

2009 No. 286

FAMILY LAW

CHILD SUPPORT

**The Child Support (Miscellaneous Amendments) Regulations
(Northern Ireland) 2009**

Made - - - - 28th July 2009

Coming into operation - 3rd August 2009

Approved by resolution of the Assembly on 16th November 2009

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 32A(4)(a), 32C, 32D(1)(b), 32E(2)(a) and (8)(a), 32F(1)(b), 32H(6), 32I(1) to (4), 32J, 32K(1)(b), 47(1) and (2)(h) and (i), and 48(2) and (4) of, and paragraph 10 of Schedule 1 to, the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b).

Citation and commencement

1. These Regulations may be cited as the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 and shall come into operation on 3rd August 2009.

Amendment of the Child Support (Collection and Enforcement) Regulations

2. After Part III of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992(c) insert—

“PART IIIA

Deduction Orders

Interpretation of Parts IIIA to IIID

25A.—(1) In Parts IIIA to IIID—

(a) S.I. 1991/2628 (N.I. 23). Articles 32A, 32C and 32D were inserted by section 14 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10)(N.I.) (“the 2008 Act”). Articles 32E, 32F, 32I, 32J and 32K were inserted by section 15 of the 2008 Act. Article 48(2) is amended by paragraph 13 of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and Schedule 5 to the 2008 Act. For certain cases only, Article 48(2) has been substituted by section 24(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)(N.I.) and amended by Schedule 5 to the 2008 Act

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

(c) S.R. 1992 No. 390

“assessable income” means the amount calculated in accordance with paragraph 5 of Schedule 1 as it applies to an old scheme case and regulations made for the purposes of that paragraph;

“attachment of debts order” means an order made in accordance with the provisions of Article 69 of the Judgments Enforcement (Northern Ireland) Order 1981(a);

“deduction period” means the period of a week, a month or other period at which deductions are to be made from the amount (if any) standing to the credit of the account specified in a regular deduction order;

“lump sum deduction order” means an order under Article 32E(1) or, as the case may be, 32F(1);

“net weekly income” has the meaning given in the Schedule to the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(b);

“regular deduction order” means an order under Article 32A(1);

“working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971(c) in the part of the United Kingdom where a copy of a regular deduction order or a lump sum deduction order is served or a notification sent by the Department is received.

(2) Any person against whom an order under Article 32A(1) may be made by the Department is referred to in this Part and Parts IIIB and IIID as “the liable person”.

(3) Where a copy of a regular deduction order or a lump sum deduction order is served by the Department in accordance with Article 32A(7), 32E(6) or 32F(6)—

(a) on a deposit-taker—

(i) where that copy of the order is sent by electronic communication or fax to the deposit-taker’s last notified address for electronic communication or, as the case may be, fax number, it is to be treated as having been served at the end of the first working day after the day it was sent by the Department, or

(ii) where that copy of the order is sent by post to the deposit-taker’s last notified address, it is to be treated as having been served at the end of the second working day after the day it was posted by the Department; or

(b) on a liable person, where that copy of the order is sent by post to that person’s last known or notified address, it is to be treated as having been served at the end of the day on which the copy of the order is posted.

(4) Any notification sent by the Department in accordance with this Part to a deposit-taker or a liable person is to be treated as having been received at the same time as an order is treated as having been served in accordance with the provisions of paragraph (3).

(5) Where a copy of a regular deduction order or a lump sum deduction order or any notification has been sent by electronic communication in accordance with paragraph (3)(a)(i) the record held on an official computer system is conclusive evidence—

(a) that a copy of that order has been sent; and

(b) of the content of that order.

(6) These Parts apply to an old scheme case in the same way as they apply to a new scheme case and—

(a) S.I. 1981/226 (N.I. 6)

(b) S.R. 2001 No. 18. The Schedule has been amended by regulation 8(a) of S.R. 2002 No. 164; regulation 9(4) of S.R. 2003 No. 84; regulation 7(3) of S.R. 2004 No. 428; regulation 6(5) of S.R. 2005 No. 125; regulation 5(2) and (3) of S.R. 2007 No. 347 and regulation 6 of S.R. 2008 No. 409

(c) 1971 (c. 80)

- (a) any references to expressions in the Order (including “maintenance calculation”) or to regulations made under the Order are to be read, in relation to an old scheme case, with the necessary modifications; and
- (b) any reference in these Parts to “net weekly income” is to be read as if it were a reference to “assessable income” where these Regulations apply to an old scheme case.

(7) In this regulation—

- (a) “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a);
- (b) “an official computer system” means a computer system maintained by or on behalf of the Department for sending an order or any notification;
- (c) “new scheme case” means a case in respect of which the provisions of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(b) have been brought into operation in accordance with Article 3 of the Child Support, Pensions and Social Security (2000 Act) (Commencement No. 9) Order (Northern Ireland) 2003(c); and
- (d) “old scheme case” means a case in respect of which those provisions have not been brought into operation.

