STATUTORY RULES OF NORTHERN IRELAND

2001 No. 23

SOCIAL SECURITY
FAMILY LAW
CHILD SUPPORT

The Social Security and Child Support (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2001

Made - - - - 23rd January 2001

Coming into operation in accordance with regulation 1

The Department for Social Development, in exercise of the powers conferred by Articles 18(1), (4) and (6), 19(3) and (5), 28G(2), 47 and 48(4) of the Child Support (Northern Ireland) Order 1991(**1**), and now vested in it(**2**), and section 28(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**3**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security and Child Support (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2001 and, subject to paragraph (2), shall come into operation in relation to a particular case on the dates on which sections 8, 9 and 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 come into operation in relation to that type of case.

(2) For the purposes of any revision, supersession or appeal in relation to a decision which is made in accordance with regulation 3 of the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(**4**), these Regulations shall come into operation on the day on which section 28 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 comes fully into operation.

(**1**) S.I.1991/2628 (N.I. 23); Articles 18 and 19 were substituted respectively by Articles 40 and 41 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and Article 19 was amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); Article 28G was substituted by section 7 of that Act and Article 48 was amended by paragraph 13 of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))

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

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

(**4**) S.R. 2001 No. 19

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

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**5**) shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 1(2) (interpretation)—

(a) after the definition of "appeal" there shall be inserted the following definition—

> ""the Arrears, Interest and Adjustment of Maintenance Assessments Regulations" means the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992(**6**);";

(b) after the definition of "legally qualified panel member" there shall be inserted the following definitions—

> ""the Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(**7**);
>
> "the Maintenance Calculations and Special Cases Regulations" means the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(**8**);";

(c) in the definition of "party to the proceedings" in paragraph (*b*) for "Article 22(1) to (3) of the Child Support Order (including that Article as extended by paragraph 3 of Schedule 4C to that Order)" there shall be substituted "Article 22 of the Child Support Order";

(d) in the definition of "referral" for "departure direction" there shall be substituted "variation";

(e) after the definition of "relevant credit"(**9**) there shall be inserted the following definition—

> ""relevant person", except where otherwise provided, means—
>
> (a) a person with care;
>
> (b) a non-resident parent; or
>
> (c) a parent who is treated as a non-resident parent under regulation 8 of the Maintenance Calculations and Special Cases Regulations,
>
> in respect of whom a maintenance calculation has been applied for, or has been treated as applied for under Article 9(3) of the Child Support Order(**10**), or is or has been in force;"; and

(f) after the definition of "the Transfer of Functions Order"(**11**) there shall be added the following definitions—

> ""the Variations Regulations" means the Child Support (Variations) Regulations (Northern Ireland) 2001(**12**);
>
> "voluntary payment" has the same meaning as in Article 28J of the Child Support Order(**13**) and Regulations made under that Article.".

(3) In regulation 2 (service of notices or documents) after "of the Order" there shall be inserted ", of the Child Support Order".

(4) After regulation 3 (revision of decisions) there shall be inserted the following regulation—

(**5**) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 Nos. 267 and 272 and S.R. 2000 No. 215
(**6**) S.R. 1992 No. 342
(**7**) S.R. 2001 No. 17
(**8**) S.R. 2001 No. 18
(**9**) The definition of "relevant credit" was inserted by regulation 6(2)(*e*) of S.R. 2000 No. 215
(**10**) Article 9 was substituted by section 3 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
(**11**) The definition of "the Transfer of Functions Order" was added by regulation 2(2) of S.R. 1999 No. 272
(**12**) S.R. 2001 No. 20
(**13**) Article 28J was inserted by section 19(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

"**Revision of child support decisions**

3A.—(1) Subject to paragraph (2), any decision, as defined in paragraph (3), may be revised under Article 18 of the Child Support Order by the Department—

(a) if it receives an application for the revision of the decision either under that Article or by way of an application under Article 28G of that Order, within one month of the date of notification of the decision or within such longer period of time as may be allowed under regulation 4;

(b) if—

(i) it notifies the person who applied for the decision to be revised within the period specified in sub-paragraph (*a*) that the application is unsuccessful because the Department is not in possession of all of the information or evidence needed to make a decision, and

(ii) that person reapplies for the decision to be revised within one month of the date of the notification mentioned in head (i), or such longer period as the Department is satisfied is reasonable in the circumstances of the case, and provides in that application sufficient information or evidence to enable a decision to be made;

(c) if it is satisfied that the decision was erroneous due to a misrepresentation of, or failure to disclose, a material fact and that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would have been but for that error;

(d) if it commences action leading to the revision of the decision within one month of the date of notification of the decision; or

(e) if the decision arose from an official error.

(2) Paragraph (1)(*a*) to (*d*) shall not apply in respect of a change of circumstances which—

(a) occurred since the date on which the decision took effect; or

(b) according to information or evidence which the Department has, is expected to occur.

(3) In paragraphs (1) and (2) "decision" means a decision of the Department under Article 13, 14 or 43 of the Child Support Order(**14**), a determination of an appeal tribunal on a referral under Article 28D(1)(*b*) of that Order(**15**) or any supersession of a decision under Article 19 of that Order.

(4) A decision made under Article 14(2) of the Child Support Order may be revised at any time before it is replaced by a decision under Article 13 of that Order.

