
STATUTORY RULES OF NORTHERN IRELAND

2001 No. 20

**FAMILY LAW
CHILD SUPPORT**

**The Child Support (Variations)
Regulations (Northern Ireland) 2001**

Made - - - - - 23rd January 2001
Approved by resolution of the
Assembly on - - - - - 29th May 2001
Coming into operation in accordance with
regulation 1(1)

The Department for Social Development, in exercise of the powers conferred by Articles 28A(5), 28B(2)(c), 28C(2)(b) and (5), 28E(1) and (5), 28F(2)(b) and (3)(b), 28G(3), 47 and 48(4) of, and paragraphs 1, 2(a), 4 and 5(1) of Schedule 4A and paragraphs 2(2) to (5), 3(1) and (2), 4, 5(1) and (3) to (5) and 6 of Schedule 4B to, the Child Support (Northern Ireland) Order 1991⁽¹⁾ and now vested in it⁽²⁾, and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Part I

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Variations) Regulations (Northern Ireland) 2001 and shall come into operation in relation to a particular case on the day on which section 5 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000⁽³⁾ is commenced in relation to that type of case.

(2) In these Regulations—

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- (1) S.I.1991/2628 (N.I. 23); Articles 28A to 28C and 28F were substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), Article 28E was inserted by Article 3 of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702(N.I. 13)) and amended by section 5(4) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Article 28G was substituted by section 7 of, and Schedules 4A and 4B were substituted by section 6 of, and Schedule 2 to, that Act. Article 47 was amended by paragraph 31 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))
- (2) See Article 8(b) of S.R. 1999 No. 481
- (3) 2000 c. 4 (N.I.)

- “the Order” means the Child Support (Northern Ireland) Order 1991;
- “Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(4);
- “capped amount” means the amount of income for the purposes of paragraph 10(3) of Schedule 1 to the Order(5);
- “couple” has the same meaning as in paragraph 10C(5) of Schedule 1 to the Order;
- “date of notification” means the date upon which notification is given in person or communicated by telephone to the recipient or, where this is not possible, the date of posting;
- “date of receipt” means the day on which the information or document is actually received;
- “home” has the meaning given in regulation 1(2) of the Maintenance Calculations and Special Cases Regulations;
- “Maintenance Calculation Procedure Regulations” means the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(6);
- “Maintenance Calculations and Special Cases Regulations” means the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(7);
- “qualifying child” means the child with respect to whom the maintenance calculation falls to be made;
- “relevant person” means—
- (a) a non-resident parent, or a parent treated as a non-resident parent under regulation 8 of the Maintenance Calculations and Special Cases Regulations, whose liability to pay child support maintenance may be affected by any variation agreed;
 - (b) a person with care, where the amount of child support maintenance payable by virtue of a calculation relevant to that person with care may be affected by any variation agreed;
- “the Service Pensions Order” means the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(8); and
- “Transitional Regulations” means the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(9).

Documents

- 2.—(1) Except where otherwise stated, where—
- (a) any document is given or sent to the Department, that document shall be treated as having been so given or sent on the date of receipt by the Department; and
 - (b) any document is given or sent to any other person, that document shall, if sent by post to that person’s last known or notified address, be treated as having been given or sent on the date that it is posted.

(4) 1992 c. 7

(5) Paragraphs 1 to 10C were substituted by section 1(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(6) S.R. 2001 No. 17

(7) S.R. 2001 No. 18

(8) S.I. 1983/883

(9) S.R. 2001 No. 19

Determination of amounts

3.—(1) Where any amount is required to be determined for the purposes of these Regulations, it shall be determined as a weekly amount and, except where the context otherwise requires, any reference to such an amount shall be construed accordingly.

(2) Where any calculation made under these Regulations results in a fraction of a penny, that fraction shall be treated as a penny if it is either one half or exceeds one half and shall be otherwise disregarded.

Part II

Application and Determination Procedure

Application for a variation

4.—(1) Where an application for a variation is made other than in writing and the Department directs that the application be made in writing, the application shall be made either on an application form provided by it and completed in accordance with its instructions or in such other written form as the Department may accept as sufficient in the circumstances of any particular case.

(2) An application for a variation which is made other than in writing shall be treated as made on the date of notification from the applicant to the Department that he wishes to make such an application.

(3) Where an application for a variation is made in writing other than in the circumstances to which paragraph (1) applies, the application shall be treated as made on the date of receipt by the Department.

(4) Where paragraph (1) applies and the Department receives the application within 14 days of the date of the direction, or at a later date but in circumstances where it is satisfied that the delay was unavoidable, the application shall be treated as made on the date of notification from the applicant to the Department that he wishes to make an application for a variation.

(5) Where paragraph (1) applies and the Department receives the application more than 14 days from the date of the direction and in circumstances where it is not satisfied that the delay was unavoidable, the application shall be treated as made on the date of receipt.

(6) An application for a variation is duly made when it has been made in accordance with this regulation and Article 28A(4) of the Order.

Amendment or withdrawal of application

5.—(1) A person who has made an application for a variation may amend or withdraw his application at any time before a decision under Article 13, 18 or 19 of the Order⁽¹⁰⁾, or a decision not to revise or supersede under Article 18 or 19 of the Order, is made in response to the variation application and such amendment or withdrawal need not be in writing unless, in any particular case, the Department requires it to be.

(2) No amendment under paragraph (1) shall relate to any change of circumstances arising after what would be the effective date of a decision in response to the variation application.

⁽¹⁰⁾ Article 13 was substituted by section 1(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000. Articles 18 and 19 were substituted by Articles 40 and 41 respectively of the Social Security (Northern Ireland) Order 1998 and amended by sections 8 and 9 respectively of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Rejection of an application following preliminary consideration

6.—(1) The Department may, on completing the preliminary consideration, reject an application for a variation (and proceed to make its decision on the application for a maintenance calculation, or to revise or supersede a decision under Article 18 or 19 of the Order, without the variation, or not to revise or supersede a decision under Article 18 or 19 of the Order, as the case may be,) if one of the circumstances in paragraph (2) applies.

(2) The circumstances are—

- (a) the application has been made in one of the circumstances to which regulation 7 applies;
- (b) the application is made—
 - (i) on a ground in paragraph 2 of Schedule 4B to the Order (special expenses) and the amount of the special expenses, or the aggregate amount of those expenses, as the case may be, does not exceed the relevant threshold provided for in regulation 15;
 - (ii) on a ground in paragraph 3 of that Schedule (property or capital transfers) and the value of the property or capital transferred does not exceed the minimum value in regulation 16(4), or
 - (iii) on a ground referred to in regulation 18 (assets) and the value of the assets does not exceed the figure in regulation 18(3)(a), or on a ground in regulation 19(1) (income not taken into account) and the amount of the income does not exceed the figure in regulation 19(2);
- (c) a request under regulation 8 has not been complied with by the applicant and the Department is not able to determine the application without the information requested; or
- (d) the Department is satisfied, on the information or evidence available to it, that the application would not be agreed to, including where, although a ground is stated, the facts alleged in the application would not bring the case within the prescription of the relevant ground in these Regulations.

