

Status: Point in time view as at 01/01/2006.

Changes to legislation: The Child Support (Northern Ireland) Order 1995 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

STATUTORY INSTRUMENTS

1995 No. 2702 (N.I. 13)

The Child Support (Northern Ireland) Order 1995 ^{F1}

- - - - - 18th October 1995

F1 functions transf. by SR 1999/481

Introductory

Title and commencement

1.—(1) This Order may be cited as the Child Support (Northern Ireland) Order 1995.

(2) This Order and the Order of 1991 may be cited together as the Child Support (Northern Ireland) Orders 1991 and 1995.

(3) This Order, except paragraph 17 of Schedule 3, shall come into operation on such day or days as the Head of the Department may by order appoint^{F2}.

(4) Paragraph 17 of Schedule 3 shall come into operation on the day appointed under Article 1(2) of the Children (Northern Ireland) Order 1995^{F3} for the coming into operation of paragraph 182 of Schedule 9 to that Order.

F2 partly exercised by SR 1995/428; 1995/474; 1996/492

F3 1995 NI 2

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F4} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the Order of 1991” means the Child Support (Northern Ireland) Order 1991^{F5}.

(3) Expressions in this Order which are used in the Order of 1991 have the same meaning in this Order as they have in that Order.

F4 1954 c. 33 (NI)

F5 1991 NI 23

Departure directions, etc.

Departure from usual rules for determining maintenance assessments

3.—(1) In the Order of 1991, after Article 28 there shall be inserted the following Articles—

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“Departure from usual rules for determining maintenance assessments

Application for a departure direction

28A.—(1) Where a maintenance assessment (“the current assessment”) is in force, the person with care, or absent parent, with respect to whom it was made may apply to the Department for a direction under Article 28F (a “departure direction”).

(2) An application for a departure direction shall state in writing the grounds on which it is made and shall, in particular, state whether it is based on—

- (a) the effect of the current assessment; or
- (b) a material change in the circumstances of the case since the current assessment was made.

(3) In other respects, an application for a departure direction shall be made in such manner as may be prescribed.

(4) An application may be made under this Article even though—

- (a) an application for a review has been made under Article 19 or 20 with respect to the current assessment; or
- (b) a child support officer is conducting a review of the current assessment under Article 18 or 21.

(5) If the Department considers it appropriate to do so, the Department may by regulations provide for the question whether a change of circumstances is material to be determined in accordance with the regulations.

(6) Schedule 4A shall have effect in relation to departure directions.

Preliminary consideration of applications

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

(2) Where the Department does so the Department may, on completing the preliminary consideration, reject the application if it appears to the Department—

- (a) that there are no grounds on which a departure direction could be given in response to the application; or
- (b) that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Department for the purposes of this paragraph and Article 28F(4).

(3) In paragraph (2)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment; and

“the revised amount” means the amount of child support maintenance which, but for paragraph (2)(b), would be fixed if a fresh maintenance assessment were to be made as a result of a departure direction allowing the departure applied for.

(4) Before completing any preliminary consideration, the Department may refer the current assessment to a child support officer for it to be reviewed as if an application for a review had been made under Article 19 or 20.

(5) A review initiated by a reference under paragraph (4) shall be conducted as if paragraph (4) of Article 19, or (as the case may be) paragraph (8) of Article 20, were omitted.

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(6) Where, as a result of a review of the current assessment under Article 18, 19, 20 or 21 (including a review initiated by a reference under paragraph (4)), a fresh maintenance assessment is made, the Department—

- (a) shall notify the applicant and such other persons as may be prescribed that the fresh maintenance assessment has been made; and
- (b) may direct that the application is to lapse unless, before the end of such period as may be prescribed, the applicant notifies the Department that he wishes it to stand.

Imposition of a regular payments condition

28C.—(1) Where an application for a departure direction is made by an absent parent, the Department may impose on him one of the conditions mentioned in paragraph (2) (“a regular payments condition”).

(2) The conditions are that—

- (a) the applicant must make the payments of child support maintenance fixed by the current assessment;
- (b) the applicant must make such reduced 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, the Department shall give written notice to the absent parent and person with care concerned of the imposition of the condition and of the effect of failure to comply with it.

(4) A regular payments conditions shall cease to have effect on the failure or determination of the application.

(5) For the purposes of paragraph (4), an application for a departure direction fails if—

- (a) it lapses or is withdrawn; or
- (b) the Department rejects if on completing a preliminary consideration under Article 28B.

