

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. 427

FAMILY LAW

CHILD SUPPORT

**The Child Support Maintenance
Calculation Regulations (Northern
Ireland) 2012**

Made - - - - -

3rd December 2012

Coming into operation in accordance with regulation 1



£9.75

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The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 3(1)(b), 4(3), 8(3), 14(4) and (5), 16(1) and (1A), 18(1), (4) and (6), 19(2), (3) and (5), 28ZA(2)(b) and (4)(c); 28ZB(6)(c) and (8), 28A(5), 28B(2)(c), 28C(2)(b) and (5), 28F(2)(b), (3)(b) and (5), 28G(2) and (3), 39, 47(1) and (2) and 48(4) of, and paragraphs 3(2) and (3), 4(1) and (2), 5, 5A(6)(b), 7(3), 8(2), 9, 10(1) and (2), 10C(2)(b) and 11 of Schedule 1, paragraphs 2, 4 and 5 of Schedule 4A and paragraphs 2(2) to (5) and 4 to 6 of Schedule 4B to, the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b).

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- (a) S.I. 1991/2628 (N.I. 23); Article 3 is substituted by section 26 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10 (N.I.)); Article 8(3) is amended by section 1(2)(a) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); Article 14 was amended by paragraph 12 of Schedule 6 to Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and is substituted by section 4 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008; Article 16 is amended by section 12 of, and paragraph 16 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008; and paragraph (1A) is inserted by paragraph 3(1) of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)); Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 and paragraph (1) is amended by section 8(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998; Articles 28ZA and 28ZB were inserted by Article 43 of the Social Security (Northern Ireland) Order 1998; Articles 28A to 28C and 28F were inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 and are substituted by section 5 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Articles 28A and 28F are amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008; Article 28G was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 and is substituted by section 7 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 39 is amended by paragraph 11 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 47(2) is amended by paragraph 31 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and section 1(2) of, and paragraph 27 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; in Schedule 1 Part 1 is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by paragraph 12 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and Schedules 1, 4 and 5 to the Child Maintenance Act (Northern Ireland) 2008 and paragraph 11 is amended by section 1(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Schedules 4A and 4B were inserted Article 3 of the Child Support (Northern Ireland) Order 1995 and are substituted by section 6 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and in Schedule 4A paragraph 5 and in Schedule 4B paragraph 2 is amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008. *See also* S.R. 2001 No. 24
- (b) *See* Article 8(b) of S.R. 1999 No. 481

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 and shall come into operation in relation to a particular case on the day on which paragraph 2 of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008(a) comes into operation in relation to that type of case.

Interpretation

2.—(1) In these Regulations—

“an authority” has the same meaning as in Article 2 of the Children Order;

“capped amount” means the figure specified in paragraph 10(3) of Schedule 1 (or in that subparagraph as modified by regulations under paragraph 10A of that Schedule(b));

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

“the Children Order” means the Children (Northern Ireland) Order 1995(c);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(d);

“contributory employment and support allowance” means an allowance to which a person is entitled under section 1(2)(a) of the Welfare Reform Act (Northern Ireland) 2007(e);

“couple” has the meaning given by paragraph 10C(5) of Schedule 1;

“current income” has the meaning given in regulation 36;

“the Earnings and Pensions Act” means the Income Tax (Earnings and Pensions) Act 2003(f);

“the flat rate” means the flat rate of child support maintenance payable under paragraph 4 of Schedule 1;

“gross weekly income” means income calculated under Chapter 1 of Part 4;

“historic income” has the meaning given in regulation 34;

“HMRC” means Her Majesty’s Revenue and Customs;

“the HMRC figure” has the meaning given in regulation 35;

“income support” means support to which a person is entitled under section 123 of the Contributions and Benefits Act(g);

“initial effective date” has the meaning given in regulation 12;

“net pay arrangements” means arrangements for relief in respect of pension contributions under section 193 of the Finance Act 2004(h);

“the nil rate” means the nil rate of child support maintenance payable under paragraph 5 of Schedule 1;

“partner” has the meaning given by paragraph 10C(4) of Schedule 1;

(a) 2008 c. 10 (N.I.)

(b) Paragraph 10A is amended by paragraph 1(26) of Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008

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

(d) 1992 c. 7

(e) 2007 c. 2 (N.I.)

(f) 2003 c. 1

(g) Section 123 was amended by paragraph 13(2), (4) and (5) of Schedule 2 and Schedule 3 to the Jobseekers (Northern Ireland) Order 1995, paragraph 2 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), paragraph 96 of Schedule 24 to the Civil Partnership Act 2004, paragraph 3(9) and (10) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and section 3(1) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.))

