STATUTORY RULES OF NORTHERN IRELAND

2012 No. 438

FAMILY LAW

CHILD SUPPORT

The Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2012

Made - - - - 6th December 2012
Coming into operation in accordance with regulation 1(1)

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 3(1)(b), 16(1), 29(3) and (3A), 47(1) and (2) and 48(4) of the Child Support (Northern Ireland) Order 1991(**1**), and now vested in it(**2**), and sections 36(2) and 38(2) of the Child Maintenance Act (Northern Ireland) 2008(**3**).

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2012 and shall come into operation as follows—

(a) this regulation and regulation 10, on 10th December 2012;

(b) regulations 2, 3 and 9(1), on the day on which section 26 of the Act comes into operation;

(**1**) S.I. 1991/2628 (N.I. 23); Article 3 is substituted by section 26 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.)); Article 16(1) is 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.)) and by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008; Article 29 is amended by section 1(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and section 31 of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)); Article 47(2) is amended by paragraph 31 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I.10)) and section 1(2) of, and paragraph 27 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**2**) *See* Article 8(b) of S.R. 1999 No. 481

(**3**) 2008 c. 10 (N.I.)

(c) subject to sub-paragraph (d), regulations 4 to 8, 9(2) and 11, in relation to a particular case, on the day on which paragraph 2 of Schedule 1 to the Act comes into operation in relation to that type of case;

(d) regulations 4(3) to (6) and 11, in relation to an arrears-only case, on 10th December 2012, subject to the savings in regulation 10(1).

(2) In these Regulations—

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

"arrears of child support maintenance" means—

(a) any payment of child support maintenance which has become due in relation to a maintenance assessment, or a maintenance calculation made under the 2003 scheme rules, and not paid; and

(b) the Department is arranging for the collection of that maintenance under Article 29 of the Child Support (Northern Ireland) Order 1991;

"arrears-only case" means a case in which—

(a) there are arrears of child support maintenance; and

(b) there is—

(i) no maintenance assessment, or maintenance calculation made under the 2003 scheme rules, still in force; and

(ii) no application for a maintenance assessment, or a maintenance calculation falling to be made under the 2003 scheme rules, still to be determined;

"the Collection and Enforcement Regulations" mean the Child Support (Collection and Enforcement) Regulations (Northern Ireland)1992(**4**).

(3) For the purposes of paragraph (2), a maintenance calculation is made (or will fall to be made) under the 2003 scheme rules if the amount of the periodical payments required to be paid in accordance with it is (or will be) determined otherwise than in accordance with Part 1 of Schedule 1 to the Child Support (Northern Ireland) Order 1991, as amended by Schedule 1 to the Act.

PART 2

Meaning of Child

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

2. In Schedule 1 to the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**5**) (meaning of "child" for the purposes of the Order)—

(a) for paragraphs 1 and 1A substitute—

"**Persons of 16 or 17 years of age who are not in full-time non-advanced education**

1.—(1) A person satisfies such conditions as may be prescribed for the purposes of Article 3(1)(b) of the Order if that person satisfies any of the conditions in sub-paragraphs (2) and (3).

(**4**) S.R. 1992 No. 390

(**5**) S.R. 1992 No. 340; Schedule 1 was amended by regulation 3(a) of S.R. 1999 No. 152, regulation 2(25) of S.R. 1999 No. 167 and regulation 2(4) of S.R. 2009 No. 363

(2) The person is receiving full-time education (which is not advanced education)—

(a) by attendance at a recognised educational establishment; or

(b) elsewhere, if the education is recognised by the Department.

(3) The person is a person in respect of whom child benefit is payable.";

(b) in paragraph 2 for—

(i) "Article 3 of the Order", in both places, substitute "this Schedule", and

(ii) in sub-paragraph (a) after "education" insert ", a higher national certificate";

(c) in paragraph 3 for "Article 3 of the Order" substitute "this Schedule";

(d) in paragraph 4(1) for "Article 3(1)(b) of the Order" substitute "paragraph 1(2)"; and

(e) for paragraph 6 substitute—

"**Interpretation**

6. In this Schedule "recognised educational establishment" means an establishment recognised by the Department for the purposes of this Schedule as being, or as comparable to, a university, college or school.

Education otherwise than at a recognised educational establishment

7. For the purposes of paragraph 1(2), the Department may recognise education provided for a person otherwise than at a recognised educational establishment only if it is satisfied that education was being so provided for that person immediately before that person attained the age of 16.".

Amendment of the Child Support (Maintenance Calculation Procedure) Regulations

3. In Schedule 1 to the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(**6**) (meaning of "child" for the purposes of the Order)—

(a) for paragraphs 1 and 1A substitute—

"**Persons of 16 or 17 years of age who are not in full-time non-advanced education**

1.—(1) A person satisfies such conditions as may be prescribed for the purposes of Article 3(1)(b) of the Order if that person satisfies any of the conditions in sub-paragraphs (2) and (3).

(2) The person is receiving full-time education (which is not advanced education)—

(a) by attendance at a recognised educational establishment; or

(b) elsewhere, if the education is recognised by the Department.