(6) Where an absent parent has failed to comply with a regular payments condition—

- (a) the Department may refuse to consider the application; and
- (b) in prescribed circumstances the application shall lapse.

(7) The question whether an absent parent has failed to comply with a regular payments condition shall be determined by the Department.

(8) Where the Department determines that an absent parent has failed to comply with a regular payments condition the Department shall give that parent, and the person with care, concerned, written notice of its decision.

Determination of applications

28D.—(1) Where an application for a departure direction has not failed, the Department shall—

- (a) determine the application in accordance with the relevant provisions of, or made under, this Order; or
- (b) refer the application to a child support appeal tribunal for the tribunal to determine it in accordance with those provisions.

(2) For the purposes of paragraph (1), an application for a departure direction has failed if—

- (a) it has lapsed or been withdrawn; or

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(b) the Department has rejected it on completing a preliminary consideration under Article 28B.

(3) In dealing with an application for a departure direction which has been referred to it under paragraph (1)(b), a child support appeal tribunal shall have the same powers, and be subject to the same duties, as would the Department if it were dealing with the application.

Matters to be taken into account

28E.—(1) In determining any application for a departure direction, the Department shall have regard both to the general principles set out in paragraph (2) and to such other considerations as may be prescribed.

(2) The general principles are that—

- (a) parents should be responsible for maintaining their children whenever they can afford to do so;
- (b) where a parent has more than one child, his obligation to maintain any one of them should be no less of an obligation than his obligation to maintain any other of them.

(3) In determining any application for a departure direction, the Department shall take into account any representations made to it by the person with care or absent parent concerned.

(4) In determining any application for a departure direction, no account shall be taken of the fact that—

- (a) any part of the income of the person with care concerned is, or would be if a departure direction were made, derived from any benefit; or
- (b) some or all of any child support maintenance might be taken into account in any manner in relation to any entitlement to benefit.

(5) In this Article “benefit” has such meaning as may be prescribed.

Departure directions

28F.—(1) The Department may give a departure direction if—

- (a) the Department 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 Department's opinion that, in all the circumstances of the case, it would be just and equitable to give a departure direction.

(2) In considering whether it would be just and equitable in any case to give a departure direction, the Department shall have regard, in particular, to—

- (a) the financial circumstances of the absent parent concerned,
- (b) the financial circumstances of the person with care concerned, and
- (c) the welfare of any child likely to be affected by the direction.

(3) The Department may by regulations make provision—

- (a) for factors which are to be taken into account in determining whether it would be just and equitable to give a departure direction in any case;
- (b) for factors which are not to be taken into account in determining such a question.

(4) The Department shall not give a departure direction if it is satisfied that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Department for the purposes of this paragraph and Article 28B(2).

(5) In paragraph (4)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment, and

“the revised amount” means the amount of child support maintenance which would be fixed if a fresh maintenance assessment were to be made as a result of the departure direction which the Department would give in response to the application but for paragraph (4).

(6) A departure direction shall—

- (a) require a child support officer to make one or more fresh maintenance assessments; and
- (b) specify the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of the direction.

(7) In giving a departure direction, the Department shall comply with the provisions of regulations made under Part II of Schedule 4B.

(8) Before the end of such period as may be prescribed, the Department shall notify the applicant for a departure direction, and such other persons as may be prescribed—

- (a) of its decision in relation to the application, and
- (b) of the reasons for its decision.

Effect and duration of departure directions

28G.—(1) Where a departure direction is given, it shall be the duty of the child support officer to whom the case is referred to comply with the direction as soon as is reasonably practicable.

(2) A departure direction may be given so as to have effect—

- (a) for a specified period; or
- (b) until the occurrence of a specified event.

(3) The Department may by regulations make provision for the cancellation of a departure direction in prescribed circumstances.

(4) The Department may by regulations make provision as to when a departure direction is to take effect.

(5) Regulations under paragraph (4) may provide for a departure direction to have effect from a date earlier than that on which the direction is given.

Appeals in relation to applications for departure directions

28H.—(1) Any qualifying person who is aggrieved by any decision of the Department on an application for a departure direction may appeal to a child support appeal tribunal against that decision.

(2) In paragraph (1), “qualifying person” means the person with care, or absent parent, with respect to whom the current assessment was made.

(3) Except with leave of the chairman of a child support appeal tribunal, no appeal under this Article shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.

(4) On an appeal under this Article, the tribunal shall—

- (a) consider the matter—

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- (i) as if it were exercising the powers of the Department in relation to the application in question; and
- (ii) as if it were subject to the duties imposed on the Department in relation to that application;
- (b) have regard to any representation made to it by the Department; and
- (c) confirm the decision or replace it with such decision as the tribunal considers appropriate.