(8) In these Parts, any reference to a numbered Article or Schedule is a reference to an Article of, or Schedule to, the Child Support (Northern Ireland) Order 1991, unless the context requires otherwise.

PART IIIB

Regular Deduction Orders

Regular deduction orders

25B.—(1) A regular deduction order must specify—

- (a) the amount of the regular deduction; and
- (b) the dates on which regular deductions (referred to in this Part as “deduction dates”) are due to be made.

(2) Where the date on which the regular deduction is due to be made is not a working day, the deduction must be made on the first working day after the date specified in the order.

Maximum deduction rate

25C.—(1) The deduction rate under a regular deduction order in respect of any deduction period—

- (a) is not to exceed 40% of the liable person’s net weekly income in respect of that period as calculated—
 - (i) at the date of the current maintenance calculation, or
 - (ii) where a maintenance calculation has been in force and there are arrears of child support maintenance, at the date of the most recent previous maintenance calculation; or
- (b) where a default maintenance decision has been made, is not to exceed £80 per week.

(a) 2000 (c. 7). Section 15(1) was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21)
 (b) 2000 (c. 4)(N.I.)
 (c) S.R. 2003 No. 53 (C. 4)

(2) In this Part, “previous maintenance calculation” means a maintenance calculation which is no longer in force.

Minimum amount

25D.—(1) A deduction must not be made where the amount standing to the credit of the account specified in the regular deduction order is below the minimum amount on the date a deduction is due to be made.

(2) The minimum amount (for the purposes of these Parts) is, where the deduction period is—

- (a) monthly, £40;
- (b) weekly, £10; or
- (c) for any other period, £10 for each whole week in that period plus £1 for each additional day in that period,

plus the amount of administrative costs authorised by regulation 25Z(a).

Notification by the deposit-taker to the Department

25E.—(1) A deposit-taker at which a regular deduction order is directed must notify the Department in writing, within seven days—

- (a) of a copy of the order or the order as varied being served; or
 - (b) of notification being received by the deposit-taker that an order has been revived,
- of the matters set out in paragraph (2).

(2) The matters are—

- (a) if the account specified in the order does not exist; and
- (b) where the name of the liable person specified in the order is different to the name in which the account specified in the order is held—
 - (i) whether the account was previously held in the name of the liable person specified in the order, and
 - (ii) if so, the new name in which the account is held,only where the liable person named in the order is the same person as the person in whose name the account specified in the order is held.

(3) A deposit-taker at which a regular deduction order is directed must notify the Department within seven days of notification being received that an order has lapsed or has been discharged—

- (a) if the account specified in the order does not exist; and
- (b) where the name of the liable person specified in the order is different to the name in which the account specified in the order is held—
 - (i) whether the account was previously held in the name of the liable person specified in the order, and
 - (ii) if so, the new name in which the account is held,only where the liable person named in the order is the same person as the person in whose name the account specified in the order is held.

(4) The deposit-taker at which a regular deduction order is directed must notify the Department within seven days starting on the date on which a deduction is due to be made—

- (a) if the account specified in the order has been closed;
- (b) if the amount standing to the credit of the account specified in the order is less than the minimum amount; and

- (c) where the name of the liable person specified in the order is different to the name in which the account specified in the order is held—
 - (i) whether the account was previously held in the name of the liable person specified in the order, and
 - (ii) if so, the new name in which the account is held,only where the liable person named in the order is the same person as the person in whose name the account specified in the order is held.

(5) The deposit-taker at which a regular deduction order is directed must notify the Department within seven days of receipt of a request made by the Department of the details of any other account held by the liable person with that deposit-taker and the details of that account, including—

- (a) the number and sort code of that account; and
- (b) the type of account.

(6) The requirements of this regulation apply only in so far as the deposit-taker has the information or can reasonably be expected to acquire it.

Notification by the Department to the deposit-taker

25F. The Department must notify the deposit-taker within seven days of making a decision that a regular deduction order has—

- (a) been varied by virtue of regulation 25I;
- (b) lapsed under regulation 25J;
- (c) been revived under regulation 25K; or
- (d) ceased to have effect by virtue of regulation 25L.

Review of a regular deduction order

25G.—(1) A deposit-taker at which a regular deduction order is directed or the liable person against whom the order is made may apply to the Department for a review of the order.

(2) The circumstances in which an application may be made under paragraph (1) are that—

- (a) the liable person or the deposit-taker satisfies the Department that some or all of the amount standing to the credit of the account specified in the order is not an amount in which the liable person has a beneficial interest;
- (b) there has been a change in the amount of the maintenance calculation in question;
- (c) any amounts payable under the order have been paid;
- (d) the maximum deduction rate has been calculated in accordance with regulation 25C(1)(a)(ii) and there has been a change in the liable person's net weekly income since the date of the most recent previous maintenance calculation;
- (e) due to an official error, an incorrect amount has been specified in the order; or
- (f) the order does not comply with the requirements of Article 32A(5) or regulation 25B(1) or 25C.

