STATUTORY RULES OF NORTHERN IRELAND

# 2009 No. 422

# FAMILY LAW

## CHILD SUPPORT

# The Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009

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| *Made - - - -* | *15th December 2009* |
| *Coming into operation* | *25th January 2010* |

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 16(3), 28J(3), 38C(1), 40A, 47(1) and (2)(d), (e) and (f), 48(3) and (4) of the Child Support (Northern Ireland) Order 1991(**1**), and now vested in it(**2**).

## PART 1

### General

**Citation and commencement**

**1.** These Regulations may be cited as the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 and shall come into operation on 25th January 2010.

**Interpretation**

**2.**—(1) In these Regulations—

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

"old scheme case" means a case in respect of which the provisions of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**3**) have not been brought into

(**1**) S.I. 1991/2628 (N.I. 23) 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)) ("the 1998 Order"); Article 28J was inserted by section 19(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)(N.I.) (" the 2000 Act"); Article 38C was inserted by section 22 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10) ("the 2008 Act"); Article 40A was inserted by section 29 of the 2008 Act; Article 47(2) was amended by paragraph 31 of Schedule 6 to the 1998 Order and section 1(2) of, and paragraph 27 of Schedule 3 to, the 2000 Act; Article 48(3) was amended by section 24(2) of the 2000 Act

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

(**3**) 2000 (c. 4)(N.I.)

operation in accordance with Article 3 of the Child Support, Pensions and Social Security (2000 Act) (Commencement No. 9) Order (Northern Ireland) 2003(**4**);

"the AIAMA Regulations" means the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992(**5**);

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**6**);

"non-resident parent" includes a person treated as a non-resident parent by virtue of regulations made under Article 39 of the Order(**7**);

"relevant person" means—

(a) a person with care; or

(b) a non-resident parent,

in respect of whom a maintenance calculation is or has been in force.

(2) In the application of these Regulations to an old scheme case, any reference to expressions in the Order (including "non-resident parent" and "maintenance calculation"), or to regulations made under the Order, are to be read with the necessary modifications.

### Arrears notices

**3.**—(1) This regulation applies to a case where—

(a) the Department is arranging for the collection of child support maintenance under Article 29 of the Order(**8**); and

(b) the non-resident parent has failed to make one or more payments of child support maintenance due.

(2) Where the Department is considering taking action with regard to a case falling within paragraph (1), it must serve a notice on the non-resident parent.

(3) The notice must—

(a) itemize the payments of child support maintenance due and not paid;

(b) set out in general terms the provisions as to arrears contained in this regulation and regulation 8 of the AIAMA Regulations(**9**); and

(c) request the non-resident parent make payment of all outstanding arrears.

(4) Where a notice has been served under paragraph (2), no duty to serve a further notice under that paragraph arises in relation to further arrears unless those further arrears have arisen after an intervening continuous period of not less than 12 weeks during the course of which all payments of child support maintenance due from the non-resident parent have been paid on time in accordance with regulations made under Article 29 of the Order.

### Attribution of payments

**4.** Where a maintenance calculation is or has been in force and there are arrears of child support maintenance, the Department may attribute any payment of child support maintenance made by a non-resident parent to child support maintenance due as it thinks fit.

(**4**) S.R. 2003 No. 53 (C. 4)
(**5**) S.R. 1992 No. 342
(**6**) S.R. 1999 No. 162
(**7**) Article 39 is amended by paragraph 11 of Schedule 3 to the 2000 Act in respect of certain cases only
(**8**) Article 29 was amended by section 1(2) of the 2000 Act, and section 12 of, and Schedule 5 to, the 2008 Act
(**9**) Regulation 8 was substituted by regulation 5(2) of S.R. 1995 No. 475 and was amended by regulation 22(1) of S.R. 1996 No. 289 and regulation 2(7) of S.R. 2001 No. 15

# PART 2

## Set Off

### Set off of liabilities to pay child support maintenance

**5.**—(1) The circumstance prescribed for the purposes of Article 38C(1)(a) of the Order, in which the Department may set off liabilities to pay child support maintenance, are set out in paragraph (2).