Transitional provisions

28I.—(1) In the case of an application for a departure direction relating to a maintenance assessment which was made before the coming into operation of Article 28A the period within which the application must be made shall be such period as may be prescribed.

(2) The Department may by regulations make provision for applications for departure directions to be dealt with according to an order determined in accordance with the regulations.

(3) The regulations may, for example, provide for—

- (a) applications relating to prescribed descriptions of maintenance assessment, or
- (b) prescribed descriptions of application, to be dealt with before applications relating to other prescribed descriptions of assessment or (as the case may be) other prescribed descriptions of application.

(4) The Department may by regulations make provision—

- (a) enabling applications for departure directions made before the coming into operation of Article 28A to be considered even though that Article is not in operation;
- (b) for the determination of any such application as if Article 28A and the other provisions of this Order relating to departure directions were in operation; and
- (c) as to the effect of any departure direction given before the coming into operation of Article 28A.

(5) Regulations under Article 28G(4) may not provide for a departure direction to have effect from a date earlier than that on which that Article came into operation.”

^{F6}(2) Schedule 1 inserts in the Order of 1991 the new Schedule 4A which is referred to in paragraph (6) of the new Article 28A inserted by paragraph (1) of this Article.

^{F6}(3) Schedule 2 inserts in the Order of 1991 the new Schedule 4B which is referred to in paragraphs (1)(a) and (7) of the new Article 28F inserted by paragraph (1) of this Article.

F6 prosp. in pt. rep. by 2000 c. 4 (NI)

The child maintenance bonus

[^{F7}The child maintenance bonus

4.—(1) The Department may by regulations make provision for the payment, in prescribed circumstances, of sums to persons—

- (a) who are or have been in receipt of child maintenance; and
- (b) to or in respect of whom income support or a jobseeker's allowance is or has been paid.

(2) A sum payable under the regulations shall be known as “a child maintenance bonus”.

(3) A child maintenance bonus shall be treated for all purposes as payable by way of income support or (as the case may be) a jobseeker's allowance.

[^{F8}(4) Paragraph (3) is subject to section 677 of the Income Tax (Earnings and Pensions) Act 2003 (which provides for a back to work bonus not to be taxable).]

^{F8}(5) The regulations may, in particular, provide for—

- (a) a child maintenance bonus to be payable only on the occurrence of a prescribed event;
- (b) a bonus not to be payable unless a claim is made before the end of the prescribed period;
- (c) the amount of a bonus (subject to any maximum prescribed by virtue of sub-paragraph (f)) to be determined in accordance with the regulations;
- (d) enabling amounts to be calculated by reference to periods of entitlement to income support and periods of entitlement to a jobseeker's allowance;
- (e) treating a bonus as payable wholly by way of a jobseeker's allowance or wholly by way of income support, in a case where amounts have been calculated in accordance with provision made by virtue of sub-paragraph (d);
- (f) the amount of a bonus not to exceed a prescribed maximum;
- (g) a bonus not to be payable if the amount of the bonus which would otherwise be payable is less than the prescribed minimum;
- (h) prescribed periods to be disregarded for prescribed purposes;
- (i) a bonus which has been paid to a person to be treated, in prescribed circumstances and for prescribed purposes, as income or capital of that person or of any other member of that person's family;
- (j) treating the whole or a prescribed part of an amount which has accrued towards a person's bonus—
 - (i) as not having accrued towards the person's bonus; but
 - (ii) as having accrued towards the bonus of another person.

(6) The Department may by regulations provide—

- (a) for the whole or a prescribed part of a child maintenance bonus to be paid in such circumstances as may be prescribed to such person, other than the person who is or had been in receipt of child maintenance, as may be determined in accordance with the regulations;
- (b) for any payments of a prescribed kind which have been collected by the Department, and retained by it, to be treated for the purposes of this Article as having been received by the appropriate person as payments of child maintenance.

(7) In this Article—

“appropriate person” has such meanings as may be prescribed; “child” means a person under the age of 16;

“child maintenance” has such meaning as may be prescribed;

[^{F9}“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or

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- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners otherwise than in prescribed circumstances;]

^{F9}“family” means—

- (a) a^{F10} couple^{F10};
- (b) a^{F10} couple^{F10} and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;
- (c) except in prescribed circumstances, a person who is not a member of a^{F10} couple^{F10} and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

Definition rep. by 2004 c. 33

Definition rep. by 2004 c. 33

[^{F9}(7A) For the purposes of this Article, two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex.]