Prescribed circumstances

7.—(1) This regulation applies where an application for a variation is made under Article 28G of the Order and—

- (a) the application is made by a relevant person and a circumstance set out in paragraph (2) applies at the relevant date;
 - (b) the application is made by a non-resident parent and a circumstance set out in paragraph (3) or (4) applies at the relevant date;
 - (c) the application is made by a person with care, on a ground in paragraph 4 of Schedule 4B to the Order (additional cases) and a circumstance set out in paragraph (5) applies at the relevant date; or
 - (d) the application is made by a non-resident parent on a ground in paragraph 2 of Schedule 4B to the Order (special expenses) and a circumstance set out in paragraph (6) applies at the relevant date.
- (2) The circumstances for the purposes of this paragraph are that—
- (a) a default maintenance decision is in force with respect to the non-resident parent;
 - (b) the non-resident parent is liable to pay the flat rate of child support maintenance owing to the application of paragraph 4(1)(c) of Schedule 1 to the Order, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, or the Transitional Regulations; or

- (c) the non-resident parent is liable to pay child support maintenance at a flat rate of a prescribed amount owing to the application of paragraph 4(2) of Schedule 1 to the Order, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, or the Transitional Regulations.
- (3) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay child support maintenance —
- (a) at the nil rate owing to the application of paragraph 5 of Schedule 1 to the Order;
 - (b) at a flat rate owing to the application of paragraph 4(1)(a) of Schedule 1 to the Order, including where the net weekly income of the non-resident parent which is taken into account for the purposes of a maintenance calculation in force in respect of him is £100 per week or less owing to a variation being taken into account or to the application of regulation 18, 19 or 21 of the Transitional Regulations (reduction for relevant departure direction or relevant property transfer); or
 - (c) at a flat rate owing to the application of paragraph 4(1)(b) of Schedule 1 to the Order, or would be so liable but is liable to pay less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, or the Transitional Regulations.
- (4) The circumstances for the purposes of this paragraph are that the non-resident parent is liable to pay an amount of child support maintenance at a rate—
- (a) of £5 per week or such other amount as may be prescribed owing to the application of paragraph 7(7) of Schedule 1 to the Order (shared care); or
 - (b) equivalent to the flat rate provided for in, or prescribed for the purposes of, paragraph 4(1)(b) of Schedule 1 to the Order owing to the application of—
 - (i) regulation 27(5);
 - (ii) regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by an authority), or
 - (iii) regulation 23(5) of the Transitional Regulations (effect of relevant departure direction on conversion calculation—general).
- (5) The circumstances for the purposes of this paragraph are that—
- (a) the amount of the net weekly income of the non-resident parent to which the Department had regard when making the maintenance calculation was the capped amount; or
 - (b) the non-resident parent or a partner of his is in receipt of working families' tax credit (as defined in section 127 of the Contributions and Benefits Act(11)) or disabled person's tax credit (as defined in section 128 of that Act(12)) and for this purpose “partner” has the same meaning as in paragraph 10C(4) of Schedule 1 to the Order.
- (6) The circumstances for the purposes of this paragraph are that the amount of the net weekly income of the non-resident parent to which the Department would have regard after deducting the amount of the special expenses would exceed the capped amount.
- (7) For the purposes of paragraph (1), the “relevant date” means the date from which, if the variation were agreed, the decision under Article 18 or 19 of the Order, as the case may be, would take effect.

(11) Section 127 was amended by paragraph 16 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and section 1(2) of, and paragraph 4 of Schedule 1 to, the Tax Credits Act 1999 (c. 10)

(12) Section 128 was amended by Article 12(2) of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 17 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 and section 1(2) and 14(4) of, and paragraph 4(h) of Schedule 1 to, the Tax Credits Act 1999

Provision of information

8.—(1) Where an application has been duly made, the Department may request further information or evidence from the applicant to enable that application to be determined and any such information or evidence requested shall be provided within one month of the date of notification of the request or such longer period as the Department is satisfied is reasonable in the circumstances of the case.

(2) Where any information or evidence requested in accordance with paragraph (1) is not provided in accordance with the time limit specified in that paragraph, the Department may, where it is able to do so, proceed to determine the application in the absence of the requested information or evidence.

Procedure in relation to the determination of an application

9.—(1) Subject to paragraph (3), where the Department has given a preliminary consideration to an application and not rejected it the Department—

- (a) shall give notice of the application to the relevant persons other than the applicant, informing them of the grounds on which the application has been made and any relevant information or evidence the applicant has given, except information or evidence falling within paragraph (2);
 - (b) may invite representations, which need not be in writing but shall be in writing if in any case it so directs, from the relevant persons other than the applicant on any matter relating to that application, to be submitted to the Department within 14 days of the date of notification or such longer period as the Department is satisfied is reasonable in the circumstances of the case; and
 - (c) shall set out the provisions of paragraphs (2)(b) and (c), (4) and (5) in relation to such representations.
- (2) The information or evidence referred to in paragraphs (1)(a), (4)(a) and (7), are—
- (a) details of the nature of the long-term illness or disability of the relevant other child which forms the basis of a variation application on the ground in regulation 11 where the applicant requests they should not be disclosed and the Department is satisfied that disclosure is not necessary in order to be able to determine the application;
 - (b) medical evidence or medical advice which has not been disclosed to the applicant or a relevant person and which the Department considers would be harmful to the health of the applicant or that relevant person if disclosed to him; or
 - (c) the address of a relevant person or qualifying child, or any other information which could reasonably be expected to lead to that person or child being located, where the Department considers that there would be a risk of harm or undue distress to that person or that child or any other children living with that person if the address or information were disclosed.
- (3) The Department need not act in accordance with paragraph (1)—
- (a) where regulation 29 applies (variation may be taken into account notwithstanding that no application has been made);
 - (b) where the variation agreed is one falling within paragraph 3 of Schedule 4B to the Order (property or capital transfers), the Department ceases to have jurisdiction to make a maintenance calculation and subsequently acquires jurisdiction in respect of the same non-resident parent, person with care and any child in respect of whom the earlier calculation was made;
 - (c) if the Department is satisfied on the information or evidence available to it that the application would not be agreed to, but if, on further consideration of the application, the

Department is minded to agree to the variation it shall, before doing so, comply with the provisions of this regulation; or

(d) where—

- (i) a variation has been agreed in relation to a maintenance calculation;
- (ii) the decision as to the maintenance calculation is replaced with a default maintenance decision under Article 14(1)(b) of the Order(13);
- (iii) the default maintenance decision is revised in accordance with Article 18(1B) of the Order(14),

and the Department is satisfied, on the information or evidence available to it, that there has been no material change of circumstances relating to the variation since the date from which the maintenance calculation referred to in head (i) ceased to have effect.

(4) Where the Department receives representations from the relevant persons—

- (a) it may, if it considers it reasonable to do so, send a copy of the representations concerned (excluding material falling within paragraph (2)) to the applicant and invite any comments he may have within 14 days or such longer period as the Department is satisfied is reasonable in the circumstances of the case; and
- (b) where the Department acts under sub-paragraph (a) it shall not proceed to determine the application until it has received such comments or the period referred to in that sub-paragraph has expired.

(5) Where the Department has not received representations from the relevant persons notified in accordance with paragraph (1), within the time limit specified in sub-paragraph (b) of that paragraph, it may proceed to agree or not, as the case may be, to a variation in their absence.

(6) In considering an application for a variation, the Department shall take into account any representations received at the date upon which it agrees or not, as the case may be, to the variation from the relevant persons, including any representation received in accordance with paragraphs (1) (b), (4)(a) and (7).

(7) Where any information or evidence requested by the Department under regulation 8 is received after notification has been given under paragraph (1), the Department may, if it considers it reasonable to do so, and except where such information or evidence falls within paragraph (2), send a copy of such information or evidence to the relevant persons and may invite them to submit representations, which need not be in writing unless the Department so directs in any particular case, on that information or evidence.

(8) The Department may, if it considers it appropriate, treat an application for a variation made on one ground as if it were an application made on a different ground, and, if it does intend to do so, it shall include this information in the notice and invitation to make representations referred to in paragraphs (1), (4) and (7).

(9) Two or more applications for a variation with respect to the same maintenance calculation or application for a maintenance calculation, made or treated as made, may be considered together.

(13) Article 14 was substituted by section 4 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(14) Paragraph (1B) was inserted by section 8(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Part III

Special Expenses

Special expenses — contact costs

10.—(1) Subject to paragraphs (2) to (5) and regulation 15, the following costs incurred or reasonably expected to be incurred by the non-resident parent, whether in respect of himself or the qualifying child or both, for the purpose of maintaining contact with that child, shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order—

- (a) the cost of purchasing a ticket for travel;
- (b) the cost of purchasing fuel where travel is by a vehicle which is not carrying fare-paying passengers;
- (c) the taxi fare for a journey or part of a journey where the Department is satisfied that the disability or long-term illness of the non-resident parent or the qualifying child makes it impracticable for any other form of transport to be used for that journey or part of that journey;
- (d) the cost of car hire where the cost of the journey would be less in total than it would be if public transport or taxis or a combination of both were used;
- (e) where the Department considers a return journey on the same day is impracticable, or the established or intended pattern of contact with the child includes contact over two or more consecutive days, the cost of the non-resident parent's, or, as the case may be, the child's, accommodation for the number of nights the Department considers appropriate in the circumstances of the case; and
- (f) any minor incidental costs such as tolls or fees payable for the use of a particular road or bridge incurred in connection with such travel, including breakfast where it is included as part of the accommodation cost referred to in sub-paragraph (e).

