STATUTORY RULES OF NORTHERN IRELAND

2009 No. 133

FAMILY LAW

CHILD SUPPORT

The Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2009

Made - - - - 25th March 2009

Coming into operation in accordance with regulation 1

Approved by resolution of the Assembly on 1st June 2009

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 3(1)(c), 16(1), 19(3) and (5), 28J(3), 46(1A) and (1C)(b), 47(1) and (2)(a), (b) and (f) and 48(2) of, and paragraphs 5(a), 5(1) and (2), 6(4) and 9(d) of Schedule 1, and paragraphs 4(1) and 5(1) of Schedule 4B to, the Child Support (Northern Ireland) Order 1991(**1**), and now vested in it(**2**), and section 38(2) of the Child Maintenance Act (Northern Ireland) 2008(**3**).

Citation and commencement

1.—(1) These Regulations may be cited as the Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 and, subject to paragraph (2), shall come into operation on 6th April 2009.

(2) Regulation 6(3), (4)(a) and (b)(iii), (5), (8) and (9) shall come into operation, for the purposes of any type of case which is not one in relation to which 3rd March 2003 is the day appointed for the coming into operation of sections 8, 9 and 10 of the Child Support, Pensions and Social Security Act

(**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 Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008 c. 10 (N.I.) ("the 2008 Act"). Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) ("the 1998 Order"). Article 28J was inserted by the 2008 Act. Article 47(2)(b) was amended by paragraph 31(b) of Schedule 6 to the 1998 Order and is substituted by paragraph 27(b) of Schedule 3 to the 2000 Act for certain cases only. Article 48(2), in so far as it relates to cases for which the amendments in the 2000 Act have not been commenced, was amended by paragraph 13 of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) ("the 1995 Order") and Schedule 5 to the 2008 Act. In so far as it relates to cases for which the amendments in the 2000 Act have been commenced, it was amended by Schedule 5 to the 2008 Act. Paragraph 5(a) of Schedule 1 is part of that Schedule so substituted by section 1(3) of, and Schedule 1 to, the 2000 Act and is operative for certain cases only. Paragraphs 5(1) and (2), 6(4) and 9(d) of Schedule 1 are of that part of Schedule 1 which has not been substituted by section 1(3) of the 2000 Act. Schedule 4B was inserted by Article 3(3) of, and Schedule 2 to, the 1995 Order, and paragraph 5(1) of that Schedule is the authority for the amendments in regulation 5 of these Regulations. Schedule 4B was substituted by section 6 of, and Schedule 2 to, the 2000 Act for certain cases only, and paragraph 4(1) of Schedule 4B as so substituted is the authority used for the amendments in regulation 8 of these Regulations

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

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

(Northern Ireland) 2000(**4**), on the day on which those provisions come into operation in relation to that type of case.

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

2.—(1) The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**5**) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) omit the definition "Information, Evidence and Disclosure Regulations".

(3) In Schedule 1 (meaning of "child" for the purposes of the Order), in paragraph 1(3)(b)(**6**) (persons of 16 or 17 years of age who are not in full-time non-advanced education), for "or income-based jobseeker's allowance" substitute ", income-based jobseeker's allowance or income-related employment and support allowance".

Amendment of the Child Support (Maintenance Assessments and Special Cases) Regulations

3.—(1) The Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(**7**) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) after the definition of "patient" insert—

> ""pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995(**8**);";

(b) after the definition of "profit-related pay"(**9**) insert—

> ""qualifying age for state pension credit" means—
>
> (a) in the case of a woman, pensionable age; or
>
> (b) in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man;".

(3) In regulation 9(1)(d) (exempt income: calculation or estimation of E), for "aged less than 60" substitute "who had not attained the qualifying age for state pension credit".

(4) In regulation 18(2)(a)(iii) (excessive housing costs), for "were aged less than 60" substitute "had not attained the qualifying age for state pension credit".

(5) In Schedule 2 (amounts to be disregarded when calculating or estimating N and M), after paragraph 15 insert—

> "**15A.** A payment made by the Department for Employment and Learning under section 1 of the Employment and Training Act (Northern Ireland) 1950(**10**) by way of Return to Work Credit.".

