



2000 CHAPTER 4

PART I CHILD SUPPORT

Maintenance calculations and default and interim maintenance decisions

Maintenance calculations and terminology

1.—(1) In the Child Support (Northern Ireland) Order 1991 (NI 23) (in this Act referred to as the Child Support Order), for Article 13 (maintenance assessments) there shall be substituted—

“Maintenance calculations

13.—(1) An application for a maintenance calculation made to the Department shall be dealt with by it in accordance with the provision made by or under this Order.

(2) The Department shall (unless it decides not to make a maintenance calculation in response to the application, or makes a decision under Article 14) determine the application by making a decision under this Article about whether any child support maintenance is payable and, if so, how much.

(3) Where—

- (a) a parent is treated under Article 9(3) as having applied for a maintenance calculation; but
- (b) the Department becomes aware before determining the application that the parent has ceased to fall within Article 9(1),

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it shall, subject to paragraph (4), cease to treat that parent as having applied for a maintenance calculation.

(4) If it appears to the Department that paragraph (10) of Article 7 would not have prevented the parent with care concerned from making an application for a maintenance calculation under that Article it shall—

- (a) notify that parent of the effect of this paragraph; and
- (b) if, before the end of the period of one month beginning with and including the day on which notice was sent to the parent with care, that parent asks the Department to do so, treat that parent as having applied not under Article 9 but under Article 7.

(5) Where paragraph (3) applies but paragraph (4) does not, the Department shall notify—

- (a) the parent with care concerned; and
- (b) the non-resident parent (or alleged non-resident parent), where it appears to the Department that that person is aware that the parent with care has been treated as having applied for a maintenance calculation.

(6) The amount of child support maintenance to be fixed by a maintenance calculation shall be determined in accordance with Part I of Schedule 1 unless an application for a variation has been made and agreed.

(7) If the Department has agreed to a variation, the amount of child support maintenance to be fixed shall be determined on the basis it determines under Article 28F(4).

(8) Part II of Schedule 1 makes further provision with respect to maintenance calculations.”

(2) In the Child Support Order—

- (a) for maintenance assessment, wherever it occurs, there shall be substituted “maintenance calculation”; and
- (b) for assessment (or any variant of that term), wherever it occurs, there shall be substituted “calculation” (or the corresponding variant) preceded, where appropriate, by a instead of an.

Subs. (3)—Amendments

Applications under Article 7 of the Child Support Order

2.—(1) Article 7(10) of the Child Support Order (child support maintenance) shall be amended as follows.

(2) In sub-paragraph (a), after maintenance order there shall be inserted “made before a prescribed date”.

(3) After sub-paragraph (a), there shall be inserted—

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“(aa) a maintenance order made on or after the date prescribed for the purposes of sub-paragraph (a) is in force in respect of them, but has been so for less than the period of one year beginning with and including the date on which it was made; or” .

Applications by persons claiming or receiving benefit

3. ^{F1}

<p>F1 S. 3 repealed (27.10.2008) by Child Maintenance Act (Northern Ireland) 2008 (c. 10), ss. 39, 41(1), Sch. 5; S.R. 2008/399, art. 2(2)(b)(d)</p>

Default and interim maintenance decisions

4. For Article 14 of the Child Support Order (interim maintenance assessments) there shall be substituted—

“Default and interim maintenance decisions

14.—(1) Where the Department—

- (a) is required to make a maintenance calculation; or
- (b) is proposing to make a decision under Article 18 or 19,

and it appears to the Department that it does not have sufficient information to enable it to do so, it may make a default maintenance decision.

(2) Where an application for a variation has been made under Article 28A(1) in connection with an application for a maintenance calculation (or in connection with such an application which is treated as having been made), the Department may make an interim maintenance decision.

(3) The amount of child support maintenance fixed by an interim maintenance decision shall be determined in accordance with Part I of Schedule 1.

(4) The Department may by regulations make provision as to default and interim maintenance decisions.

(5) The regulations may, in particular, make provision as to—

- (a) the procedure to be followed in making a default or an interim maintenance decision; and
- (b) a default rate of child support maintenance to apply where a default maintenance decision is made.”.

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Applications for a variation

Departure from usual rules for calculating maintenance

5.—(1) The Child Support Order shall be amended as follows.

(2) For Articles 28A to 28C (application for a departure direction, preliminary consideration of applications and the imposition of a regular payments condition) there shall be substituted—

“Variations

Application for variation of usual rules for calculating maintenance

28A.—(1) Where an application for a maintenance calculation is made under Article 7, or treated as made under Article 9, the person with care or the non-resident parent may apply to the Department for the rules by which the calculation is made to be varied in accordance with this Order.

