

2001 No. 23

SOCIAL SECURITY

FAMILY LAW

CHILD SUPPORT

**The Social Security and Child Support (Decisions and Appeals)
(Amendment) Regulations (Northern Ireland) 2001**

Made 23rd January 2001

Coming into operation in accordance with regulation 1

The Department for Social Development, in exercise of the powers conferred by Articles 18(1), (4) and (6), 19(3) and (5), 28G(2), 47 and 48(4) of the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b), and section 28(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(c) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Social Security and Child Support (Decisions and Appeals) (Amendment) Regulations (Northern Ireland) 2001 and, subject to paragraph (2), shall come into operation in relation to a particular case on the dates on which sections 8, 9 and 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 come into operation in relation to that type of case.

(2) For the purposes of any revision, supersession or appeal in relation to a decision which is made in accordance with regulation 3 of the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(d), these Regulations shall come into operation on the day on which section 28 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 comes fully into operation.

(a) S.I. 1991/2628 (N.I. 23); Articles 18 and 19 were substituted respectively by Articles 40 and 41 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and Article 19 was amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); Article 28G was substituted by section 7 of that Act and Article 48 was amended by paragraph 13 of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13))

(b) See Article 8(b) of S.R. 1999 No. 481

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

(d) S.R. 2001 No. 19

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

2.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999^(a) shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 1(2) (interpretation)—

(a) after the definition of “appeal” there shall be inserted the following definition—

“ “the Arrears, Interest and Adjustment of Maintenance Assessments Regulations” means the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992^(b);”;

(b) after the definition of “legally qualified panel member” there shall be inserted the following definitions—

“ “the Maintenance Calculation Procedure Regulations” means the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001^(c);

“the Maintenance Calculations and Special Cases Regulations” means the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001^(d);”;

(c) in the definition of “party to the proceedings” in paragraph (b) for “Article 22(1) to (3) of the Child Support Order (including that Article as extended by paragraph 3 of Schedule 4C to that Order)” there shall be substituted “Article 22 of the Child Support Order”;

(d) in the definition of “referral” for “departure direction” there shall be substituted “variation”;

(e) after the definition of “relevant credit”^(e) there shall be inserted the following definition—

“ “relevant person”, except where otherwise provided, means—

(a) a person with care;

(b) a non-resident parent; or

(c) a parent who is treated as a non-resident parent under regulation 8 of the Maintenance Calculations and Special Cases Regulations,

in respect of whom a maintenance calculation has been applied for, or has been treated as applied for under Article 9(3) of the Child Support Order^(f), or is or has been in force;”;

(a) S.R. 1999 No. 162; relevant amending regulations are S.R. 1999 Nos. 267 and 272 and S.R. 2000 No. 215

(b) S.R. 1992 No. 342

(c) S.R. 2001 No. 17

(d) S.R. 2001 No. 18

(e) The definition of “relevant credit” was inserted by regulation 6(2)(e) of S.R. 2000 No. 215

(f) Article 9 was substituted by section 3 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(f) after the definition of “the Transfer of Functions Order”(a) there shall be added the following definitions—

“ “the Variations Regulations” means the Child Support (Variations) Regulations (Northern Ireland) 2001(b);

“voluntary payment” has the same meaning as in Article 28J of the Child Support Order(c) and Regulations made under that Article.”.

(3) In regulation 2 (service of notices or documents) after “of the Order” there shall be inserted “, of the Child Support Order”.

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

“Revision of child support decisions

3A.—(1) Subject to paragraph (2), any decision, as defined in paragraph (3), may be revised under Article 18 of the Child Support Order by the Department—

(a) if it receives an application for the revision of the decision either under that Article or by way of an application under Article 28G of that Order, within one month of the date of notification of the decision or within such longer period of time as may be allowed under regulation 4;

(b) if—

(i) it notifies the person who applied for the decision to be revised within the period specified in sub-paragraph (a) that the application is unsuccessful because the Department is not in possession of all of the information or evidence needed to make a decision, and

(ii) that person reapplies for the decision to be revised within one month of the date of the notification mentioned in head (i), or such longer period as the Department is satisfied is reasonable in the circumstances of the case, and provides in that application sufficient information or evidence to enable a decision to be made;

(c) if it is satisfied that the decision was erroneous due to a misrepresentation of, or failure to disclose, a material fact and that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would have been but for that error;

(d) if it commences action leading to the revision of the decision within one month of the date of notification of the decision; or

(e) if the decision arose from an official error.

