

Regulations made by the Department for Social Development and laid before the Assembly under section 36(4) of the Child Maintenance Act (Northern Ireland) 2008 for approval of the Assembly before the expiration of six months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2014 No. 191

FAMILY LAW

CHILD SUPPORT

The Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014

Made - - - - *26th June 2014*
Coming into operation *30th June 2014*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 11 and 36(1) and (2) of, and paragraphs 2, 3, 5 and 6 of Schedule 2 to, the Child Maintenance Act (Northern Ireland) 2008(1).

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014 and shall come into operation on 30th June 2014.

(2) In these Regulations—

“the Child Support Order” means the Child Support (Northern Ireland) Order 1991(2);

“the 1992 Regulations” means the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(3);

“the 2008 Act” means the Child Maintenance Act (Northern Ireland) 2008;

“absent parent” has the meaning given in Article 4(2) of the Child Support Order;

“liability end date” has the meaning given in regulation 6;

(1) 2008 c. 10 (N.I.)
(2) S.I. 1991/2628 (N.I. 23)
(3) S.R. 1992 No. 341

“non-resident parent” has the meaning given in Article 4(2) of the Child Support Order(4);
 “person with care” has the meaning given in Article 4(3) of the Child Support Order;
 “partner” has the meaning given in paragraph 10C(4) of Schedule 1 to the Child Support Order(5);
 “prescribed benefit” means a benefit prescribed by regulations made under paragraph 4(1)(c) of Schedule 1 to the Child Support Order;
 “qualifying child” has the meaning given in Article 4(1) of the Child Support Order(6);
 “the scheme” means the scheme prepared by the Department under regulation 3(1); and
 “transition period” has the meaning given in regulation 3(2) and (3).

(3) For the purposes of these Regulations an existing case is related to an application made under Article 7(1) of the Child Support Order(7) if—

- (a) the non-resident parent in relation to that application is also the non-resident parent or absent parent in relation to the existing case and the person with care in relation to that application is not the person with care in relation to the existing case; or
- (b) the non-resident parent in relation to that application is a partner of a non-resident parent or absent parent and either or both are in receipt of a prescribed benefit.

Meaning of “interested parties”

2. For the purposes of Schedule 2 to the 2008 Act “interested parties” means, in relation to an existing case—

- (a) the absent parent or the non-resident parent; and
- (b) the person with care.

Scheme in relation to ending liability in existing cases

3. (1) The power under paragraph 1(1) of Schedule 2 to the 2008 Act must be exercised in accordance with a scheme prepared by the Department.

(2) The transition period during which the power in paragraph 1(1) of Schedule 2 to the 2008 Act may be exercised shall begin on the day on which these Regulations come into operation.

(3) The scheme prepared by the Department shall state the date on which the transition period ends.

(4) The scheme may be revised from time to time by the Department.

Staging under the scheme

4. (1) The scheme prepared by the Department must make provision for the exercise of the power in paragraph 1(1) of Schedule 2 to the 2008 Act in stages, applying the principles in paragraphs (2) to (4).

(2) Where an application is made under Article 7(1) of the Child Support Order during the transition period the power is to be exercised in relation to any existing case that is related to that application.

(4) The term “non-resident parent” is substituted for the definition of “absent parent” by paragraph 11 of Schedule 3, to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c.4 (N.I.)) (“the 2000 Act”)

(5) Schedule 1 Part 1 is substituted by Schedule 1 to the 2000 Act

(6) Article 4(1) is amended by paragraph 11 of Schedule 3 to the 2000 Act

(7) Article 7(1) is amended by section 1(2)(a) and paragraph 11 of Schedule 3 to the 2000 Act

(3) The power is not to be exercised in relation to an existing case where the youngest, or only, qualifying child will have reached the age of 20 before the end of the transition period unless that case is related to an application referred to under paragraph (2).

(4) Cases other than those to which either paragraphs (2) or (3) apply, are to be selected in tranches and, in making that selection priority may be given to cases where—

- (a) the nil rate is payable under regulation 26 (cases where child support maintenance is not to be payable) of the 1992 Regulations⁽⁸⁾;
- (b) regulation 28 (amount payable where absent parent is in receipt of income support or other prescribed benefit) of the 1992 Regulations⁽⁹⁾ applies;
- (c) the nil rate is payable under regulation 5 (nil rate) of the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001⁽¹⁰⁾.

Exercise of the choice as to whether or not to stay in the statutory scheme

5. (1) The right to make a choice required under paragraph 1(1) of Schedule 2 to the 2008 Act must be exercised in accordance with this regulation.

(2) An interested party must make a choice following receipt of written notice given by the Department.

(3) The notice to the interested parties must specify—

- (a) the liability end date; and
- (b) the manner in which they are to exercise a choice to remain in the statutory scheme.

(4) A party is taken to have received written notice in accordance with paragraph (2) on the second day after the notice is sent by post to that party's last known or notified address.

(5) A choice to remain in the statutory scheme must be made—

- (a) by way of an application to the Department for a maintenance calculation; and
- (b) before the liability end date.

(6) The Department may require information to be provided in an application made under paragraph (5) and may do so despite such information having been notified for the purposes of the existing case.

(7) The Department may withdraw a notice given under paragraph (2) where—

- (a) in the Department's opinion the notice was given in error; and
- (b) the date of withdrawal is earlier than 30 days from the liability end date.