^{F9}(8) For the purposes of this Article, the Department may by regulations make provision as to the circumstances in which—

- (a) persons are to be treated as being or not being members of the same household;
- (b) one person is to be treated as responsible or not responsible for another.]

F7	Art. 4 repealed (3.3.2003 or such later date for certain purposes, otherwise prosp.) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 22, 67(1), 68(2)(a), Sch. 9 Pt. I; S.R. 2003/53, art. 6 (as substituted by S.R. 2003/92, art. 2)
F8	2003 c. 1
F9	2004 c.33
F10	2004 c.33

Reviews of maintenance assessments etc.

Arts. 5 #10 rep. by 1998 NI 10

Determination of questions other than by Child Support Commissioners

11. In Schedule 4 to the Order of 1991 (matters concerning Child Support Commissioners), after paragraph 1 there shall be inserted—

“Determination of questions by other officers

- 1A.—**(1) The Lord Chancellor may by regulations provide—
- (a) for officers authorised by him to determine any question which is determinable by a Child Support Commissioner and which does not involve the determination of any appeal, application for leave to appeal or reference;
- (b) for the procedure to be followed by any such officer in determining any such question;
- (c) for the manner in which determinations of such questions by such officers may be called in question.

(2) A determination which would have the effect of preventing an appeal, application for leave to appeal or reference being determined by a Child Support Commissioner is not a determination of the appeal, application or reference for the purposes of sub-paragraph (1).”

Miscellaneous

Deferral of right to apply for maintenance assessment

12.—(1) In Article 7 of the Order of 1991 (right of person with care or absent parent to apply for maintenance assessment), at the end there shall be inserted—

“(10) No application may be made at any time under this Article with respect to a qualifying child or any qualifying children if—

- (a) there is in force a written maintenance agreement made before 5th April 1993, or a maintenance order, in respect of that child or those children and the person who is, at that time, the absent parent; or
- (b) benefit is being paid to, or in respect of, a parent with care of that child or those children.

(11) In paragraph (10) “benefit” means any benefit which is mentioned in, or prescribed by regulations under, Article 9(1).”

^{F11}(2) In Article 10 of the Order of 1991 (role of the courts with respect to maintenance for children), after paragraph (3) there shall be inserted—

“(3A) In any case in which Article 7(10) prevents the making of an application for a maintenance assessment, and—

- (a) no application has been made for a maintenance assessment under Article 9, or
- (b) such an application has been made but no maintenance assessment has been made in response to it, paragraph (3) shall have effect with the omission of the word “vary”.”

(3) In Article 11 of the Order of 1991 (maintenance agreements), at the beginning of paragraph (3) there shall be inserted “Subject to Article 7(10)(a),” and after paragraph (5) there shall be inserted—

“(6) In any case in which Article 7(10) prevents the making of an application for a maintenance assessment, and—

- (a) no application has been made for a maintenance assessment under Article 9, or
- (b) such an application has been made but no maintenance assessment has been made in response to it, paragraph (5) shall have effect with the omission of sub-paragraph (b).”

^{F11}(4) The Department may by order repeal any of the provisions of this Article.

(5) Article 7(10) of the Order of 1991 shall not apply in relation to a maintenance order made in the circumstances mentioned in paragraph (7) or (8) of Article 10 of the Order of 1991.

(6) The Department may by regulations make provision for Article 7(10) of the Order of 1991 not to apply in relation to such other cases as may be prescribed.

(7) Part I of the Schedule to the Child Support (1991 Order) (Commencement No. 3 and Transitional Provisions) Order (Northern Ireland) 1992^{F12} (phased take-on of certain cases) is hereby revoked.

(8) At any time before 7th April 1997, neither Article 10(3), nor Article 11(5)(b), of the Order of 1991 shall apply in relation to any case which fell within paragraph 4(2) of the Schedule to the Order of 1992 (pending cases during the transitional period set by that order).

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F11 prosp. in pt. rep. by 2000 c. 4 (NI)

F12 SR 1992 No. 467

^{F13}Non-referral of applications for maintenance assessments

13. In Article 13 of the Order of 1991, after paragraph (1) (referral of application for maintenance assessment to child support officer) there shall be inserted—

“(1A) Where—

- (a) an application for a maintenance assessment is made under Article 9, but
- (b) the Department becomes aware, before referring the application to a child support officer, that the claim mentioned in paragraph (1) of that Article has been disallowed or withdrawn, the Department shall, subject of paragraph (1B), treat the application as if it had not been made.