(2) The costs to which paragraph (1) applies include the cost of a person to travel with the non-resident parent or the qualifying child, if the Department is satisfied that the presence of another person on the journey, or part of the journey, is necessary including, but not limited to, where it is necessary because of the young age of the qualifying child or the disability or long-term illness of the non-resident parent or that child.

(3) The costs referred to in paragraphs (1) and (2)—

- (a) shall be expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order only to the extent that they are—
 - (i) incurred in accordance with a set pattern as to frequency of contact between the non-resident parent and the qualifying child which has been established at or, where at the time of the variation application it has ceased, which had been established before, the time that the variation application is made, or
 - (ii) based on an intended set pattern for such contact which the Department is satisfied has been agreed between the non-resident parent and the person with care of the qualifying child, and
- (b) shall be—
 - (i) where sub-paragraph (a)(i) applies and such contact is continuing, calculated as an average weekly amount based on the expenses actually incurred over the period of 12 months, or such lesser period as the Department may consider appropriate in the circumstances of the case, ending immediately before the first day of the maintenance period from which a variation agreed on this ground would take effect;

- (ii) where sub-paragraph (a)(i) applies and such contact has ceased, calculated as an average weekly amount based on the expenses actually incurred during the period from the first day of the maintenance period from which a variation agreed on this ground would take effect to the last day of the maintenance period in relation to which the variation would take effect, or
- (iii) where sub-paragraph (a)(ii) applies, calculated as an average weekly amount based on anticipated costs during such period as the Department considers appropriate.

(4) For the purposes of this regulation, costs of contact shall not include costs which relate to periods where the non-resident parent has care of a qualifying child overnight as part of a shared care arrangement for which provision is made under paragraphs 7 and 8 of Schedule 1 to the Order and regulation 7 of the Maintenance Calculations and Special Cases Regulations.

(5) Where the non-resident parent has at the date he makes the variation application received, or at that date is in receipt of, or where he will receive, any financial assistance, other than a loan, from any source to meet, wholly or in part, the costs of maintaining contact with a child as referred to in paragraph (1), only the amount of the costs referred to in that paragraph, after the deduction of the financial assistance, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order.

Special expenses — illness or disability of relevant other child

11.—(1) Subject to paragraphs (2) and (3), expenses necessarily incurred by the non-resident parent in respect of the items listed in sub-paragraphs (a) to (m) due to the long-term illness or disability of a relevant other child shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order—

- (a) personal care and attendance;
- (b) personal communication needs;
- (c) mobility;
- (d) domestic help;
- (e) medical aids where these cannot be provided as part of health services;
- (f) heating;
- (g) clothing;
- (h) laundry requirements;
- (i) payments for food essential to comply with a diet recommended by a medical practitioner;
- (j) adaptations required to the non-resident parent’s home;
- (k) day care;
- (l) rehabilitation; or
- (m) respite care.

(2) For the purposes of this regulation and regulation 10—

- (a) a person is “disabled” for a period in respect of which—
 - (i) either an attendance allowance, disability living allowance or a mobility supplement is paid to or in respect of him;
 - (ii) he would receive an attendance allowance or disability living allowance if it were not for the fact that he is a patient, though remaining part of the applicant’s family, or

(iii) he is registered blind or treated as blind within the meaning of paragraph 13 of Schedule 1B to the Income Support (General) Regulations (Northern Ireland) 1987(15);

and for the purpose of this sub-paragraph—

- (i) “attendance allowance” means an allowance payable under section 64 of the Contributions and Benefits Act or an increase of disablement pension under section 104 of that Act, or an award under article 14 of the Service Pensions Order or any analogous allowance payable in conjunction with any other war disablement pension within the meaning of section 146(2) of the Contributions and Benefits Act;
 - (ii) “disability living allowance” means an allowance payable under section 72 of the Contributions and Benefits Act;
 - (iii) “mobility supplement” means an award under article 26A of the Service Pensions Order(16) or any analogous allowance payable in conjunction with any other war disablement pension within the meaning of section 146(2) of the Contributions and Benefits Act;
 - (iv) “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a juvenile justice centre within the meaning of Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998(17) or a young offenders centre within the meaning of section 2 of the Treatment of Offenders Act (Northern Ireland)1968(18)) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(19);
- (b) “health services” has the same meaning as in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972(20);
- (c) “long-term illness” means an illness from which the non-resident parent or child is suffering at the date of the application or the date from which the variation, if agreed, would take effect and which is likely to last for at least 52 weeks from that date, or, if likely to be shorter than 52 weeks, for the remainder of the life of that person; and
- (d) “relevant other child” has the meaning given in paragraph 10C(2) of Schedule 1 to the Order(21) and Regulations made under that paragraph.

(3) Where the non-resident parent has, at the date he makes the variation application, received, or at that date is in receipt of, or where he will receive any financial assistance from any source in respect of the long-term illness or disability of the relevant other child or a disability living allowance is received by the non-resident parent on behalf of the relevant other child, only the net amount of the costs incurred in respect of the items listed in paragraph (1), after the deduction of the financial assistance or the amount of the allowance, shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order(22).

(15) S.R. 1987 No. 459; Schedule 1B was inserted by regulation 22 of, and Schedule 1 to, S.R. 1996 No. 199

(16) Article 26A was inserted by article 4 of S.I. 1983/1116 and amended by S.I. 1983/1821, 1986/592, 1990/1308, 1991/766, 1992/710, 1995/766 and 1997/286

(17) S.I. 1998/1504 (N.I. 9)

(18) 1968 c. 29; section 2 was amended by the Treatment of Offenders (Northern Ireland) Order 1989 (S.I. 1989/1344 (N.I. 15)) and the Criminal Justice (Children) (Northern Ireland) Order 1998

(19) S.R. 1975 No. 109; relevant amending regulations are S.R. 1992 No. 453

(20) S.I. 1972/1265 (N.I. 14)

(21) Paragraphs 1 to 10C were substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

(22) Schedule 4B was substituted by section 6 of, and Part II of Schedule 2 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Special expenses — prior debts

12.—(1) Subject to paragraphs (2) to (6) and regulation 15, the repayment of debts to which paragraph (2) applies shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order where those debts were incurred—

- (a) before the non-resident parent became a non-resident parent in relation to the qualifying child; and
 - (b) at the time when the non-resident parent and the person with care in relation to the child referred to in sub-paragraph (a) were a couple.
- (2) This paragraph applies to debts incurred—
- (a) for the joint benefit of the non-resident parent and the person with care;
 - (b) for the benefit of the person with care where the non-resident parent remains legally liable to repay the whole or part of the debt;
 - (c) for the benefit of any person who is not a child but who at the time the debt was incurred—
 - (i) was a child;
 - (ii) lived with the non-resident parent and the person with care, and
 - (iii) of whom the non-resident parent or the person with care is the parent, or both are the parents;
 - (d) for the benefit of the qualifying child referred to in paragraph (1); or
 - (e) for the benefit of any child, other than the qualifying child referred to in paragraph (1), who, at the time the debt was incurred—
 - (i) lived with the non-resident parent and the person with care, and
 - (ii) of whom the person with care is the parent.
- (3) Paragraph (1) shall not apply to repayment of—
- (a) a debt which would otherwise fall within paragraph (1) where the non-resident parent has retained for his own use and benefit the asset in connection with the purchase of which he incurred the debt;
 - (b) a debt incurred for the purposes of any trade or business;
 - (c) a gambling debt;
 - (d) a fine imposed on the non-resident parent;
 - (e) unpaid legal costs in respect of separation or divorce from the person with care;
 - (f) amounts due after use of a credit card;
 - (g) a debt incurred by the non-resident parent to pay any of the items listed in sub-paragraphs (c) to (f) and (j);
 - (h) amounts payable by the non-resident parent under a mortgage or loan taken out on the security of any property except where that mortgage or loan was taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which is the home of the person with care and any qualifying child;
 - (i) amounts payable by the non-resident parent in respect of a policy of insurance except where that policy of insurance was obtained or retained to discharge a mortgage or charge taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which is the home of the person with care and the qualifying child;
 - (j) a bank overdraft except where the overdraft was at the time it was taken out agreed to be for a specified amount repayable over a specified period;

- (k) a loan obtained by the non-resident parent other than a loan obtained from a qualifying lender or the non-resident parent's current or former employer;
- (l) a debt in respect of which a variation has previously been agreed and which has not been repaid during the period for which the maintenance calculation which took account of the variation was in force; or
- (m) any other debt which the Department is satisfied it is reasonable to exclude.