(5) Where the Department revises a decision made under Article 14(1) of the Child Support Order in accordance with Article 18(1B) of that Order, that decision may be revised under Article 18 of that Order at any time.

(6) Article 18 of the Child Support Order shall apply in relation to any decision of the Department—

(a) under Article 38A or 44 of the Child Support Order; or

(b) that an adjustment shall cease or with respect to the adjustment of amounts payable under maintenance calculations for the purpose of taking account of overpayments of child support maintenance and voluntary payments,

(**14**) Articles 14 and 43 were substituted respectively by sections 4 and 18 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**15**) Article 28D was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 and amended by section 5(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

as it applies in relation to any decision of the Department under Article 13, 14, 19 or 43 of that Order, or the determination of an appeal tribunal on a referral under Article 28D(1)(*b*) of that Order.".

(5) In regulation 4 (late application for a revision)—

(a) in paragraph (1) after "regulation 3(1) or (3)" there shall be inserted "or 3A(1)(*a*)";

(b) in paragraph (2) after "made by" there shall be inserted "the relevant person,";

(c) in paragraph (4)(*c*) after "regulation 3" there shall be inserted "or, as the case may be, 3A";

(d) in paragraph (5) after "regulation 3(1) and (3)" there shall be inserted "or, as the case may be, regulation 3A(1)(*a*)"; and

(e) for paragraph (8) there shall be substituted the following paragraph—

"(8) In this regulation "Commissioner" includes—

(a) a Commissioner within the meaning of section 39(1) of the Social Security Act 1998(**16**); and

(b) a Child Support Commissioner appointed under section 22 or 23 of the Child Support Act 1991(**17**).".

(6) After regulation 5 (date from which a decision revised under Article 10 takes effect) there shall be inserted the following regulation—

"**Date from which a decision revised under Article 18 of the Child Support Order takes effect**

5A.—(1) Where the date from which a decision took effect is found to be erroneous on a revision under Article 18 of the Child Support Order, the revision shall take effect from the date on which the decision revised would have taken effect had the error not been made.

(2) Where the Department considers it appropriate to revise a decision under Article 14(1) of the Child Support Order as if it were revising a decision under Article 13 of that Order, the revision shall take effect from the first day of the maintenance period in which the information required to make a maintenance calculation was provided, except where—

(a) the non-resident parent satisfies the Department—

(i) that he used his best endeavours to obtain the information required by the Department, and

(ii) the failure to provide the information was not his fault; or

(b) the decision which is treated as being made under Article 13 of the Child Support Order is at a higher rate than the rate of liability which had been imposed by the decision made under Article 14(1) of that Order.".

(7) After regulation 6 (supersession of decisions) there shall be inserted the following regulations—

"**Supersession of child support decisions**

6A.—(1) Subject to paragraphs (7) and (8), the cases and circumstances in which a decision ("a superseding decision") may be made by the Department for the purposes of Article 19 of the Child Support Order are set out in paragraphs (2) to (6).

(2) A decision may be superseded by a decision made by the Department acting on its own initiative where—

(**16**) 1998 c. 14
(**17**) 1991 c. 48

(a) there has been a relevant change of circumstances since the decision took effect; or

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

(3) Subject to regulation 6B, a decision may be superseded by a decision made by the Department where—

(a) an application is made on the basis that—

(i) there has been a change of circumstances since the date from which the decision took effect, or

(ii) it is expected that a change of circumstances will occur; and

(b) the Department is satisfied that the change of circumstances is or would be relevant.

(4) A decision may be superseded by a decision made by the Department where—

(a) an application is made on the basis that the decision was made in ignorance of, or based on a mistake as to, a fact; and

(b) the Department is satisfied that the fact is or would be material.

(5) A decision, other than a decision made on appeal, may be superseded by a decision made by the Department—

(a) acting on its own initiative, where it is satisfied that the decision was erroneous in point of law; or

(b) where an application is made on the basis that the decision was erroneous in point of law.

(6) A decision may be superseded by a decision made by the Department where it receives an application for the supersession of the decision by way of an application made under Article 28G of the Child Support Order.

(7) The cases and circumstances in which a decision may be superseded shall not include any case or circumstance in which a decision may be revised.

(8) Paragraphs (2) to (6) shall not apply in respect of a decision to refuse an application for a maintenance calculation.

(9) For the purposes of Article 19 of the Child Support Order, paragraphs (2) to (6) shall apply in relation to any decision of the Department that an adjustment shall cease or with respect to the adjustment of amounts payable under a maintenance calculation for the purpose of taking account of overpayments of child support maintenance and voluntary payments, whether as originally made or as revised under Article 18 of that Order.

Circumstances in which a child support decision may not be superseded

6B.—(1) Except as provided in paragraph (4), and subject to paragraph (3), a decision of the Department, appeal tribunal or Child Support Commissioner, on an application made under regulation 6A(3), shall not be superseded where the difference between—

(a) the non-resident parent's net income figure fixed for the purposes of the maintenance calculation in force in accordance with Part I of Schedule 1 to the Child Support Order; and

(b) the non-resident parent's net income figure which would be fixed in accordance with a superseding decision,

is less than 5 per cent. of the figure referred to in sub-paragraph (*a*).