Liability end date

6. (1) Subject to paragraph (2), the date determined for the purposes of paragraph 5(1) and (2) of Schedule 2 to the 2008 Act is—

- (a) if an existing case is related to an application under Article 7(1) of the Child Support Order, a date specified by the Department which shall be no fewer than 30 days after the date on which notice is given under regulation 5(2);
- (b) in any other case, a date specified by the Department which shall be no fewer than 180 days but no more than 272 days after which that notice is given.

⁽⁸⁾ Regulation 26 was amended by regulation 9(13) of S.R. 1995 No. 162 and regulation 4(12) of S.R. 1998 No. 8

⁽⁹⁾ Regulation 28 was amended by regulation 5(10) of S.R. 1993 No. 164, regulation 2(2) of S.R. 1993 No. 191, regulation 21(3) of S.R. 1996 No. 289, regulation 4(13) of S.R. 1998 No. 8 and regulation 18(4) of S.R. 2008 No. 286

⁽¹⁰⁾ S.R. 2001 No. 18; regulation 5 was amended by regulation 6(4) of S.R. 2003 No. 469, regulation 7(2) of S.R. 2004 No. 428, regulation 26(4) of S.R. 2008 No. 286 and regulation 7 of S.R. 2009 No. 133

(2) Where an existing case becomes related to an application under Article 7(1) of the Child Support Order after a notice has been given under regulation 5(2), the Department may revise the liability end date by issuing a further notice to the interested parties with a liability end date falling at least 30 days after such further notice is given.

(3) Paragraph (1) shall not apply where the Department withdraws a notice under regulation 5(7).

Effect of an application exercising the choice to remain in the statutory scheme

7. (1) The Child Support Order and regulations made under that Order apply in relation to an application under regulation 5(5) as if it were an application made under Article 7(1) of that Order.

(2) Subject to paragraph (3), the Child Support Order and regulations made under that Order apply in relation to a maintenance calculation made in response to an application under regulation 5(5) as if it were a maintenance calculation made in response to an application made under Article 7(1) of that Order.

(3) Where an application under regulation 5(5) is made, the maintenance calculation made in response to that application is to be calculated by reference to the information applicable at the date the absent parent or non-resident parent is notified of that application but takes effect from the day after the liability end date.

(4) Where an application under regulation 5(5) is made in any given case, in Articles 31 and 32A of the Child Support Order⁽¹¹⁾, references to “the maintenance calculation in question” and “the calculation” (or “the maintenance assessment in question” or “assessment” where applicable) apply in relation to that particular case to the maintenance calculation made in response to that application as though it were a continuation of the maintenance calculation (or maintenance assessment) for which liability ceased to accrue in accordance with regulation 6.

Treating applications for a maintenance assessment or for a maintenance calculation falling to be made under existing rules as withdrawn

8. Where the power in paragraph 1(1) of Schedule 2 to the 2008 Act is exercised in relation to a case mentioned in paragraph 1(2)(b) or (d) of that Schedule (application for a maintenance assessment or for a maintenance calculation falling to be made under existing rules), if none of the interested parties exercises a choice to remain in the statutory scheme before the liability end date, the Department may treat that application as withdrawn.

Sealed with the Official Seal of the Department for Social Development on 26th June 2014

Anne McCleary
A senior officer of the Department for Social
Development

(11) Article 31 is amended by section 1(2) of the 2000 Act and Article 32A was inserted by section 14 of the Child Maintenance Act (Northern Ireland) 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for existing cases under the statutory child support maintenance scheme that are not subject to the new calculation rules.

The new calculation rules are the provisions in Schedule 1 to the Child Support (Northern Ireland) Order 1991 (“the Child Support Order”) as amended by the Child Maintenance Act (Northern Ireland) 2008 (“the 2008 Act”). The calculation rules that applied to an existing case before the new rules came into operation continue to apply.

Regulation 3 makes provision for the power in paragraph 1 of Schedule 2 to the 2008 Act to be exercised in accordance with a scheme prepared by the Department. The scheme must provide for a transition period’s end date. The scheme can be revised by the Department.

Regulation 4 provides that the scheme prepared by the Department must make provision for the exercise of the power in stages and lists the principles that must be applied in making such provision.

Regulation 5 provides that at a time determined in accordance with the scheme, the parties to the case must be notified of the date on which liability in the existing case will end and by which they must choose whether to remain in the statutory child support maintenance scheme. The choice to remain in the statutory child support maintenance scheme is to be exercised by way of a new application for a calculation of child support maintenance. Paragraph (7) makes provision for when a notice under this regulation can be withdrawn.

Regulation 6 provides for the meaning of “liability end date” referred to in regulation 5 which is also the date by which an interested party must choose whether to remain in the statutory child support maintenance scheme. The notice period will be no fewer than 30 days where a case is related to a new application and between 180-272 days in all other cases. Where a case becomes related to a new application after a notice has been issued, the Department may revise the liability end date to at least 30 days’ notice.

Regulation 7 provides for the application of the Child Support Order, and regulations made under it, to an application made under regulation 5, and a calculation made in response to an application under regulation 5, as if it were an application made under Article 7 of that Order. The exception to this is that the maintenance calculation made in response to the application under regulation 5 is to be calculated by reference to the information applicable at the date the absent parent or non-resident parent is notified of the application but the effective date will be the day after the liability end date. There is also provision for any references to a maintenance calculation (or maintenance assessment) in relation to deduction from earnings orders and regular deductions from accounts to be treated as a continuation of the maintenance calculation (or maintenance assessment) for which liability ends under regulation 6.

Regulation 8 provides for the treatment of an existing case where no calculation of maintenance has yet been made. If the choice to stay in the statutory scheme is not exercised the application may be treated as withdrawn.