(1B) 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 assessment under that Article the Department shall—

- (a) notify that parent of the effect of this paragraph, and
- (b) if, before the end of the period of 28 days beginning with the day on which notice was sent to that parent, that parent asks the Department to do so, treat the application as having been made not under Article 9 but under Article 7.

(1C) Where the application is not preserved under paragraph (1B) (and so is treated as not having been made) the Department shall notify—

- (a) the parent with care concerned; and
- (b) the absent parent (or alleged absent parent), where it appears to him that that person is aware of the application.”

F13 prosp. in pt. rep. by 2000 c. 4 (NI)

Fees for scientific tests

14. After Article 27 of the Order of 1991 there shall be inserted—

“Recovery of fees for scientific tests

27A.—(1) This Article applies in any case where—

- (a) an application for a maintenance assessment has been made or a maintenance assessment is in force;
- (b) scientific tests have been carried out (otherwise than under a direction) in relation to bodily samples obtained from a person who is alleged to be a parent of a child with respect to whom the application or assessment is made;
- (c) the results of the tests do not exclude the alleged parent from being one of the child's parents; and
- (d) one of the conditions set out in paragraph (2) is satisfied.

(2) The conditions are that—

- (a) the alleged parent does not deny that he is one of the child's parents; or

(b) in proceedings under Article 28, a court has made a declaration that the alleged parent is a parent of the child in question.

(3) In any case to which this Article applies, any fee paid by the Department in connection with scientific tests may be recovered by it from the alleged parent as a debt due to the Crown.

(4) In this Article—

“bodily sample” means a sample of bodily fluid or bodily tissue taken for the purpose of scientific tests;

“direction” means a direction given by a court under Article 8 of the Family Law Reform (Northern Ireland) Order 1977^{F14} (tests to determine paternity); and

“scientific tests” means scientific tests made with the object of ascertaining the inheritable characteristics of bodily fluids or bodily tissue.

(5) Any sum recovered by the Department under this Article shall be paid by the Department into the Consolidated Fund.”

F14 1977 NI 17

Art. 15 rep. by 2000 c. 4 (NI)

Child support maintenance: arrears and overpayments

16. In the Order of 1991, after Article 38 there shall be inserted—

“Arrears: alternative to interest payments

38A.—(1) The Department may by regulations make provision for the payment by absent parents who are in arrears with payments of child support maintenance of sums determined in accordance with the regulations.

(2) A sum payable under any such regulations is referred to in this Article as an “additional sum”.

(3) Any liability of an absent parent to pay an additional sum shall not affect any liability of his to pay the arrears of child support maintenance concerned.

(4) The Department shall exercise its powers under this Article and those under Article 38(3) in such a way as to ensure that no absent parent is liable to pay both interest and an additional sum in respect of the same period (except by reference to different maintenance assessments).

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

- (a) as to the calculation of any additional sum;
- (b) as to the time at which, and person to whom, any additional sum shall be payable;
- (c) as to the circumstances in which, in a case where the Department has been acting under Article 9, any additional sum may be retained by it;
- (d) for the Department, in a case where it has been acting under Article 9 and in such circumstances as may be prescribed, to waive any additional sum (or part of any additional sum).

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

- (a) the collection of child support maintenance;
- (b) the enforcement of any obligation to pay child support maintenance,

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shall apply equally to additional sums payable by virtue of regulations made under this Article.

(7) Any sum retained by the Department by virtue of this Article shall be paid by the Department into the Consolidated Fund.

Repayment of overpaid child support maintenance

38B.—(1) This Article applies where it appears to the Department that an absent parent has made a payment by way of child support maintenance which amounts to an overpayment by him of that maintenance and that—

- (a) it would not be possible for the absent parent to recover the amount of overpayment by way of an adjustment of the amount payable under a maintenance assessment; or
- (b) it would be inappropriate to rely on an adjustment of the amount payable under a maintenance assessment as the means of enabling the absent parent to recover the amount of the overpayment.

(2) The Department may make such payment to the absent parent by way of reimbursement, or partial reimbursement, of the overpayment as the Department considers appropriate.

(3) Where the Department has made a payment under this Article the Department may, in such circumstances as may be prescribed, require the relevant person to pay to it the whole, or a specified proportion, of the amount of that payment.

(4) Any such requirement shall be imposed by giving the relevant person a written demand for the amount which the Department wishes to recover from him.

(5) Any sum which a person is required to pay to the Department under this Article shall be recoverable from him by the Department as a debt due to the Crown.

