STATUTORY RULES OF NORTHERN IRELAND

2008 No. 409

FAMILY LAW

CHILD SUPPORT

The Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2008

Made - - - -	*3rd October 2008*
Coming into operation	*27th October 2008*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 29(2), (4), (6) and (7), 32(2)(bb), 47(1) and (2)(b) and 48(4) of, and paragraphs 10(1) and (2) and 11 of Schedule 1 to, the Child Support (Northern Ireland) Order 1991(**1**), and now vested in it(**2**), and section 28 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**3**).

Citation and commencement

1. These Regulations may be cited as the Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2008 and shall come into operation on 27th October 2008.

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

2. In regulation 29(A) of the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**4**) (effective dates of new maintenance assessments in particular cases), after paragraph (7) insert—

(**1**) S.I. 1991/2628 (N.I. 23); Article 29(2) is amended by section 1(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), and paragraphs (4), (6) and (7) were added by section 12 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.)); Article 32(2)(bb) was inserted by paragraph 24 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 47(2)(b) was amended by paragraph 3 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), and paragraph 27 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; paragraph 10(1) and (2) of Schedule 1 to the Child Support (Northern Ireland) Order 1991 relates to cases for which the amendments in the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 have been commenced; paragraph 11 of Schedule 1 is amended by section 1(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

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

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

(**4**) S.R. 1992 No. 340; regulation 29(A) was inserted by regulation 3(19) of S.R. 1995 No. 475 and amended by regulation 2(5) of S.R. 1996 No. 590, regulation 3(7) of S.R. 1998 No. 8, regulation 2(14) of S.R. 1999 No. 167 and regulation 2(3) of S.R. 2003 No. 469

"(8) The effective date of a new maintenance assessment, where the circumstances set out in paragraph (9) apply, shall be—

(a) on, or on one of the six days immediately following, the effective date as it would have been but for this paragraph; and

(b) on the same day of the week as the day on which the maintenance period in respect of the previous maintenance assessment, as defined in paragraph 9(b), began.

(9) The circumstances referred to in paragraph (8) are where—

(a) a maintenance assessment ("the previous maintenance assessment") has been in force in relation to the absent parent, whether or not in respect of the same parent with care; and

(b) the previous maintenance assessment is no longer in force when the decision as to the maintenance assessment is made.".

Amendment of the Child Support (Collection and Enforcement) Regulations

3.—(1) The Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(**5**) are amended as follows.

(2) In regulation 3 (method of payment)—

(a) in paragraph (1)—

(i) omit sub-paragraph (h)(**6**), and

(ii) after sub-paragraph (h), add—

"(i) by deduction from earnings order.";

(b) in paragraph (1A)(**7**), omit sub-paragraph (c); and

(c) after paragraph (2), add—

"(3) Where the Department is considering specifying a deduction from earnings order by virtue of paragraph (1)(i), that method of payment is not to be used in any case where there is good reason not to use it.

(4) For the purposes of paragraph (3) the matters which are to be taken into account in determining whether there is good reason not to use that method of payment are whether the making of a deduction from earnings order is likely to result in the disclosure of the parentage of a child and the impact of that disclosure on—

(a) the liable person's employment;

(b) any relationship between the liable person and a third party.

(5) For the purposes of paragraph (3) the circumstances in which good reason not to use that method of payment is to be regarded as existing are—

(a) a member of the liable person's or parent with care's family is employed by the same relevant employer as the liable person;

(b) that family member's employment requires knowledge of the relevant employer's functions in giving effect to the deduction from earnings order; and

(**5**) S.R. 1992 No.390; relevant amending rules are S.R. 1995 No. 162, S.R. 1996 No. 317, S.R. 1999 No. 246 (C. 20), S.R. 2001 No. 15, S.R. 2006 No. 273 and S.R. 2007 No. 347

(**6**) Paragraph (h) was inserted by regulation 3(2)(a) of S.R. 2006 No. 273

(**7**) Paragraph 1A was inserted by regulation 3(4)(b) of S.R. 2001 No. 15 and is substituted by regulation 3(2)(b) of S.R. 2006 No. 273

(c) as a consequence of these circumstances the liable person's employment status or family relationships may be adversely affected by the use of a deduction from earnings order as a method of payment.