(4) Except where the repayment is of an amount which is payable under a mortgage or loan or in respect of a policy of insurance which falls within the exception set out in paragraph (3)(h) or (i), repayment of a debt shall not constitute expenses for the purposes of paragraph (1) where the Department is satisfied that the non-resident parent has taken responsibility for repayment of that debt as, or as part of, a financial settlement with the person with care or by virtue of a court order.

(5) Where an applicant has incurred a debt partly to repay a debt repayment of which would have fallen within paragraph (1), the repayment of that part of the debt incurred which is referable to the debt repayment of which would have fallen within that paragraph shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order.

- (6) For the purposes of this regulation and regulation 14—
- (a) “qualifying lender” has the meaning given to it in section 376(4) of the Income and Corporation Taxes Act 1988(23); and
 - (b) “repairs or improvements” means major repairs necessary to maintain the fabric of the home and any of the following measures—
 - (i) installation of a fixed bath, shower, wash basin or lavatory, and necessary associated plumbing;
 - (ii) damp-proofing measures;
 - (iii) provision or improvement of ventilation and natural light;
 - (iv) provision of electric lighting and sockets;
 - (v) provision or improvement of drainage facilities;
 - (vi) improvement of the structural condition of the home;
 - (vii) improvements to the facilities for the storing, preparation and cooking of food;
 - (viii) provision of heating, including central heating;
 - (ix) provision of storage facilities for fuel and refuse;
 - (x) improvements to the insulation of the home, or
 - (xi) other improvements which the Department considers reasonable in the circumstances.

Special expenses — boarding school fees

13.—(1) Subject to paragraphs (2) to (5) and regulation 15, the maintenance element of the costs, incurred or reasonably expected to be incurred, by the non-resident parent for the purpose of the attendance at a boarding school of the qualifying child shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order .

(2) Where the Department considers that the costs referred to in paragraph (1) cannot be distinguished with reasonable certainty from other costs incurred in connection with the attendance at boarding school by the qualifying child, it may instead determine the amount of those costs and any such determination shall not exceed 35 per cent. of the total costs.

(3) Where—

- (a) the non-resident parent has at the date the variation application is made, received, or at that date is in receipt of, financial assistance from any source in respect of the boarding school fees; or
- (b) the boarding school fees are being paid in part by the non-resident parent and in part by another person,

a portion of the costs incurred by the non-resident parent in respect of the boarding school fees shall constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order being the same proportion as the maintenance element of the costs bears to the total amount of the costs.

(4) No variation on this ground shall reduce by more than 50 per cent. the income to which the Department would otherwise have had regard in the calculation of maintenance liability.

(5) For the purposes of this regulation, “boarding school fees” means the fees payable in respect of attendance at a recognised educational establishment providing full-time education which is not advanced education for children under the age of 19 and where some or all of the pupils, including the qualifying child, are resident during term time.

Special expenses—payments in respect of certain mortgages, loans or insurance policies

14.—(1) Subject to regulation 15, the payments to which paragraph (2) applies shall constitute expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order.

(2) This paragraph applies to payments, whether made to the mortgagee, lender, insurer or the person with care—

- (a) in respect of a mortgage or loan where—
 - (i) the mortgage or loan was taken out to facilitate the purchase of, or repairs or improvements to, a property (“the property”) by a person other than the non-resident parent;
 - (ii) the payments are not made under a debt incurred by the non-resident parent or do not arise out of any other legal liability of his for the period in respect of which the variation is applied for;
 - (iii) the property was the home of the applicant and the person with care when they were a couple and remains the home of the person with care and the qualifying child, and
 - (iv) the non-resident parent has no legal or equitable interest in and no charge or right to have a charge over the property, or
- (b) of amounts payable in respect of a policy of insurance taken out for the discharge of a mortgage or loan referred to in sub-paragraph (a), including an endowment policy, except where the non-resident parent is entitled to any part of the proceeds on the maturity of that policy.

Thresholds for and reduction of amount of special expenses

15.—(1) Subject to paragraphs (2) to (4), the costs or repayments referred to in regulations 10 and 12 to 14 shall be special expenses for the purposes of paragraph 2(2) of Schedule 4B to the Order where and to the extent that they exceed the threshold amount, which is—

- (a) £15 per week where the expenses fall within only one description of expenses, and, where the expenses fall within more than one description of expenses, £15 per week in respect of the aggregate of those expenses, where the relevant net weekly income of the non-resident parent is £200 or more; or

- (b) £10 per week where the expenses fall within only one description of expenses, and, where the expenses fall within more than one description of expenses, £10 per week in respect of the aggregate of those expenses, where the relevant net weekly income of the non-resident parent is below £200.

(2) Subject to paragraph (3), where the Department considers any expenses referred to in regulations 10 to 14 to be unreasonably high or to have been unreasonably incurred it may substitute such lower amount as it considers reasonable, including an amount which is below the threshold amount or a nil amount.

(3) Any lower amount substituted by the Department under paragraph (2) in relation to contact costs under regulation 10 shall not be so low as to make it impossible, in the Department's opinion, for contact between the non-resident parent and the qualifying child to be maintained at the frequency specified in any court order made in respect of the non-resident parent and that child where the non-resident parent is maintaining contact at that frequency.

(4) For the purposes of this regulation "relevant net weekly income" means the net weekly income taken into account for the purposes of the maintenance calculation before taking account of any variation on the grounds of special expenses.

Part IV

Property or Capital Transfers

Prescription of terms

16.—(1) For the purposes of paragraph 3(1)(a) and (b) of Schedule 4B to the Order—

- (a) a court order means an order made—
- (i) under one or more of the statutory provisions listed in or prescribed under Article 10(11) of the Order⁽²⁴⁾, and
 - (ii) in connection with the transfer of property of a kind defined in paragraph (2);
- (b) an agreement means a written agreement made in connection with the transfer of property of a kind defined in paragraph (2).

(2) Subject to paragraphs (3) and (4), for the purposes of paragraph 3(2) of Schedule 4B to the Order, a transfer of property is a transfer by the non-resident parent of his beneficial interest in any asset to the person with care, to the qualifying child, or to trustees where the object or one of the objects of the trust is the provision of maintenance.

(3) Where a transfer of property would not have fallen within paragraph (2) when made but the Department is satisfied that some or all of the amount of that property was subsequently transferred to the person currently with care of the qualifying child, the transfer of that property to the person currently with care shall constitute a transfer of property for the purposes of paragraph 3 of Schedule 4B to the Order.

(4) The minimum value for the purposes of paragraph 3(2) of Schedule 4B to the Order is the threshold amount which is £5,000.

Value of a transfer of property—equivalent weekly value

17.—(1) Where the conditions specified in paragraph 3 of Schedule 4B to the Order are satisfied, the value of a transfer of property for the purposes of that paragraph shall be that part of the transfer

⁽²⁴⁾ Article 10(11) was amended by paragraph 180 of Schedule 9 to the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2))

made by the non-resident parent (making allowances for any transfer by the person with care to the non-resident parent) which the Department is satisfied is in lieu of periodical payments of maintenance.

(2) The Department shall, in determining the value of a transfer of property in accordance with paragraph (1), assume that, unless evidence to the contrary is provided to it—

- (a) the person with care and the non-resident parent had equal beneficial interests in the asset in relation to which the court order or agreement was made;
- (b) where the person with care was married to the non-resident parent, one half of the value of the transfer was a transfer for the benefit of the person with care; and
- (c) where the person with care has never been married to the non-resident parent, none of the value of the transfer was for the benefit of the person with care.