(3) Following a review of an order under this regulation—

- (a) where the Department changes the amount to be deducted by the deposit-taker under the order, it may vary the order; or
- (b) where the Department extinguishes the amount to be deducted by the deposit-taker under the order, it must discharge the order.

(4) In paragraph (2)(e) “official error” has the same meaning as in regulation 1(2) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(a) (citation, commencement and interpretation).

Priority as between orders – regular deduction orders

25H.—(1) Paragraphs (2) to (5) apply where one or more attachment of debts orders provide for deductions to be made from the same account as that specified in a regular deduction order.

(2) Where—

- (a) one or more attachment of debts orders are served on a deposit-taker before or on the day a payment is due to be made under a regular deduction order; and
- (b) the regular deduction order was served on the same deposit-taker before those orders,

the deposit-taker must make that payment except where the deposit-taker has taken action to comply with the obligations under any attachment of debts order.

(3) Where a regular deduction order is served after a provisional attachment of debts order, the deposit-taker must take action to comply with the provisional attachment of debts order before making a deduction under the regular deduction order.

(4) Where paragraph (2) or (3) applies, the deposit-taker must take action to comply with the attachment of debts order before making further deductions under the regular deduction order.

(5) Where a decision to revive a regular deduction order takes effect on the same day as, or any day after, an attachment of debts order has been served, the deposit-taker must take action to comply with the attachment of debts order before making a deduction under the regular deduction order.

Variation of a regular deduction order

25I.—(1) The Department may vary a regular deduction order by changing the amount to be deducted in the circumstances set out in paragraph (2).

(2) The circumstances are that—

- (a) the Department has accepted—
 - (i) that a payment of arrears has been made by the liable person, and
 - (ii) no alternative method of payment of child support maintenance has been arranged;
- (b) a decision has been made under Article 13, 14, 18 or 19 or there has been an appeal against a maintenance calculation;
- (c) the Department has reviewed the order under regulation 25G; or
- (d) there has been an appeal under regulation 25AB(1)(a) or (b).

(3) The Department may from time to time vary the deduction period.

(4) Where—

- (a) a regular deduction order has been varied under this regulation; and
- (b) a copy of the order as varied has been served on the deposit-taker at which it is directed,

(a) S.R. 1999 No. 162. The definition of “official error” was substituted by paragraph 2(b) of Schedule 4 to S.R. 2001 No. 176, and is amended by regulation 2(2)(a) of S.R. 2002 No. 189

that deposit-taker must comply with the order; but the deposit-taker is not to be under any liability for non-compliance before the end of the period of seven days beginning on the day on which the copy of the order as varied is served on the deposit-taker.

Lapse of a regular deduction order

25J.—(1) A regular deduction order is to lapse in the circumstances set out in paragraph (2).

(2) The circumstances are where—

- (a) the Department has agreed with the liable person an alternative method of payment of the child support maintenance due under the maintenance calculation; or
- (b) there is an insufficient amount standing to the credit of the account specified in the order to enable a deduction to be made on two consecutive deduction dates, unless the Department has decided that the order is to continue for a greater number of deduction dates,

and the Department considers it is reasonable in all the circumstances that the order is to lapse.

(3) A regular deduction order lapses on the day on which the deposit-taker receives notification that the order has lapsed from the Department.

(4) A regular deduction order which has lapsed under this regulation is to be treated as remaining in force for the purposes of regulations 25E, 25G and 25AB.

Revival of a regular deduction order

25K.—(1) Where a regular deduction order has lapsed it may be revived by the Department where—

- (a) the liable person has failed to comply with any agreement reached under regulation 25J(2)(a); or
- (b) the Department has reason to believe that following the lapse of an order under regulation 25J(2)(b) there is sufficient amount standing to the credit of the account specified in the order to enable a deduction to be made.

(2) Where the Department decides to revive a regular deduction order that decision is to take effect on the day notification that the order has been revived is received by the deposit-taker.

Discharge of a regular deduction order

25L.—(1) A regular deduction order must be discharged by the Department where—

- (a) the account specified in the order has been closed;
- (b) the maintenance calculation in question is no longer in force and the amount of child support maintenance due under that calculation has been paid in full in accordance with regulation 2;
- (c) the liable person has complied with any agreement reached under regulation 25J(2)(a) for such period as the Department considers appropriate in the circumstances of the case;
- (d) the Department has reviewed the order under regulation 25G and it has extinguished the amount to be deducted by the deposit-taker under the order;
- (e) on an appeal under regulation 25AB(1)(a) the court has set aside the order;
- (f) unless sub-paragraph (g) applies, a regular deduction order has lapsed under regulation 25J(2) and six months have passed beginning on the day the lapse took effect;

- (g) an appeal is brought by virtue of regulation 25AB(1)(a) or (b), against a regular deduction order which has lapsed under regulation 25J(2) and one month has passed beginning on—
 - (i) the day proceedings on the appeal (including any further appeal) concluded, or
 - (ii) the end of any period during which a further appeal may ordinarily be brought,whichever is the later; or
- (h) the liable person has died.

