STATUTORY RULES OF NORTHERN IRELAND

1996 No. 541

FAMILY LAW
CHILD SUPPORT

The Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996

Made - - - - *21st November 1996*

Coming into operation *2nd December 1996*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(2), 16(3), 23, 28A(3), 28B(2)(*b*), 28C(2)(*b*) and (6)(*b*), 28E(5), 28F(3), (4) and (8), 28G(3), (4) and (5), 39, 47 and 48(4) of, and paragraph 5 of Schedule 1, paragraphs 2, 4, 6, 7 and 9 of Schedule 4A and Schedule 4B to, the Child Support (Northern Ireland) Order 1991(**1**) 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 Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996 and shall come into operation on 2nd December 1996.

(2) In these Regulations—

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

"applicant" has the same meaning as in Schedule 4B to the Order;

"application" means an application for a departure direction;

"departure direction application form" means the form provided by the Department in accordance with regulation 4(1);

"effective date" in relation to a departure direction means the date on which that direction takes effect;

(**1**) S.I.1991/2628 (N.I. 23); Articles 28A to 28G and Schedules 4A and 4B were inserted by Article 3 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))

"Maintenance Assessment Procedure Regulations" means the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**2**);

"Maintenance Assessments and Special Cases Regulations" means the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(**3**);

"maintenance period" has the same meaning as in regulation 32 of the Maintenance Assessment Procedure Regulations;

"non-applicant" means—

(a) where the application has been made by a person with care, the absent parent;

(b) where the application has been made by an absent parent, the person with care;

"partner" has the same meaning as in regulation 1(2) of the Maintenance Assessments and Special Cases Regulations;

"relevant person" means—

(a) an absent parent, or a person who is treated as an absent parent under regulation 20 of the Maintenance Assessments and Special Cases Regulations (persons treated as absent parents), whose liability under a maintenance assessment may be affected by any departure direction given following an application;

(b) a person with care, where the amount of child support maintenance payable under a maintenance assessment relevant to that person with care may be affected by any departure direction given following an application.

Documents

2.—(1) Where, under any provision of these Regulations—

(a) any document is given or sent to the Department, that document shall, subject to paragraph (2), be treated as having been so given or sent on the date it is received 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, and subject to paragraph (3), be treated as having been given or sent on the second day after the day of posting, excluding any Sunday or any day which is a bank holiday in England, Wales, Scotland or Northern Ireland under the Banking and Financial Dealings Act 1971(**4**).

(2) The Department may treat any document given or sent to it as given or sent on such day, earlier than the day it was received by it, as it may determine, if it is satisfied that there was unavoidable delay in its receiving the document in question.

(3) Where, by any provision of these Regulations, and in relation to a particular application, notice or notification—

(a) more than one document is required to be given or sent to a person, and more than one such document is sent by post to that person but not all the documents are posted on the same day; or

(b) documents are required to be given or sent to more than one person, and not all such documents are posted on the same day,

all those documents shall be treated as having been posted on the later or, as the case may be, the latest day of posting.

(**2**) S.R. 1992 No. 340; relevant amending regulations are S.R. 1994 No. 37 and S.R. 1995 Nos. 19, 162 and 475
(**3**) S.R. 1992 No. 341; the relevant amending regulations are S.R. 1993 No. 164, S.R. 1994 No. 65, S.R. 1995 Nos. 162 and 475 and S.R. 1996 Nos. 289 and 317
(**4**) 1971 c. 80

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 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

Procedure on an Application for a Departure Direction and Preliminary Consideration

Application for a departure direction

4.—(1) Every application shall be made in writing on a form (a "departure direction application form") provided by the Department, or in such other manner, being in writing, as the Department may accept as sufficient in the circumstances of any particular case.

(2) Departure direction application forms shall be supplied without charge by such persons as the Department authorises for that purpose.

(3) Every application shall be given or sent to the Department or to such persons as it may authorise for that purpose.

(4) Where an application is defective at the date when it is received, or has been made in writing but not on the departure direction application form provided by the Department, the Department may refer that application to the person who made it or, as the case may be, supply him with a departure direction application form.

(5) In a case to which paragraph (4) applies, if the departure direction application form is received by the Department properly completed—

(a) within the specified period, it shall treat the application as if it had been duly made in the first instance;

(b) outside the specified period, unless it is satisfied that the delay has been unavoidable, it shall treat the application as a fresh application made on the date upon which the properly completed departure direction application form was received.

(6) An application which is made on a departure direction application form is, for the purposes of paragraph (5), properly completed if completed in accordance with the instructions on the form and defective if not so completed.

(7) In a case to which paragraph (4) applies, the specified period for the purposes of paragraph (5) shall be the period of 14 days commencing with the date upon which, in accordance with paragraph (4), the application is referred to the person who made the defective application or a departure direction application form is given or sent to the person who made a written application but not on a departure direction application form.

(8) For the purposes of paragraph (7), the provisions of regulation 2 shall apply to an application referred to in paragraph (4).