(a) The definition of “the Transfer of Functions Order” was added by regulation 2(2) of S.R. 1999 No. 272

(b) S.R. 2001 No. 20

(c) Article 28J was inserted by section 19(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(2) Paragraph (1)(a) to (d) shall not apply in respect of a change of circumstances which—

- (a) occurred since the date on which the decision took effect; or
- (b) according to information or evidence which the Department has, is expected to occur.

(3) In paragraphs (1) and (2) “decision” means a decision of the Department under Article 13, 14 or 43 of the Child Support Order(a), a determination of an appeal tribunal on a referral under Article 28D(1)(b) of that Order(b) or any supersession of a decision under Article 19 of that Order.

(4) A decision made under Article 14(2) of the Child Support Order may be revised at any time before it is replaced by a decision under Article 13 of that Order.

(5) Where the Department revises a decision made under Article 14(1) of the Child Support Order in accordance with Article 18(1B) of that Order, that decision may be revised under Article 18 of that Order at any time.

(6) Article 18 of the Child Support Order shall apply in relation to any decision of the Department—

- (a) under Article 38A or 44 of the Child Support Order; or
- (b) that an adjustment shall cease or with respect to the adjustment of amounts payable under maintenance calculations for the purpose of taking account of overpayments of child support maintenance and voluntary payments,

as it applies in relation to any decision of the Department under Article 13, 14, 19 or 43 of that Order, or the determination of an appeal tribunal on a referral under Article 28D(1)(b) of that Order.”.

(5) In regulation 4 (late application for a revision)—

- (a) in paragraph (1) after “regulation 3(1) or (3)” there shall be inserted “or 3A(1)(a)”;
- (b) in paragraph (2) after “made by” there shall be inserted “the relevant person,”;
- (c) in paragraph (4)(c) after “regulation 3” there shall be inserted “or, as the case may be, 3A”;
- (d) in paragraph (5) after “regulation 3(1) and (3)” there shall be inserted “or, as the case may be, regulation 3A(1)(a)”;
- (e) for paragraph (8) there shall be substituted the following paragraph—
“(8) In this regulation “Commissioner” includes—

(a) Articles 14 and 43 were substituted respectively by sections 4 and 18 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(b) Article 28D was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 and amended by section 5(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

- (a) a Commissioner within the meaning of section 39(1) of the Social Security Act 1998(a); and
 - (b) a Child Support Commissioner appointed under section 22 or 23 of the Child Support Act 1991(b).”.
- (6) After regulation 5 (date from which a decision revised under Article 10 takes effect) there shall be inserted the following regulation—

“Date from which a decision revised under Article 18 of the Child Support Order takes effect

5A.—(1) Where the date from which a decision took effect is found to be erroneous on a revision under Article 18 of the Child Support Order, the revision shall take effect from the date on which the decision revised would have taken effect had the error not been made.

(2) Where the Department considers it appropriate to revise a decision under Article 14(1) of the Child Support Order as if it were revising a decision under Article 13 of that Order, the revision shall take effect from the first day of the maintenance period in which the information required to make a maintenance calculation was provided, except where—

- (a) the non-resident parent satisfies the Department—
 - (i) that he used his best endeavours to obtain the information required by the Department, and
 - (ii) the failure to provide the information was not his fault; or
- (b) the decision which is treated as being made under Article 13 of the Child Support Order is at a higher rate than the rate of liability which had been imposed by the decision made under Article 14(1) of that Order.”.

(7) After regulation 6 (supersession of decisions) there shall be inserted the following regulations—

“Supersession of child support decisions

6A.—(1) Subject to paragraphs (7) and (8), the cases and circumstances in which a decision (“a superseding decision”) may be made by the Department for the purposes of Article 19 of the Child Support Order are set out in paragraphs (2) to (6).

(2) A decision may be superseded by a decision made by the Department acting on its own initiative where—

- (a) there has been a relevant change of circumstances since the decision took effect; or
- (b) the decision was made in ignorance of, or was based on a mistake as to, some material fact.

