*Regulations made by the Department for Communities and laid before the Assembly under Article 48(2) of the Child Support (Northern Ireland) Order 1991 for approval of the Assembly before the expiration of six months from the date of their coming into operation*

STATUTORY RULES OF NORTHERN IRELAND

# 2019 No. 221

# FAMILY LAW

## CHILD SUPPORT

# The Child Support (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2019

*Made - - - - 06th December 2019*

*Coming into operation in accordance with regulation 1*

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 16(1) and (3), 32A(4)(a) and (b), 32C(1) and (2)(h), (k), (l), (n), (o) and (p), 32D(1)(b), 32E(2)(a) and (b), 32F(1)(b), 32I, 32J(1) and (2)(d), (e) and (i), 32K(1)(b), 37(11), 38E, 47(1) and (2)(i), 48(4) and paragraph 4(1) of Schedule 4B to the Child Support (Northern Ireland) Order 1991(**1**), and now vested in it(**2**).

## PART 1

## GENERAL

### Citation and commencement

**1.**—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2019 and shall come into operation on 10th December 2019.

(**1**) S.I. 1991/2628 (N.I. 23). Article 16(1) was amended by section 12 of, and paragraph 16 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) ("the 2000 Act") and by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.)) ("the 2008 Act"). Article 16(3) was amended by paragraph 14(b) of Schedule 6 and Schedule 7 to the Social Security (Northern Ireland) Order 1998 ((S.I. 1998/1506 (N.I. 10)). Articles 32A, 32C and 32D were inserted by section 14 and Articles 32E. 32F, 32I, 32J and 32K were inserted by section 15 of the 2008 Act. Article 38E was inserted by section 24 of the 2008 Act. Schedule 4B was inserted by Article 3(3) and Schedule 2 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and is substituted by section 6 of and Schedule 2 to the 2000 Act

(**2**) *See* Article 8(b) of S.R. 1999 No. 481 and Section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

# PART 2

## AMENDMENTS RELATING TO THE GROUNDS FOR VARIATION OF A MAINTENANCE CALCULATION

### Amendment of the Child Support Maintenance Calculation Regulations

**2.**—(1) The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012(**3**) are amended as follows.

(2) After regulation 68 (non-resident parent with unearned income) insert—

"**Assets exceeding a prescribed value**

**68A.**—(1) Where this paragraph applies, the other cases prescribed under paragraph 4(1) of Schedule 4B to the Child Support Order are cases where the Department is satisfied that there is an asset in which the non-resident parent has a legal or beneficial interest and the value of that interest exceeds the prescribed value.

(2) In this regulation "asset" means—

(a) money, whether in cash or on deposit, including any money which is due to a non-resident parent where the Department is satisfied that requiring payment of the monies to the non-resident parent immediately would be reasonable;

(b) gold, silver or platinum bullion bars or coins;

(c) a virtual currency which is capable of being exchanged for money;

(d) land or rights in or over land;

(e) shares within the meaning of section 540 of the Companies Act 2006(**4**);

(f) stock or shares within the meaning of section 2 of the Judgements Enforcement (Northern Ireland) Order 1981(**5**);

(g) gilt edged securities within the meaning of paragraphs 1 and 1A of Part 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1992(**6**); or

(h) a chose in action which has not been enforced on the date of an application for a variation under regulation 55 and where the Department is satisfied that such enforcement would be reasonable.

(3) In this regulation "asset" includes any asset which is subject to a trust where the non-resident parent is a beneficiary.

(4) Paragraph (1) does not apply in the case of any asset which—

(a) has been received by the non-resident parent as compensation for personal injury suffered by the non-resident parent;

(b) is being used in the course of the non-resident parent's trade or business;

(c) the Department is satisfied could have been purchased from the gross weekly income of the non-resident parent which has been taken into account for the purposes of a maintenance calculation;

(d) will need to be sold in order to meet any additional maintenance payment required as a result of a variation under paragraph 4(1) of Schedule 4B to the Child Support

(**3**) S.R. 2012 No. 427
(**4**) 2006 c.46
(**5**) S.I. 1981/226 (N.I. 6)
(**6**) 1992 c.12. Paragraph 1A of Part 1 of Schedule 9 was inserted by paragraph 8 of Schedule 40 to the Finance Act 1996 (1996 c.8)

Order where the Department is satisfied that the sale of that asset would cause hardship to a child of the non-resident parent, or would otherwise be unreasonable having taken into account all relevant circumstances; or

(e) is a legal or beneficial interest in land where the land in question is the primary residence of the non-resident parent or any child of the non-resident parent.

(5) The "prescribed value" is £31,250.

(6) In the case of an asset which is subject to a mortgage or charge, the value of that asset will be its value after a deduction is made for any amount owing under the mortgage or charge.

(7) The Department shall calculate the weekly value of an asset by applying the statutory rate of interest to the value of the asset and dividing by 52.

(8) For the purposes of this regulation—

"statutory rate of interest" means interest at the statutory rate prescribed for a judgment debt(**7**);

"virtual currency" means a digital representation of value which is not issued by a central bank or a public authority; and is accepted by natural or legal persons as a means of payment; and can be transferred, stored or traded electronically.".