(**4**) 2000 c. 4 (N.I.)
(**5**) S.R. 1992 No. 340
(**6**) Paragraph 1(3)(b) was amended by regulation 20(11) of S.R. 1996 No. 289
(**7**) S.R. 1992 No. 341
(**8**) S.I. 1995/3213 (N.I. 22). Paragraph 1 of Schedule 2 was amended by paragraph 28 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 c. 14 (N.I.), paragraph 8 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 c. 2 (N.I.) and paragraphs 3 and 4 of Schedule 3 to the Pensions Act (Northern Ireland) 2008 c. 1 (N.I.)
(**9**) The definition of "profit-related pay" was inserted by regulation 3(2)(a)(vii) of S.R. 1996 No. 590
(**10**) 1950 c. 29 (N.I.). Section 1 is amended by Article 3 of the Employment and Training (Amendment)(Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

Amendment of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations

4. In regulation 10(4) of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992(**11**) (adjustment of the amount payable under a maintenance assessment/calculation), for "(1), (3A) or regulation 15D of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999" substitute "(1) or (3A)".

Amendment of the Child Support Departure Direction and Consequential Amendments Regulations

5. For regulation 24 of the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996(**12**) (diversion of income) substitute—

"**24.**—(1) A case shall constitute a case for the purposes of paragraph 5(1) of Schedule 4B to the Order where—

(a) the non-applicant has the ability to control the amount of income that—

(i) he receives, or

(ii) is taken into account as his assessable income,

including earnings from employment or self-employment and dividends from shares, whether or not the whole of that income is derived from the company or business from which those earnings are derived; and

(b) the Department is satisfied that the non-applicant has unreasonably reduced the amount of his income which would otherwise fall to be taken into account under regulation 7 or 8 of the Maintenance Assessments and Special Cases Regulations by diverting it to other persons or for purposes other than the provision of such income for himself.

(2) In this regulation "assessable income" means the amount calculated in accordance with paragraph 5(1) to (3) of Schedule 1 to the Order, and regulations made for the purposes of that paragraph.".

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

6.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**13**) are amended as follows.

(2) In regulation 3A(**14**) (revision of child support decisions) omit paragraph (6).

(3) For regulation 6A(**15**) substitute—

(**11**) S.R. 1992 No. 342. Regulation 10 was substituted by regulation 3(3) of S.R. 1995 No. 162 and paragraph (4) was amended for certain cases only by regulation 2(10)(c) of S.R. 2001 No. 15. Paragraphs (2) and (3) are revoked by regulation 4(a) of S.R. 2001 No. 23 but are saved for certain cases only by virtue of regulation 3(1) of the same Regulations. References to paragraphs (2) and (3) in paragraph (4) are also saved for certain cases only by regulation 5 of S.R.2001 No. 15

(**12**) S.R. 1996 No. 541

(**13**) S.R. 1999 No. 162; relevant amending Regulations are S.R. 2001 No. 23, S.R. 2002 No. 164, S.R. 2003 Nos. 84 and 224, S.R. 2004 No. 428 and S.R. 2008 Nos. 286 and 404

(**14**) Regulation 3A was inserted by regulation 2(4) of S.R. 2001 No. 23. Paragraph (6) was amended by regulation 4(3)(b) of S.R. 2008 No. 404

(**15**) Regulation 6A was inserted by regulation 2(7) of S.R. 2001 No. 23 and amended by regulation 3(5) of S.R. 2003 No. 224

"**Supersession of child support decisions**

6A.—(1) This regulation and regulation 6B set out the circumstances in which a decision may be made by the Department under Article 19 of the Child Support Order.

(2) A decision may be superseded by a decision of the Department, on an application or acting under its own initiative, where—

(a) there has been a relevant change of circumstances since the decision had effect or it is expected that a relevant change of circumstances will occur;

(b) the decision was made in ignorance of, or was based on a mistake as to, some material fact; or

(c) the decision was wrong in law (unless it was a decision made on appeal).

(3) The circumstances in which a decision may be superseded include where the relevant change of circumstances causes the maintenance calculation to cease by virtue of paragraph 16 of Schedule 1 to the Child Support Order or where the Department no longer has jurisdiction by virtue of Article 41 of that Order.

(4) A decision may be superseded by a decision of the Department where the Department receives an application for a variation of the decision under Article 28G of the Child Support Order.