(3) The equivalent weekly value of a transfer of property shall be determined in accordance with the provisions of the Schedule.

(4) For the purposes of regulation 16 and this regulation, the term “maintenance” means the normal day-to-day living expenses of the qualifying child.

(5) A variation falling within paragraph (1) shall cease to have effect at the end of the number of years of liability, as defined in paragraph 1 of the Schedule, for the case in question.

Part V

Additional Cases

Assets

18.—(1) Subject to paragraphs (2) and (3), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Order where the Department is satisfied there is an asset—

- (a) in which the non-resident parent has the beneficial interest, or which the non-resident parent has the ability to control;
- (b) which has been transferred by the non-resident parent to trustees, and the non-resident parent is a beneficiary of the trust so created, in circumstances where the Department is satisfied the non-resident parent has made the transfer to reduce the amount of assets which would otherwise be taken into account for the purposes of a variation under paragraph 4(1) of Schedule 4B to the Order; or
- (c) which has become subject to a trust created by legal implication of which the non-resident parent is a beneficiary.

(2) For the purposes of this regulation “asset” means—

- (a) money, whether in cash or on deposit;
- (b) a beneficial interest in land and rights in or over land;
- (c) shares as defined in Article 2 of the Companies (Northern Ireland) Order 1986⁽²⁵⁾, stock, unit trusts, gilt edged securities as defined in paragraph 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1992⁽²⁶⁾, and other similar financial instruments;
- (d) a chose in action which has not been enforced when the Department is satisfied that such enforcement would be reasonable,

and includes any such asset located outside Northern Ireland.

⁽²⁵⁾ S.I. 1986/1032 (N.I. 6)

⁽²⁶⁾ 1992 c. 12

(3) Paragraph (2) shall not apply—

- (a) where the total value of the assets referred to in that paragraph does not exceed £65,000 after deduction of the amount owing under any mortgage or charge on those assets;
- (b) in relation to any asset which the Department is satisfied is being retained by the non-resident parent to be used for a purpose which the Department considers reasonable in all the circumstances of the case;
- (c) to any asset received by the non-resident parent as compensation for personal injury suffered by him;
- (d) to any asset used in the course of a trade or business; or
- (e) to property which is the home of the non-resident parent or any child of his.

(4) For the purposes of this regulation, where any asset is held in the joint names of the non-resident parent and another person the Department shall assume, unless evidence to the contrary is provided to it, that the asset is held by them in equal shares.

(5) Where a variation is agreed on the ground that the non-resident parent has assets for which provision is made in this regulation, the Department shall calculate the weekly value of the assets by applying the statutory rate of interest to the value of the assets and dividing by 52, and the resulting figure, aggregated with any benefit, pension or allowance which the non-resident parent receives, other than any benefits referred to in regulation 26(3), shall be taken into account as additional income under regulation 25.

(6) For the purposes of this regulation—

- (a) “statutory rate of interest” means interest at the same rate as that prescribed for judgments by Order 42 rule 9 of the Rules of the Supreme Court (Northern Ireland) 1980(27) which applies on the date from which the maintenance calculation which takes account of the variation takes effect;
- (b) “stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;
- (c) “unit trust” means any trust established for the purpose, or having the effect of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

Income not taken into account and diversion of income

19.—(1) Subject to paragraph (2), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Order where—

- (a) the non-resident parent’s liability to pay child support maintenance under the maintenance calculation which is in force or has been applied for or treated as applied for, is, or would be, as the case may be—
 - (i) the nil rate owing to the application of paragraph 5(a) of Schedule 1 to the Order, or
 - (ii) a flat rate, owing to the application of paragraph 4(1)(b) of Schedule 1 to the Order, or would be a flat rate but is less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order, and
- (b) the Department is satisfied that the non-resident parent is in receipt of income which would fall to be taken into account under the Maintenance Calculations and Special Cases Regulations but for the application to the non-resident parent of paragraph 4(1)(b) or 5(a) of Schedule 1 to the Order.

(2) Paragraph (1) shall apply where the income referred to in sub-paragraph (b) of that paragraph is a net weekly income of over £100.

(3) Net weekly income for the purposes of paragraph (2), in relation to earned income of a non-resident parent who is a student, shall be calculated by aggregating the income for the year ending with the relevant week (which for this purpose shall have the meaning given in the Maintenance Calculations and Special Cases Regulations) and dividing by 52, or, where the Department does not consider the result to be representative of the student's earned income, over such other period as it shall consider representative and dividing by the number of weeks in that period.

(4) A case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Order where—

- (a) the non-resident parent has the ability to control the amount of income he receives, including earnings from employment or self-employment, whether or not the whole of that income is derived from the company or business from which his earnings are derived; and
 - (b) the Department is satisfied that the non-resident parent has unreasonably reduced the amount of his income which would otherwise fall to be taken into account under the Maintenance Calculations and Special Cases Regulations by diverting it to other persons or for purposes other than the provision of such income for himself in order to reduce his liability to pay child support maintenance.
- (5) Where a variation on this ground is agreed to—
- (a) in a case to which paragraph (1) applies, the additional income taken into account under regulation 25 shall be the whole of the income referred to in paragraph (1)(b), aggregated with any benefit, pension or allowance which the non-resident parent receives other than any benefits referred to in regulation 26(3); and
 - (b) in a case to which paragraph (4) applies, the additional income taken into account under regulation 25 shall be the whole of the amount by which the Department is satisfied the non-resident parent has unreasonably reduced his income.

Life-style inconsistent with declared income

20.—(1) Subject to paragraph (3), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Order where—

- (a) the non-resident parent's liability to pay child support maintenance under the maintenance calculation which is in force, or which has been applied for or treated as applied for, is, or would be, as the case may be—
 - (i) the basic rate;
 - (ii) the reduced rate;
 - (iii) a flat rate owing to the application of paragraph 4(1)(a) of Schedule 1 to the Order, including where the net weekly income of the non-resident parent taken into account for the purposes of the maintenance calculation is, or would be, £100 per week or less owing to a variation being taken into account, or to the application of regulation 18, 19 or 21 of the Transitional Regulations (deduction for relevant departure direction or relevant property transfer);
 - (iv) £5 per week or such other amount as may be prescribed owing to the application of paragraph 7(7) of Schedule 1 to the Order (shared care);
 - (v) equivalent to the flat rate provided for in, or prescribed for the purposes of, paragraph 4(1)(b) of Schedule 1 to the Order owing to the application of—
 - (aa) regulation 27(5);

- (bb) regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by an authority); or
 - (cc) regulation 23(5) of the Transitional Regulations (effect of relevant departure direction on conversion calculation —general); or
 - (vi) the nil rate owing to the application of paragraph 5(b) of Schedule 1 to the Order, and
- (b) the Department is satisfied that the income which has been, or would be, taken into account for the purposes of the maintenance calculation is substantially lower than the level of income required to support the overall life-style of the non-resident parent.
- (2) Subject to paragraph (4), a case shall constitute a case for the purposes of paragraph 4(1) of Schedule 4B to the Order where the non-resident parent’s liability to pay child support maintenance under the maintenance calculation which is in force, or which has been applied for or treated as applied for, is, or would be, as the case may be—
- (a) a flat rate owing to the application of paragraph 4(1)(b) of Schedule 1 to the Order, or would be a flat rate but is less than that amount, or nil, owing to the application of paragraph 8 of Schedule 1 to the Order; or
 - (b) the nil rate owing to the application of paragraph 5(a) of Schedule 1 to the Order,
- and the Department is satisfied that the income which would otherwise be taken into account for the purposes of the maintenance calculation is substantially lower than the level of income required to support the overall life-style of the non-resident parent.
- (3) Paragraph (1) shall not apply where the Department is satisfied that the life-style of the non-resident parent is paid for from—
- (a) income which is or would be disregarded for the purposes of a maintenance calculation under the Maintenance Calculations and Special Cases Regulations;
 - (b) income which falls to be considered under regulation 19(4) (diversion of income);
 - (c) assets as defined for the purposes of regulation 18, or income derived from those assets;
 - (d) the income of any partner of the non-resident parent except where the non-resident parent is able to influence or control the amount of income received by that partner; or
 - (e) assets as defined for the purposes of regulation 18 of any partner of the non-resident parent, or any income derived from such assets, except where the non-resident parent is able to influence or control the assets, their use, or income derived from them.
- (4) Paragraph (2) shall not apply where the Department is satisfied that the life-style of the non-resident parent is paid for—
- (a) from a source referred to in paragraph (3);
 - (b) from net weekly income of £100 or less; or
 - (c) from income which falls to be considered under regulation 19(1).
- (5) Where a variation on this ground is agreed to, the additional income taken into account under regulation 25 shall be the difference between the income which the Department is satisfied the non-resident parent requires to support his overall life-style and the income which has been or, but for the application of paragraph 4(1)(b) or 5(a) of Schedule 1 to the Order⁽²⁸⁾, would be taken into account for the purposes of the maintenance calculation, aggregated with any benefit, pension or allowance which the non-resident parent receives other than any benefits referred to in regulation 26(3).