(2) A regular deduction order may be discharged where the Department considers it is appropriate to do so in the circumstances of the case.

(3) Where a regular deduction order is discharged that discharge takes effect immediately after the payment of the last regular deduction prior to discharge.

PART IIIC

Lump Sum Deduction Orders

Period in which representations may be made

25M. Where a lump sum deduction order has been made under Article 32E(1) the period for making representations to the Department in respect of the proposal specified in that order is fourteen days beginning on the day a copy of the order was served.

Disapplication of Article 32G(1) and 32H(2)(b)

25N.—(1) Something that would otherwise be in breach of Articles 32G(1) and 32H(2)(b) may, with the consent of the Department, be done in the following circumstances—

- (a) the liable person, the liable person's partner or any relevant other child is suffering hardship in meeting ordinary living expenses;
- (b) the liable person is under a written contractual obligation, agreed before the lump sum deduction order was made, to make a payment;
- (c) the deposit-taker has a right of set off and satisfies the Department that an intention to exercise that right was formed within 30 days before the date the lump sum deduction order under Article 32E was served;
- (d) the deposit-taker and the liable person have made a written agreement in which the availability of an amount standing to the credit of the account specified in the lump sum deduction order was required as security for that agreement; or
- (e) any other circumstances the Department considers appropriate in the particular case.

(2) The liable person or the deposit-taker at which a lump sum deduction order is directed may apply to the Department for consent.

(3) When deciding whether to give consent, the Department must take into account—

- (a) any adverse impact the decision may have on the liable person or any other person; and
- (b) any alternative arrangements which may be made by the liable person or the deposit-taker.

(4) Where the Department gives consent, it is to take effect on the day on which the deposit-taker receives notification from the Department to disapply Article 32G(1) or 32H(2)(b).

(5) Something that would otherwise be in breach of Article 32G(1) and 32H(2)(b) may be done where—

- (a) the amount standing to the credit of the account specified in the lump sum deduction order is less than the amount specified in that order, except in respect of any amount dealt with in compliance with Article 32G(1); or
- (b) the deposit-taker has made a payment in accordance with Article 32H(1)(a).

(6) Paragraph (5) has effect until the Department gives notice to the deposit-taker that paragraph (5) has ceased to have effect in a particular case and that notification is to take effect on the day on which the deposit-taker receives notification from the Department.

(7) In this regulation—

“partner” has the same meaning as in regulation 3(9)(a) and the definition of “couple” in that regulation is to apply accordingly; and

“relevant other child” is to be interpreted in accordance with paragraph 10C(2) of Schedule 1(b) and regulations made for the purposes of that paragraph.

Information

250.—(1) A deposit-taker at which a lump sum deduction order is directed must supply to the Department in writing, within seven days—

- (a) of a copy of the order or order as varied being served; or
- (b) of notification being received by the deposit-taker that an order has been revived, the information set out in paragraph (2).

(2) The information is—

- (a) if the account specified in the order—
 - (i) does not exist,
 - (ii) cannot be traced, or
 - (iii) has been closed;
- (b) whether the amount standing to the credit of the account specified in the order—
 - (i) on the day the order is served, or
 - (ii) where an order is revived, on the day the decision to revive the order takes effect,is at least the same or less than the amount specified in the order and where it is less, that amount; and
- (c) where the name of the liable person specified in the order is different to the name in which the account specified in the order is held—
 - (i) whether the account was previously held in the name of the liable person specified in the order, and
 - (ii) if so, the new name in which the account is held,only where the liable person named in the order is the same person as the person in whose name the account specified in the order is held.

(3) A deposit-taker at which a lump sum deduction order is directed must notify the Department within seven days of notification being received that an order has lapsed or has been discharged—

- (a) if the account specified in the order cannot be traced; or

(a) Paragraph (9) was inserted by regulation 3(2)(c) of S.R. 2008 No. 409

(b) Paragraph 10C was inserted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)(N.I.)