(5) A decision may not be superseded in circumstances where it may be revised.

(6) A decision to refuse an application for a maintenance calculation may not be superseded.".

(4) In regulation 6B(**16**) (circumstances in which a child support decision may not be superseded) —

(a) wherever "6A(3)" occurs, substitute "6A(2)(a)";

(b) in paragraph (4)—

(i) at the end of sub-paragraph (c) insert "or",

(ii) omit sub-paragraph (d), and

(iii) in sub-paragraph (e), for "regulation 7B(1) to (3) or (20)"(**17**) substitute "paragraph 4 of Schedule 2D".

(5) For regulation 7B(**18**) (date from which a decision superseded under Article 19 of the Child Support Order takes effect) substitute—

"**Effective date of a supersession decision**

7B. Schedule 2D provides for cases and circumstances in which a supersession decision takes effect from a date other than the date specified in Article 19(4) of the Child Support Order.".

(6) In regulation 15C(**19**) (notification of a decision made under Article 18 or 19 of the Child Support Order) omit paragraphs (6) to (8).

(7) Omit regulation 15D(**20**) (procedure in relation to the adjustment of the amount payable under a maintenance calculation).

(**16**) Regulation 6B was inserted by regulation 2(7) of S.R. 2001 No. 23 and amended by regulation 6(3) of S.R. 2002 No. 164 and regulation 5 of S.R. 2004 No. 428

(**17**) Paragraph (4)(e) was amended by regulation 6(3) of S.R. 2002 No. 164

(**18**) Regulation 7B was inserted by regulation 2(8) of S.R. 2001 No. 23 and is amended by regulation 6(4) of S.R. 2002 No. 164, regulation 7 of S.R. 2003 No. 84, regulation 3(7) of S.R. 2003 No. 224, regulation 22(6) of S.R. 2008 No. 286 and regulation 4(4) of S.R. 2008 No. 404

(**19**) Regulation 15C was inserted by regulation 2(9) of S.R. 2001 No. 23

(**20**) Regulation 15D was inserted by regulation 2(9) of S.R. 2001 No. 23

(8) In regulation 30A(**21**) (appeals to appeal tribunals in child support cases) for the words from "that an adjustment" to the end substitute "with respect to the adjustment of amounts payable under a maintenance calculation for the purpose of taking account of overpayments of child support maintenance or voluntary payments".

(9) After Schedule 2C(**22**) (date from which change of circumstances takes effect where a claimant is entitled to employment and support allowance) insert as Schedule 2D the Schedule set out in Schedule 1 to these Regulations.

Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations

7. In regulation 5(1) of the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(**23**) (nil rate)—

(a) at the end of sub-paragraph (e) insert "or", and

(b) omit sub-paragraphs (g), (gg) and (h).

Amendment of the Child Support (Variations) Regulations

8.—(1) Regulation 19 of the Child Support (Variations) Regulations (Northern Ireland) 2001(**24**), (income not taken into account and diversion of income) is amended as follows.

(2) In paragraph (4)(a), after "he receives," insert "or is taken into account as his net weekly income,".

(3) After paragraph (4) insert—

"(4A) In paragraph (4), "net weekly income" has the same meaning as in the Maintenance Calculations and Special Cases Regulations.".

Amendment of the Child Support Information Regulations

9. In regulation 14 of the Child Support Information Regulations (Northern Ireland) 2008(**25**) (employment to which Article 46 of the Order applies), for the words from "Article 46" to "that Article" substitute "For the purposes of Article 46(1C) of the Order, the following kinds of employment are prescribed as kinds of employment to which Article 46(1B) of the Order applies".

Revocations

10. The statutory provisions specified in Schedule 2 are revoked to the extent specified there.

(**21**) Regulation 30A was inserted by regulation 2(11) of S.R. 2001 No. 23
(**22**) Schedule 2C was inserted by regulation 22(14) of S.R. 2008 No. 286
(**23**) S.R. 2001 No. 18. Relevant amendments are by regulation 33(4) of S.R. 2003 No. 191, regulation 6 of S.R. 2003 No. 261 and regulation 6(3) of S.R. 2005 No. 125
(**24**) S.R. 2001 No. 20. Relevant amendments are by regulation 8(5) of S.R. 2005 No. 125
(**25**) S.R. 2008 No. 403