

Regulations made by the Department for Social Development and laid before the Assembly under Article 48(2) of the Child Support (Northern Ireland) Order 1991 for approval of the Assembly before the expiration of six months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2012 No. 439

FAMILY LAW

CHILD SUPPORT

**The Child Support (Management of Payments and Arrears)
(Amendment) Regulations (Northern Ireland) 2012**

Made - - - - 6th December 2012

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 16(3), 38D(2) and (3), 38E, 47(1) and 48(4) of 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 (Management of Payments and Arrears) (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation on the day on which sections 23 and 24 of the Child Maintenance Act (Northern Ireland) 2008(c) come into operation.

(a) S.I. 1991/2628 (N.I. 23); Article 16(3) was amended by paragraph 14(b) of Schedule 6 and Schedule 7 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), and Articles 38D and 38E are inserted respectively by sections 23 and 24 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.))
(b) See Article 8(b) of S.R. 1999 No. 481
(c) 2008 c. 10 (N.I.)

Amendment of the Child Support (Management of Payments and Arrears) Regulations

2. After Part 4 of the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009^(a) (recovery from estates) insert—

“PART 4A

Part Payment of Arrears in Full and Final Satisfaction

Amounts owed to different persons to be treated separately

13A. Where the arrears of child support maintenance for which a person is liable comprise different amounts that have accrued in respect of—

- (a) separate applications for a maintenance calculation; or
- (b) one application but would, if recovered, be payable to different persons,

those amounts are to be treated as separate amounts of arrears for the purpose of exercising the power under Article 38D(1) of the Order.

Written consent

13B.—(1) The Department may not exercise the power under Article 38D(1) of the Order without the written consent of the person with care with respect to whom the maintenance calculation was made unless the Department would be entitled to retain—

- (a) the whole of the arrears under Article 38(2) of the Order^(b) if it recovered them; or
- (b) part of the arrears under that Article if it recovered them, and the part of the arrears that the Department would not be entitled to retain is equal to or less than the payment accepted under Article 38D(1) of the Order.

(2) Where the written consent of the person with care is required, the Department must make available such information and guidance as it thinks appropriate for the purpose of helping that person decide whether to give that consent.

Agreement

13C.—(1) Where the Department proposes to exercise the power under Article 38D(1) of the Order, it must prepare a written agreement.

(2) The agreement must—

- (a) name the non-resident parent and, where the consent of the person with care is required, name the person with care;
- (b) specify the amount of arrears to which the agreement relates and the period of liability to which those arrears relate;
- (c) state the amount that is agreed will be paid in satisfaction of those arrears;
- (d) state the method of payment and to whom payment will be made; and
- (e) state the day by which payment is to be made.

(3) The Department must send the non-resident parent and, where applicable, the person with care a copy of the agreement.

^(a) S.R. 2009 No. 422

^(b) Article 38(2) was substituted by paragraph 9 of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)) and is amended by paragraph 11 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))

- (4) The agreement does not take effect until—
 - (a) the non-resident parent has agreed in writing to its terms; and
 - (b) where applicable, the person with care has given written consent to the Department.

Where payment is received

13D.—(1) Unless the non-resident parent fails to comply with the terms of the agreement the Department must not take action to recover any of the arrears to which the agreement relates.

(2) Where the non-resident parent has made full payment in accordance with the agreement all remaining liability in respect of the arrears of child support maintenance to which the agreement relates is extinguished.

(3) Where the non-resident parent fails to make any payment or only makes part payment or otherwise fails to adhere to the terms of the agreement, the non-resident parent remains liable to pay the full amount of any outstanding arrears to which the agreement relates and the Department may arrange to recover any of those outstanding arrears in accordance with the Order.

(4) Nothing in these Regulations prevents the Department from entering into a new agreement with the non-resident parent in respect of any of the arrears to which the previous agreement relates provided that the new agreement complies with the requirements set out in regulation 13C.

(5) Where the Department enters into a new agreement with the non-resident parent in respect of any of the arrears to which a previous agreement related, the previous agreement ceases to have effect on the coming into effect of that new agreement.

PART 4B

Write-Off of Arrears

Amounts owed to different persons to be treated separately

13E. Where the arrears of child support maintenance for which a person is liable comprise amounts that have accrued in respect of—

- (a) separate applications for a maintenance calculation; or
- (b) one application, but would, if recovered, be payable to different persons,

those amounts are to be treated as separate amounts of arrears for the purpose of exercising the power under Article 38E(1) of the Order.

Circumstances in which the Department may exercise the power in Article 38E of the Order

13F. The circumstances of the case specified for the purposes of Article 38E(1)(a) of the Order are that—

- (a) the person with care has requested under Article 7(5) of the Order that the Department ceases to act in respect of the arrears;
- (b) the non-resident parent died before 25th January 2010 or there is no further action that can be taken with regard to recovery of the arrears from the non-resident parent's estate under Part 4;
- (c) the arrears relate to liability for child support maintenance for any period in respect of which an interim maintenance assessment was in force between 5th April 1993 and 18th April 1995; or

- (d) the non-resident parent has been informed by the Department that no further action would ever be taken to recover those arrears.

Department required to give notice

13G.—(1) Where the Department is considering exercising its powers under Article 38E(1) of the Order, it must send written notice to the person with care and the non-resident parent.

