1992 No. 342

FAMILY LAW

CHILD SUPPORT

The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992

Made	*30th July 1992*
Coming into operation . .	*5th April 1993*

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 38(2), (3) and (4) and 47 of the Child Support (Northern Ireland) Order 1991(**a**) 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 (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 and shall come into operation on 5th April 1993.

(2) In these regulations—

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

"absent parent" includes a person treated as an absent parent by virtue of regulation 20 of the Maintenance Assessments and Special Cases Regulations;

"arrears" means arrears of child support maintenance;

"arrears of child support maintenance" is to be construed in accordance with Article 38(1) and (2) of the Order;

"arrears notice" has the meaning prescribed in regulation 2;

"due date" has the meaning prescribed in regulation 3;

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

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

(**a**) S.I. 1991/2628 (N.I. 23)
(**b**) S.R. 1992 No. 341
(**c**) S.R. 1992 No. 340

''parent with care'' means a person who, in respect of the same child or children, is both a parent and a person with care;

''relevant person'' has the same meaning as in regulation 1(2) of the Maintenance Assessment Procedure Regulations.

PART II

ARREARS OF CHILD SUPPORT MAINTENANCE AND INTEREST ON ARREARS

Applicability of provisions as to arrears and interest and arrears notices

2.—(1) The provisions of paragraphs (2) to (4) and regulations 3 to 9 shall apply where—

(*a*) a case falls within Article 38(1) of the Order; and

(*b*) the Department is arranging for the collection of child support maintenance under Article 29 of the Order.

(2) Where the Department is considering taking action with regard to a case falling within paragraph (1), the Department shall serve a notice (an ''arrears notice'') on the absent parent.

(3) An arrears notice shall—

(*a*) itemize the payments of child support maintenance due and not paid;

(*b*) set out in general terms the provisions as to arrears and interest contained in this regulation and regulations 3 to 9; and

(*c*) request the absent parent to make payment of all outstanding arrears.

(4) Where an arrears notice has been served under paragraph (2), no duty to serve a further notice under that paragraph shall arise in relation to further arrears unless those further arrears have arisen after an intervening continuous period of not less than 12 weeks during the course of which all payments of child support maintenance due from the absent parent have been paid on time in accordance with regulations made under Article 29 of the Order.

Liability to make payments of interest with respect to arrears

3.—(1) Subject to paragraph (2) and regulations 4 and 5, interest shall be payable with respect to any amount of child support maintenance due in accordance with a maintenance assessment and not paid by the date specified by the Department in accordance with regulations made under Article 29 of the Order (the ''due date''), and shall be payable in respect of the period commencing on that day and terminating on the date that amount is paid.

(2) Subject to paragraph (3), interest with respect to arrears shall only be payable if the Department has served an arrears notice in relation to those arrears, and shall not be payable in respect of any period terminating on a date earlier than 14 days prior to the date the arrears notice is served on the absent parent.

(3) Where the Department has served an arrears notice, the provisions of paragraph (2) shall not apply in relation to further arrears unless the conditions mentioned in regulation 2(4) are satisfied.

(4) Subject to paragraph (6), where, following a review under Article 20 or 21 of the Order or an appeal under Article 22 of the Order, a fresh maintenance assessment is made with retrospective effect, interest in respect of the relevant retrospective period shall be payable with respect to the arrears calculated by reference to that fresh assessment.

(5) The provisions of paragraph (4) shall apply to a fresh assessment following a review under Article 20 or 21 of the Order or an appeal under Article 22 of the Order prior to any adjustment of that assessment under the provisions of regulation 10.

(6) For the purposes of paragraph (4), where the review under Article 20 or 21 of the Order or an appeal under Article 22 of the Order results in an increased assessment, and arrears in relation to that assessment arise, no interest shall be payable with respect to the arrears relating to the additional maintenance payable under that assessment in respect of any period prior to the date the absent parent is notified of the increased assessment.

Circumstances in which no liability to pay interest arises

4.—(1) An absent parent shall not be liable to make payments of interest with respect to arrears in respect of any period if the conditions set out in paragraph (2) are satisfied in relation to that period.

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

(*a*) the absent parent did not know, and could not reasonably have been expected to know, of the existence of the arrears; or

(*b*) the arrears have arisen solely in consequence of an operational or administrative error on the part of the Department or a child support officer.

Payment of arrears by agreement

5.—(1) The Department may at any time enter into an agreement in writing with an absent parent (an "arrears agreement") for the absent parent to pay all outstanding arrears.

(2) An arrears agreement shall specify the dates on which the payments of arrears shall be made and the amount to be paid on each such date.

(3) If an arrears agreement is entered into within 28 days of the due date, and the terms of that agreement are adhered to by the absent parent, there shall be no liability to make payments of interest under the provisions of regulation 3 with respect to the arrears in relation to which the arrears agreement was entered into.

(4) If an arrears agreement is entered into later than 28 days after the due date and the terms of that agreement are adhered to by the absent parent, there shall, with respect to the arrears in relation to which that agreement was entered into, be no liability to make payments of interest in respect of any period commencing on the date that agreement was entered into.

(5) The Department may at any time enter into a further arrears agreement with the absent parent in relation to all arrears then outstanding.

(6) Where the terms of any arrears agreement are not adhered to by an absent parent, interest shall be payable with respect to arrears in accordance with the provisions of regulation 3.

(7) It shall be an implied term of any arrears agreement that any payment of child support maintenance that becomes due whilst that agreement is in force shall be made by the due date.

Rate of interest and calculation of interest

6.—(1) The rate of interest payable where liability to pay interest under regulation 3 arises shall be one per centum per annum above the median base rate prevailing from time to time calculated on a daily basis.

(2) Interest shall be payable only with respect to arrears of child support maintenance and shall not be payable with respect to any interest that has already become due.

(3) For the purposes of paragraph (1)—

(*a*) the median base rate, in relation to a year or part of a year, is the base rate quoted by the reference banks; or, if different base rates are quoted, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of seven, is fourth in the sequence;

(*b*) the reference banks are the seven largest institutions—

(i) authorised by the Bank of England under the Banking Act 1987(**a**), and

(ii) incorporated in and carrying on a deposit-taking business within the United Kingdom,

which quote a base rate in sterling; and

(*c*) the size of an institution is to be determined by reference to its total consolidated gross assets in sterling, as shown in its audited end-year accounts last published.

(4) In paragraph (3)(*c*), the reference to the consolidated gross assets of an institution is a reference to the consolidated gross assets of that institution together with any subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986(**b**)).

Receipt and retention of interest paid

7.—(1) Payments of interest with respect to arrears shall be made in accordance with regulations under Article 29 of the Order as though they were payments of child support maintenance payable in accordance with a maintenance assessment, and shall be made within 14 days of being demanded by the Department.

(**a**) 1987 c. 22

(**b**) S.I. 1986/1032 (N.I. 16); Article 4 was substituted by Article 62 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))