1995 No. 162

FAMILY LAW

SOCIAL SECURITY

CHILD SUPPORT

The Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995

Made . . . . . 10th April 1995

Coming into operation in accordance with regulation 1(1)

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 10(11), 12(1), 14(2) and (3), 16(1) and (3), 18(1), 19(4), 20(11), 23(2) and (3), 29(2) and (3), 32, 38(3), 39, 40(1), 43(11), 44, 47, 48 and 50(2) of, and paragraphs 4(3), 5(1) and (2), 6(2), (4) and (5), 7(1), 8, 9(*a*) and 11 of Schedule 1 to, the Child Support (Northern Ireland) Order 1991(**a**) and by section 131(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**b**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995 and shall come into operation as follows—

(*a*) regulations 1 and 9(18) on 13th April 1995; and

(*b*) all other regulations on 18th April 1995.

(2) In these Regulations—

"the Appeals Regulations" means the Child Support Appeal Tribunals (Procedure) Regulations (Northern Ireland) 1993(**c**);

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

"the Collection and Enforcement Regulations" means the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(**e**);

(**a**) S.I. 1991/2628 (N.I. 23)
(**b**) 1992 c. 7
(**c**) S.R. 1993 No. 50
(**d**) S.R. 1992 No. 342; relevant amending regulations are S.R. 1993 No. 164
(**e**) S.R. 1992 No. 390; relevant amending regulations are S.R. 1994 No. 37

"the Fees Regulations" means the Child Support Fees Regulations (Northern Ireland) 1993(**a**);

"the Information, Evidence and Disclosure Regulations" means the Child Support (Information, Evidence and Disclosure) Regulations (Northern Ireland) 1992(**b**);

"the Maintenance Arrangements and Jurisdiction Regulations" means the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992(**c**);

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

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

"the Miscellaneous Amendments Regulations" means the Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations (Northern Ireland) 1994(**f**).

(3) The Interpretation Act (Northern Ireland) 1954(**g**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of the Appeals Regulations

2.—(1) The Appeals Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 2 (service of notices or documents) after paragraph (2) there shall be added the following paragraph—

"(3) The provisions of paragraph (2) shall apply to a summons issued under regulation 10.".

(3) In regulation 3 (making an appeal or application and time limits) for paragraph (1) there shall be substituted the following paragraphs—

"(1) This regulation applies to an appeal to a tribunal under—

(*a*) Article 22(1) or 43(7) of the Order; or

(*b*) regulation 41(9) of the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(**h**),

and to an application to a tribunal to set aside its decision under regulation 15.

(1A) An appeal or application of a kind mentioned in paragraph (1) shall be by notice in writing, signed by the person making it, or by his

(**a**) S.R. 1993 No. 73; relevant amending regulations are S.R. 1994 No. 37
(**b**) S.R. 1992 No. 339; relevant amending regulations are S.R. 1994 No. 65 and S.R. 1995 No. 19
(**c**) S.R. 1992 No. 466; relevant amending regulations are S.R. 1995 No. 19
(**d**) S.R. 1992 No. 340; relevant amending regulations are S.R. 1993 No. 164, S.R. 1994 No. 37 and S.R. 1995 No. 19
(**e**) S.R. 1992 No. 341; relevant amending regulations are S.R. 1993 Nos. 164 and 191 and S.R. 1994 Nos. 37 and 65
(**f**) S.R. 1994 No. 37
(**g**) 1954 c. 33 (N.I.)
(**h**) Paragraph (9) was substituted by regulation 4(12) of S.R. 1993 No. 164

representative where it appears to a chairman that he was unable to sign personally, or by a barrister or solicitor on his behalf.".

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

"*Death of a party to an appeal*

3A.—(1) In any proceedings, on the death of a party to those proceedings, the Department may appoint such person as it thinks fit to proceed with the appeal in the place of such deceased party.

(2) A grant of probate or letters of administration to the estate of the deceased party, whenever taken out, shall have no effect on an appointment made under paragraph (1).

(3) Where a person appointed under paragraph (1) has, prior to the date of such appointment, taken any action in relation to the appeal on behalf of the deceased party, the effective date of the appointment by the Department shall be the day immediately prior to the first day on which such action was taken.".

(5) In regulation 6 (striking out of proceedings) in paragraph (1) for "because of" there shall be substituted "for want of prosecution which term includes".

(6) In regulation 11 (hearings) after paragraph (5) there shall be inserted the following paragraph—

"(5A) A tribunal may require any person who is, with leave of the tribunal, acting as an interpreter for any person entitled to be heard or for a witness to swear that he will carry out his functions correctly and to the best of his skill and understanding and, for that purpose, there may be administered an oath.".

