STATUTORY RULES OF NORTHERN IRELAND

2001 No. 19

FAMILY LAW
CHILD SUPPORT

The Child Support (Transitional Provisions) 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, 19, 47(1) and 48 of 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**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Part I

General

Citation and commencement

1. These Regulations may be cited as the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001 and shall come into operation on the day on which section 28 of the Act comes fully into operation.

Interpretation

2.—(1) In these Regulations—

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

"the Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000;

"calculation date" means the date the Department makes a conversion decision;

(**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. Article 48 was amended by section 24 of that Act

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

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

"capped amount" means the amount of income for the purposes of Part I of Schedule 1 to the Order(**4**) where that income is limited by the application of paragraph 10(3) of that Schedule;

"case conversion date" means the effective date for the conversion of the non-resident parent's liability to pay child support maintenance from the rate as determined under the former Order and Regulations made under that Order, as provided for in regulation 15;

"commencement date" means the date on which section 1 of the Act, which amends Article 13 of the Order, comes into operation for the purposes of maintenance calculations the effective date of which, were they maintenance assessments, applying the Maintenance Assessment Procedure Regulations or the Maintenance Arrangements and Jurisdiction Regulations, and subject to paragraph (2), would be the same as or later than the date prescribed for the purposes of Article 7(10)(*a*) of the Order(**5**);

"conversion calculation" means the calculation made in accordance with regulation 16;

"conversion date" means the date on which section 1 of the Act, which amends Article 13 of the Order, comes into operation for all purposes;

"conversion decision" means the decision under regulation 3(1) or (4);

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

"departure direction" has the meaning given in Article 2(2) of the former Order(**7**);

"the Departure Regulations" means the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996(**8**);

"first prescribed amount" means the amount stated in or prescribed for the purposes of paragraph 4(1)(*b*) or (*c*) of Part I of Schedule 1 to the Order (flat rate for non-resident parent in receipt of benefit, pension or allowance);

"former assessment amount" means the amount of child support maintenance payable under a maintenance assessment on the calculation date excluding amounts payable in respect of arrears or reductions for overpayments;

"former Order" means the Order prior to its amendment by the Act;

"interim maintenance assessment" has the meaning given in Article 2(2) of the former Order;

"the Maintenance Arrangements and Jurisdiction Regulations" means the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992(**9**), prior to their amendment by the Child Support (Information, Evidence and Disclosure and Maintenance Arrangements and Jurisdiction) (Amendment) Regulations (Northern Ireland) 2001(**10**);

"maintenance assessment" has the meaning given in Article 2(2) of the former Order other than an interim maintenance assessment;

(**4**) Part I was substituted by section 1(3) of, and Schedule 1 to, the Child Suppport, Pensions and Social Security Act (Northern Ireland) 2000

(**5**) Paragraph (10) was inserted by Article 12(1) of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and sub-paragraph (*a*) was amended by section 2(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**6**) S.R. 1999 No. 162; relevant amending rules are S.R. 1999 Nos. 242, 267, 271 (C. 22), 272, 408, 472 (C. 36) and 473 and S.R. 2000 Nos. 3, 215, 365 and S.R. 2001 No. 23

(**7**) The definition of "departure direction" was inserted by paragraph 2 of Schedule 3 to the Child Support (Northern Ireland) Order 1995

(**8**) S.R. 1996 No. 541; relevant amending rules are S.R. 1998 No. 8, S.R. 1999 Nos. 167, 385 and 246 (C. 20) and S.R. 2000 No. 215

(**9**) S.R. 1992 No. 466; relevant amending rules are S.R. 1993 No. 164, S.R. 1995 Nos. 19, 162 and 475, S.R. 1998 No. 8 and S.R. 1999 No. 246 (C. 20)

(**10**) S.R. 2001 No. 16

"the Maintenance Assessment Procedure Regulations" means the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**11**);

"the Maintenance Assessments and Special Cases Regulations" means the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(**12**);

"the Maintenance Calculations and Special Cases Regulations" means the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(**13**);