(3) Subject to regulation 6B, a decision may be superseded by a decision made by the Department where—

(a) 1998 c. 14
(b) 1991 c. 48

- (a) an application is made on the basis that—
 - (i) there has been a change of circumstances since the date from which the decision took effect, or
 - (ii) it is expected that a change of circumstances will occur; and
 - (b) the Department is satisfied that the change of circumstances is or would be relevant.
- (4) A decision may be superseded by a decision made by the Department where—
- (a) an application is made on the basis that the decision was made in ignorance of, or based on a mistake as to, a fact; and
 - (b) the Department is satisfied that the fact is or would be material.
- (5) A decision, other than a decision made on appeal, may be superseded by a decision made by the Department—
- (a) acting on its own initiative, where it is satisfied that the decision was erroneous in point of law; or
 - (b) where an application is made on the basis that the decision was erroneous in point of law.
- (6) A decision may be superseded by a decision made by the Department where it receives an application for the supersession of the decision by way of an application made under Article 28G of the Child Support Order.
- (7) The cases and circumstances in which a decision may be superseded shall not include any case or circumstance in which a decision may be revised.
- (8) Paragraphs (2) to (6) shall not apply in respect of a decision to refuse an application for a maintenance calculation.
- (9) For the purposes of Article 19 of the Child Support Order, paragraphs (2) to (6) shall apply in relation to any decision of the Department that an adjustment shall cease or with respect to the adjustment of amounts payable under a maintenance calculation for the purpose of taking account of overpayments of child support maintenance and voluntary payments, whether as originally made or as revised under Article 18 of that Order.

Circumstances in which a child support decision may not be superseded

- 6B.**—(1) Except as provided in paragraph (4), and subject to paragraph (3), a decision of the Department, appeal tribunal or Child Support Commissioner, on an application made under regulation 6A(3), shall not be superseded where the difference between—
- (a) the non-resident parent’s net income figure fixed for the purposes of the maintenance calculation in force in accordance with Part I of Schedule 1 to the Child Support Order; and
 - (b) the non-resident parent’s net income figure which would be fixed in accordance with a superseding decision,

is less than 5 per cent. of the figure referred to in sub-paragraph (a).

(2) In paragraph (1)(b) “superseding decision” means a decision which would supersede the decision subject to the application made under regulation 6A(3) but for the application of this regulation.

(3) Where the application for a supersession is made on more than one ground, this regulation shall only apply to the ground relating to the net income of the non-resident parent.

(4) This regulation shall not apply to a decision under regulation 6A(3) where—

(a) the superseding decision is made in consequence of the determination of an application made under Article 28G of the Child Support Order;

(b) the superseding decision affects a variation ground in a decision made under Article 13 or 19 of the Child Support Order, whether as originally made or as revised under Article 18 of that Order;

(c) the decision being superseded was made under Article 14(2) of the Child Support Order, or was a decision under Article 19 of that Order superseding an interim maintenance decision, whether as originally made or as revised under Article 18 of that Order;

(d) the decision being superseded was a decision that an adjustment shall cease or with respect to the adjustment of amounts payable under maintenance calculations for the purpose of taking account of overpayments of child support maintenance and voluntary payments or was a decision under Article 19 of the Child Support Order superseding that decision, whether as originally made or as revised under Article 18 of that Order; or

(e) the superseding decision takes effect from a date prescribed in regulation 7B(1) to (3), (19) or (20).”.

(8) After regulation 7A(a) (date from which revised or superseded decision takes effect where entitlement is dependent on another benefit) there shall be inserted the following regulations—

“Date from which a decision superseded under Article 19 of the Child Support Order takes effect

7B.—(1) Subject to the following provisions of this regulation, where a decision is superseded by a decision made by the Department in a case to which regulation 6A(2)(a) applies on the basis of information or evidence which was also the basis of a decision made under Article 9, 10 or 11, the decision under Article 19 of the Child Support Order shall take effect from the first day of the maintenance period in which that information or evidence was first brought to the attention of an officer exercising the functions of the Department under the Child Support Order (“the officer”).

(2) Where a decision is superseded by a decision made by the Department in a case to which regulation 6A(3)(a) applies and the

(a) Regulation 7A was inserted by regulation 2(6) of S.R. 1999 No. 267

relevant circumstance is that the non-resident parent or his partner has notified the officer that he or his partner had made a claim for a relevant benefit and, where the relevant benefit is payable, that the officer was notified within one month of notification of the award, the decision shall take effect from the first day of the maintenance period in which—

- (a) the non-resident parent or his partner notified the officer that he or his partner had made a claim for a relevant benefit, where entitlement to that benefit commences on or before the date of notification; or
- (b) entitlement to the relevant benefit commences, where that entitlement commenced after the date of notification.

(3) Where a decision is superseded by a decision made by the Department in a case to which regulation 6A(4) applies and the material fact is that the non-resident parent or his partner has notified the officer that he or his partner had made a claim for a relevant benefit before the Department notified him of an application for a maintenance calculation in accordance with regulation 5 of the Maintenance Calculation Procedure Regulations and, where the relevant benefit is payable, that the officer was notified within one month of notification of the award, the decision shall take effect from the first day of the maintenance period in which—

- (a) the non-resident parent or his partner notified the officer that he or his partner had made a claim for a relevant benefit, where entitlement to that benefit commences on or before the date of notification; or
- (b) entitlement to the relevant benefit commences, where that entitlement commenced after the date of notification.