(2) Such an application is referred to in this Order as an application for a variation.

(3) An application for a variation may be made at any time before the Department has made a decision (under Article 13 or 14(1)) on the application for a maintenance calculation (or the application treated as having been made under Article 9).

(4) A person who applies for a variation—

(a) need not make the application in writing unless the Department directs in any case that he must; and

(b) shall say upon what grounds the application is made.

(5) In other respects an application for a variation shall be made in such manner as may be prescribed.

(6) Schedule 4A shall have effect in relation to applications for a variation.

Preliminary consideration of applications

28B.—(1) Where an application for a variation has been duly made to the Department, it may give it a preliminary consideration.

(2) Where the Department does so it may, on completing the preliminary consideration, reject the application (and proceed to make its decision on the application for a maintenance calculation without any variation) if it appears to it—

(a) that there are no grounds on which it could agree to a variation;

(b) that it has insufficient information to make a decision on the application for the maintenance calculation under Article 13 (apart

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from any information needed in relation to the application for a variation), and therefore that its decision would be made under Article 14(1); or

(c) that other prescribed circumstances apply.

Imposition of regular payments condition

28C.—(1) Where—

- (a) an application for a variation is made by the non-resident parent; and
- (b) the Department makes an interim maintenance decision,

it may also, if it has completed its preliminary consideration (under Article 28B) of the application for a variation and has not rejected it under that Article, impose on the non-resident parent one of the conditions mentioned in paragraph (2) (a regular payments condition).

(2) The conditions are that—

- (a) the non-resident parent shall make the payments of child support maintenance specified in the interim maintenance decision;
- (b) the non-resident parent shall make such lesser payments of child support maintenance as may be determined in accordance with regulations made by the Department.

(3) Where the Department imposes a regular payments condition, it shall give written notice of the imposition of the condition and of the effect of failure to comply with it to—

- (a) the non-resident parent; and
- (b) all the persons with care concerned.

(4) A regular payments condition shall cease to have effect—

- (a) when the Department has made a decision on the application for a maintenance calculation under Article 13 (whether it agrees to a variation or not);
- (b) on the withdrawal of the application for a variation.

(5) Where a non-resident parent has failed to comply with a regular payments condition, the Department may in prescribed circumstances refuse to consider the application for a variation, and instead make its decision under Article 13 as if no such application had been made.

(6) The question whether a non-resident parent has failed to comply with a regular payments condition shall be determined by the Department.

(7) Where the Department determines that a non-resident parent has failed to comply with a regular payments condition it shall give written notice of its determination to—

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- (a) that parent; and
 - (b) all the persons with care concerned.”.
- (3) In Article 28D (determination of applications)—
- (a) for paragraph (1) there shall be substituted—
 - “(1) Where an application for a variation has not failed, the Department shall, in accordance with the relevant provisions of, or made under, this Order—
 - (a) either agree or not agree to a variation, and make a decision under Article 13 or 14(1); or
 - (b) refer the application to an appeal tribunal for the tribunal to determine what variation, if any, is to be made.” ;
 - (b) in paragraphs (2) and (3), for departure direction there shall be substituted “variation”; and
 - (c) in paragraph (2), in sub-paragraph (a) lapsed or shall cease to have effect, at the end of sub-paragraph (b) “or” shall be inserted, and after that sub-paragraph there shall be added—
 - “(c) the Department has refused to consider it under Article 28C(5).” .
- (4) In Article 28E (matters to be taken into account)—
- (a) in paragraphs (1), (3) and (4), for any application for a departure direction there shall be substituted “whether to agree to a variation”; and
 - (b) in paragraph (4)(a), for a departure direction were made there shall be substituted “the Department agreed to a variation”.
- (5) For Article 28F (departure directions) there shall be substituted—

“Agreement to a variation

- 28F.**—(1) The Department may agree to a variation if—
- (a) it is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
 - (b) it is the opinion of the Department that, in all the circumstances of the case, it would be just and equitable to agree to a variation.
- (2) In considering whether it would be just and equitable in any case to agree to a variation, the Department—
- (a) shall have regard, in particular, to the welfare of any child likely to be affected if it did agree to a variation; and

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(b) shall, or as the case may be shall not, take any prescribed factors into account, or shall take them into account (or not) in prescribed circumstances.