(3) The person is a person in respect of whom child benefit is payable.";

(b) in paragraph 2—

(i) for "Article 3 of the Order", in both places, substitute "this Schedule", and

(ii) in sub-paragraph (a) after "education" insert ", a higher national certificate";

(**6**) S.R. 2001 No. 17; Schedule 1 was amended by regulation 4 of S.R. 2009 No. 363

(c) in paragraph 3 for "Article 3 of the Order" substitute "this Schedule";

(d) in paragraph 4(1) for "Article 3(1)(b) of the Order" substitute "paragraph 1(2)"; and

(e) for paragraph 6 substitute—

"**Interpretation**

6. In this Schedule "recognised educational establishment" means an establishment recognised by the Department for the purposes of this Schedule as being, or as comparable to, a university, college or school.

Education otherwise than at a recognised educational establishment

7. For the purposes of paragraph 1(2), the Department may recognise education provided for a person otherwise than at a recognised educational establishment only if satisfied that education was being so provided for that person immediately before that person attained the age of 16.".

PART 3

New Calculation Rules – Consequential and Miscellaneous Amendments

Amendment of the Collection and Enforcement Regulations

4.—(1) The Collection and Enforcement Regulations are amended in accordance with paragraphs (2) to (6).

(2) For regulation 4(**7**) (interval of payment) substitute—

"**Payments to be scheduled over reference period**

4.—(1) The Department may, for the purposes of determining the frequency and amount of the payments of child support maintenance required to be made by a liable person—

(a) determine the total amount payable for the reference period on the assumption that the weekly rate of child support maintenance will not change over that period; and

(b) require that amount to be paid by equal instalments over that period at intervals determined by the Department.

(2) The reference period in relation to the maintenance calculation is, subject to paragraph (3), the period of 52 weeks mentioned in Article 29(3A) of the Order beginning with—

(a) the initial effective date (where it is the first such period in relation to the maintenance calculation); or

(b) the review date.

(3) In this regulation "initial effective date" and "review date" have the meanings given by regulations 12 and 19 respectively of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012(**8**).".

(**7**) Regulation 4 was amended by regulation 4(2) of S.R. 1995 No. 162
(**8**) S.R 2012 No. 427

(3) In regulation 8(1) (interpretation of this Part) in the definition of "normal deduction rate" for "week, month or other period" substitute "month and the equivalent of that sum for a 1, 2 and 4 week period".

(4) For regulations 10 and 11(**9**) (normal deduction rate and protected earnings proportion) substitute—

"**Normal deduction rate**

10.—(1) The period by reference to which the normal deduction rate is set must be the period by reference to which the liable person is normally paid where that period is a 1, 2 or 4 weekly or monthly period.

(2) The employer must select the normal deduction rate which applies depending on the period by reference to which the liable person's earnings are normally paid.

(3) Where the liable person is paid by reference to a period other than at a 1, 2 or 4 weekly or monthly period, the Department must discharge the deduction from earnings order in accordance with regulation 20.

Protected earnings proportion

11.—(1) The period by reference to which the protected earnings proportion is set must be the same as the period by reference to which the normal deduction rate is set in accordance with regulation 10(1).

(2) The protected earnings proportion in respect of any period shall be 60 per cent. of the liable person's net earnings in respect of that period as calculated at the pay-day of the liable person by the employer.".

(5) In regulation 20(1)(**10**) (discharge of deduction from earnings orders)—

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

(b) after sub-paragraph (f) add—

"or

(g) the circumstances in regulation 10(3) apply.".

(6) In regulations 25C(1)(a) and 25G(2)(d)(**11**) (maximum deduction rate and review of a regular deduction order) for "net" substitute "gross".

Amendment of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations

5.—(1) The Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992(**12**) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) omit the definitions of "Maintenance Assessment Procedure Regulations" and "Maintenance Calculation Procedure Regulations"(**13**).

(**9**) Regulation 10 was amended by regulation 4(6) of S.R. 1995 No. 162 and regulation 3(10) of S.R. 2001 No.15 and regulation 11 was amended by regulation 4(7)(b) of S.R. 1995 No. 162, regulation 5(3) of S.R. 1996 No. 317, Article 11 of S.R. 1999 No. 246 (C. 20), regulation 3(11) of S.R. 2001 No. 15, regulation 3(3) of S.R. 2006 No. 273 and regulation 3(3) of S.R. 2008 No. 409

(**10**) Regulation 20 was amended by regulation 4(9) of S.R. 1995 No. 162 and regulation 3(14) of S.R. 2001 No. 15

(**11**) Regulations 25C and 25G were inserted by regulation 2 of S.R. 2009 No. 286

(**12**) S.R. 1992 No. 466; relevant amending Regulations are S.R. 1995 No. 162, S.R. 2001 No. 16 and S.R. 2005 No. 125

(**13**) The definition of "Maintenance Assessment Procedure Regulations" was inserted by regulation 7(2) of S.R. 1995 No. 162 and is substituted by regulation 3(4) of S.R. 2001 No. 16 and the definition of "Maintenance Calculation Procedure Regulations" is substituted by regulation 3(4) of S.R 2001 No. 16