(4) Subject to paragraphs (17) to (21), where the superseding decision is made in a case to which regulation 6A(3)(a)(i) applies and that decision supersedes a decision which has been made under Article 14(2) of the Child Support Order, the decision shall take effect from the first day of the maintenance period in which the change of circumstances occurred.

(5) Where the superseding decision is made in a case to which regulation 6A(3)(a)(ii) applies, the decision shall take effect from the first day of the maintenance period in which the change of circumstances is expected to occur.

(6) Where the superseding decision is made in a case to which regulation 6A(6) applies and the relevant circumstance is that a ground for a variation is expected to occur, the decision shall take effect from the first day of the maintenance period in which the ground for the variation is expected to occur.

(7) Except in a case to which paragraph (1) applies, where the superseding decision is made in a case to which regulation 7C applies, that decision shall take effect from the first day of the maintenance period which includes the date which is 28 days after the date on which the Department gave notice to the relevant persons under that regulation.

- (8) For the purposes of paragraph (7)—
- (a) where the relevant persons are notified on different dates, the period of 28 days shall be counted from the date of the latest notification;
 - (b) notification includes oral and written notification;
 - (c) where a person is notified in more than one way, the date on which he is notified is the date on which he was first given notification; and
 - (d) the date of written notification is the date on which it was given or sent to the person.

(9) Where—

- (a) a decision made by an appeal tribunal or by a Child Support Commissioner is superseded on the ground that it was erroneous due to a misrepresentation of, or that there was a failure to disclose, a material fact; and
- (b) the Department is satisfied that the decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would have been but for that error,

the superseding decision shall take effect from the date on which the decision of the appeal tribunal or, as the case may be, the Child Support Commissioner took, or was to take, effect.

(10) Any decision made under Article 19 of the Child Support Order in consequence of a determination which is a relevant determination for the purposes of Article 28ZC of that Order^(a) shall take effect from the date of the relevant determination.

(11) Where a decision with respect to a reduced benefit decision is superseded because the decision ceases to be in force in accordance with regulation 16(a) of the Maintenance Calculation Procedure Regulations, the superseding decision shall take effect—

- (a) where the decision is in operation immediately before it ceases to be in force, from the last day of the benefit week during the course of which the parent concerned falls within the provisions of Article 43(1) of the Child Support Order^(b); or
- (b) where the decision is suspended immediately before it ceases to be in force, from the date on which the parent concerned falls within the provisions of Article 43(1) of that Order.

(12) Where a decision with respect to a reduced benefit decision is superseded because the decision ceases to be in force in accordance with regulation 16(b) of the Maintenance Calculation Procedure Regulations, the superseding decision shall take effect—

- (a) where the decision is in operation immediately before it ceases to be in force, from the last day of the benefit week during the course

(a) Article 28ZC was inserted by Article 44 of the Social Security (Northern Ireland) Order 1998

(b) Article 43 was substituted by section 18 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

of which the parent concerned complied with the obligations imposed by Article 43(6)(b) of the Child Support Order; or

- (b) where the decision is suspended immediately before it ceases to be in force, from the date on which the parent concerned complied with the obligations imposed by Article 43(6)(b) of that Order.

(13) Where a decision with respect to a reduced benefit decision is superseded because the decision ceases to be in force in accordance with regulation 16(c) of the Maintenance Calculation Procedure Regulations, the superseding decision shall take effect from the last day of the benefit week in which entitlement to benefit ceased.

(14) Where a decision with respect to a reduced benefit decision is superseded because the decision ceases to be in force in accordance with regulation 17(1) of the Maintenance Calculation Procedure Regulations, the superseding decision shall take effect from—

- (a) the last day of the benefit week preceding the benefit week which includes, in accordance with the provisions of regulation 11(3) of those Regulations, the first day on which the further decision comes into operation; or
- (b) the first day on which the further decision would come into operation but for the provisions of regulation 14 or 15 of those Regulations.

(15) Where a decision with respect to a reduced benefit decision is superseded because the decision ceases to be in force in accordance with regulation 18(2) of the Maintenance Calculation Procedure Regulations, the superseding decision shall take effect from the last day of the benefit week which includes the day on which the child ceases to be a child within the meaning of Article 3 of the Child Support Order as supplemented by Schedule 1 to those Regulations, or the parent ceases to be the person with care.