- (b) where the name of the liable person specified in the order is different to the name in which the account specified in the order is held—
 - (i) whether the account was previously held in the name of the liable person specified in the order, and
 - (ii) if so, the new name in which the account is held,
 only where the liable person named in the order is the same person as the person in whose name the account specified in the order is held.
- (4) A deposit-taker at which a lump sum deduction order is directed, must supply to the Department within seven days of receipt of a request being made by the Department, the following information—
 - (a) whether the liable person holds another account or has opened an account with that deposit-taker or with another deposit-taker and, if so, the details of that account, including—
 - (i) the number and sort code of that account, and
 - (ii) the type of account; and
 - (b) whether the amount standing to the credit of the account specified in the order on the day the request is received is at least the same or less than the amount specified in the order or the remaining amount and where it is less, that amount.
- (5) In so far as a deposit-taker at which a lump sum deduction order is directed (“X”) has the information, the details of an account held with another deposit-taker (“Y”) must be supplied to the Department in accordance with paragraph (4) only if—
 - (a) the liable person has—
 - (i) closed the account specified in the order and held with X,
 - (ii) opened an account with Y, and
 - (iii) transferred the amount standing to the credit of the account held with X to the account held with Y;
 - (b) either—
 - (i) a lump sum deduction order has lapsed, or
 - (ii) X has notified the Department in accordance with paragraph (2)(a)(iii), that the account specified in the order has been closed; and
 - (c) the Department has made a request for the information within one month of the order lapsing or, as the case may be, notification being received by the Department that the account has been closed.
- (6) The requirements of paragraphs (1) to (3), and paragraph (4) as it applies to a deposit-taker at which a lump sum deduction order is directed, apply only in so far as the deposit-taker has the information or can reasonably be expected to acquire it.
- (7) In paragraph (4)(b) and regulation 25T(1)(b) and (c) “remaining amount” has the same meaning as in Article 32H(6).

Priority as between orders – lump sum deduction orders

25P.—(1) Where a deposit-taker would, but for this paragraph, be obliged to comply with an order under Article 32F, and one or more provisional attachment of debts orders, it must take action to comply with the orders according to the order in which they were served on the deposit-taker.

(2) Paragraph (1) does not apply where an order under Article 32E was served after a provisional attachment of debts order, except where there remains an amount standing to the credit of the account specified in the order under Article 32F after the attachment of debts order has been complied with by the deposit-taker (referred to in this regulation as “an outstanding amount”).

(3) Where there is an outstanding amount, Article 32G(1) applies in respect of that amount.

(4) Where a decision to revive a lump sum deduction order takes effect on the same day as, or any day after, an attachment of debts order has been served, the deposit-taker must take action to comply with the attachment of debts order before making a deduction under the lump sum deduction order.

Minimum amount

25Q.—(1) A deduction must not be made where the amount standing to the credit of the account specified in the lump sum deduction order is below the minimum amount on the date the deduction is due to be made.

(2) The minimum amount is £55 plus the amount of administrative costs authorised by regulation 25Z(b).

Variation of a lump sum deduction order

25R.—(1) The Department may, in the circumstances set out in paragraph (2), vary a lump sum deduction order by reducing the amount specified in that order.

(2) The circumstances are that—

- (a) the Department accepts the liable person's agreement to make a payment;
- (b) a decision has been made under Article 13, 14, 18 or 19 or there has been an appeal against a maintenance calculation;
- (c) the Department has consented to the doing of things that would otherwise be in breach of Articles 32G(1) and 32H(2)(b);
- (d) there has been an appeal made under regulation 25AB(1)(c) or (d); or
- (e) representations made in respect of the proposals specified in the order made under Article 32E have been accepted by the Department.

(3) Where—

- (a) a lump sum deduction order has been varied under this regulation; and
- (b) a copy of the order as varied has been served on the deposit-taker at which it is directed,

that deposit-taker must comply with the order when that order is served.

Lapse of a lump sum deduction order

25S.—(1) A lump sum deduction order is to lapse in the circumstances set out in paragraph (2).

(2) The circumstances are where—

- (a) the amount in the account specified in the order under Article 32E is nil;
- (b) in consequence of the consent given by the Department under regulation 25N(1) the amount in the account specified in the lump sum deduction order is reduced to nil; or
- (c) the Department has agreed with the liable person an alternative method of payment of the child support maintenance due under the maintenance calculation,

and the Department considers it is reasonable in all the circumstances that the order is to lapse.

(3) A lump sum deduction order lapses on the day on which the deposit-taker receives notification that the order has lapsed from the Department.

(4) A lump sum deduction order which has lapsed under this regulation is to be treated as remaining in force for the purposes of regulations 25M, 25O and 25AB.

Revival of a lump sum deduction order

25T.—(1) Where a lump sum deduction order has lapsed it may be revived by the Department where—

- (a) in the case of an order under Article 32E, the amount standing to the credit of the account specified in that order was nil and the Department is informed in accordance with the requirement in regulation 25O(4)(b) that there is an amount at least the same as or less than the amount specified in the order standing to the credit of the account specified in the order;
- (b) a lump sum deduction order has lapsed under regulation 25S(2)(b) and the Department is informed in accordance with the requirement in regulation 25O(4)(b) that there is an amount at least the same as or less than the amount specified in the order, or the remaining amount, standing to the credit of the account specified in the order; or
- (c) in the case of an order under Article 32F, there is a remaining amount and the liable person has failed to comply with the agreement referred to in regulation 25S(2)(c).

