STATUTORY RULES OF NORTHERN IRELAND

2013 No. 276 (C. 18)

FAMILY LAW

CHILD SUPPORT

The Child Maintenance (2008 Act) (Commencement No. 12 and Savings Provisions) Order (Northern Ireland) 2013

Made - - - - *22nd November 2013*

The Department for Social Development makes the following Order in exercise of the power conferred by section 41(1) and (2) of the Child Maintenance Act (Northern Ireland) 2008(**1**).

Citation and interpretation

1.—(1) This Order may be cited as the Child Maintenance (2008 Act) (Commencement No. 12 and Savings Provisions) Order (Northern Ireland) 2013.

(2) In this Order—

"the Child Support Order" means the Child Support (Northern Ireland) Order 1991(**2**);

"the 2000 Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**3**);

"the Act" means the Child Maintenance Act (Northern Ireland) 2008; and

"new calculation rules" means Part 1 of Schedule 1 to the Child Support Order as amended by the provisions specified in Article 2.

(3) In this Order, subject to paragraph (5)—

"maintenance calculation", "non-resident parent", "person with care" and "qualifying child" have the meanings given in the Child Support Order(**4**); and

"absent parent" and "maintenance assessment" have the meanings given in the 1991 Order before its amendment by the 2000 Act.

(4) In this Order, a reference to an existing case is to a case in which there is—

(a) a maintenance assessment in force;

(**1**) 2008 c. 10 (N.I.)
(**2**) S.I. 1991/2628 (N.I. 23)
(**3**) 2000 c. 4 (N.I.)
(**4**) The definition of "maintenance calculation" is substituted for the definition of "maintenance assessment" by paragraph 12(e) of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and the term "non-resident parent" is substituted for the definition of "absent parent" by paragraph 11 of that Schedule

(b) a maintenance calculation, made otherwise than in accordance with the new calculation rules, in force;

(c) an application for a maintenance assessment which has been made but not determined; or

(d) an application for a maintenance calculation, which falls to be made otherwise than in accordance with the new calculation rules, which has been made but not determined.

(5) In this Order—

(a) a reference to a non-resident parent includes reference to a person who is—

(i) alleged to be the non-resident parent for the purposes of an application for child support maintenance under the Child Support Order, or

(ii) treated as the non-resident parent for the purposes of the Child Support Order(**5**); and

(b) a reference to an absent parent includes reference to a person who is—

(i) alleged to be the absent parent for the purposes of an application for child support maintenance under the Child Support Order, or

(ii) treated as the absent parent for the purposes of the Child Support Order(**6**).

Appointed day

2. The day appointed for the coming into operation of the following provisions of the Act, except where the saving in Article 3 applies—

(a) sections 8 (changes to the calculation of maintenance), 9 (power to regulate supersession), 10 (determination of applications for a variation) and Schedule 1 (changes to the calculation of maintenance);

(b) section 38(1) and paragraph 1(1) of Schedule 4 (minor and consequential amendments) so far as relating to the sub-paragraphs of paragraph 1 referred to in paragraph (c);

(c) paragraph 1(4), (24) and (25), of Schedule 4;and

(d) section 39 (repeals), so far as relating to the entries referred to in paragraph (e); and

(e) in Schedule 5 (repeals), the entries relating to—

(i) Schedule 1 to the Child Support Order, and

(ii) Schedule 24 to the Civil Partnership Act 2004(**7**),

in so far as not already in operation, is 25th November 2013.

New calculation rules not to apply to existing cases

3.—(1) The provisions of the 2008 Act referred to in Article 2 do not apply to an existing case.

(2) Subject to Articles 4 and 5, the saving in paragraph (1) applies until liability in relation to the maintenance assessment or maintenance calculation ceases to accrue (whether because the applicant has requested the Department to cease acting, because it has otherwise ceased or because the power in paragraph 1(1) of Schedule 2 to the Act has been exercised in relation to that case) or, where an application has been made but not determined, until the date notified to the person with care as the date on which the Department has ceased acting.

(**5**) A person may be treated as a non-resident parent for the purposes of the Child Support (Northern Ireland) Order 1991 ("the Order") under regulation 49(2) of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 (S.R. 2012 No. 427) or regulation 8(2) of the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 18)

(**6**) A person may be treated as an absent parent for the purposes of the Order under regulation 20(2) of the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 341)

(**7**) 2004 c. 33

Thirteen week linking rule where case closed voluntarily

4.—(1) This Article applies where—

(a) on or after the date on which this order is made, the applicant in relation to an existing case makes a request to the Department under Article 7(5) of the Child Support Order to cease acting; and

(b) a further application is made under Article 7 of the Child Support Order in relation to the same qualifying child, person with care and non-resident parent before the expiry of 13 weeks from the date of cessation of action by the Department.

(2) Where this Article applies, for the purposes of calculating the amount of child maintenance in response to the further application referred to in paragraph (1)(b) the saving in Article 3 continues to apply (so that new application is an existing case).

(3) For the purposes of paragraph (1)(b),

(a) the date an application is made—

(i) where made by telephone, is the date the telephone call is made; and

(ii) where made by post, is the date of receipt by the Department; and

(b) the date of cessation of action by the Department is—

(i) where there is a maintenance assessment or maintenance calculation in force, the date on which the liability under that assessment or calculation ends as a result of the request to cease acting; or

(ii) where there is an application still to be determined, the date notified to the person with care as the date on which the Department has ceased acting.

New calculation rules to apply to existing cases related to a new application

5.—(1) Subject to Article 4, where an application is made under Article 7 of the Child Support Order on or after 25th November 2013, but before the Department begins to exercise the power in paragraph 1(1) of Schedule 2 to the Act, and that application satisfies paragraph (2) or (3), paragraph (5) applies.

(2) An application satisfies this paragraph where—

(a) the non-resident parent in relation to the application is also the non-resident parent or absent parent in relation to an existing case; and

(b) the person with care in relation to the application is not the person with care in relation to the existing case in sub-paragraph (a).

(3) An application satisfies this paragraph where—

(a) the non-resident parent in relation to the application ("A") is a partner of a non-resident parent or an absent parent in relation to an existing case ("B"); and

(b) A or B is in receipt of a prescribed benefit.

(4) For the purposes of paragraph (3)—

"partner" has the meaning given in paragraph 10C(4) of Schedule 1 to the Child Support Order (as substituted by Schedule 1 to the 2000 Act); and

"prescribed benefit" means a benefit prescribed, or treated as prescribed, for the purposes of paragraph 4(1)(c) of Schedule 1 to the Child Support Order (as substituted by Schedule 1 to the 2000 Act).

(5) Where this paragraph applies, the saving in Article 3 ceases to apply in relation to the existing case referred to in paragraph (2)(a) or (3)(a) (and accordingly the new calculation rules apply) on