STATUTORY RULES OF NORTHERN IRELAND

2001 No. 18

FAMILY LAW
CHILD SUPPORT

The Child Support (Maintenance Calculations and Special Cases) 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 16(1) and (1A), 39, 47 and 48(4) of, and paragraphs 3(2), 4(1)(*b*) and (*c*) and (3), 5(*a*), 7(3), 9, 10 and 10C(2)(*b*) of Schedule 1 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 (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001 and shall come into operation as follows—

(a) subject to sub-paragraph (*b*), in relation to a particular case on the day on which section 1(3) of, and Schedule 1 to, the Act comes into operation in relation to that type of case;

(b) regulation 4(1) and (2) and, for the purposes of those provisions, this regulation shall come into operation on 31st January 2001.

(**1**) S.I.1991/2628 (N.I. 23); Article 16 was amended by paragraph 3 of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and paragraph 14 of Schedule 6 to, and Schedule 7 to, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), Article 47 was amended by paragraph 31 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and Part I of Schedule 1 was substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

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

(2) In these Regulations—

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

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**3**);

"the Great Britain Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(**4**);

"the Children Order" means the Children (Northern Ireland) Order 1995(**5**);

"the Jobseekers Order" means the Jobseekers (Northern Ireland) Order 1995(**6**);

"the Act" means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(**7**);

"an authority" has the same meaning as in Article 2 of the Children Order;

"couple" means a man and a woman who are—

(a) married to each other and are members of the same household; or

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

"course of advanced education" means—

(a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a Diploma of Higher Education, a higher national diploma, a higher national diploma or higher national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority or a teaching qualification; or

(b) any other full-time course which is a course of a standard above that of an ordinary national diploma, a national diploma or national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority, the advanced level of the General Certificate of Education, a Scottish certificate of education (higher level), a Scottish certificate of sixth year studies or a Scottish National Qualification at Higher Level;

"day" includes any part of a day;

"day to day care" means—

(a) care of not less than 104 nights in total during the 12 month period ending with the relevant week; or

(b) where, in the opinion of the Department, a period other than 12 months is more representative of the current arrangements for the care of the child in question, care during that period of not less in total than the number of nights which bears the same ratio to 104 nights as that period bears to 12 months,

and for the purpose of this definition—

(i) where a child is a boarder at a boarding school, or is a patient in a hospital or other circumstances apply, such as where the child stays with a person who is not a parent of the child, and which the Department regards as temporary, the person who, but for those circumstances, would otherwise provide day to day care of the child shall be treated as providing day to day care during the periods in question, and

(**3**) 1992 c. 7
(**4**) 1992 c. 4
(**5**) S.I. 1995/755 (N.I. 2)
(**6**) S.I. 1995/2705 (N.I. 15)
(**7**) 2000 c. 4 (N.I.)

(ii) "relevant week" shall have the meaning ascribed to it in the definition in this paragraph, except that in a case where notification is given under regulation 7C of the Decisions and Appeals Regulations(**8**) to the relevant persons on different dates, "relevant week" means the period of 7 days immediately preceding the date of the latest notification;

"the Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(**9**);

"disabled person's tax credit" means a disabled person's tax credit under section 128 of the Contributions and Benefits Act(**10**);

"effective date" means the date on which a maintenance calculation takes effect for the purposes of the Order;

"employed earner" means a person—

(a) who is gainfully employed in the United Kingdom or the Republic of Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E or, as the case may be, chargeable under the legislation of the Republic of Ireland which is analogous to income tax under Schedule E; or

(b) to whom Article 41(2A) of the Order applies(**11**);

"family" means—

(a) a couple (including the members of a polygamous marriage) and any member of the same household for whom one or more of them is responsible and who is a child; or

(b) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child;

"home" means—

(a) the dwelling in which a person and any family of his normally live; or

(b) if he or they normally live in more than one home, the principal home of that person and any family of his,

and for the purpose of determining the principal home in which a person normally lives no regard shall be had to residence in a residential care home or a nursing home during a period which does not exceed 52 weeks or, where it appears to the Department that the person will return to his principal home after that period has expired, such longer period as the Department considers reasonable to allow for the return of that person to that home;

"the Income Support Regulations" means the Income Support (General) Regulations (Northern Ireland) 1987(**12**);

"the Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations 2001(**13**);

"net weekly income" has the meaning given in the Schedule;

(**8**) Regulation 7C was inserted by regulation 2(8) of S.R. 2001 No. 23
(**9**) S.R. 1999 No. 162; relevant amending regulations are S.R. 2001 No. 23
(**10**) 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 (S.I. 1995/2705 (N.I. 15)) and sections 1(2) and 14(4) of, and paragraph 4(*h*) of Schedule 1 to, the Tax Credits Act 1999 (c. 10)
(**11**) Paragraph (2A) was inserted by section 21(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
(**12**) S.R. 1987 No. 459; relevant amending rules are S.R. 1988 No. 318, S.R. 1990 No. 131, S.R. 1993 No. 149, S.R. 1996 No. 288 and S.R. 2000 No. 38
(**13**) S.R. 2001 No. 17