(3) The Department shall not agree to a variation (and shall proceed to make its decision on the application for a maintenance calculation without any variation) if it is satisfied that—

(a) it has insufficient information to make a decision on the application for the maintenance calculation under Article 13, and therefore that its decision would be made under Article 14(1); or

(b) other prescribed circumstances apply.

(4) Where the Department agrees to a variation, it shall—

(a) determine the basis on which the amount of child support maintenance shall be calculated in response to the application for a maintenance calculation (including an application treated as having been made); and

(b) make a decision under Article 13 on that basis.

(5) If the Department has made an interim maintenance decision, that decision shall be treated as having been replaced by the Department's decision under Article 13, and except in prescribed circumstances any appeal connected with it (under Article 22) shall lapse.

(6) In determining whether or not to agree to a variation, the Department shall comply with regulations made under Part II of Schedule 4B.”.

Section 6—Amendments

Variations: revision and supersession

7. For Article 28G of the Child Support Order (effect and duration of departure directions) there shall be substituted—

“Variations: revision and supersession

28G.—(1) An application for a variation may also be made when a maintenance calculation is in force.

(2) The Department may by regulations provide for—

(a) Articles 18, 19 and 22; and

(b) Articles 28A to 28F and Schedules 4A and 4B,

to apply with prescribed modifications in relation to such applications.

(3) The Department may by regulations provide that, in prescribed cases (or except in prescribed cases), a decision under Article 19 made otherwise than pursuant to an application for a variation may be made on the basis of

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a variation agreed to for the purposes of an earlier decision without a new application for a variation having to be made.”

Revision and supersession of decisions

Revision of decisions

8.—(1) Article 18 of the Child Support Order (revision of decisions) shall be amended as follows.

(2) In paragraph (1), for of the Department under Article 13, 14 or 19 there shall be substituted “to which paragraph (1A) applies”.

(3) After paragraph (1), there shall be inserted—

“(1A) This paragraph applies to—

- (a) a decision of the Department under Article 13, 14 or 19;
- (b) a reduced benefit decision under Article 43;
- (c) a decision of an appeal tribunal on a referral under Article 28D(1)(b).

(1B) Where the Department revises a decision under Article 14(1)—

- (a) it may (if appropriate) do so as if it were revising a decision under Article 13; and
- (b) if it does that, its decision, as revised, shall be treated as a decision under Article 13 instead of Article 14(1) (and, in particular, shall be so treated for the purposes of an appeal against it under Article 22).” .

Decisions superseding earlier decisions

9.—(1) Article 19 of the Child Support Order (decisions superseding earlier decisions) shall be amended as follows.

(2) In paragraph (1), for sub-paragraph (c) there shall be substituted—

- “(c) any reduced benefit decision under Article 43;
- (d) any decision of an appeal tribunal on a referral under Article 28D(1)(b); and
- (e) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in sub-paragraph (b) or (d),” .

(3) For paragraph (4) there shall be substituted—

“(4) Subject to paragraph (5) and Article 28ZC, a decision under this Article shall take effect as from the beginning of the maintenance period in which it is made or, where applicable, the beginning of the maintenance period in which the application was made.

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(4A) In paragraph (4), a maintenance period is (except where a different meaning is prescribed for prescribed cases) a period of seven days, the first one beginning on and including the effective date of the first decision made by the Department under Article 13 or (if earlier) the Department's first default or interim maintenance decision (under Article 14) in relation to the non-resident parent in question, and each subsequent one beginning on and including the day after the last day of the previous one.” .

Appeals

Appeals to appeal tribunals

10. For Article 22 of the Child Support Order (appeals to appeal tribunals) there shall be substituted—

“Appeals to appeal tribunals

22.—(1) A qualifying person has a right of appeal to an appeal tribunal against—

- (a) a decision of the Department under Article 13, 14 or 19 (whether as originally made or as revised under Article 18);
- (b) a decision of the Department not to make a maintenance calculation under Article 13 or not to supersede a decision under Article 19;
- (c) a reduced benefit decision under Article 43;
- (d) the imposition (by virtue of Article 38A) of a requirement to make penalty payments, or their amount;
- (e) the imposition (by virtue of Article 44) of a requirement to pay fees.

(2) In paragraph (1), qualifying person means—

- (a) in relation to sub-paragraphs (a) and (b), the person with care, or non-resident parent, with respect to whom the Department made the decision;
- (b) in relation to sub-paragraph (c), the person in respect of whom the benefits are payable;
- (c) in relation to sub-paragraph (d), the parent who has been required to make penalty payments; and
- (d) in relation to sub-paragraph (e), the person required to pay fees.