"maintenance period" has the meaning given in regulation 32 of the Maintenance Assessment Procedure Regulations (maintenance periods)(**14**) and, where in relation to a non-resident parent there is in force on the calculation date more than one maintenance assessment with more than one maintenance period, the first maintenance period to begin on or after the conversion date;

"maximum transitional amount" means 30 per cent. of the non-resident parent's net weekly income taken into account in the conversion decision, or the subsequent decision, as the case may be;

"new amount" means the amount of child support maintenance payable in accordance with the conversion decision;

"partner" means, where there is a couple, the other member of that couple and "couple" for this purpose has the same meaning as in paragraph 10C(5) of Part I of Schedule 1 to the Order;

"phasing amount" means the amount determined in accordance with regulation 24;

"relevant departure direction" and "relevant property transfer" have the meanings given in regulation 17;

"relevant other children" has the meaning given in paragraph 10C(2) of Part I of Schedule 1 to the Order and Regulations made under that paragraph;

"second prescribed amount" means the amount prescribed for the purposes of paragraph 4(2) of Part I of Schedule 1 to the Order (flat rate for non-resident parent who has a partner and who is in receipt of certain benefits);

"subsequent decision" for the purposes of Parts I to III and V means—

(a) any decision under Article 18 or 19 of the Order to revise or supersede a conversion decision; or

(b) any such revision or supersession as decided on appeal,

whether as originally made or as revised under Article 18 of the Order, or decided on appeal;

"subsequent decision amount" means the amount of child support maintenance liability resulting from a subsequent decision;

"transitional amount" for the purposes of Parts I to III and V means the amount of child support maintenance payable during the transitional period;

"transitional period" for the purposes of Parts I to III and V means—

(a) the period from the case conversion date to the end of the last complete maintenance period which falls immediately prior to the—

(i) fifth anniversary of the case conversion date, or

(**11**) S.R. 1992 No. 340; relevant amending rules are S.R. 1993 No. 164, S.R. 1994 Nos. 37 and 65, S.R. 1995 Nos. 19, 162 and 475, S.R. 1996 Nos. 289, 317, 358, 503, 541 and 590, S.R. 1998 No. 8 and S.R. 1999 Nos. 152, 167, 385 and 246 (C. 20)

(**12**) S.R. 1992 No. 341; relevant amending regulations are S.R. 1995 No. 162

(**13**) S.R. 2001 No. 18

(**14**) Regulation 32 was amended by regulation 3(22) of S.R. 1995 No. 475, regulation 3(5) of S.R. 1996 No. 317 and regulation 2(17) of S.R. 1999 No. 167

(ii) first anniversary of the case conversion date where regulation 12(1), (2), (4) or (5) or 13 applies; or

(b) if earlier, the period from the case conversion date up to the date when the amount of child support maintenance payable by the non-resident parent is equal to the new amount or the subsequent decision amount, as the case may be; and

"the Variations Regulations" means the Child Support (Variations) Regulations (Northern Ireland) 2001(**15**).

(2) For the purposes of the definition of "commencement date" in paragraph (1)—

(a) in the application of the Maintenance Assessment Procedure Regulations, where no maintenance enquiry form, as defined in those Regulations, is given or sent to the non-resident parent, the Regulations shall be applied as if references in regulation 29 of those Regulations (effective dates of new maintenance assessments)(**16**)—

(i) to the date when the maintenance enquiry form was given or sent to the non-resident parent were to the date on which the non-resident parent is first notified by the Department, orally or in writing, that an application for child support maintenance has been made in respect of which he is named as the non-resident parent, and

(ii) to the return by the non-resident parent of the maintenance enquiry form containing his name, address and written confirmation that he is the parent of the child or children in respect of whom the application was made, were to the provision of this information by the non-resident parent, or

(b) in the application of the Maintenance Arrangements and Jurisdiction Regulations, where no maintenance enquiry form, as defined in the Maintenance Assessment Procedure Regulations, is given or sent to the non-resident parent, regulation 3(7) of the Maintenance Arrangements and Jurisdiction Regulations(**17**) (relationship between maintenance assessments and certain court orders) shall apply as if the reference to the date when the maintenance enquiry form was given or sent were to the date on which the non-resident parent is first notified by the Department, orally or in writing, that an application for child support maintenance has been made in respect of which he is named as the non-resident parent.