⁽²⁸⁾ Paragraphs 1 to 10C were substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Part VI

Factors to be taken into account for the purposes of Article 28F of the Order

Factors to be taken into account and not to be taken into account

21.—(1) The factors to be taken into account in determining whether it would be just and equitable to agree to a variation in any case shall include—

- (a) where the application is made on any ground—
 - (i) whether, in the opinion of the Department, agreeing to a variation would be likely to result in a relevant person ceasing paid employment;
 - (ii) if the applicant is the non-resident parent, the extent, if any, of his liability to pay child maintenance under a court order or agreement in the period prior to the effective date of the maintenance calculation, and
- (b) where an application is made on the ground that the case falls within regulations 10 to 14 (special expenses), whether, in the opinion of the Department—
 - (i) the financial arrangements made by the non-resident parent could have been such as to enable the expenses to be paid without a variation being agreed, or
 - (ii) the non-resident parent has at his disposal financial resources which are currently utilised for the payment of expenses other than those arising from essential everyday requirements and which could be used to pay the expenses.

(2) The following factors are not to be taken into account in determining whether it would be just and equitable to agree to a variation in any case—

- (a) the fact that the conception of the qualifying child was not planned by one or both of the parents;
- (b) whether the non-resident parent or the person with care of the qualifying child was responsible for the breakdown of the relationship between them;
- (c) the fact that the non-resident parent or the person with care of the qualifying child has formed a new relationship with a person who is not a parent of that child;
- (d) the existence of particular arrangements for contact with the qualifying child, including whether any arrangements made are being adhered to;
- (e) the income or assets of any person other than the non-resident parent, other than the income or assets of a partner of the non-resident parent taken into account under regulation 20(3);
- (f) the failure by a non-resident parent to make payments of child support maintenance or to make payments under a maintenance order or a written maintenance agreement; or
- (g) representations made by persons other than the relevant persons.

Part VII

Effect of a Variation on the Maintenance Calculation and Effective Dates

Effective dates

22.—(1) Subject to paragraph (2), where the application for a variation is made in the circumstances referred to in Article 28A(3) of the Order⁽²⁹⁾ (before the Department has reached a

⁽²⁹⁾ Article 28A was substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

decision under Article 13 or 14(1) of the Order(30)) and the application is agreed to, the effective date of the maintenance calculation which takes account of the variation shall be—

- (a) where the ground giving rise to the variation existed from the effective date of the maintenance calculation as provided for in the Maintenance Calculation Procedure Regulations, that date; or
- (b) where the ground giving rise to the variation arose after the effective date referred to in sub-paragraph (a), the first day of the maintenance period in which the ground arose.

(2) Where the ground for the variation applied for under Article 28A(3) of the Order is a ground in regulation 12 (prior debts) or 14 (special expenses-payments in respect of certain mortgages, loans or insurance policies) and payments falling within regulation 12 or 14 which have been made by the non-resident parent constitute voluntary payments for the purposes of Article 28J of the Order(31) and Regulations made under that Article, the date from which the maintenance calculation shall take account of the variation on this ground shall be the date on which the maintenance period begins which immediately follows the date on which the non-resident parent is notified under the Maintenance Calculation Procedure Regulations of the amount of his liability to pay child support maintenance.

(3) Where the ground for the variation applied for under Article 28A(3) of the Order has ceased to exist by the date when the maintenance calculation is made, that calculation shall take account of the variation for the period ending on the last day of the maintenance period in which the ground existed.

Effect on maintenance calculation—special expenses

23.—(1) Subject to paragraph (2) and regulations 26 and 27, where the variation agreed to is one falling within regulations 10 to 14 (special expenses) effect shall be given to the variation in the maintenance calculation by deducting from the net weekly income of the non-resident parent the weekly amount of those expenses.

(2) Where the income which is taken into account in the maintenance calculation is the capped amount and the variation agreed to is one falling within regulations 10 to 14 then—

- (a) the weekly amount of the expenses shall first be deducted from the actual net weekly income of the non-resident parent;
- (b) the amount by which the capped amount exceeds the figure calculated under sub-paragraph (a) shall be calculated; and
- (c) effect shall be given to the variation in the maintenance calculation by deducting from the capped amount the amount calculated under sub-paragraph (b).

Effect on maintenance calculation—property or capital transfer

24. Subject to regulation 27, where the variation agreed to is one falling within regulation 16 (property or capital transfers)—

- (a) the maintenance calculation shall be carried out in accordance with Part I of Schedule 1 to the Order(32) and Regulations made under that Part; and
- (b) the equivalent weekly value of the transfer calculated as provided in regulation 17 shall be deducted from the amount of child support maintenance which the non-resident parent would otherwise be liable to pay to the person with care with respect to whom the transfer was made.

(30) Articles 13 and 14 were substituted by sections 1(1) and 4 respectively of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(31) Article 28J was inserted by section 19 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(32) Part I was substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

Effect on maintenance calculation—additional cases

25. Subject to regulations 26 and 27, where the variation agreed to is one falling within regulations 18 to 20 (additional cases), effect shall be given to the variation in the maintenance calculation by increasing the net weekly income of the non-resident parent which would otherwise be taken into account by the weekly amount of the additional income except that, where the amount of net weekly income calculated in this way would exceed the capped amount, the amount of net weekly income taken into account shall be the capped amount.

Effect on maintenance calculation—maximum amount payable where the variation is on additional cases ground

26.—(1) Subject to regulation 27, where this regulation applies the amount of child support maintenance which the non-resident parent shall be liable to pay shall be whichever is the lesser of—

- (a) a weekly amount calculated by aggregating an amount equivalent to the flat rate stated in or prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Order with the amount calculated by applying that Schedule to the additional income arising under the variation, other than the weekly amount of any benefit, pension or allowance the non-resident parent receives which is prescribed for the purposes of that paragraph; or
- (b) a weekly amount calculated by applying Part I of Schedule 1 to the Order to the additional income arising under the variation.

(2) This regulation applies where the variation agreed to is one to which regulation 25 applies and the non-resident parent’s liability calculated as provided in Part I of Schedule 1 to the Order and Regulations made under that Schedule would, but for the variation, be—

- (a) a flat rate under paragraph 4(1)(b) of that Schedule;
- (b) a flat rate but is less than that amount or nil, owing to the application of paragraph 8 of that Schedule; or
- (c) a flat rate under paragraph 4(1)(b) of that Schedule but for the application of paragraph 5(a) of that Schedule.

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

- (a) any benefit, pension or allowance taken into account in the additional income referred to in sub-paragraph (b) shall not include—
 - (i) in the case of industrial injuries benefit under section 94 of the Contributions and Benefits Act, any increase in that benefit under section 104 (constant attendance) or 105 (exceptionally severe disablement) of that Act;
 - (ii) in the case of a war disablement pension within the meaning in section 146(2) of the Contributions and Benefits Act, any award under the following articles of the Service Pensions Order: article 14 (constant attendance allowance), 15 (exceptionally severe disablement allowance), 16 (service disablement occupational allowance) or 26A (mobility supplement)(33) or any analogous allowance payable in conjunction with any other war disablement pension, and
 - (iii) any award under article 18 of the Service Pensions Order (unemployability allowances) which is an additional allowance in respect of a child of the non-resident parent where that child is not living with the non-resident parent;
- (b) “additional income” for the purposes of sub-paragraphs (a) and (b) means such income after the application of a variation falling within regulations 10 to 14 (special expenses); and

(33) Article 26A was inserted by Article 4 of S.I. 1983/1116 and amended by S.I. 1983/1821, 1986/592, 1990/1308, 1991/766, 1995/766 and 1987/286

- (c) “weekly amount” for the purposes of sub-paragraphs (a) and (b) means the aggregate of the amounts referred to in the relevant sub-paragraph—
- (i) adjusted as provided in regulation 27(3) as if the reference in that regulation to child support maintenance were to the weekly amount, and
 - (ii) after any deduction provided for in regulation 27(4) as if the reference in that regulation to child support maintenance were to the weekly amount.