(6) The Department may by regulations make provision in relation to any case in which—

- (a) one or more overpayments of child support maintenance are being reimbursed to the Department by the relevant person; and
- (b) child support maintenance has continued to be payable by the absent parent concerned to the person with care concerned, or again becomes so payable.

(7) For the purposes of this Article any payments made by a person under a maintenance assessment which was not validly made shall be treated as overpayment of child support maintenance made by an absent parent.

(8) In this Article “relevant person”, in relation to an overpayment, means the person with care to whom the overpayment was made.

(9) Any sum recovered by the Department under this Article shall be paid by the Department into the Consolidated Fund.”

Art. 17 rep. by 2000 c. 4 (NI)

Payment of benefit where maintenance payments collected by the Department

18. In the Social Security Administration (Northern Ireland) Act 1992, after section 72 (income support and other payments), there shall be inserted—

“Payment of benefit where maintenance payments collected by Department.

72A.—(1) This section applies where—

- (a) a person (“the claimant”) is entitled to a benefit to which this section applies;
- (b) the Department is collecting periodical payments of child or spousal maintenance made in respect of the claimant or a member of the claimant's family; and
- (c) the inclusion of any such periodical payment in the claimant's relevant income would, apart from this section, have the effect of reducing the amount of the benefit to which the claimant is entitled.

(2) The Department may, to such extent as it considers appropriate, treat any such periodical payment as not being relevant income for the purposes of calculating the amount of benefit to which the claimant is entitled.

(3) The Department may, to the extent that any periodical payment collected by it is treated as not being relevant income for those purposes, retain the whole or any part of that payment.

(4) Any sum retained by the Department under subsection (3) shall be paid by the Department into the Consolidated Fund.

(5) In this section—

“child” means a person under the age of 16.

“child maintenance”, “spousal maintenance” and “relevant income” have such meaning as may be prescribed;

“family” means—

- (a) a married or unmarried couple;
- (b) a married or unmarried couple and a member of the same household for whom one of them is, or both are, responsible and who is a child or a person of a prescribed description;
- (c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

“married couple” means a man and woman who are married to each other and are members of the same household; and

“unmarried couple” means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances.

(6) For the purposes of this section, the Department may by regulations make provision as to the circumstances in which—

- (a) persons are to be treated as being or not being members of the same household;
- (b) one person is to be treated as responsible or not responsible for another.

(7) The benefits to which this section applies are income support, an income-based jobseeker's allowance and such other benefits (if any) as may be prescribed.”

Supplemental

Regulations and orders

19.—(1) Any power under this Order to make regulations or orders includes power—

- (a) to make such incidental, supplemental, consequential or transitional provision as appears to the Department to be expedient; and
- (b) to provide for a person to exercise a discretion in dealing with any matter.

(2) Paragraph (3) applies to—

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(a) the first regulations made under Article 4;

(b) any order made under Article 12(4);

^{F15}(c) the first regulations made under Article 17.

(3) A statutory rule to which this paragraph applies 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 the making of new regulations) cease to have effect upon the expiration of a period of 6 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.

(4) Any other statutory rule made under this Order, other than an order made under Article 1(3), shall be subject to negative resolution.

F15 prosp. in pt. rep. by [2000 c. 4 \(NI\)](#)

Art. 20 rep. by 1998 c.47

Article 21—Amendments

Status: Point in time view as at 01/01/2006.

Changes to legislation: The Child Support (Northern Ireland) Order 1995 is up to date with all changes known to be in force on or before 27 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

^{F16}SCHEDULE 1

Article 3(2).

DEPARTURE DIRECTIONS

F16 prosp. in pt. rep. by 2000 c. 4 (NI)

The following Schedule shall be inserted in the Order of 1991, after Schedule 4—

“SCHEDULE 4A

DEPARTURE DIRECTIONS

Interpretation

1. In this Schedule—

“departure application” means an application for a departure direction;

“regulations” means regulations made by the Department;

“review” means a review under Article 18, 19, 20 or 21.

Applications for departure directions

2. Regulations may make provision—

(a) as to the procedure to be followed in considering a departure application;

(b) as to the procedure to be followed when a departure application is referred to a child support appeal tribunal under Article 28D(1)(b);

(c) for the giving of a direction by the Department as to the order in which, in a particular case, a departure application and a review are to be dealt with;

(d) for the reconsideration of a departure application in a case where further information becomes available to the Department after the application has been determined.

Completion of preliminary consideration

3. Regulations may provide for determining when the preliminary consideration of a departure application is to be taken to have been completed.

