (2) and (3), Article 22 shall apply—

- (a) in relation to a qualifying person who is aggrieved by any decision of the Department with respect to a departure direction; and
- (b) in relation to any person who is aggrieved by a decision of the Department—
 - (i) with respect to a reduced benefit direction; or
 - (ii) with respect to a person’s liability under Article 40,

as it applies in relation to a person whose application for a maintenance assessment is refused or to such a person as is mentioned in paragraph (2) of Article 22.

(2) On an appeal under Article 22 as extended by sub-paragraph (1)(a), the appeal tribunal shall—

- (a) consider the matter—
 - (i) as if it were exercising the powers of the Department in relation to the application in question; and
 - (ii) as if it were subject to the duties imposed on the Department in relation to that application;
- (b) have regard to any representations made to it by the Department; and
- (c) confirm the decision or replace it with such decision as the tribunal considers appropriate.

(3) No appeal shall lie under Article 22 as extended by sub-paragraph (1)(b)(i) unless the amount of the person’s benefit is reduced in accordance with the reduced benefit direction; and the time within which such an appeal may be brought shall run from the date of the notification of the reduction.

(4) In sub-paragraph (1) “qualifying person” means the person with care, or absent parent, with respect to whom the current assessment was made.

Decisions and appeals dependent on other cases

- 4.—(1) Article 28ZA shall also apply where—
- (a) a decision falls to be made—
 - (i) with respect to a departure direction, a reduced benefit direction or a person’s liability under Article 40, by the Department; or
 - (ii) with respect to a departure direction, by an appeal tribunal on a referral under Article 28D(1)(b); and
 - (b) an appeal is pending against a decision given with respect to a different direction by a Child Support Commissioner or a court.
- (2) Article 28ZA as it applies by virtue of sub-paragraph (1) shall have effect as if the reference in paragraph (3) to Article 18 were a reference to that Article as extended by paragraph 1.
- (3) Article 28ZA as it applies by virtue of sub-paragraph (1)(a)(ii) shall have effect as if—
- (a) in paragraph (2), for the words “the Department”, in each place where they occur, there were substituted the words “the appeal tribunal”; and
 - (b) in paragraph (3)—
 - (i) for the words “the Department” there were substituted the words “the appeal tribunal”;
 - (ii) for the word “it” there were substituted the words “the Department”; and
 - (iii) for the word “its” there were substituted the words “the tribunal's”.
- 5.—(1) Article 28ZB shall also apply where—
- (a) an appeal is made to an appeal tribunal under Article 22 as extended by paragraph 3; and
 - (b) an appeal is pending against a decision given in a different case by a Child Support Commissioner or a court.
- (2) Article 28ZB as it applies by virtue of sub-paragraph (1) shall have effect as if any reference to Article 18 or Article 19 were a reference to that Article as extended by paragraph 1 or, as the case may be, paragraph 2.

Cases of error

- 6.—(1) Subject to sub-paragraph (2), Article 28ZC shall also apply where—
- (a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court (“the relevant determination”) is that the adjudicating authority’s decision out of which the appeal arose was erroneous in point of law; and
 - (b) after the date of the relevant determination a decision falls to be made by the Department in accordance with that determination (or would, apart from this paragraph, fall to be so made)—
 - (i) in relation to an application for a departure direction (made after the commencement date);
 - (ii) as to whether to revise, under Article 18 as extended by paragraph 1, a decision (made after the commencement date) in relation to a departure direction, a reduced benefit direction or a person’s liability under Article 40; or
 - (iii) on an application made under Article 19 as extended by paragraph 2 before the date of the relevant determination (but after the commencement date) for

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

a decision in relation to a departure direction, a reduced benefit direction or a person's liability under Article 40 to be superseded.

(2) Article 28ZC shall not apply where the decision of the Department mentioned in sub-paragraph (1)(b)—

- (a) is one which, but for Article 28ZA(2)(a) as it applies by virtue of paragraph 4(1), would have been made before the date of the relevant determination; or
- (b) is one made in pursuance of Article 28ZB(3) or (5) as it applies by virtue of paragraph 5(1).

(3) Article 28ZC as it applies by virtue of sub-paragraph (1) shall have effect as if in paragraph (4), in the definition of “adjudicating authority”, at the end there were added the words “or, in the case of a decision made on a referral under Article 28D(1)(b), an appeal tribunal”.

(4) In this paragraph “adjudicating authority”, “the commencement date” and “the court” have the same meanings as in Article 28ZC.”.