(16) Where a superseding decision is made in a case to which regulation 6A(2)(a) or (3) applies and the relevant circumstance is the death of a qualifying child or a qualifying child ceasing to be a qualifying child, the decision shall take effect from the first day of the maintenance period in which the change occurred.

(17) Where a superseding decision is made in a case to which regulation 6A(2)(a) or (3) applies and the relevant circumstance is that the non-resident parent, person with care or qualifying child has moved out of the jurisdiction, the decision shall take effect from the first day of the maintenance period in which the non-resident parent, person with care or qualifying child leaves the jurisdiction and jurisdiction is within the meaning of Article 41 of the Child Support Order.

(18) Where a superseding decision is made in a case to which regulation 6A(2)(a) or (3) applies and the relevant circumstance is that the maintenance calculation has been made on an application which is treated as made under Article 9 of the Child Support Order and—

- (a) the person on whose application the calculation was made (“the applicant”) asks the Department to cease acting; and
- (b) the Department is satisfied that the applicant has ceased to fall within Article 9(1) of that Order,

the decision shall take effect from the first day of the maintenance period after the applicant asks the Department to cease acting.

(19) Where a superseding decision is made in a case to which regulation 6A(2)(a) or (3) applies and the relevant circumstance is that both the non-resident parent and the person with care with respect to whom a maintenance calculation was made request the Department to decide that the maintenance calculation shall cease and it is satisfied that they are living together, the decision shall take effect from the first day of the maintenance period in which the later of the two requests was made.

(20) Where a superseding decision is made in a case to which regulation 6A(2)(a) or (3) applies and the relevant circumstance is that—

- (a) an application for a maintenance calculation is made under Article 7 of the Child Support Order, or treated as made under Article 9(3) of that Order, in respect of a non-resident parent; and
- (b) before the decision as to a maintenance calculation is made, at least one other maintenance calculation is in force with respect to the same non-resident parent but to a different person with care and a different child,

the effective date of the maintenance calculation made in respect of the application shall be a date which is not later than 7 days after the date of notification to the non-resident parent and which is the day on which a maintenance period in respect of the maintenance calculation in force begins.

(21) Where a superseding decision is made in a case to which regulation 6A(3) applies and in relation to that decision a maintenance calculation is made to which paragraph 15 of Schedule 1 to the Child Support Order applies, the effective date of the calculation shall be the beginning of the maintenance period in which the change of circumstances to which the calculation relates, occurred or is expected to occur and where that change occurred before the date of the application for the supersession and was notified after that date, the date of that application.

(22) In this regulation—

“benefit week”, in relation to income support, has the same meaning as in regulation 2(1) of the Income Support Regulations and, in relation to jobseeker’s allowance, has the same meaning as in regulation 1(2) of the Jobseeker’s Allowance Regulations;

“partner” has the same meaning as in regulation 2(1) of the Income Support Regulations or, as the case may be, regulation 1(2) of the Jobseeker’s Allowance Regulations;

“relevant benefit” means a benefit which is prescribed in regulation 4 of the Maintenance Calculations and Special Cases Regulations

for the purposes of paragraph 4(1)(b) of Schedule 1 to the Child Support Order, and child benefit as referred to in paragraph 10C(2)(a) of that Schedule.

Procedure where the Department proposes to supersede a decision under Article 19 of the Child Support Order on its own initiative

7C. Where the Department on its own initiative proposes to make a decision superseding a decision, it shall notify the relevant persons who could be materially affected by the decision of that proposal.”.

(9) After regulation 15 (jobseeker’s allowance determinations on incomplete evidence) there shall be inserted the following regulations—

“Provision of information

15A.—(1) Where the Department has received an application under Article 18 or 19 of the Child Support Order in connection with a previously determined variation which has an effect on the maintenance calculation in force, it may request further information or evidence from the applicant to enable a decision on that application to be made and any such information or evidence 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 within the time limit specified in that paragraph, the Department may, where it is able to do so, make the decision in the absence of that information or evidence.

Procedure in relation to an application made under Article 18 or 19 of the Child Support Order in connection with a previously determined variation

15B.—(1) Subject to paragraph (3), where the Department has received an application under Article 18 or 19 of the Child Support Order in connection with a previously determined variation which has an effect on the maintenance calculation in force, it—

- (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 which 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 notification or such longer period as it 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) is—

- (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 of the Variations Regulations where the applicant requests that 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;
- (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) if—

- (a) it is satisfied, on the information or evidence available to it, that it will not agree to a variation of the maintenance calculation in force, but if, on further consideration, it is minded to do so it shall, before doing so, comply with the provisions of this regulation; and
- (b) were the application to succeed, the decision as revised or superseded would be less advantageous to the applicant than the decision before it was so revised or superseded.