Information

4.—(1) Regulations may make provision for the use for any purpose of this Order of—

(a) information acquired by the Department in connection with an application for, or the making of, a departure direction;

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(b) information acquired by a child support officer or the Department in connection with an application for, or the making of, a maintenance assessment.

(2) If any information which is required (by regulations under this Order) to be furnished to the Department in connection with a departure application has not been furnished within such period as may be prescribed, the Department may nevertheless proceed to determine the application.

Anticipation of change of circumstances

5.—(1) A departure direction may be given so as to provide that if the circumstances of the case change in such manner as may be specified in the direction a fresh maintenance assessment is to be made.

(2) Where any such provision is made, the departure direction may provide for the basis on which the amount of child support maintenance is to be fixed by the fresh maintenance assessment to differ from the basis on which the amount of child support maintenance was fixed by any earlier maintenance assessment made as a result of the direction.

Reviews and departure directions

6. Regulations may make provision—

- (a) with respect to cases in which a child support officer is conducting a review of a maintenance assessment which was made as a result of a departure direction;
- (b) with respect to cases in which a departure direction is made at a time when a child support officer is conducting a review.

Subsequent departure directions

7.—(1) Regulations may make provision with respect to any departure application made with respect to a maintenance assessment which was made as a result of a departure direction.

(2) The regulations may, in particular, provide for the application to be considered by reference to the maintenance assessment which would have been made had the departure direction not been given.

Joint consideration of departure applications and appeals

8.—(1) Regulations may provide for two or more departure applications with respect to the same current assessment to be considered together.

(2) A child support appeal tribunal considering—

- (a) a departure application referred to it under Article 28D(1)(b), or
- (b) an appeal under Article 28H,

may consider it at the same time as hearing an appeal under Article 22 in respect of the current assessment, if it considers that to be appropriate.

Child support appeal tribunals

9.—(1) Regulations may provide that, in prescribed circumstances, where—

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- (a) a departure application is referred to a child support appeal tribunal under Article 28D(1)(b), or
 - (b) an appeal is brought under Article 28H, the application or appeal may be dealt with by a tribunal constituted by the chairman sitting alone.
- (2) Sub-paragraph (1) does not apply in relation to any appeal which is being heard together with an appeal under Article 22.

Current assessments which are replaced by fresh assessments

10. Regulations may make provision as to the circumstances in which prescribed references in this Order to a current assessment are to have effect as if they were references to any later maintenance assessment made with respect to the same persons as the current assessment.”

F17 SCHEDULE 2

Article 3(3).

Departure Directions: The Cases and Controls

F17 prosp. in pt. rep. by 2000 c. 4 (NI)

The following Schedule shall be inserted in the Order of 1991, after Schedule 4A—

“SCHEDULE 4B

DEPARTURE DIRECTIONS: THE CASES AND CONTROLS

PART I

The Cases

General

1.—(1) The cases in which a departure direction may be given are those set out in this Part or in regulations made under this Part.

(2) In this Schedule “applicant” means the person whose application for a departure direction is being considered.

Special expenses

2.—(1) A departure direction may be given with respect to special expenses of the applicant which were not, and could not have been, taken into account in determining the current assessment in accordance with the provisions of, or made under, Part I of Schedule 1.

(2) In this paragraph “special expenses” means the whole, or any prescribed part, of expenses which fall within a prescribed description of expenses.

(3) In prescribing descriptions of expenses for the purposes of this paragraph, the Department may, in particular, make provision with respect to—

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- (a) costs incurred in travelling to work;
 - (b) costs incurred by an absent parent in maintaining contact with the child, or with any of the children, with respect to whom he is liable to pay child support maintenance under the current assessment;
 - (c) costs attributable to a long-term illness or disability of the applicant or of a dependant of the applicant;
 - (d) debts incurred, before the absent parent became an absent parent in relation to a child with respect to whom the current assessment was made—
 - (i) for the joint benefit of both parents;
 - (ii) for the benefit of any child with respect to whom the current assessment was made; or
 - (iii) for the benefit of any other child falling within a prescribed category;
 - (e) pre-1993 financial commitments from which it is impossible for the parent concerned to withdraw or from which it would be unreasonable to expect that parent to have to withdraw;
 - (f) costs incurred by a parent in supporting a child who is not his child but who is part of his family.
- (4) For the purposes of sub-paragraph (3)(c)—
- (a) the question whether one person is a dependant of another shall be determined in accordance with regulations made by the Department;
 - (b) “disability” and “illness” have such meaning as may be prescribed; and
 - (c) the question whether an illness or disability is long-term shall be determined in accordance with regulations made by the Department.
- (5) For the purposes of sub-paragraph (3)(e), “pre-1993 financial commitments” means financial commitments of a prescribed kind entered into before 5th April 1993 in any case where—
- (a) a court order of a prescribed kind was in force with respect to the absent parent and the person with care concerned at the time when they were entered into; or
 - (b) an agreement between them of a prescribed kind was in force at that time.
- (6) For the purposes of sub-paragraph (3)(f), a child who is not the child of a particular person is a part of that person's family in such circumstances as may be prescribed.