Part II

Decision Making and Appeals

Decision and notice of decision

3.—(1) Subject to paragraph (2), a decision as to the amount of child support maintenance payable under a maintenance assessment or an interim maintenance assessment made under Article 13, 14, 18, 19 or 22 of the former Order(**18**) may be superseded by the Department on its own initiative under Article 19 of the Order, in relation to—

(a) a maintenance assessment (whenever made) which has an effective date before the commencement date and is in force on the calculation date;

(**15**) S.R. 2001 No. 20

(**16**) Regulation 29 was amended by regulation 4(5) of S.R. 1995 No. 19, regulation 8(10) of S.R. 1995 No. 162, regulation 3(18) of S.R. 1995 No. 475 and regulation 2(13) of S.R. 1999 No. 167

(**17**) Regulation 3(7) was inserted by regulation 7(4)(*b*) of S.R. 1995 No. 162 and amended by regulation 7(2) of S.R. 1995 No. 475

(**18**) Articles 13 was amended by Article 13 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and paragraph 11 of Schedule 6 to the Social Security (Northern Ireland) Order 1998. Article 14 was amended by Article 5 of the Child Support (Northern Ireland) Order 1995 and paragraph 12 of Schedule 6 to the Social Security (Northern Ireland) Order 1998. Article 22 was substituted by Article 42 of the Social Security (Northern Ireland) Order 1998

(b) a maintenance assessment made following an application for child support maintenance which is made or treated as made as provided for in regulation 28(1);

(c) an interim maintenance assessment where there is sufficient information held by the Department to make a decision in accordance with this paragraph.

(2) Where the Department acts in accordance with paragraph (1) the information used for the purposes of that supersession will be that held by the Department on the calculation date.

(3) Where a superseding decision referred to in paragraph (1) is made the Department shall—

(a) make a conversion calculation;

(b) calculate a new amount; and

(c) notify to the non-resident parent and the person with care in writing—

(i) the new amount;

(ii) where appropriate, the transitional amount;

(iii) any phasing amount applied in the calculation of the transitional amount;

(iv) the length of the transitional period;

(v) the date the conversion decision was made;

(vi) the effective date of the conversion decision;

(vii) the non-resident parent's net weekly income;

(viii) the number of qualifying children;

(ix) the number of relevant other children;

(x) where there is an adjustment for apportionment or shared care, or both, or under regulation 9 or 11 of the Maintenance Calculations and Special Cases Regulations, the amount calculated in accordance with Part I of Schedule 1 to the Order and those Regulations;

(xi) any relevant departure direction or relevant property transfer taken into account in the conversion decision, and

(xii) any apportionment carried out in accordance with regulation 25(3).

(4) Where at the calculation date there is an interim maintenance assessment in force and there is insufficient information held by the Department to make a maintenance assessment, or a decision in accordance with paragraph (1), the Department shall—

(a) supersede the interim maintenance assessment to make a default maintenance decision; and

(b) notify the non-resident parent and the person with care in writing, in accordance with regulation 15C(2) of the Decisions and Appeals Regulations(**19**).

(5) In a case to which paragraph (1)(*c*) or (4) applies, where after the calculation date information is made available to the Department to enable it to make a maintenance assessment it may—

(a) where the decision was made under paragraph (1)(*c*), revise the interim maintenance assessment in accordance with the Maintenance Assessment Procedure Regulations, and supersede the conversion decision in accordance with the Decisions and Appeals Regulations;

(b) where the decision was made under paragraph (4), revise the interim maintenance assessment in accordance with the Maintenance Assessment Procedure Regulations, and revise the default maintenance decision in accordance the Decisions and Appeals Regulations.

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