(2) Where the Department decides to revive a lump sum deduction order that decision is to take effect on the day notification that the order has been revived is received by the deposit-taker.

Discharge of a lump sum deduction order

25U.—(1) A lump sum deduction order must be discharged where—

- (a) the account specified in the order has been closed;
- (b) the amount of arrears of child support maintenance specified in the order has been paid in full in accordance with regulation 2;
- (c) the liable person has paid the total amount of arrears of child support maintenance specified in the order by an alternative method agreed between the Department and the liable person;
- (d) the Department has considered representations made in respect of an order under Article 32E and it has decided not to make an order under Article 32F;
- (e) unless sub-paragraph (f) applies—
 - (i) an order under Article 32F has lapsed under regulation 25S(2) and six months have passed beginning on the day on which the deposit-taker received notification that the order had lapsed from the Department, or
 - (ii) regulation 25N(5) applies and six months have passed beginning on the day on which payment was made under Article 32H(1)(a);
- (f) an appeal is brought by virtue of regulation 25AB(1)(d) and one month has passed beginning on—
 - (i) the day proceedings on the appeal (including any further appeal) concluded, or
 - (ii) the end of any period during which a further appeal may ordinarily be brought,whichever is the later; or
- (g) the liable person has died.

(2) A lump sum deduction order may be discharged where the Department considers it is appropriate to do so in the circumstances of the case.

(3) A lump sum deduction order is discharged on the day notification that the order has been discharged is received by the deposit-taker.

Time at which a lump sum deduction order under Article 32E ceases to be in force

25V. For the purposes of Article 32E(8)(a) the prescribed period is—

- (a) unless paragraph (b) applies, six months beginning on—
 - (i) the day the order under Article 32E was served on the deposit-taker, or
 - (ii) where that order has lapsed under regulation 25S, the day on which the deposit-taker received notification that the order had lapsed from the Department; or
- (b) where an appeal is brought by virtue of regulation 25AB(1)(c), one month beginning on—
 - (i) the day proceedings on the appeal (including any further appeal) concluded, or
 - (ii) the end of any period during which a further appeal may ordinarily be brought,whichever is the later.

Meaning of “the relevant time”

25W. For the purposes of the meaning of “the relevant time” in Article 32H(6) the prescribed circumstances are that—

- (a) unless paragraph (b) applies, six months have passed beginning on the day the order under Article 32F was served on the deposit-taker; or
- (b) where an appeal is brought by virtue of regulation 25AB(1)(d), one month has passed beginning on—
 - (i) the day proceedings on the appeal (including any further appeal) concluded, or
 - (ii) the end of any period during which a further appeal may ordinarily be brought,whichever is the later.

PART IIID

General Matters for Deduction Orders

Accounts of a prescribed description

25X.—(1) A regular deduction order or a lump sum deduction order may not be made in respect of an account which—

- (a) the liable person operates solely for the purposes of exercising the function of a trustee or office holder and the account is one in which all the funds are held on behalf of other persons or for the purposes of that office; or
- (b) is used wholly or in part for business purposes.

(2) For the purposes of paragraph (1)(b), whether an account is used wholly or in part for business purposes is to be decided by the Department.

(3) Paragraph (1)(b) does not apply where a regular deduction order is made in respect of an account which is used by the liable person as a sole trader.

Circumstances in which amounts standing to the credit of an account are to be disregarded

25Y. The circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of Articles 32A, 32E, 32G and 32H, are where the liable person has no beneficial interest in the amount.

Administrative costs

25Z. A deposit-taker at which an order under Article 32A or 32F is directed may deduct from the amount standing to the credit of the account specified in the order an amount towards its administrative costs for each deduction made, not exceeding—

- (a) in the case of a regular deduction order, £10; or
- (b) in the case of a lump sum deduction order under Article 32F, £55,

before making any payment to the Department required by Article 32A or, as the case may be, Article 32H.

Payment by deposit-taker to the Department

25AA.—(1) Amounts deducted by a deposit-taker at which a regular deduction order or a lump sum deduction order under Article 32F is directed must be paid to the Department within—

- (a) in the case of a regular deduction order, ten days of the date the regular deduction is due to be made; or
- (b) in the case of a lump sum deduction order under Article 32F, ten days of the end of the relevant period.

(2) The payment to the Department of amounts deducted under that order may be made by—

- (a) cheque;
- (b) automated credit transfer; or
- (c) such other method as the Department may specify.

(3) In this regulation “the relevant period” has the same meaning as in Article 32G(5) and (6).

Appeals

25AB.—(1) A qualifying person has a right of appeal to a court of summary jurisdiction against—

- (a) the making of a regular deduction order;
- (b) any decision made by the Department on an application made under regulation 25G;
- (c) the withholding of the consent to be obtained in accordance with regulation 25N;
- (d) the making of an order under Article 32F.

