STATUTORY RULES OF NORTHERN IRELAND

2001 No. 20

FAMILY LAW
CHILD SUPPORT

The Child Support (Variations) Regulations (Northern Ireland) 2001

Made - - - - 23rd January 2001
Approved by resolution of the Assembly on - - - - 29th May 2001
Coming into operation in accordance with regulation 1(1)

The Department for Social Development, in exercise of the powers conferred by Articles 28A(5), 28B(2)(*c*), 28C(2)(*b*) and (5), 28E(1) and (5), 28F(2)(*b*) and (3)(*b*), 28G(3), 47 and 48(4) of, and paragraphs 1, 2(*a*), 4 and 5(1) of Schedule 4A and paragraphs 2(2) to (5), 3(1) and (2), 4, 5(1) and (3) to (5) and 6 of Schedule 4B to, the Child Support (Northern Ireland) Order 1991(**1**) and now vested in it(**2**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Part I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Variations) Regulations (Northern Ireland) 2001 and shall come into operation in relation to a particular case on the day on which section 5 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**3**) is commenced in relation to that type of case.

(2) In these Regulations—

(**1**) S.I.1991/2628 (N.I. 23); Articles 28A to 28C and 28F were substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I)), Article 28E was inserted by Article 3 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702(N.I. 13)) and amended by section 5(4) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Article 28G was substituted by section 7 of, and Schedules 4A and 4B were substituted by section 6 of, and Schedule 2 to, that Act. Article 47 was amended by paragraph 31 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))

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

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

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

"Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**4**);

"capped amount" means the amount of income for the purposes of paragraph 10(3) of Schedule 1 to the Order(**5**);

"couple" has the same meaning as in paragraph 10C(5) of Schedule 1 to the Order;

"date of notification" means the date upon which notification is given in person or communicated by telephone to the recipient or, where this is not possible, the date of posting;

"date of receipt" means the day on which the information or document is actually received;

"home" has the meaning given in regulation 1(2) of the Maintenance Calculations and Special Cases Regulations;

"Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(**6**);

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

"qualifying child" means the child with respect to whom the maintenance calculation falls to be made;

"relevant person" means—

(a) a non-resident parent, or a parent treated as a non-resident parent under regulation 8 of the Maintenance Calculations and Special Cases Regulations, whose liability to pay child support maintenance may be affected by any variation agreed;

(b) a person with care, where the amount of child support maintenance payable by virtue of a calculation relevant to that person with care may be affected by any variation agreed;

"the Service Pensions Order" means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(**8**); and

"Transitional Regulations" means the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(**9**).

Documents

2.—(1) Except where otherwise stated, where—

(a) any document is given or sent to the Department, that document shall be treated as having been so given or sent on the date of receipt by the Department; and

(b) any document is given or sent to any other person, that document shall, if sent by post to that person's last known or notified address, be treated as having been given or sent on the date that it is posted.

(**4**) 1992 c. 7
(**5**) Paragraphs 1 to 10C were substituted by section 1(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
(**6**) S.R. 2001 No. 17
(**7**) S.R. 2001 No. 18
(**8**) S.I. 1983/883
(**9**) S.R. 2001 No. 19

Determination of amounts

3.—(1) Where any amount is required to be determined for the purposes of these Regulations, it shall be determined as a weekly amount and, except where the context otherwise requires, any reference to such an amount shall be construed accordingly.

(2) Where any calculation made under these Regulations results in a fraction of a penny, that fraction shall be treated as a penny if it is either one half or exceeds one half and shall be otherwise disregarded.

Part II

Application and Determination Procedure

Application for a variation

4.—(1) Where an application for a variation is made other than in writing and the Department directs that the application be made in writing, the application shall be made either on an application form provided by it and completed in accordance with its instructions or in such other written form as the Department may accept as sufficient in the circumstances of any particular case.

(2) An application for a variation which is made other than in writing shall be treated as made on the date of notification from the applicant to the Department that he wishes to make such an application.

(3) Where an application for a variation is made in writing other than in the circumstances to which paragraph (1) applies, the application shall be treated as made on the date of receipt by the Department.

(4) Where paragraph (1) applies and the Department receives the application within 14 days of the date of the direction, or at a later date but in circumstances where it is satisfied that the delay was unavoidable, the application shall be treated as made on the date of notification from the applicant to the Department that he wishes to make an application for a variation.

(5) Where paragraph (1) applies and the Department receives the application more than 14 days from the date of the direction and in circumstances where it is not satisfied that the delay was unavoidable, the application shall be treated as made on the date of receipt.

(6) An application for a variation is duly made when it has been made in accordance with this regulation and Article 28A(4) of the Order.

Amendment or withdrawal of application

5.—(1) A person who has made an application for a variation may amend or withdraw his application at any time before a decision under Article 13, 18 or 19 of the Order(**10**), or a decision not to revise or supersede under Article 18 or 19 of the Order, is made in response to the variation application and such amendment or withdrawal need not be in writing unless, in any particular case, the Department requires it to be.

(2) No amendment under paragraph (1) shall relate to any change of circumstances arising after what would be the effective date of a decision in response to the variation application.