Property or capital transfers

- 3.—(1) A departure direction may be given if—
- (a) before 5th April 1993—
 - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made; or
 - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
 - (b) in consequence of one or more transfers of property of a prescribed kind—
 - (i) the amount payable by the absent parent by way of maintenance was less than would have been the case had that transfer or those transfers not been made; or

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- (ii) no amount was payable by the absent parent by way of maintenance; and
 - (c) the effect of that transfer, or those transfers, is not properly reflected in the current assessment.
- (2) For the purposes of sub-paragraph (1)(b), “maintenance” means periodical payments of maintenance made (otherwise than under this Order) with respect to the child, or any of the children, with respect to whom the current assessment was made.
- (3) For the purposes of sub-paragraph (1)(c), the question whether the effect of one or more transfers of property is properly reflected in the current assessment shall be determined in accordance with regulations made by the Department.

4.—(1) A departure direction may be given if—

- (a) before 5th April 1993—
 - (i) a court order of a prescribed kind was in force with respect to the absent parent and either the person with care with respect to whom the current assessment was made or the child, or any of the children, with respect to whom that assessment was made, or
 - (ii) an agreement of a prescribed kind between the absent parent and any of those persons was in force;
 - (b) in pursuance of the court order or agreement, the absent parent has made one or more transfers of property of a prescribed kind;
 - (c) the amount payable by the absent parent by way of maintenance was not reduced as a result of that transfer or those transfers;
 - (d) the amount payable by the absent parent by way of child support maintenance under the current assessment has been reduced as a result of that transfer or those transfers, in accordance with provisions of or made under this Order; and
 - (e) it is nevertheless inappropriate, having regard to the purposes for which the transfer or transfers was or were made, for that reduction to have been made.
- (2) For the purposes of sub-paragraph (1)(c), “maintenance” means periodical payments of maintenance made (otherwise than under this Order) with respect to the child, or any of the children, with respect to whom the current assessment was made.

Additional cases

5.—(1) The Department may by regulations prescribe other cases in which a departure may be given.

(2) Regulations under this paragraph may, for example, make provision with respect to cases where—

- (a) assets which do not produce income are capable of producing income;
- (b) a person's life-style is inconsistent with the level of his income;
- (c) housing costs are unreasonably high;
- (d) housing costs are in part attributable to housing persons whose circumstances are such as to justify disregarding a part of those costs;
- (e) travel costs are unreasonably high; or
- (f) travel costs should be disregarded.

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PART II

Regulatory Controls

6.—(1) The Department may by regulations make provision with respect to the directions which may be given in a departure direction.

(2) No directions may be given other than those which are permitted by the regulations.

(3) Regulations under this paragraph may, in particular, make provision for a departure direction to require—

- (a) the substitution, for any formula set out in Part I of Schedule 1, of such other formula as may be prescribed;
- (b) any prescribed amount by reference to which any calculation is to be made in fixing the amount of child support maintenance to be increased or reduced in accordance with the regulations;
- (c) the substitution, for any provision in accordance with which any such calculation is to be made, of such other provision as may be prescribed.

(4) Regulations may limit the extent to which the amount of the child support maintenance fixed by a maintenance assessment made as a result of a departure direction may differ from the amount of the child support maintenance which would be fixed by a maintenance assessment made otherwise than as a result of the direction.

(5) Regulations may provide for the amount of any special expenses to be taken into account in a case falling within paragraph 2, for the purposes of a departure direction, not to exceed such amount as may be prescribed or as may be determined in accordance with the regulations.

(6) No departure direction may be given so as to have the effect of denying to an absent parent the protection of paragraph 6 of Schedule 1.

(7) Sub-paragraph (6) does not prevent the modification of the provisions of, or made under, paragraph 6 of Schedule 1 to the extent permitted by regulations under this paragraph.

(8) Any regulations under this paragraph may make different provision with respect to different levels of income.”

Schedule 3—Amendments

Status:

Point in time view as at 01/01/2006.

Changes to legislation:

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