# PART 3

## AMENDMENTS RELATING TO DEDUCTIONS FROM JOINT AND BUSINESS ACCOUNTS

**Amendment of the Child Support (Collection and Enforcement) Regulations**

**3.**—(1) The Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(**8**) are amended as follows.

(2) In regulations 25A(**9**) (interpretation of Parts IIIA to IIID)—

(a) In paragraph (1)—

(i) before the definition of "assessable income" insert—

""another account-holder" means an account-holder other than the liable person in a case where a regular deduction order or a lump sum deduction order is proposed or made in respect of a joint account;"; and

(ii) after the definition of "gross weekly income"(**10**) insert—

""joint account" includes an account used by a partnership(**11**) of which the liable person is a partner;";

(b) in paragraph (3)(b), after "liable person" insert "or (where the order is made in respect of a joint account) another account-holder"; and

(c) in paragraph (4), for "or a liable person" substitute ", a liable person or another account-holder".

(3) After regulation 25A insert—

(**7**) The statutory rate of interest is prescribed by Rule 9 of Order 42 to the Rules of the Court of Judicature (NI) 1980
(**8**) S.R. 1992 No. 390
(**9**) Regulation 25A was inserted by regulation 2 of S.R. 2009 No. 286
(**10**) The definition "gross weekly income" was inserted by regulation 4(2)(b) of S.R. 2013 No. 182
(**11**) Partnership is defined in section 1 of the Partnership Act 1890 (c. 39)

"**Regular deduction order in respect of a joint account**

**25A1.**—(1) Before making a regular deduction order in respect of a joint account the Department shall serve a notice containing the information set out in paragraph (2) and the further information set out in paragraph (3) or (4) (as appropriate).

(2) The information to each account-holder is—

(a) that the Department is proposing to make an order in respect of the account;

(b) the name of the liable person;

(c) the number and sort code of the account;

(d) that the order would be made to secure the payment of child support maintenance payable by the liable person;

(e) the dates on which the Department is proposing to make deductions under the order;

(f) that each account-holder has an opportunity to make representations to the Department about the matters in sub-paragraphs (a) and (e);

(g) that the order is likely to be made in the terms set out in the notice if representations are not made; and

(h) the period for making representations.

(3) The further information to the liable person is—

(a) the amounts that the Department is proposing to deduct under the order in respect of each of arrears of child support maintenance payable under the calculation and amounts of child support maintenance which will become payable under the calculation;

(b) that the liable person has an opportunity to make representations to the Department about the matters in sub-paragraph (a);

(c) that the order is likely to be made in the terms set out in the notice if representations are not made; and

(d) the period for making representations.

(4) The further information to another account-holder is—

(a) the amounts that the Department is proposing to deduct under the order; and

(b) that another account-holder has an opportunity to make representations to the Department about the matters in sub-paragraph (a);

(c) that the order is likely to be made in the terms set out in the notice if representations are not made; and

(d) the period for making representations.

(5) The period for making representations to the Department in respect of the matters referred to in paragraphs (2)(a), (e) and (3)(a) or (4)(a) is—

(a) 14 days, beginning with the day on which the account-holder receives the notice; or

(b) such longer period as the Department considers reasonable in the circumstances of the case.

(6) A regular deduction order may not be made before the period for making representations has expired and the Department has considered any representations in respect of the matters referred to in paragraphs (2)(a), (e) and (3)(a) or (4)(a) made to the Department during that period.".

(4) In regulation 25E (notification by the deposit-taker to the Department)—

(a) in paragraph (1) omit "in writing"; and

(b) after paragraph (5) insert—

"(5A) The deposit-taker at which a regular deduction order is directed must within 7 days of changing the name of an account-holder, beginning with the day on which the deposit-taker changes that name, notify the Department of the old name of the account-holder and the new name of that account-holder, if the order—

(a) is made in respect of a joint account; and

(b) remains in force at any time within that 7 day period.".

(5) In regulation 25G (review of a regular deduction order)—

(a) for paragraph (1) substitute—

"(1) The following persons may apply to the Department for a review of a regular deduction order—

(a) a deposit-taker at which the order is directed;

(b) the liable person against whom the order is made; or

(c) another account-holder (in the case of an order made in respect of a joint account).''; and

(b) in paragraph (2)—

(i) in sub-paragraph (a) for "the liable person or the deposit-taker" substitute "the liable person, the deposit-taker or another account-holder (in the case of an order made in respect of a joint account)";

(ii) at the beginning of sub-paragraph (b) insert "the applicant is the liable person and";

(iii) after sub-paragraph (e) omit "or"; and

(iv) after sub-paragraph (f) insert—

";

(g) for a joint account, another account-holder satisfies the Department that the amount contributed by the liable person to the account specified in the order—

(i) has decreased; or

(ii) will decrease within a period of 3 months of the date on which the account-holder applied for a review of the order; or

(h) for a joint account, another account-holder who did not make representations within the period for making representations under regulation 25A1(5), 25IA(3) or 25KA(3) both—

(i) satisfies the Department that that account-holder had reasonable excuse for not making representations within that period; and

(ii) applies for a review of the order within 3 months of the expiry of the period for making representations under regulation 25A1(5), 25IA(3) or 25KA(3).".

(6) In regulation 25I (variation of a regular deduction order)—

(a) for paragraph (1) substitute—

"(1) Subject to regulation 25IA, the Department may vary a regular deduction order by changing the amount to be deducted in the circumstances set out in paragraph (2).''; and

(b) in paragraph (2)—

(i) after sub-paragraph (d) omit "or"; and insert—