(**10**) Article 13 was substituted by section 1(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000. Articles 18 and 19 were substituted by Articles 40 and 41 respectively of the Social Security (Northern Ireland) Order 1998 and amended by sections 8 and 9 respectively of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Rejection of an application following preliminary consideration

6.—(1) The Department may, on completing the preliminary consideration, reject an application for a variation (and proceed to make its decision on the application for a maintenance calculation, or to revise or supersede a decision under Article 18 or 19 of the Order, without the variation, or not to revise or supersede a decision under Article 18 or 19 of the Order, as the case may be,) if one of the circumstances in paragraph (2) applies.

(2) The circumstances are—

(a) the application has been made in one of the circumstances to which regulation 7 applies;

(b) the application is made—

(i) on a ground in paragraph 2 of Schedule 4B to the Order (special expenses) and the amount of the special expenses, or the aggregate amount of those expenses, as the case may be, does not exceed the relevant threshold provided for in regulation 15;

(ii) on a ground in paragraph 3 of that Schedule (property or capital transfers) and the value of the property or capital transferred does not exceed the minimum value in regulation 16(4), or

(iii) on a ground referred to in regulation 18 (assets) and the value of the assets does not exceed the figure in regulation 18(3)(*a*), or on a ground in regulation 19(1) (income not taken into account) and the amount of the income does not exceed the figure in regulation 19(2);

(c) a request under regulation 8 has not been complied with by the applicant and the Department is not able to determine the application without the information requested; or

(d) the Department is satisfied, on the information or evidence available to it, that the application would not be agreed to, including where, although a ground is stated, the facts alleged in the application would not bring the case within the prescription of the relevant ground in these Regulations.

Prescribed circumstances

7.—(1) This regulation applies where an application for a variation is made under Article 28G of the Order and—

(a) the application is made by a relevant person and a circumstance set out in paragraph (2) applies at the relevant date;

(b) the application is made by a non-resident parent and a circumstance set out in paragraph (3) or (4) applies at the relevant date;

(c) the application is made by a person with care, on a ground in paragraph 4 of Schedule 4B to the Order (additional cases) and a circumstance set out in paragraph (5) applies at the relevant date; or

(d) the application is made by a non-resident parent on a ground in paragraph 2 of Schedule 4B to the Order (special expenses) and a circumstance set out in paragraph (6) applies at the relevant date.

(2) The circumstances for the purposes of this paragraph are that—

(a) a default maintenance decision is in force with respect to the non-resident parent;

(b) the non-resident parent is liable to pay the flat rate of child support maintenance owing to the application of paragraph 4(1)(*c*) of Schedule 1 to the Order, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, or the Transitional Regulations; or

(c) the non-resident parent is liable to pay child support maintenance at a flat rate of a prescribed amount owing to the application of paragraph 4(2) of Schedule 1 to the Order, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, or the Transitional Regulations.

(3) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay child support maintenance —

(a) at the nil rate owing to the application of paragraph 5 of Schedule 1 to the Order;

(b) at a flat rate owing to the application of paragraph 4(1)(*a*) of Schedule 1 to the Order, including where the net weekly income of the non-resident parent which is taken into account for the purposes of a maintenance calculation in force in respect of him is £100 per week or less owing to a variation being taken into account or to the application of regulation 18, 19 or 21of the Transitional Regulations (reduction for relevant departure direction or relevant property transfer); or

(c) at a flat rate owing to the application of paragraph 4(1)(*b*) of Schedule 1 to the Order, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, or the Transitional Regulations.

(4) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay an amount of child support maintenance at a rate—

(a) of £5 per week or such other amount as may be prescribed owing to the application of paragraph 7(7) of Schedule 1 to the Order (shared care); or

(b) equivalent to the flat rate provided for in, or prescribed for the purposes of, paragraph 4(1)(*b*) of Schedule 1 to the Order owing to the application of—

(i) regulation 27(5);

(ii) regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by an authority), or

(iii) regulation 23(5) of the Transitional Regulations (effect of relevant departure direction on conversion calculation—general).

(5) The circumstances for the purposes of this paragraph are that—

(a) the amount of the net weekly income of the non-resident parent to which the Department had regard when making the maintenance calculation was the capped amount; or

(b) the non-resident parent or a partner of his is in receipt of working families' tax credit (as defined in section 127 of the Contributions and Benefits Act(**11**)) or disabled person's tax credit (as defined in section 128 of that Act(**12**)) and for this purpose "partner" has the same meaning as in paragraph 10C(4) of Schedule 1 to the Order.

(6) The circumstances for the purposes of this paragraph are that the amount of the net weekly income of the non-resident parent to which the Department would have regard after deducting the amount of the special expenses would exceed the capped amount.

(7) For the purposes of paragraph (1), the "relevant date" means the date from which, if the variation were agreed, the decision under Article 18 or 19 of the Order, as the case may be, would take effect.

(**11**) Section 127 was amended by paragraph 16 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and section 1(2) of, and paragraph 4 of Schedule 1 to, the Tax Credits Act 1999 (c. 10)

(**12**) Section 128 was amended by Article 12(2) of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 17 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 and section 1(2) and 14(4) of, and paragraph 4(*h*) of Schedule 1 to, the Tax Credits Act 1999