"nursing home" has the same meaning as in regulation 19(2) of the Income Support Regulations(**14**);

"occupational pension scheme" means such a scheme within the meaning in section 1 of the Pension Schemes (Northern Ireland) Act 1993(**15**) and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988(**16**);

"partner" means—

(a) in relation to a member of a couple, the other member of that couple;

(b) in relation to a member of a polygamous marriage, any other member of that marriage with whom he lives;

"patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a juvenile justice centre within the meaning of Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998(**17**) or a young offenders centre within the meaning of section 2 of the Treatment of Offenders Act (Northern Ireland) 1968(**18**)) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(**19**);

"person" does not include an authority;

"personal pension scheme" means such a scheme within the meaning in section 1 of the Pension Schemes (Northern Ireland) Act 1993(**20**) and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988;

"polygamous marriage" means any marriage during the subsistence of which a party to it is married to more than one person and in respect of which any ceremony of marriage took place under the law of a country which at the time of that ceremony permitted polygamy;

"prisoner" means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person whose detention is under the Mental Health (Northern Ireland) Order 1986(**21**);

"relevant training scheme" means—

(a) arrangements under section 1 of the Employment and Training Act (Northern Ireland) 1950(**22**) (general functions of Department of Higher and Further Education, Training and Employment as to employment and training for employment);

(b) arrangements made by the Secretary of State for persons enlisted in Her Majesty's forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(**23**) (power of Defence Council to make regulations as to engagement of persons in regular forces),

for purposes which include the training of persons who, at the beginning of their training, are under the age of 18;

"relevant week" means—

(**14**) The definition of "nursing home" was substituted by paragraph 6(5)(*b*) of Schedule 2 to S.R. 1993 No. 149
(**15**) 1993 c. 49
(**16**) 1988 c. 33
(**17**) S.I. 1998/1504 (N.I. 9)
(**18**) 1968 c. 29; section 2 was amended by the Treatment of Offenders (Northern Ireland) Order 1989 (S.I. 1989/1344 (N.I. 15)) and the Criminal Justice (Children) Northern Ireland) Order 1998
(**19**) S.R. 1975 No. 109; relevant amending regulations are S.R. 1992 No. 453
(**20**) The definition of "personal pension scheme" was amended by paragraph 2(1)(*a*) of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))
(**21**) S.I. 1986/595 (N.I. 4)
(**22**) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8)). *See*S.R. 1999 No. 481
(**23**) 1966 c. 45

(a) in relation to an application for child support maintenance—

(i) where the application is made by a non-resident parent, the period of 7 days immediately before the application is made, and

(ii) in any other case, the period of 7 days immediately before the date of notification to the non-resident parent and for this purpose "the date of notification to the non-resident parent" means the date on which the non-resident parent is first given notice by the Department under the Maintenance Calculation Procedure Regulations that an application for a maintenance calculation has been made, or treated as made, as the case may be, in relation to which the non-resident parent is named as the parent of the child to whom the application relates;

(b) where a decision ("the original decision") is to be—

(i) revised under Article 18 of the Order(**24**), or

(ii) superseded by a decision under Article 19 of the Order(**25**) on the grounds that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact or was erroneous in point of law,

the period of 7 days which was the relevant week for the purposes of the original decision;

(c) where a decision ("the original decision") is to be superseded under Article 19 of the Order—

(i) on an application made for the purpose on the basis that a material change of circumstances has occurred since the original decision was made, the period of 7 days immediately preceding the date on which that application was made;

(ii) subject to sub-paragraph (*b*), in a case where a relevant person is given notice under regulation 7C of the Decisions and Appeals Regulations, the period of 7 days immediately preceding the date of the notification,

except that where, under paragraph 15 of Schedule 1 to the Order, the Department makes separate maintenance calculations in respect of different periods in a particular case, because it is aware of one or more changes of circumstances which occurred after the date which is applicable to that case, the relevant week for the purposes of each separate maintenance calculation made to take account of each such change of circumstances shall be the period of 7 days immediately before the date on which notification was given to the Department of the change of circumstances relevant to that separate maintenance calculation;

"residential care home" has the same meaning as in regulation 19(2) of the Income Support Regulations(**26**);

"retirement annuity contract" means an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision of a life annuity in old age or the provision of an annuity for a partner or dependant and in respect of which relief from income tax may be given on any premium;

"self-employed earner" means a person who is gainfully employed in the United Kingdom or the Republic of Ireland otherwise than in employed earner's employment (whether or not he is also employed in such employment);

"student" means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or who is aged 19 or over

(**24**) Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and is amended by section 8 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**25**) Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and is amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(**26**) The definition of "residential care home" was inserted by paragraph 1(3)(*a*) of Schedule 1 to S.R. 1993 No. 149