(3) A person with a right of appeal under this Article shall be given such notice as may be prescribed of—

- (a) that right; and

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- (b) the relevant decision, or the imposition of the requirement.
- (4) Regulations may make—
 - (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
 - (b) such provision with respect to proceedings before appeal tribunals as the Department considers appropriate.
- (5) The regulations may in particular make any provision of a kind mentioned in Schedule 4 to the Social Security (Northern Ireland) Order 1998.
- (6) No appeal lies by virtue of paragraph (1)(c) unless the amount of the person's benefit is reduced in accordance with the reduced benefit decision; and the time within which such an appeal may be brought runs from the date of notification of the reduction.
- (7) In deciding an appeal under this Article, an appeal tribunal—
 - (a) need not consider any issue that is not raised by the appeal; and
 - (b) shall not take into account any circumstances not obtaining at the time when the Department made the decision or imposed the requirement.
- (8) If an appeal under this Article is allowed, the appeal tribunal may—
 - (a) itself make such decision as it considers appropriate; or
 - (b) remit the case to the Department, together with such directions (if any) as it considers appropriate.”.

Redetermination of appeals

11. After Article 24 of the Child Support Order there shall be inserted—

“Redetermination of appeals

24A.—(1) This Article applies where an application is made to a person under Article 25(6)(a) for leave to appeal from a decision of an appeal tribunal.

(2) If the person who constituted, or was the chairman of, the appeal tribunal considers that the decision was erroneous in point of law, he may set aside the decision and refer the case either for redetermination by the tribunal or for determination by a differently constituted tribunal.

(3) If each of the principal parties to the case expresses the view that the decision was erroneous in point of law, the person shall set aside the decision and refer the case for determination by a differently constituted tribunal.

(4) The principal parties are—

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- (a) the Department; and
- (b) those who are qualifying persons for the purposes of Article 22(2) in relation to the decision in question.”.

Information

Information required by the Department

12. In Article 16(1) of the Child Support Order (information required by the Department), after such an application, there shall be inserted “ (or application treated as made), or needed for the making of any decision or in connection with the imposition of any condition or requirement under this Order,”.

Commencement Information

- II** S. 12 wholly in operation at 3.10.2008; s. 12 not in operation at Royal Assent see s. 68(2); s. 12 in operation for certain purposes at 3.3.2003 by S.R. 2003/53, art. 3, Sch.; s. 12 in operation at 3.10.2008 in so far as not already in operation by S.R. 2008/402, art. 2(a)

Information - offences

13. After Article 16 of the Child Support Order there shall be inserted—

“Information - offences

16A.—(1) This Article applies to—

- (a) persons who are required to comply with regulations under Article 7(4); and
- (b) persons specified in regulations under Article 16(1)(a).

(2) Such a person is guilty of an offence if, pursuant to a request for information under or by virtue of those regulations—

- (a) he makes a statement or representation which he knows to be false; or
- (b) he provides, or knowingly causes or knowingly allows to be provided, a document or other information which he knows to be false in a material particular.

(3) Such a person is guilty of an offence if, following such a request, he fails to comply with it.

(4) It is a defence for a person charged with an offence under paragraph (3) to prove that he had a reasonable excuse for failing to comply.

(5) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

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Inspectors

14.—(1) Article 17 of the Child Support Order (powers of inspectors) shall be amended as follows.

(2) For paragraphs (1) to (4) there shall be substituted—

“(1) The Department may appoint, on such terms as it thinks fit, persons to act as inspectors under this Article.

(2) The function of inspectors shall be to acquire information which the Department needs for any of the purposes of this Order.

(3) Every inspector shall be given a certificate of his appointment.

(4) An inspector shall have power, at any reasonable time and either alone or accompanied by such other persons as he thinks fit, to enter any premises which—

(a) are liable to inspection under this Article; and

(b) are premises to which it is reasonable for him to require entry in order that he may exercise his functions under this Article,

and may there make such examination and inquiry as he considers appropriate.

(4A) Premises liable to inspection under this Article are those which are not used wholly as a dwelling house and which the inspector has reasonable grounds for suspecting are—

(a) premises at which a non-resident parent is or has been employed;

(b) premises at which a non-resident parent carries out, or has carried out, a trade, profession, vocation or business;

(c) premises at which there is information held by a person (A) whom the inspector has reasonable grounds for suspecting has information about a non-resident parent acquired in the course of A's own trade, profession, vocation or business.”.