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

- (a) may, if it considers it reasonable to do so, send a copy of those representations (excluding information or evidence 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 it acts under sub-paragraph (a), shall not make a decision on the application until it has received such comments or the period referred to in sub-paragraph (a) 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 make a decision under Article 18 or 19 of the Child Support Order on the application, in their absence.

(6) In considering an application for a revision or supersession, the Department shall take into account any representations received from the relevant persons at the date on which it makes a decision under Article

18 or 19 of the Child Support Order, including any representations received in connection with the application in accordance with paragraphs (1)(b), (4)(a) and (7).

(7) Where any information or evidence requested by the Department under regulation 15A is received after notification has been given under paragraph (1), it 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 it so directs in any particular case, on that information or evidence.

(8) Where the Department is considering making a decision under Article 18 or 19 of the Child Support Order in accordance with this regulation, it shall apply the factors to be taken into account for the purposes of Article 28F of that Order^(a) set out in regulation 21 of the Variations Regulations as factors to be taken into account and not to be taken into account when considering making a decision under this regulation.

(9) In this regulation “relevant person” means—

- (a) a non-resident parent, or a person 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.

Notification of a decision made under Article 18 or 19 of the Child Support Order

15C.—(1) Subject to paragraphs (2) and (5) to (11), a notification of a decision made following the revision or supersession of a decision made under Article 13, 14 or 19 of the Child Support Order, whether as originally made or as revised under Article 18 of that Order, shall set out, in relation to the decision in question—

- (a) the effective date of the maintenance calculation;
- (b) where relevant, the non-resident parent’s net weekly income;
- (c) the number of qualifying children;
- (d) the number of relevant other children;
- (e) the weekly rate;
- (f) the amounts calculated in accordance with Part I of Schedule 1 to the Child Support Order and, where there has been agreement to a variation or a variation has otherwise been taken into account, the Variations Regulations;

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

- (g) where the weekly rate is adjusted by apportionment or shared care or both, the amount calculated in accordance with paragraph 6, 7 or 8, as the case may be, of Schedule 1 to the Child Support Order; and
- (h) where the amount of child support maintenance which the non-resident parent is liable to pay is decreased in accordance with regulation 9 or 11 of the Maintenance Calculations and Special Cases Regulations, the adjustment calculated in accordance with that regulation.

(2) A notification of a revision or supersession of a maintenance calculation made under Article 14(1) of the Child Support Order shall set out the effective date of the maintenance calculation, the default rate, the number of qualifying children on which the rate is based and whether any apportionment has been applied under regulation 7 of the Maintenance Calculation Procedure Regulations and shall state the nature of the information required to enable a decision under Article 13 of that Order to be made by way of Article 18 of that Order.

(3) Except where a person gives written permission to the Department that the information in relation to him, mentioned in sub-paragraphs (a) and (b), may be conveyed to other persons, any document given or sent under the provisions of paragraph (1) or (2) shall not contain—

- (a) the address of any person other than the recipient of the document in question (other than the address of the office of the officer concerned who is exercising functions of the Department under the Child Support Order) or any other information the use of which could reasonably be expected to lead to any such person being located;
- (b) any other information the use of which could reasonably be expected to lead to any person, other than a qualifying child or a relevant person, being identified.

(4) Where a decision as to the revision or supersession of a decision made under Article 13, 14 or 19 of the Child Support Order, whether as originally made or as revised under Article 18 of that Order, is made under Article 18 or 19 of that Order, a notification under paragraph (1) or (2) shall include information as to the provisions of Articles 18, 19 and 22 of that Order.

(5) Where the Department makes a decision that a maintenance calculation shall cease to have effect—

- (a) it shall immediately notify the non-resident parent and person with care, so far as that is reasonably practicable; and
- (b) any notice under sub-paragraph (a) shall specify the date with effect from which that decision took effect.

(6) Where the Department, under the provisions of Article 18 or 19 of the Child Support Order, has made a decision that an adjustment shall cease, or adjusted the amount payable under a maintenance calculation,

it shall immediately notify the relevant persons, so far as that is reasonably practicable, that the adjustment has ceased or of the amount and period of the adjustment, and the amount payable during the period of the adjustment.