Effect on maintenance calculation—general

27.—(1) Subject to paragraphs (4) and (5), where more than one variation is agreed to in respect of the same period regulations 23 to 26 shall apply and the results shall be aggregated as appropriate.

(2) Paragraph 7(2) to (7) of Schedule 1 to the Order (shared care) shall apply where the rate of child support maintenance is affected by a variation which is agreed to and paragraph 7(2) of that Schedule shall be read as if after “as calculated in accordance with the preceding paragraphs” there were inserted “, Schedule 4B and Regulations made under that Schedule”.

(3) Subject to paragraphs (4) and (5), where the non-resident parent shares the care of a qualifying child within the meaning in Part I of Schedule 1 to the Order, or where the care of such a child is shared in part by an authority, the amount of child support maintenance the non-resident parent is liable to pay the person with care, calculated to take account of any variation, shall be reduced in accordance with the provisions of paragraph 7 of that Part or regulation 9 of the Maintenance Calculations and Special Cases Regulations (care provided in part by an authority), as the case may be.

(4) Subject to paragraph (5), where the variation agreed to is one falling within regulation 16 (property or capital transfers) the equivalent weekly value of the transfer calculated as provided in regulation 17 shall be deducted from the amount of child support maintenance the non-resident parent would otherwise be liable to pay the person with care in respect of whom the transfer was made after aggregation of the effects of any other variations as provided in paragraph (1) or deduction for shared care as provided in paragraph (3).

(5) If the application of regulation 24, or paragraph (3) or (4), would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to the person with care (or all of them) to less than a figure equivalent to the flat rate of child support maintenance payable under paragraph 4(1)(b) of Schedule 1 to the Order, he shall instead be liable to pay child support maintenance at a rate equivalent to that rate apportioned (if appropriate) as provided in paragraph 6 of Schedule 1 to the Order.

(6) The effect of a variation shall not be applied for any period during which a circumstance referred to in regulation 7 applies.

(7) For the purposes of this regulation “an authority” has the same meaning as in Article 2(2) of the Children (Northern Ireland) Order 1995(34);

(8) For the purposes of regulations 23 and 25 “net weekly income” means as calculated or estimated under the Maintenance Calculations and Special Cases Regulations.

Transitional provisions—conversion decisions

28. Where the variation is being applied for in connection with a subsequent decision within the meaning given in the Transitional Regulations, and the decision to be revised or superseded under Article 18 or 19 of the Order, as the case may be, takes into account a relevant property transfer as defined and provided for in those Regulations—

(34) S.I. 1995/755 (N.I. 2)

- (a) for the purposes of regulations 23 and 25 “capped amount” shall mean the income for the purposes of paragraph 10(3) of Schedule 1 to the Order less any deduction in respect of the relevant property transfer;
- (b) for the purposes of regulation 26(3)(b) the additional income for the purposes of paragraph (1) of that regulation shall be after deduction in respect of the relevant property transfer;
- (c) regulation 27(4) shall be read as if the aggregation referred to included any deduction in respect of the relevant property transfer; and
- (d) regulation 27(5) shall be read as if after the reference to paragraph (3) or (4) there were a reference to any deduction in respect of the relevant property transfer.

Situations in which a variation previously agreed to may be taken into account in calculating maintenance liability

29.—(1) This regulation applies where a variation has been agreed to in relation to a maintenance calculation.

(2) In the circumstances set out in paragraph (3), the Department may take account of the effect of such a variation upon the rate of liability for child support maintenance notwithstanding the fact that an application has not been made.

(3) The circumstances are—

- (a) that the decision as to the maintenance calculation is superseded under Article 19 of the Order⁽³⁵⁾ on a change of circumstances so that the non-resident parent becomes liable to pay child support maintenance at the nil rate, or another rate which means that the variation cannot be taken into account; and
- (b) that the superseding decision referred to in sub-paragraph (a) is itself superseded under Article 19 of the Order on a change of circumstances so that the non-resident parent becomes liable to pay a rate of child support maintenance which can be adjusted to take account of the variation.

Circumstances for the purposes of Article 28F(3) of the Order

30. The circumstances prescribed for the purposes of Article 28F(3) of the Order⁽³⁶⁾ (Department shall not agree to a variation) are—

- (a) the prescribed circumstances in regulation 6(2) or 7; and
- (b) where the Department considers it would not be just and equitable to agree to the variation having regard to any of the factors referred to in regulation 21.

Part VIII

Miscellaneous

Regular payments condition

31.—(1) For the purposes of Article 28C(2)(b) of the Order⁽³⁷⁾ (payments of child support maintenance less than those specified in the interim maintenance decision) the payments shall be

⁽³⁵⁾ Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I.10)) and amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

⁽³⁶⁾ Article 28F was substituted by section 5(5) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

⁽³⁷⁾ Article 28C was substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

those fixed by the interim maintenance decision or the maintenance calculation in force, as the case may be, adjusted to take account of the variation applied for by the non-resident parent as if that variation had been agreed.

(2) The Department may refuse to consider the application for a variation where a regular payments condition has been imposed and the non-resident parent has failed to comply with it in the circumstances to which paragraph (3) applies.

(3) This paragraph applies where the non-resident parent has failed to comply with the regular payments condition and fails to make such payments which are due and unpaid within one month of being required to do so by the Department or such other period as the Department may in the particular case decide.

Meaning of “benefit” for the purposes of Article 28E of the Order

32. For the purposes of Article 28E of the Order(38), “benefit” means income support, income-based jobseeker’s allowance and housing benefit.

Part IX

Revocation

Revocation and savings

33.—(1) Subject to paragraph (2), the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996(39) (“the Departure Direction Regulations”) shall be revoked with respect to a particular case with effect from the date that these Regulations come into operation with respect to that type of case (“the commencement date”).

(2) Where before the commencement date in respect of a particular case—

- (a) an application was made and not determined for—
 - (i) a maintenance assessment;
 - (ii) a departure direction, or
 - (iii) a revision or supersession of a decision;
- (b) the Department had begun but not completed a revision or supersession of a decision on its own initiative;
- (c) any time limit provided for in Regulations for making an application for a revision or a departure direction had not expired; or
- (d) any appeal was made but not decided or any time limit for making an appeal had not expired,

the provisions of the Departure Direction Regulations shall continue to apply for the purposes of—

- (aa) the decision on the application referred to in sub-paragraph (a);
- (bb) the revision or supersession referred to in sub-paragraph (b);
- (cc) the ability to apply for the revision or the departure direction referred to in sub-paragraph (c) and the decision whether to revise or to give a departure direction following any such application;
- (dd) any appeal outstanding or made during the time limit referred to in sub-paragraph (d); or

(38) Article 28E was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and amended by section 5(4) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(39) S.R. 1996 No. 541

(ee) any revision, supersession or appeal or application for a departure direction in relation to a decision, ability to apply or appeal referred to in sub-paragraphs (aa) to (dd).

(3) Where, after the commencement date, a decision with respect to a departure direction is revised from a date which is prior to the commencement date, the provisions of the Departure Direction Regulations shall continue to apply for the purposes of that revision.

(4) Where, under regulation 28(1) of the Transitional Regulations, an application for a maintenance calculation is treated as an application for a maintenance assessment, the provisions of the Departure Direction Regulations shall continue to apply for the purposes of an application for a departure direction in relation to any such assessment made.