(3) In paragraph (6), for the words from any person who to the end of subparagraph (d) there shall be substituted “any such person”.

(4) After paragraph (10) there shall be added—

“(11) In this Article, premises includes—

(a) moveable structures and vehicles, vessels, aircraft and hovercraft;

(b) installations that are offshore installations for the purposes of the Mineral Workings (Offshore Installations) Act 1971; and

(c) places of all other descriptions whether or not occupied as land or otherwise,

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and references in this Article to the occupier of premises shall be construed, in relation to premises that are not occupied as land, as references to any person for the time being present at the place in question.”.

Parentage

Presumption of parentage in child support cases

15.—(1) In Article 27(2) of the Child Support Order (disputes about parentage), before Case A there shall be inserted—

“CASE A1

Where—

- (a) the child is habitually resident in Northern Ireland;
- (b) the Department is satisfied that the alleged parent was married to the child's mother at some time in the period beginning with the conception and ending with the birth of the child; and
- (c) the child has not been adopted.

CASE A2

Where—

- (a) the child is habitually resident in Northern Ireland;
- (b) the alleged parent has been registered as the father of the child under Article 14 or 18(1)(b)(ii) of the Births and Deaths Registration (Northern Ireland) Order 1976, or under section 10 or 10A of the Births and Deaths Registration Act 1953, or in any register kept under section 13 or 44 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and
- (c) the child has not subsequently been adopted.

CASE A3

Where the result of a scientific test (within the meaning of Article 27A) taken by the alleged parent would be relevant to determining the child's parentage, and the alleged parent—

- (a) refuses to take such a test; or
 - (b) has submitted to such a test, and it shows that there is no reasonable doubt that the alleged parent is a parent of the child.”.
- (2) In that provision, after Case B there shall be inserted—

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“CASE B1

Where the Department is satisfied that the alleged parent is a parent of the child in question by virtue of section 27 or 28 of that Act (meaning of mother and of father respectively).”.

Disqualification from driving

Disqualification from driving

16.—(1) After Article 36 of the Child Support Order there shall be inserted—

“Commitment to prison and disqualification from driving

36A.—(1) Where the Department has sought to recover an amount by virtue of Article 35 and that amount, or any portion of it, remains unpaid, the Department may apply to the court under this Article.

(2) An application under this Article is for whichever the court considers appropriate in all the circumstances of—

- (a) the issue of a warrant committing the liable person to prison; or
- (b) an order for him to be disqualified for holding or obtaining a driving licence.

(3) On any such application the court shall (in the presence of the liable person) inquire as to—

- (a) whether he needs a driving licence to earn his living;
- (b) his means; and
- (c) whether there has been wilful refusal or culpable neglect on his part.

(4) The Department may make representations to the court as to whether the Department thinks it more appropriate to commit the liable person to prison or to disqualify him for holding or obtaining a driving licence; and the liable person may reply to those representations.

(5) In this Article and Article 37A, driving licence means a licence to drive a motor vehicle granted under Part II of the Road Traffic (Northern Ireland) Order 1981.

(6) In this Article and Articles 37 and 37A, the court means a court of summary jurisdiction.”.

(2) In Article 37 of the Child Support Order (commitment to prison), paragraphs (1) and (2) shall cease to have effect.

(3) After Article 37 of the Child Support Order there shall be inserted—

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“Disqualification from driving: further provision

37A.—(1) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person, it may—

- (a) order him to be disqualified, for such period specified in the order but not exceeding two years as it thinks fit, for holding or obtaining a driving licence (a disqualification order); or
- (b) make a disqualification order but suspend its operation until such time and on such conditions (if any) as it thinks just.

(2) The court may not take action under both Article 37 and this Article.

(3) A disqualification order shall state the amount in respect of which it is made, which shall be the aggregate of—

- (a) the amount in respect of which the liability order was made or so much of that amount as remains outstanding; and
- (b) an amount (determined in accordance with regulations made by the Department) in respect of the costs of the application under Article 36A.

(4) A court which makes a disqualification order shall require the person to whom it relates to produce any driving licence held by him, and its counterpart (within the meaning of Part II of the Road Traffic (Northern Ireland) Order 1981).

(5) On an application by the Department or the liable person, the court—

- (a) may make an order substituting a shorter period of disqualification, or make an order revoking the disqualification order, if part of the amount referred to in paragraph (3) (the amount due) is paid to any person authorised to receive it; and
- (b) shall make an order revoking the disqualification order if all of the amount due is so paid.