Amendment of the Arrears Regulations

3.—(1) The Arrears Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 4(**a**) (circumstances in which no liability to pay interest arises)—

(*a*) in paragraph (1) for the words from "with respect to arrears" to the end there shall be substituted—

"with respect to arrears—

(*a*) in respect of any day which falls after 17th April 1995; or

(*b*) in respect of any period if either of the conditions set out in paragraph (2) is satisfied in relation to that period.";

(*b*) in paragraph (3) the words "of interest" where they first occur shall be omitted.

(3) For regulation 10 (adjustment of the amount payable under a maintenance assessment) there shall be substituted the following regulation—

"**10.**—(1) Where for any reason, including the retrospective effect of a new or a fresh maintenance assessment, there has been an overpayment

(**a**) Paragraph (3) was added by regulation 2(3) of S.R. 1993 No. 164

of child support maintenance, a child support officer may, for the purpose of taking account of that overpayment—

(*a*) apply the amount overpaid to reduce any arrears of child support maintenance due under any previous maintenance assessment made in respect of the same relevant persons; or

(*b*) where there is no previous relevant maintenance assessment or an overpayment remains after the application of sub-paragraph (*a*), and subject to paragraph (4), adjust the amount payable under a current maintenance assessment by such amount as he considers appropriate in all the circumstances of the case having regard in particular to—

(i) the circumstances of the absent parent and the person with care;

(ii) the amount of the overpayment in relation to the amount due under the current maintenance assessment, and

(iii) the period over which it would be reasonable for the overpayment to be rectified.

(2) Where a child support officer has adjusted the amount payable under a maintenance assessment under the provisions of paragraph (1) and that maintenance assessment is subsequently reviewed under Article 18, 19, 20 or 21 of the Order and a fresh maintenance assessment made, that adjustment shall, subject to paragraph (3), continue to apply to the amount payable under that fresh maintenance assessment unless a child support officer is satisfied that such adjustment would not be appropriate in all the circumstances of the case.

(3) Where a child support officer is satisfied that the adjustment referred to in paragraph (2) would not be appropriate, he may cancel that adjustment or he may adjust the amount payable under that fresh maintenance assessment as he sees fit, having regard to the matters specified in heads (i) to (iii) of paragraph (1)(*b*).

(4) Any adjustment under the provisions of paragraph (1), (2) or (3) shall not reduce the amount payable under a maintenance assessment to less than the minimum amount prescribed under paragraph 7 of Schedule 1 to the Order.".

(4) In regulation 11 (notifications following an adjustment under the provisions of regulation 10)—

(*a*) for the heading there shall be substituted the following heading—

"*Notifications following a cancellation or adjustment under the provisions of regulation 10*";

(*b*) for paragraph (1) there shall be substituted the following paragraph—

"(1) Where a child support officer has, under the provisions of regulation 10, cancelled an adjustment in accordance with the provisions of paragraph (3) of that regulation or adjusted the amount payable under a maintenance assessment, he shall immediately notify the relevant persons, so far as is reasonably practicable, of the cancellation or, of the

amount and period of the adjustment, and the amount payable during the period of the adjustment.".

(5) For regulation 12 (review of adjustments under regulation 10 or of the calculation of arrears or interest) there shall be substituted the following regulation—

"*Review of cancellations or adjustments under regulation 10*

12.—(1) Where an adjustment made under regulation 10 has been cancelled under paragraph (3) of that regulation or where the amount payable under a maintenance assessment has been adjusted under the provisions of that regulation, a relevant person may apply to the Department for a review of that cancellation or adjustment as if it were a case falling within Article 20 of the Order and—

(*a*) Article 20(5), (7) and (8) and regulations made under Article 20(11); and

(*b*) subject to the modifications set out in paragraph (2), Article 20(6) and (9),

shall apply to such a review.

(2) The modifications referred to in paragraph (1) are—

(*a*) Article 20(6) of the Order shall have effect as if for "the refusal, assessment or cancellation in question" there is substituted "the adjustment of the amount payable, or the cancellation of the adjustment of the amount payable, under regulation 10 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992";

(*b*) Article 20(9) of the Order shall have effect as if for "a maintenance assessment or (as the case may be) a fresh maintenance assessment should be made" there is substituted "a cancelled adjustment should be reinstated or a revised adjustment of the amount payable under regulation 10 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 should be made".

(3) Where an adjustment has been cancelled or the amount payable under a maintenance assessment has been adjusted under the provisions of regulation 10, a child support officer may reinstate that cancelled adjustment or revise that adjustment if he is satisfied that one or more of the circumstances set out in sub-paragraphs (*a*) to (*c*) of Article 21(1) of the Order apply to that cancellation or that adjustment.".

(6) In regulation 13 (procedure and notifications on applications and reviews under regulation 12)—

(*a*) in paragraph (3) for "or (5)" there shall be substituted "or (3)";

(*b*) after paragraph (4) there shall be inserted the following paragraph(**a**)—

(**a**) The original paragraph (5) of regulation 13 of the Arrears Regulations was omitted by regulation 2(7)(*b*) of S.R. 1993 No. 164