(5) For the purposes of this regulation—

- (a) “departure direction” and “maintenance assessment” have the same meaning as in Article 2(2) of the Order(40) before its amendment by the Act;
- (b) “revision or supersession” means a revision or supersession of a decision under Article 18 or 19 of the Order before its amendment by the Act and “any time limit for making an application for a revision” means any time limit provided for in Regulations made under Article 18 of the Order;
- (c) “the Act” means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(41).

Sealed with the Official Seal of the Department for Social Development on 23rd January 2001.

L.S.

John O'Neill
Senior Officer of the
Department for Social Development

(40) The definition of “departure direction” was inserted by paragraph 2 of Schedule 3 to the Child Support (Northern Ireland) Order 1995

(41) 2000 c. 4 (N.I.)

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SCHEDULE

Regulation 17(3)

Equivalent weekly value of a transfer of property

1.—(1) Subject to paragraph 3, the equivalent weekly value of a transfer of property shall be calculated by multiplying the value of a transfer of property determined in accordance with regulation 17 by the relevant factor specified in the Table set out in paragraph 2 (“the Table”).

(2) For the purposes of sub-paragraph (1), the relevant factor is the number in the Table at the intersection of the column for the statutory rate and of the row for the number of years of liability.

(3) In sub-paragraph (2)—

- (a) “the statutory rate” means interest at the same rate as that prescribed for judgments by Order 42 rule 9 of the Rules of the Supreme Court (Northern Ireland) 1980⁽⁴²⁾ which applies at the date of the court order or written agreement relating to the transfer of the property;
- (b) “the number of years of liability” means the number of years, beginning on and including the date of the court order or written agreement relating to the transfer of property and ending on—
- (i) the date specified in that order or agreement as the date on which maintenance for the youngest child in respect of whom that order or agreement was made shall cease, or
- (ii) if no such date is specified, the date on which the youngest child specified in the order or agreement reaches the age of 18,

and where that period includes a fraction of a year, that fraction shall be treated as a full year if it is either one half or exceeds one half of a year, and shall otherwise be disregarded.

2. The Table referred to in paragraph 1(1) is—

THE TABLE

| <i>Number of years of liability</i> | <i>Statutory Rate</i> | | | | | | | |
|---|-----------------------|--------|--------|--------|--------|--------|--------|--------|
| | 7.0% | 8.0% | 10.0% | 11.0% | 12.0% | 12.5% | 14.0% | 15.0% |
| 1. | .02058 | .02077 | .02115 | .02135 | .02154 | .02163 | .02192 | .02212 |
| 2. | .01064 | .01078 | .01108 | .01123 | .01138 | .01145 | .01168 | .01183 |
| 3. | .00733 | .00746 | .00773 | .00787 | .00801 | .00808 | .00828 | .00842 |
| 4. | .00568 | .00581 | .00607 | .00620 | .00633 | .00640 | .00660 | .00674 |
| 5. | .00469 | .00482 | .00507 | .00520 | .00533 | .00540 | .00560 | .00574 |
| 6. | .00403 | .00416 | .00442 | .00455 | .00468 | .00474 | .00495 | .00508 |
| 7. | .00357 | .00369 | .00395 | .00408 | .00421 | .00428 | .00448 | .00462 |
| 8. | .00322 | .00335 | .00360 | .00374 | .00387 | .00394 | .00415 | .00429 |
| 9. | .00295 | .00308 | .00334 | .00347 | .00361 | .00368 | .00389 | .00403 |
| 10. | .00274 | .00287 | .00313 | .00327 | .00340 | .00347 | .00369 | .00383 |

(42) S.R. 1980 No. 346

| <i>Number of years of liability</i> | <i>Statutory Rate</i> | | | | | | | |
|---|-----------------------|--------|--------|--------|--------|--------|--------|--------|
| | 7.0% | 8.0% | 10.0% | 11.0% | 12.0% | 12.5% | 14.0% | 15.0% |
| 11. | .00256 | .00269 | .00296 | .00310 | .00324 | .00331 | .00353 | .00367 |
| 12. | .00242 | .00255 | .00282 | .00296 | .00310 | .00318 | .00340 | .00355 |
| 13. | .00230 | .00243 | .00271 | .00285 | .00299 | .00307 | .00329 | .00344 |
| 14. | .00220 | .00233 | .00261 | .00275 | .00290 | .00298 | .00320 | .00336 |
| 15. | .00211 | .00225 | .00253 | .00267 | .00282 | .00290 | .00313 | .00329 |
| 16. | .00204 | .00217 | .00246 | .00261 | .00276 | .00283 | .00307 | .00323 |
| 17. | .00197 | .00211 | .00240 | .00255 | .00270 | .00278 | .00302 | .00318 |
| 18. | .00191 | .00205 | .00234 | .00250 | .00265 | .00273 | .00297 | .00314 |

3. The Department may determine a lower equivalent weekly value than that determined in accordance with paragraphs 1 and 2 where the amount of child support maintenance that would be payable in consequence of agreeing to a variation of that value is lower than the amount of the periodical payments of maintenance which were payable under the court order or written agreement referred to in regulation 16.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations provide for variations to the rate of child maintenance payable under the Child Support (Northern Ireland) Order 1991 (“the Order”) consequent upon the introduction of changes to the child support system made by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (“the Act”). Subject to savings for transitional purposes these Regulations revoke the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996 (“the Departure Direction Regulations”).

These Regulations come into operation at different times for different cases according to the dates on which provisions of the Act which are relevant to these Regulations are commenced for different types of cases.

Part I (regulations 1 to 3) contains general provisions relating to citation, commencement and interpretation, the giving or sending of documents and the determination of amounts as weekly amounts.

Part II (regulations 4 to 9) sets out the procedure for making and determining applications for a variation. This includes the ability to reject an application on a preliminary consideration. Among the reasons for this may be because the application is for an amount which does not exceed a threshold applicable to the ground, or because a circumstance prescribed for the purposes of Article 28B of the Order, in regulation 7, applies. The Department for Social Development is enabled to request further information (regulation 8) and may invite representations (regulation 9).

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Part III (regulations 10 to 15) gives details of what constitutes expenses for the purposes of the ground for a variation in paragraph 2 of Schedule 4B to the Order. Part IV (regulations 16 and 17 and the Schedule) is concerned with a variation under paragraph 3 of Schedule 4B to the Order, in relation to a property or capital transfer, and Part V (regulations 18 to 20) concerns the additional cases for which provision is made in paragraph 4 of that Schedule. The factors to be taken into account in determining whether it would be just and equitable to agree a variation, referred to in Article 28F of the Order, are set out in Part VI (regulation 21).

Part VII (regulations 22 to 30) provides for the effective date of maintenance calculations which take account of a variation, for the way in which each type of variation is to affect the non-resident parent's liability, for situations where a variation may be applied without an application and for the circumstances, for the purposes of Article 28F (3) of the Order, in which a variation is not to be agreed to.

Part VIII (regulations 31 and 32) prescribes the amount payable under the regular payments condition for the purposes of Article 28C(2)(b) of the Order and benefit for the purposes of Article 28E of the Order.

Part IX (regulation 33) provides for the revocation, with savings for transitional purposes, of the Departure Direction Regulations.

Articles 28A(5), 28B(2)(c), 28C(2)(b) and (5), 28E(1), 28F(2)(b) and (3)(b) and 28G(3) of, and paragraphs 1, 2(a), 4 and 5(1) of Schedule 4A and paragraphs 2(2) to (5), 3(1) and (2), 4, 5(1) and (3) to (5) and 6 of Schedule 4B to, the Order are some of the enabling provisions under which these Regulations are made. They are substituted or amended by sections 5 to 7 of, and Schedule 2 to, the Act and were brought into operation, for the purpose only of making regulations, on 22nd November 2000 by virtue of the Child Support, Pensions and Social Security (2000 Act) (Commencement No. 1) Order (Northern Ireland) 2000 ([S.R. 2000 No. 358 \(C. 16\)](#)).

The impact on business of these Regulations was covered in the Regulatory Impact Assessment for the Act, in accordance with, and in consequence of which, these Regulations are made. A copy of that Assessment may be obtained, free of charge, from Social Security Policy and Legislation Division, Castle Buildings, Stormont, Belfast BT4 3SQ.