(6) The Department may make representations to the court as to the amount which should be paid before it would be appropriate to make an order revoking the disqualification order under paragraph (5)(a), and the liable person may reply to those representations.

(7) The Department may make a further application under Article 36A if the amount due has not been paid in full when the period of disqualification specified in the disqualification order expires.

(8) Where a court—

- (a) makes a disqualification order;
- (b) makes an order under paragraph (5); or
- (c) allows an appeal against a disqualification order,

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it shall send notice of that fact to the Department; and the notice shall contain such particulars and be sent in such manner and to such address as the Department may determine.

(9) Where a court makes a disqualification order, it shall also send the driving licence and its counterpart, on their being produced to the court, to the Department at such address as the Department may determine.

(10) Article 110 of the Magistrates' Courts (Northern Ireland) Order 1981 (application of sums found upon defaulter) shall apply in relation to a disqualification order under this Article in relation to a liable person as it applies in relation to the enforcement of a sum mentioned in paragraph (1) of that Article.

(11) The Department may by regulations make provision in relation to disqualification orders corresponding to the provision it may make under Article 37(11).”.

(4) In Article 180(3B) of the Road Traffic (Northern Ireland) Order 1981 (NI 1) (enforcement powers of constable), after required under there shall be inserted “Article 37A of the Child Support (Northern Ireland) Order 1991 or”.

(5) In Article 29(2) of the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10) (offence of failing to produce a licence), for the word then there shall be substituted “or if the holder of the licence does not produce it and its counterpart as required by Article 37A of the Child Support (Northern Ireland) Order 1991, then,”.

Financial penalties

Financial penalties

17.—(1) In Article 38 of the Child Support Order (arrears of child support maintenance), paragraphs (3) to (5) shall cease to have effect.

(2) For Article 38A of the Child Support Order (arrears: alternative to interest payments) there shall be substituted—

“Penalty payments

38A.—(1) The Department may by regulations make provision for the payment to it by non-resident parents who are in arrears with payments of child support maintenance of penalty payments determined in accordance with the regulations.

(2) The amount of a penalty payment in respect of any week may not exceed 25 per cent. of the amount of child support maintenance payable for that week, but otherwise is to be determined by the Department.

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(3) The liability of a non-resident parent to make a penalty payment does not affect his liability to pay the arrears of child support maintenance concerned.

(4) Regulations under paragraph (1) may, in particular, make provision—

(a) as to the time at which a penalty payment shall be payable;

(b) for the Department to waive a penalty payment, or part of it.

(5) The provisions of this Order with respect to—

(a) the collection of child support maintenance;

(b) the enforcement of an obligation to pay child support maintenance, apply equally (with any necessary modifications) to penalty payments payable by virtue of regulations under this Article.

(6) The Department shall pay penalty payments received by it into the Consolidated Fund.”.

Reduced benefit decisions

18. ^{F2}

<p>F2 S. 18 repealed (14.7.2008) by Child Maintenance Act (Northern Ireland) 2008 (c. 10), ss. 39, 41(1), Sch. 5; S.R. 2008/291, art. 2(1)(c)(ii)</p>
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Miscellaneous

Voluntary payments

19.—(1) After Article 28I of the Child Support Order there shall be inserted—

“Voluntary payments

Voluntary payments

28J.—(1) This Article applies where—

(a) a person has applied for a maintenance calculation under Article 7(1), or is treated as having applied for one by virtue of Article 9;

(b) the Department has neither made a decision under Article 13 or 14 on the application, nor decided not to make a maintenance calculation; and

(c) the non-resident parent makes a voluntary payment.

(2) A voluntary payment is a payment—

(a) on account of child support maintenance which the non-resident parent expects to become liable to pay following the determination