(2) In this regulation, a “qualifying person” means—

- (a) in relation to paragraph (1)(a) and (b), any person affected by—
 - (i) a regular deduction order, or, as the case may be,
 - (ii) the decision referred to in paragraph (1)(b);
- (b) in relation to paragraph (1)(c), the persons prescribed in regulation 25N(2); and
- (c) in relation to paragraph (1)(d), any person affected by an order under Article 32F.

(3) An appeal under paragraph (1) shall be made within 21 days of—

- (a) where the appellant is a deposit-taker, service of the order;
 - (b) where the appellant is a liable person, receipt of the order; or
 - (c) where the appellant is either a deposit-taker or a liable person, the date of receipt of notification of the decision.
- (4) For the purposes of paragraph (3), the liable person is to be treated as having received the order or notification of the decision two days after it was posted by the Department.
- (5) Where an appeal is made under paragraph (1)—
- (a) the court has power to—
 - (i) affirm or set aside the order or decision,
 - (ii) remit the matter to the Department for the order or decision to be reconsidered, with appropriate directions,
 - (iii) refer any application or issue for determination by the Department,
 - (iv) make a costs order; and
 - (b) the court may exercise its powers in relation to the whole or part of an order or decision of the Department.
- (6) An appeal against an order made under paragraph 1(d) shall operate as a stay of proceedings on the order.

Offences

25AC. The following regulations are designated for the purposes of Articles 32D(1)(b) and 32K(1)(b)—

- (a) 25E(1) to (5);
- (b) 25I(4);
- (c) 25O(1) to (5);
- (d) 25R(3); and
- (e) 25AA(1).

Department to warn of consequences of failing to comply with an order or to provide information

25AD. Where information is required by virtue of regulation 25E or 25O, the Department must set out in writing the possible consequences of failure to—

- (a) comply with a regular deduction order or lump sum deduction order; and
- (b) provide the information required under the regulations designated by regulation 25AC(a) and (b),

including details of the offences provided for by virtue of Articles 32D and 32K, as the case may be.”.

Amendment of the Child Support (Maintenance Calculations and Special Cases) Regulations

3. In paragraph 4(2)(h) of the Schedule to the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001(a) (earnings), omit “, other than any expenses wholly, exclusively, and necessarily incurred in the performance of those duties”.

Sealed with the Official Seal of the Department for Social Development on 28th July 2009

(a) S.R. 2001 No. 18

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

The powers exercised to make these Regulations are contained in the Child Support (Northern Ireland) Order 1991 (“the Order”). Most of the powers exercised have been inserted into the Order by the Child Maintenance Act (Northern Ireland) 2008 (“the 2008 Act”). Some of the powers are conferred by provisions of the Order prior to the amendments made to it by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (“the 2000 Act”), some of which amendments are not fully in operation, and relate to the child support scheme which was in operation prior to 3 March 2003, and which remains in operation for the purposes of certain cases (“the old scheme”). Other powers are conferred by provisions of the Order as amended by the 2000 Act, which relate to the child support scheme provided for by those amendments, which came into operation for the purposes of specified categories of cases on 3 March 2003 (*see* the Child Support, Pensions and Social Security (2000 Act) (Commencement No. 9) Order (Northern Ireland) 2003) (“the new scheme”).

Regulation 2 amends the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 (“the Collection and Enforcement Regulations”) by inserting new Parts IIIA to IIID into those Regulations. These Parts provide for regular deduction orders made under Article 32A of the Order, and lump sum deduction orders made under Articles 32E and 32F of the Order. Article 32A was inserted into the Order by section 14 of the 2008 Act, and Articles 32E and 32F were inserted by section 15 of the 2008 Act. Specifically, Regulation 2 inserts thirty new regulations, 25A to 25AD, to the Collection and Enforcement Regulations. The following paragraphs briefly outline the function of each of the new regulations.

Regulation 25A sets out definitions and makes provision for the service of regular deduction and lump sum deduction orders, and the sending of notifications, evidence and the application of these Regulations to an old scheme case and a new scheme case.

Regulation 25B provides the additional matters which must be specified in a regular deduction order.

Regulation 25C provides the maximum deduction rate under a regular deduction order.

Regulation 25D specifies the minimum amount which may be deducted under a regular deduction order.

Regulation 25E makes provision for the matters which have to be notified by a deposit-taker to the Department giving the time limits within which the deposit-taker is required to comply. The information which is required to be notified includes whether the account specified in the order does not exist, whether the account contains less than the minimum amount and, where requested, information relating to other accounts held by the liable person with the deposit-taker.

Regulation 25F provides that the Department must notify the deposit-taker where a regular deduction order is varied, lapsed, revived or ceases to have effect.

Regulation 25G makes provision for the circumstances in which a regular deduction order may be reviewed and, where it is reviewed, the decision which may result from that review.

Regulation 25H makes provision for the priority of orders.

