STATUTORY RULES OF NORTHERN IRELAND

2012 No. 440 (C. 45)

FAMILY LAW

CHILD SUPPORT

The Child Maintenance (2008 Act) (Commencement No. 10 and Transitional Provisions) Order (Northern Ireland) 2012

Made - - - - 6th December 2012

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. 10 and Transitional Provisions) Order (Northern Ireland) 2012.

(2) In this Order—

"the 2000 Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**2**);

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

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

(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(**3**);

"absent parent" and "maintenance assessment" have the meanings given in the Child Support 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;

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

(**1**) 2008 c. 10 (N.I.)
(**2**) 2000 c. 4 (N.I.)
(**3**) The definition of "maintenance calculation" is substituted 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 by paragraph 11 of that Schedule

(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 that Order; 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 that Order.

Appointed day

2.—(1) The day appointed for the coming into operation of the following provisions of the Act, for the purposes of those types of cases falling within Article 3—

(a) sections 9 and 10 (power to regulate supersession and determination of applications for a variation)

(b) in Schedule 1 (changes to the calculation of maintenance) paragraphs 2, 3 and 5 to 10, and section 8 and paragraph 1 of Schedule 1 so far as relating to those paragraphs;

(c) in paragraph 1 of Schedule 4 (minor and consequential amendments) sub-paragraphs (4) and (25), and section 38(1) and paragraph 1(1) of Schedule 4 so far as relating to those sub-paragraphs;

(d) in Schedule 5 (repeals) the repeals relating to—

(i) Schedule 1 to the Child Support (Northern Ireland) Order 1991(**4**), and

(ii) the Civil Partnership Act 2004(**5**),

and section 39 so far as it relates to those repeals,

in so far as not already in operation, is 10th December 2012.

(2) The day appointed for the coming into operation of—

(a) sections 23 and 24 (power to accept part payment of arrears in full and final satisfaction and to write off arrears); and

(b) section 26 (meaning of "child"),

of the Act, in so far as not already in operation, is 10th December 2012.

Cases to which the new calculation rules apply

3.—(1) The types of cases falling within this Article, for the purposes of Article 2(1), are those cases satisfying any of paragraphs (2) to (4).

(2) A case satisfies this paragraph where—

(a) an application under Article 7 of the Child Support Order(**6**) (child support maintenance) is made to the Department on or after 10th December 2012;

(**4**) S.I. 1991/2628 (N.I. 23)
(**5**) 2004 c. 33
(**6**) Article 7 was amended by Article 12(1) of the Child Support (Northern Ireland) Order 1995 (S.I. 1995 No. 2702 (N.I. 13)), Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998 No. 1506 (N.I. 10), sections 1(2) and 2 of, and

(b) that application is made in respect of at least four qualifying children with the same person with care and the same non-resident parent; and

(c) subject to paragraph (5), there is no existing case which has both the same person with care and the same non-resident parent referred to in sub-paragraph (b).

(3) A case satisfies this paragraph where it is an existing case and—

(a) the non-resident parent, in a case falling within paragraph (2), is also the non-resident parent or absent parent in relation to the existing case; and

(b) the person with care in relation to the existing case is not the person with care in relation to the case falling within paragraph (2).

(4) A case satisfies this paragraph where it is an existing case and—

(a) the non-resident parent or absent parent ("A") is a partner of a non-resident parent in a case falling within paragraph (2) ("B"); and

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

(5) Where—

(a) 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 that Order in relation to the same qualifying child, person with care and non-resident parent on or after 10th December 2012, but before the expiry of 13 weeks from the date of cessation of action by the Department,

the case is to be treated as an existing case (and so is not a case that satisfies paragraph (2)).

(6) For the purposes of paragraphs (2)(a) and (5)(b), the date an application is made is—

(a) where made by telephone, the date it is made; and

(b) where made by post, the date of receipt by the Department.

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

"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);

"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).

(8) For the purposes of paragraph (5)(b), the date of cessation of action by the Department is—

(a) 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;

(b) 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.

Transitional provision for existing cases

4. Where a case falls within Article 3(3) or (4), the provisions of the Child Support Order continue to apply—

(a) as they were in operation immediately before the coming into operation of the provisions in Article 2(1) in relation to that case;