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- of the application (whether or not the amount of the payment is based on any estimate of his potential liability which the Department has agreed to give); and
- (b) made before the maintenance calculation has been notified to the non-resident parent or (as the case may be) before the Department has notified the non-resident parent that it has decided not to make a maintenance calculation.
- (3) In such circumstances and to such extent as may be prescribed—
- (a) the voluntary payment may be set off against arrears of child support maintenance which accrued by virtue of the maintenance calculation taking effect on a date earlier than that on which it was notified to the non-resident parent;
 - (b) the amount payable under a maintenance calculation may be adjusted to take account of the voluntary payment.
- (4) A voluntary payment shall be made to the Department unless it agrees, on such conditions as it may specify, that that payment may be made to the person with care, or to or through another person.
- (5) The Department may by regulations make provision as to voluntary payments, and the regulations may in particular—
- (a) prescribe what payments or descriptions of payment are, or are not, to count as voluntary payments;
 - (b) prescribe the extent to which and circumstances in which a payment, or a payment of a prescribed description, counts.”.
- (2) Article 38B of the Child Support Order (repayment of overpaid child support maintenance) shall be amended as follows.
- (3) After paragraph (1) there shall be inserted—
- “(1A) This Article also applies where the non-resident parent has made a voluntary payment and it appears to the Department—
- (a) that he is not liable to pay child support maintenance; or
 - (b) that he is liable, but some or all of the payment amounts to an overpayment,
- and, in a case falling within sub-paragraph (b), it also appears to the Department that paragraph (1)(a) or (b) applies.”.
- (4) For paragraph (7) there shall be substituted—
- “(7) For the purposes of this Article—
- (a) a payment made by a person under a maintenance calculation which was not validly made; and
 - (b) a voluntary payment made in the circumstances set out in paragraph (1A)(a),

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shall be treated as overpayments of child support maintenance made by a non-resident parent.”.

Recovery of child support maintenance by deduction from benefit

20. For Article 40 of the Child Support Order (contribution to maintenance by deduction from benefit) there shall be substituted—

“Recovery of child support maintenance by deduction from benefit

40.—(1) This Article applies where—

- (a) a non-resident parent is liable to pay a flat rate of child support maintenance (or would be so liable but for a variation having been agreed to), and that rate applies (or would have applied) because he falls within paragraph 4(1)(b) or (c) or 4(2) of Schedule 1; and
- (b) such conditions as may be prescribed for the purposes of this Article are satisfied.

(2) The power of the Department to make regulations under section 5 of the Social Security Administration (Northern Ireland) Act 1992 by virtue of subsection (1)(q) (deductions from benefits) may be exercised in relation to cases to which this Article applies with a view to securing that payments in respect of child support maintenance are made or that arrears of child support maintenance are recovered.

(3) For the purposes of this Article, the benefits to which section 5 of that Act applies shall be taken as including war disablement pensions and war widows' pensions (within the meaning of section 146(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (interpretation)).”.

Jurisdiction

21.—(1) Article 41 of the Child Support Order (jurisdiction) shall be amended as follows.

(2) In paragraph (1), after United Kingdom there shall be added “, except in the case of a non-resident parent who falls within paragraph (2A)”.

(3) After paragraph (2) there shall be inserted—

“(2A) A non-resident parent falls within this paragraph if he is not habitually resident in the United Kingdom, but is—

- (a) employed in the civil service of the Crown, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;

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- (b) a member of the naval, military or air forces of the Crown, including any person employed by an association established for the purposes of Part XI of the Reserve Forces Act 1996;
 - (c) employed by a company of a prescribed description registered under the Companies (Northern Ireland) Order 1986 or under the Companies Act 1985 in England and Wales or in Scotland; or
 - (d) employed by a body of a prescribed description.” .
- (4) Paragraph (3) shall cease to have effect.

Abolition of the child maintenance bonus

22. Article 4 of the Child Support (Northern Ireland) Order 1995 (NI 13) (the child maintenance bonus) shall cease to have effect.

Commencement Information

- I2** [S. 22](#) wholly in operation at 27.10.2008; [s. 22](#) not in operation at Royal Assent see [s. 68\(2\)](#); [s. 22](#) in operation for certain purposes at different dates by [S.R. 2003/53, art. 6](#) (as substituted by [S.R. 2003/92, art. 2](#)); [s. 22](#) in operation at 27.10.2008 in so far as not already in operation by [S.R. 2008/402, art. 2\(c\)](#)

Periodical reviews

23. Article 3(3) of the Social Security (1998 Order) (Commencement No. 2) Order (Northern Ireland) 1998 (No. 395 (C. 19)) (which saved Article 18 of the Child Support Order for certain purposes) is revoked; and accordingly Article 18 shall cease to have effect for all purposes.

Regulations

24.—(1) In Article 48 of the Child Support Order (regulations and orders), for paragraph (2) there shall be substituted—

“(2) A statutory rule containing (whether alone or with other provisions) regulations made under—

- (a) Article 9(1), 14(4) (so far as the regulations make provision for the default rate of child support maintenance mentioned in Article 14(5)(b)), 28C(2)(b), 28F(2)(b), 30(4A), 38(2), 38A, 38B(6), 40(1), 41(2A)(d), 43 or 44;
- (b) paragraph 3(2) or 10A(1) of Part I of Schedule 1; or
- (c) Schedule 4B,

shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without

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prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.