Regulations 25I to 25K provide for the circumstances in which a regular deduction order may be varied, is to lapse or may be revived. An order may be varied in circumstances which may lead to a change in the amount to be deducted under the order. The Department may also vary the deduction period. An order is to lapse either where the Department has agreed an alternative method of payment or where there is an insufficient amount standing to the credit of the account specified in the regular deduction order on a specified number of deduction dates. An order may be revived where the liable person has failed to comply with the alternative method of payment agreed by the Department, or it has reason to believe that there is a sufficient amount standing to the credit of the account specified in the order to make a regular deduction.

Regulation 25L makes provision setting out the circumstances in which the Department must discharge a regular deduction order, which includes where the account specified in the order has been closed, the amount due under the maintenance calculation has been paid and no further payment is due, and the amount to be deducted has been extinguished on review. It also includes provision for a lapsed order to be discharged after the expiry of specified periods of time.

Regulation 25M makes provision for representations to be made in respect of the proposal specified in the interim lump sum deduction order made under Article 32E(1) of the Order within fourteen days for the deposit-taker and the liable person from the date a copy of that order was served.

Regulation 25N provides the circumstances in which something that would otherwise be a breach of Articles 32G(1) and 32H(2)(b) of the Order, with the consent of the Department can be done. It sets out the matters which must be taken into account when the Department is deciding whether to give consent. Further provision is made for the circumstances in which those Articles are to be disapplied until the deposit-taker receives notification from the Department.

Regulation 25O makes provision for the information which has to be provided by a deposit-taker to the Department giving the time limits within which the deposit-taker is required to comply. The information which is required to be notified includes whether the account specified in the order does not exist, cannot be traced or has been closed, and where requested, information relating to other accounts held by the liable person is required to be provided by the deposit-taker to the Department in specified circumstances.

Regulation 25P makes provision for the priority of orders.

Regulation 25Q specifies the minimum amount which may be deducted under a lump sum deduction order.

Regulations 25R to 25T provide for the circumstances in which a lump sum deduction order may be varied, is to lapse or may be revived. An order may be varied in circumstances which lead to a reduction in the amount to be deducted under the order. An order is to lapse either where the amount in the account specified in the order is nil, the amount in the account specified in the order is reduced to nil where the Department has consented to the disapplication of Articles 32G(1) and 32H(2)(b) of the Order or the Department has agreed an alternative method of payment. The circumstances in which an order may be revived include where an amount has been paid into the account specified in the order, or where the liable person has failed to comply with the alternative method of payment agreed by the Department.

Regulation 25U makes provision setting out the circumstances in which the Department must discharge a lump sum deduction order, including where the account specified in the order has been closed, the amount of arrears specified in the order has been paid in the required manner and the Department has decided not to make an order under Article 32F of the Order having considered representations.

Regulation 25V prescribes the time at which an order made under Article 32E of the Order ceases to be in force.

Regulation 25W prescribes the circumstances which arise for the purposes of the meaning of “the relevant time” as defined in Article 32H(6) of the Order.

Regulations 25X and 25Y prescribe accounts in respect of which a regular or lump sum deduction order may not be made and the circumstances in which amounts standing to the credit of an account are to be disregarded, respectively.

Regulation 25Z specifies the amount which a deposit-taker may deduct towards its administrative costs before making any payment to the Department.

Regulation 25AA specifies the time at which, and the method by which, payment is to be made by the deposit-taker to the Department.

Regulation 25AB makes provision for appeals to a court of summary jurisdiction against the making of a regular deduction order, any decision on the review of a regular deduction order, the withholding of consent to the disapplication of Articles 32G(1) and 32H(2)(b) of the Order by the Department and the making of a lump sum deduction order. The time limit for making an appeal is specified. A court may affirm or set aside any order or decision of the Department, but a variation of the amount of the order may only be carried out by the Department. The court may also make an order for costs. Once a liable person has appealed a final deduction order, the deposit-taker or the Department can take no further action until the appeal is decided.

Regulation 25AC designates regulations 25E(1) to (5), 25I(4), 25O(1) to (5), 25R(3) and 25AA(1) for the purposes of Articles 32D(1)(b) and 32K(1)(b) of the Order. Failure to comply with the requirements of those regulations is an offence in accordance with those Articles.

Regulation 25AD provides that the Department must set out the consequences of a failure to comply with a regular or lump sum deduction order or a requirement to provide information in accordance with regulation 25E or 25O including details of the offences provided for by Articles 32D and 32K of the Order.

Regulation 3 amends paragraph 4(2)(h) of Schedule 1 to the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001 to clarify that expenses incurred by district council members in the performance of their duties are not to be taken into account as earnings.

An assessment of the impact of these Regulations on the private and voluntary sectors has been made. Copies of this impact assessment are available in both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 7F Caxton House, Tothill Street, London SW1H 9NA, or from the Department for Work and Pensions' website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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FAMILY LAW

CHILD SUPPORT

The Child Support (Miscellaneous Amendments) Regulations
(Northern Ireland) 2009