(9) A person applying for a departure direction may authorise a representative, whether or not legally qualified, to receive notices and other documents on his behalf, and to act on his behalf in relation to an application.

(10) Where a person has, under paragraph (9), authorised a representative who is not legally qualified, he shall confirm that authorisation in writing, or as otherwise required, to the Department,

unless such authorisation has already been approved by the Department under regulation 51 of the Maintenance Assessment Procedure Regulations (authorisation of representative).

(11) This paragraph applies where a departure direction has effect, and a later application by the applicant in response to whose application that direction was given is made on grounds which are—

(a) additional to the grounds in respect of which the earlier direction was given;

(b) not additional to the grounds in respect of which the earlier direction was given but there has been a change of circumstances in respect of one or more but not all of those grounds.

(12) Where—

(a) paragraph (11)(*a*) applies, the later application may be treated as an application in respect of which the earlier direction was given;

(b) paragraph (11)(*b*) applies, the later application may be treated as an application in respect of which the earlier direction was given in relation to which there have been no changes of circumstances.

(13) Where a departure direction has effect and the Department is satisfied that a ground in respect of which the application for that direction was made no longer applies, it shall treat the applicant for that direction as having applied for a later direction in respect of the grounds which remain applicable.

(14) Regulation 8(1) shall apply to cases to which paragraph (11) applies but only in relation to the additional grounds or, as the case may be, those in relation to which there has been stated to be a change of circumstances and shall not apply to cases to which paragraph (13) applies.

Amendment or withdrawal of application

5. A person who has made an application may amend or withdraw his application by notice in writing to the Department at any time prior to a determination being made in relation to that application.

Provision of information

6.—(1) Where an application has been made, the Department may request further information or evidence from the applicant to enable that application to be determined.

(2) Any information or evidence requested by the Department in accordance with paragraph (1) shall be given within 14 days of the request for such information or evidence having been given or sent.

(3) Where the time limit specified in paragraph (2) is not complied with, the Department may determine that application, in the absence of that information or evidence.

Rejection of application on completion of a preliminary consideration

7.—(1) The Department may, on completing a preliminary consideration of an application, reject that application on the ground set out in Article 28B(2)(*b*) of the Order if it appears to it that the difference between the current amount and the revised amount is less than £1·00.

(2) Where an application has been rejected in accordance with paragraph (1), the Department shall, as soon as reasonably practicable, give notice of that rejection to the relevant persons.

Procedure in relation to the determination of an application

8.—(1) Subject to paragraph (4), where an application has not failed within the meaning of Article 28D of the Order, the Department shall—

(a) give notice of that application to the relevant persons other than the applicant;

(b) send to them details of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except details, information or evidence falling within paragraph (2);

(c) invite representations in writing from the relevant persons other than the applicant on any matter relating to that application; and

(d) set out the provisions of paragraphs (2), (5) and (6) in relation to such representations.

(2) The details, information or evidence referred to in paragraphs (1)(*b*), (6) and (7) are—

(a) medical evidence or medical advice that has not been disclosed to the applicant or a relevant person and which the Department considers would be harmful to the health of the applicant or that relevant person if disclosed to him;

(b) the address of a relevant person, or of any child in relation to whom the assessment was made in respect of which the application has been made, or any other information which could reasonably be expected to lead to that person or that child being located, where that person has not agreed to disclosure of that address or that information, it is not known to the other party to that assessment and—

(i) the Department is satisfied that that address or that information is not necessary for the determination of that application, or

(ii) the Department is satisfied that that address or that information is necessary for the determination of that application and that there would be a risk of harm or undue distress to that person or that child if disclosure were made.

(3) Subject to paragraph (4), the notice referred to in paragraph (1)(*a*) shall be given as soon as reasonably practicable after—

(a) completion of the preliminary consideration of that application under Article 28B of the Order; or

(b) where the Department has requested information or evidence under regulation 6, receipt of that information or evidence or the expiry of the period of 14 days referred to in regulation 6(2).

(4) The provisions of paragraphs (1) and (3) shall not apply where the information or evidence requested in accordance with regulation 6 has not been received by the Department within the period specified in paragraph (2) of that regulation and the Department is satisfied on the information or evidence available to it that a departure direction should not be given.

(5) Where the Department does not receive written representations from a relevant person within 14 days of the date on which representations were invited under paragraph (1), (6) or (7) it may, in the absence of written representations from that person, proceed to determine the application.

(6) The Department may, if it considers it reasonable to do so, send to the applicant a copy of any written representations made following an invitation under paragraph (1)(*c*), whether or not they were received within the time specified in paragraph (5), except to the extent that the representations contain information or evidence which falls within paragraph (2), and invite him to submit representations in writing on any matters contained in those representations.

(7) Where any information or evidence requested by the Department under regulation 6 is received after notification has been given under paragraph (1), the Department may, if it considers it reasonable to do so and except where that information or evidence falls within paragraph (2), send a copy of such information or evidence to the relevant persons and invite them to submit representations in writing on that information or evidence.

(8) In deciding whether to give a departure direction, the Department shall take into account—

(a) any information or evidence given by the applicant for that direction; and