(2A) A statutory rule containing (whether alone or with other provisions) the first set of regulations made under paragraph 10(1) of Part I of Schedule 1 (as substituted by section 1(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000) shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly.” .

(2) In Article 48(3)(a) of that Order after paragraph (2) there shall be inserted “or (2A)”.

Commencement Information

I3 S. 24 in operation at 16.5.2014 in so far as not already in operation by S.R. 2014/138, art. 2

Section 25—Amendments

Temporary compensation payment scheme

26.—(1) This section applies where—

- (a) a maintenance assessment is made before a prescribed date following an application for one under Article 7 or 9 of the Child Support Order; or
- (b) a fresh maintenance assessment has been made following either a periodic review under Article 18 of the Child Support Order or a review under Article 19 of that Order (as they had effect before their substitution by Article 40 or 41 respectively of the Social Security (Northern Ireland) Order 1998 (NI 10)) (in this Act referred to as the 1998 Order),

and the effective date of the assessment is earlier than the date on which the assessment was made, with the result that arrears of child support maintenance have become due under the assessment.

(2) The Department may by regulations provide for this section to have effect as if it were modified so as—

- (a) to apply to cases of arrears of child support maintenance having become due additional to those referred to in subsection (1);
- (b) not to apply to any such case as is referred to in subsection (1).

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(3) If this section applies, the Department may in prescribed circumstances agree with the absent parent, on terms specified in the agreement, that—

- (a) the absent parent shall not be required to pay the whole of the arrears, but only some lesser amount; and
- (b) the Department shall not, while the agreement is complied with, take action to recover any of the arrears.

(4) The terms which may be specified shall be prescribed by or determined in accordance with regulations made by the Department.

(5) ^{F3} An agreement may be entered into only if it is made before 1st April 2002 and expires before 1st April 2003.

(6) If the absent parent enters into such an agreement, the Department may, while the absent parent complies with it, refrain from taking action under the Child Support Order to recover the arrears.

(7) On the expiry of the agreement, if the absent parent has complied with it—

- (a) he ceases to be liable to pay the arrears; and
- (b) the Department may make payments of such amounts and at such times as it may determine to the person with care.

(8) If the absent parent fails to comply with the agreement he shall become liable to pay the full amount of any outstanding arrears (as well as any other amount payable in accordance with the assessment).

(9) The Department may by regulations provide for this section to have effect as if there were substituted for the dates in subsection (5) such later dates as shall be prescribed.

(10) In this section, prescribed means prescribed by regulations made by the Department.

(11) Regulations under subsection (9) shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have been approved by a resolution of the Assembly; but otherwise regulations under this section shall be subject to negative resolution.

F3 mod. by SR 2002/247

Pilot schemes

^{F4}27.

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F4 S. 27 (never in operation) repealed (29.7.2013) by [Child Maintenance Act \(Northern Ireland\) 2008 \(c. 10\)](#), s. 41(1), [Sch. 5](#); S.R. 2013/201, art. 2(2)

Transitional provisions, savings, etc.

28.—(1) The Department may by regulations make such transitional and transitory provisions, and such incidental, supplementary, savings and consequential provisions, as it considers necessary or expedient in connection with the coming into operation of this Part or any provision of it.

(2) The regulations may, in particular—

- (a) provide for the amount of child support maintenance payable by or to any person to be at a transitional rate (or more than one such rate successively) resulting from the phasing-in by way of prescribed steps of any increase or decrease in the amount payable following the coming into operation of this Part or any provision of it;
- (b) provide for a departure direction or any finding in relation to a previous determination of child support maintenance to be taken into account in a decision as to the amount of child support maintenance payable by or to any person.

(3) Article 74(3), (4) and (6) of the 1998 Order (regulations and orders) shall apply to any power to make regulations under this section as it applies to any power to make regulations under that Order.

(4) Regulations under this section shall be subject to negative resolution.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 7 para. 1(2)(c) added by [2007 c. 2 \(N.I.\) Sch. 5 para. 6](#)
- Sch. 7 para. 6(5A)-(5C) inserted by [S.I. 2015/2006 \(N.I.\) Sch. 11 para. 10\(3\)](#)