(2) The requirement in paragraph (1) does not apply where the person in question cannot be traced or has died.

(3) The notice must—

- (a) specify the person with care in respect of whom liability in respect of arrears of child support maintenance has accrued;
- (b) specify the amount of the arrears and the period of liability to which the arrears relate;
- (c) state why it appears to the Department that it would be unfair or inappropriate to enforce liability in respect of the arrears;
- (d) advise the person that the person may make representations, within 30 days of receiving the notice, to the Department as to whether the liability in respect of the arrears should be extinguished; and
- (e) explain the effect of any decision to extinguish liability in respect of any arrears of child support maintenance under Article 38E(1) of the Order.

(4) If no representations are received by the Department within 30 days of the notice being received by the person with care and the non-resident parent, the Department may make the decision to extinguish the arrears.

(5) For the purposes of this regulation, where the Department sends any written notice by ordinary post to a person’s last known or notified address that document is treated as having been received by that person on the second day following the day on which it is posted.

Department to take account of the parties’ views

13H. Where the Department receives representations within the 30-day period referred to in regulation 13G(3)(d) it must take account of those representations in making a decision under Article 38E(1) of the Order.

Notification of decision to write off

13I.—(1) On making a decision under Article 38E(1) of the Order the Department must send written notification of that decision to the non-resident parent and the person with care.

(2) The requirement in paragraph (1) does not apply where the person in question cannot be traced or has died.”.

Amendment of the Child Support Information Regulations

3. In regulation 13(1) of the Child Support Information Regulations (Northern Ireland) 2008(a) (disclosure of information to other persons)—

- (a) omit “or” after sub-paragraph (f); and

(a) S.R. 2008 No. 403

(b) after sub-paragraph (g) add—

- “(h) why it was decided, in relation to any arrears of child support maintenance, not to accept payment in part in satisfaction of liability for the whole under Article 38D(1) of the Order; or
- (i) why it was decided not to extinguish liability in respect of arrears of child support maintenance under Article 38E(1) of the Order.”.

Sealed with the Official Seal of the Department for Social Development on 6th December 2012

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 (“the Management of Payments and Arrears Regulations”) and the Child Support Information Regulations (Northern Ireland) 2008 (“the Information Regulations”).

Regulation 2 inserts Parts 4A and 4B into the Management of Payments and Arrears Regulations to make provision in relation to the power to accept part payment of arrears, in full and final satisfaction of any arrears of child support maintenance under Article 38D of the Child Support (Northern Ireland) Order 1991 (“the Order”) and to extinguish liability in respect of arrears of child support maintenance under Article 38E(1) of that Order.

In Part 4A—

regulation 13A provides that where arrears of child support maintenance for which a person is liable comprise different amounts owed to different persons they are to be treated as separate amounts of arrears for the purpose of exercising the power under Article 38D(1) of the Order;

regulation 13B provides that the Department for Social Development (“the Department”) may not exercise the power in Article 38D(1) of the Order without the written consent of the person with care unless certain conditions apply;

regulation 13C provides that where it is proposed to accept an offer of a part payment of arrears, the Department must set out the terms of the agreement in writing and send it to the non-resident parent and, where applicable, to the person with care, and that the non-resident parent must have agreed to the terms in writing, and, where applicable, the person with care must have given written consent to the Department; and

regulation 13D provides that—

while a non-resident parent is complying with the agreement, the Department must not take steps to recover the outstanding arrears to which the agreement relates and that once full payment has been made in accordance with the terms of the agreement then all remaining liability in respect of the arrears of child support maintenance to which the agreement relates is extinguished, and

where the agreement has not been adhered to, the Department may recover all outstanding arrears, however, the Department may enter into a new agreement with the non-resident parent in respect of any arrears to which the previous agreement relates provided the new agreement complies with the requirements set out in regulation 13C.

In Part 4B—

regulation 13E provides that where arrears of child support maintenance for which a person is liable comprise different amounts owed to different persons they are to be treated as separate amounts of arrears for the purpose of exercising the power under Article 38E(1) of the Order;

regulation 13F prescribes the circumstances in which the Department may exercise the power in Article 38E(1) of the Order;

regulation 13G sets out the requirement for the Department to notify the person with care and the non-resident parent before making a decision and provides that if no representations are received within 30 days of the notice being received by them, the Department may make the decision to extinguish the arrears;

regulation 13H provides that where the Department receives representations in response to a notice given under regulation 13G, it must take account of those representations in making a decision under Article 38E(1) of the Order; and

regulation 13I provides that the Department must send written notification of a decision to write off arrears under Article 38E(1) of the Order to the non-resident parent and the person with care.

Regulation 3 amends the Information Regulations to permit the Department to disclose information relating to one party to a maintenance calculation held for the purposes of the Order to another party to that calculation where, in the opinion of the Department, such information is essential to inform the party to whom it would be given as to why it was decided not to exercise power under either Article 38D(1) or 38E(1) of the Order.

Articles 38D and 38E of the Order, some of the enabling provisions under which these Regulations are made, are inserted respectively by sections 23 and 24 of the Child Maintenance Act (Northern Ireland) 2008. Those sections were brought into operation, for the purposes only of making regulations, on 3rd December 2012 by virtue of the Child Maintenance (2008 Act) (Commencement No. 9) Order (Northern Ireland) 2012 (S.R. 2012 No. 423 (C. 43)).

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