(7) Where the Department has made a decision under Article 18 of the Child Support Order, revising a decision under Article 38A or 44 of that Order, it shall immediately notify the relevant persons, so far as that is reasonably practicable, of the amount of child support maintenance payable, the amount of arrears, the amount of the penalty payment or fees to be paid, as the case may be, the method of payment and the day by which payment is to be made.

(8) Where the non-resident parent appeals against a decision made by the Department under Article 38A or 44 of the Child Support Order and the Department makes a decision under Article 18 of that Order, before the appeal is decided it shall notify the relevant persons, so far as that is reasonably practicable, of either the new amount of the penalty payment or the fee to be paid or that the amount is no longer payable, the method of payment and the day by which payment is to be made.

(9) Paragraphs (1) to (3) shall not apply where the Department has decided not to supersede a decision under Article 19 of the Child Support Order, and it shall, so far as that is reasonably practicable, notify the relevant persons of that decision.

(10) A notification under any of paragraphs (6) to (9) shall include information as to the provisions of Articles 18, 19 and 22 of the Child Support Order.

(11) Where paragraph (9) applies, and the Department decides not to supersede under regulation 6B, it shall notify the relevant persons, in relation to the decision in question of—

- (a) the fact that regulation 6B applies to the decision;
- (b) the non-resident parent's net income figure fixed for the purposes of the maintenance calculation in force in accordance with Part I of Schedule 1 to the Child Support Order;
- (c) the non-resident parent's net income figure provided by that parent to the Department with the application for supersession under regulation 6A(3);
- (d) its decision not to supersede; and
- (e) the right to appeal against the decision under Article 22 of the Child Support Order.

(12) Where an appeal lapses in accordance with Article 18(6) or 28F(5) of the Child Support Order, the Department shall, so far as that is reasonably practicable, notify the relevant persons that the appeal has lapsed.

Procedure in relation to the adjustment of the amount payable under a maintenance calculation

15D.—(1) Where the Department has adjusted the amount payable under a maintenance calculation under the provisions of regulation 10(1) and (3A) of the Arrears, Interest and Adjustment of Maintenance Assessments Regulations and that maintenance calculation is subsequently replaced by a fresh maintenance calculation made by virtue of a revision under Article 18 of the Child Support Order or of a decision under Article 19 of that Order superseding an earlier decision, that adjustment shall, subject to paragraph (2), continue to apply to the amount payable under that fresh maintenance calculation unless the Department is satisfied that such adjustment would not be appropriate in all the circumstances of the case.

(2) Where the Department is satisfied that the adjustment referred to in paragraph (1) would not be appropriate, it may make a decision under Article 19 of the Child Support Order, superseding an earlier decision making an adjustment, and—

(a) the adjustment shall cease; or

(b) it may adjust the amount payable under that fresh maintenance calculation,

as it sees fit, having regard to the matters specified in regulation 10(1)(b)(i) to (iii) of the Arrears, Interest and Adjustment of Maintenance Assessments Regulations.”

(10) In regulation 30 (appeals against decisions which have been revised)—

(a) in the heading after “which have been” there shall be inserted “replaced or”;

(b) in paragraph (1)—

(i) for “is revised under Article 18 of the Child Support Order” there shall be substituted “is treated as replaced by a decision under Article 13 of the Child Support Order by Article 28F(5) of that Order, or is revised under Article 18 of that Order”,

(ii) after “and the decision as” there shall be inserted “replaced or”, and

(iii) after “before it was” there shall be inserted “replaced or”;

(c) in paragraph (3)—

(i) for “revised under Article 18 of the Child Support Order” there shall be substituted “replaced under Article 28F(5) of the Child Support Order or revised under Article 18 of that Order”,

(ii) after “before it was” there shall be inserted “replaced or”, and

(iii) after “against the decision as” there shall be inserted “replaced or”;

(d) in paragraph (4) after “notification of the decision as” there shall be inserted “replaced or”; and

(e) in paragraph (5) after “decision before it was” there shall be inserted “replaced or”.

(11) After regulation 30 there shall be inserted the following regulation—

“Appeals to appeal tribunals in child support cases

30A. Article 22 of the Child Support Order shall apply to any decision of the Department that an adjustment shall cease or with respect to the adjustment of amounts payable under a maintenance calculation for the purpose of taking account of overpayments of child support maintenance and voluntary payments, or a decision under Article 19 of that Order, whether as originally made or as revised under Article 18 of that Order.”.