(6) For the purposes of paragraph (3) the matters which are not to be taken into account in determining whether there is good reason not to use that method of payment are—

(a) the liable person's preference for a different method of payment;

(b) the liable person's preference for a relevant employer not to be informed about that parent's maintenance liability;

(c) that a third party would become aware of the liable person's maintenance liability,

unless they are relevant to any matter falling within paragraph (4) or circumstance falling within paragraph (5).

(7) Where the Department is considering specifying the method of payment set out in paragraph (1)(i) and decides that there is no good reason not to use it, that method is not to be specified until—

(a) the time within which an appeal against that decision may ordinarily be brought (including any period during which a further appeal may ordinarily be brought) has ended; or

(b) if an appeal is brought on the grounds set out in regulation 22(3A), the time at which proceedings on the appeal (including any proceedings on a further appeal) have been concluded.

(8) Nothing in this regulation is to prevent the Department exercising its powers under Article 31 of the Order to make a deduction from earnings order where the Department considers it is appropriate in the circumstances of the case, unless it has specified a deduction from earnings order as a method of payment by virtue of paragraph (1)(i).

(9) In this regulation—

"couple" means—

(a) a man and woman who are married to each other and are members of the same household;

(b) a man and woman who are not married to each other but are living together as husband and wife;

(c) two people of the same sex who are civil partners of each other and are members of the same household; or

(d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;

"family" means partner, parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, grand-parent, grand-child, uncle, aunt, nephew, niece, or if any of the preceding persons is one member of a couple, the other member of that couple;

"partner" means where a person is a member of a couple, the other member of that couple; and

"relevant employer" means the employer of a liable person in respect of whom the order under Article 31 of the Order would be made but for paragraph (3).".

(3) In regulation 11(**8**) (protected earnings rate)—

(a) in paragraph (2), for "paragraph (3) or (4)" substitute "paragraph (3), (4) or (5)"; and

(b) after paragraph (4), add—

"(5) This paragraph applies where the liable person—

(a) has more than one employer; and

(b) the Department makes an order under Article 31 of the Order ("an order") against that person in respect of more than one employer.

(6) Where paragraph (5) applies, the protected earnings rate for each order is to be divided proportionately between the earnings of the liable person with each employer in accordance with paragraph (7).

(7) The amount to be specified as the protected earnings rate in respect of any period in an order is an amount equal to the percentage of the liable person's exempt income which is the same as the amounts earned with an employer, as a percentage of the total earnings with the employers.

(8) Any reference to an "employer" in paragraphs (6) and (7) is to be construed as a reference to an employer subject to an order made in respect of a liable person.".

(4) In regulation 22(**9**) (appeals against deduction from earnings orders)—

(a) at the beginning of paragraph (2), insert "Subject to paragraph (2A),";

(b) after paragraph (2), insert—

"(2A) Any appeal against a decision of the Department that the exclusion required by regulation 3(3) does not apply is—

(a) where the liable person is resident in the United Kingdom, to be made within 28 days of the date on which that decision is given or sent to the liable person;

(b) where the liable person is not resident in the United Kingdom, to be made within 56 days of the date on which that decision is given or sent to the liable person.";

(c) at the beginning of paragraph (3), insert "Subject to paragraph (3A),";

(d) after paragraph (3), insert—

"(3A) Where the Department is considering specifying a deduction from earnings order as a method of payment under regulation 3(1)(i), an appeal may also be made against a decision of the Department that the exclusion required by regulation 3(3) does not apply.";

(e) at the beginning of paragraph (4), insert "Subject to paragraph (5),"; and

(f) after paragraph (4), add—

"(5) Where an appeal is brought on the grounds set out in paragraph (3A), and the court is satisfied that the appeal should be allowed, the court is to refer the case to the Department for it to specify whichever of the methods of payment set out in regulation 3(1) it considers to be appropriate in the circumstances.".

(**8**) Regulation 11 was amended by regulation 4(7) 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 and regulation 3(3) of S.R. 2006 No. 273

(**9**) Regulation 22 was amended by regulation 4(2) of S.R. 2007 No. 347