(2) The Department may set off the liability to pay child support maintenance of one person ("A") against the liability to pay child support maintenance of another person ("B") where—

(a) A is liable to pay child support maintenance under a maintenance calculation, whether that calculation is current or no longer in force, in relation to which B is the person with care; and

(b) B is liable to pay child support maintenance under a maintenance calculation, whether that calculation is current or no longer in force, in relation to which A is the person with care.

(3) There shall be no set off in relation to any amount which if paid could be retained under Article 38 of the Order(**10**).

### Set off of payments against child support maintenance liability

**6.**—(1) The circumstances prescribed for the purposes of Article 38C(1)(b) of the Order, in which the Department may set off a payment against a person's liability to pay child support maintenance, are set out in paragraph (2).

(2) The Department may set off a payment against a non-resident parent's liability to pay child support maintenance where—

(a) the payment falls within paragraph (3); and

(b) the person with care agreed to the making of the payment.

(3) A payment is of a prescribed description for the purposes of Article 38C(1)(b) of the Order if it was made by the non-resident parent in respect of—

(a) a mortgage or loan taken out on the security of the property which is the qualifying child's home where that mortgage or loan was taken out to facilitate the purchase of, or to pay for essential repairs or improvements to, that property;

(b) rent on the property which is the qualifying child's home;

(c) mains-supplied gas, water or electricity charges at the qualifying child's home;

(d) rates payable by the person with care in relation to the qualifying child's home;

(e) essential repairs to the heating system in the qualifying child's home; or

(f) repairs which are essential to maintain the fabric of the qualifying child's home.

### Application of set off

**7.**—(1) In setting off a person's liability for child support maintenance under this Part, the Department may apply the amount to be set off to reduce any arrears of child support maintenance due under any current maintenance calculation, or any previous maintenance calculation made in respect of the same relevant persons.

(**10**) Article 38 was amended by paragraph (9) of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)); sections 1(2) and 17(1) of, and paragraph 11 of Schedule 3 to, the 2000 Act, and paragraph 1(29) of Schedule 4, and Schedule 5, to the 2008 Act

(2) Where there are no arrears of child support maintenance due, or an amount remains to be set off after the application of paragraph (1), the Department may adjust the amount payable in relation to the current maintenance calculation by such amount as it considers appropriate in all the circumstances of the case, having regard in particular to—

(a) the circumstances of the relevant persons; and

(b) the amount to be set off and the period over which it would be reasonable to adjust the amount payable to set off that amount.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

# PART 3

## Overpayments and Voluntary Payments

### Application of overpayments

**8.**—(1) Where for any reason, including the retrospective effect of a maintenance calculation, there has been an overpayment of child support maintenance, the Department may apply the amount overpaid to reduce any arrears of child support maintenance due under any previous maintenance calculation in respect of the same relevant persons.

(2) Where there is no previous maintenance calculation, or an amount of the overpayment remains after the application of paragraph (1), the Department may adjust the amount payable in relation to the current maintenance calculation by such amount as it considers appropriate in all the circumstances of the case, having regard in particular to—

(a) the circumstances of the relevant persons; and

(b) the amount of the overpayment and the period over which it would be reasonable to adjust the amount payable for the overpayment to be rectified.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

### Application of voluntary payments

**9.**—(1) Where there has been a voluntary payment, the Department may apply the amount of the voluntary payment to reduce any arrears of child support maintenance due under any previous maintenance calculation in respect of the same relevant persons.

(2) Where there is no previous maintenance calculation, or an amount of the voluntary payment remains after the application of paragraph (1), the Department may adjust the amount payable in relation to the current maintenance calculation by such amount as it considers appropriate in all the circumstances of the case, having regard in particular to—

(a) the circumstances of the relevant persons; and

(b) the amount of the voluntary payment and the period over which it would be reasonable to adjust the amount payable for the voluntary payment to be taken into account.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.