(12) For regulation 45 (consideration of more than one appeal under Article 22 of the Child Support Order) there shall be substituted the following regulation—

“Procedure on a referral under Article 28D(1)(b) of the Child Support Order

45.—(1) On a referral under Article 28D(1)(b) of the Child Support Order **(a)** an appeal tribunal may—

- (a) consider together two or more applications for a variation with respect to the same application for a maintenance calculation; or
- (b) consider together two or more applications for a variation with respect to the same maintenance calculation.

(2) In paragraph (1) “maintenance calculation” means a decision under Article 13 or 19 of the Child Support Order, as calculated in accordance with Part I of Schedule 1 to that Order, whether as originally made or as revised under Article 18 of that Order.”.

Savings

3.—(1) Where on the commencement date—

- (a) an appeal has not been decided;
- (b) the time limit for bringing an appeal has not expired;
- (c) the time limit for making an application for the revision of a decision has not expired; or
- (d) an application for a supersession of a decision has not been decided,

regulations 10(2) and (3) and 11 to 17 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 shall continue to apply for the purposes of—

- (i) the decision of the appeal tribunal referred to in sub-paragraph (a),

(a) Article 28D(1) was substituted by section 5(3)(a) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

- (ii) the ability to bring the appeal referred to in sub-paragraph (b) and the decision of the appeal tribunal following the bringing of that appeal,
- (iii) the ability to apply for the revision referred to in sub-paragraph (c) and the decision whether to revise following any such application, or
- (iv) the decision whether to supersede following the application referred to in sub-paragraph (d),

as if these Regulations had not been made.

(2) Where—

(a) before the commencement date—

- (i) an application was made and not determined for a departure direction or a revision or supersession of a decision in respect of a departure direction,
- (ii) the Department had initiated but not completed a revision or supersession of a decision in respect of a departure direction, or
- (iii) an appeal was made in respect of a departure direction decision which, on the commencement date, had not been decided; or

(b) on the commencement date any time limit provided for in Regulations for making an application for a departure direction or revision, or for making an appeal in respect of a departure direction decision, had not expired,

regulation 45 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 shall continue to apply for the purposes of an appeal—

- (i) made in consequence of the decision on the application, revision or supersession referred to in sub-paragraph (a)(i),
- (ii) made in consequence of the revision or supersession referred to in sub-paragraph (a)(ii),
- (iii) referred to in sub-paragraph (a)(iii), or
- (iv) made within the time limit referred to in sub-paragraph (b) or made in consequence of a decision made on an application for a departure direction or revision made within the time limit referred to in that paragraph,

as if these Regulations had not been made.

(3) In this regulation—

“commencement date” means, with respect to a particular case, the date on which these Regulations come into operation with respect to that type of case;

“maintenance assessment” has the meaning given in the Child Support Order before its amendment by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.

Revocations

4. The following provisions are hereby revoked—

- (a) regulation 10(2) and (3) and Part IV of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992(a);
- (b) regulation 3(4) of the Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995(b); and
- (c) Article 10(4)(c) and (d), (5) and (6) of the Social Security (1998 Order) (Commencement No. 6 and Consequential and Transitional Provisions) Order (Northern Ireland) 1999(c).

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

(a) S.R. 1992 No. 342; relevant amending rules are S.R. 1995 No. 162 and S.R. 1999 No. 246 (C. 20)
(b) S.R. 1995 No. 162
(c) S.R. 1999 No. 246 (C. 20)

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the principal Regulations”) to provide for the decision-making process under the Child Support (Northern Ireland) Order 1991 (“the Child Support 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”).

Regulation 2 inserts regulations into the principal Regulations making provision for—

the revision of child support decisions and the date from which such decisions take effect (paragraphs (4) and (6));

the supersession of child support decisions, the date from which such decisions take effect and related procedural rules (paragraphs (7) and (8));

the Department to request further information or evidence and invite representations where it has to make a decision which is connected to a previously determined variation and the notification following decisions made by it (paragraph (9));

the extension of appeal rights to decisions adjusting amounts payable under maintenance calculations (paragraph (11));

the procedure where the Department has referred an application for a variation to an appeal tribunal under section 28D(1)(b) of the Child Support Order (paragraph (12)),

and makes consequential amendments.

Regulation 3 provides for regulations 10(2) and (3) and 11 to 17 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 and regulation 45 of the principal Regulations to continue to apply in certain circumstances.

Regulation 4 provides for the revocation of regulation 10(2) and (3) and Part IV of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 and makes consequential revocations.

Article 28G of the Child Support Order, one of the enabling provisions under which these Regulations are made, was substituted by section 7 of the Act. That section was brought into operation for the purpose 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)).

These Regulations do not impose a charge on business.

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