(h) 2004 c. 12; section 193 was amended by paragraph 475 of Schedule 1 to the Income Tax Act 2007 (c. 3)

“party”, in relation to a maintenance calculation in force or an application for a maintenance calculation, means the non-resident parent and the person with care;

“the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(a);

“qualifying lender” has the meaning given to it in section 376(4) of the Income and Corporation Taxes Act 1988(b);

“the reduced rate” means the reduced rate of child support maintenance payable under paragraph 3 of Schedule 1;

“relevant training scheme” means—

(a) arrangements under section 1 of the Employment and Training Act (Northern Ireland) 1950(c);

(b) arrangements made by the Secretary of State for Defence for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(d),

for purposes which include the training of persons who, at the beginning of their training, are under the age of 18;

“relievable pension contributions” has the meaning given by section 188(2) of the Finance Act 2004;

“review date” has the meaning given in regulation 19;

“self assessment return” means a return which an individual is required to make and deliver under section 8 of the Taxes Management Act 1970(e);

“state pension credit” means the benefit payable in accordance with section 1 of the State Pension Credit Act (Northern Ireland) 2002(f);

“supersession decision” means a decision made under Article 19(g) superseding a decision mentioned in paragraph (1) of that Article;

“tax year” has the meaning given by section 4 of the Income Tax Act 2007(h);

“the Trading and Other Income Act” means the Income Tax (Trading and Other Income) Act 2005(i);

“UK social security pension” means a pension to which section 577 of the Earnings and Pensions Act applies(j);

“work-based training for young people” means arrangements made by the Secretary of State for Defence for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(k) for purposes which include the training of persons who, at the beginning of their training, are under the age of 18.

(a) S.I. 2003/2682

(b) 1988 c. 1; section 376(4) was amended by paragraph 55 of Schedule 16 and Part 4 of Schedule 18 to the Government of Wales Act 1998 (c. 38), paragraph 42 of Schedule 8 and paragraph 12 of Schedule 9 to the Housing and Regeneration Act 2008 (c. 17), paragraph 24 of Schedule 19 to the Localism Act 2011 (c. 20), Schedule 2 to S.I. 2001/1149 and Article 23 of S.I. 2001/3629

(c) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(d) 1966 c. 45

(e) 1970 c. 9; section 8 was amended by section 121(1) of the Finance Act 1996 (c. 8) and Part 5(3) of Schedule 27 to the Finance Act 2007 (c. 11)

(f) 2002 c. 14 (N.I.)

(g) Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(h) 2007 c. 3

(i) 2005 c. 5

(j) Section 577 was amended by paragraph 9(4) of Schedule 17 and Part 2(12) of Schedule 42 to the Finance Act 2004 and section 10(2) of the Finance (No. 2) Act 2005 (c. 22)

(k) 1966 c. 45

(2) Any reference in these Regulations to a numbered Article or Schedule is to the Article of, or Schedule to, the Child Support Order.

Meaning of “calculation decision”

3. In these Regulations “calculation decision” means a decision of the Department under Article 13, 18(a) or 19 determining the amount of child support maintenance to be fixed in accordance with Part I of Schedule 1.

Meaning of “latest available tax year”

4.—(1) In these Regulations “latest available tax year” means the tax year which, on the date on which the Department requests information from HMRC for the purposes of regulation 34 or regulation 68, is the most recent relevant tax year for which HMRC have received the information required to be provided in relation to the non-resident parent under the PAYE Regulations or in a self assessment return.

(2) In this regulation a “relevant tax year” is any one of the 6 tax years immediately preceding the date of the request for information referred to in paragraph (1).

Calculation – information applicable

5. Information required for the purposes of making a calculation decision or a decision in relation to an application for a variation is the information applicable at the date from which that decision (assuming that the decision was a decision to make or amend a maintenance calculation) would have effect.

Rounding

6. Where a calculation decision or a decision in relation to an application for a variation results in a fraction of a penny, that is to be treated as a penny if it is either one half or exceeds one half, and otherwise it is to be disregarded.

Service of documents

7.—(1) Where any document is given or sent to the Department, that document is to be treated as having been given or sent on the date of receipt by the Department.

(2) Where the Department sends any written notification or any document by ordinary post to a person’s last known or notified address that document is treated as having been given or sent on the second day following the day on which it is posted.

Authorisation of representative

8.—(1) A person may authorise a representative, whether or not legally qualified, to receive notices and other documents on that person’s behalf and to act on that person’s behalf in relation to the making of applications and the supply of information under any provision of the Child Support Order or these Regulations.

(2) Where a person has authorised a representative for the purposes of paragraph (1) who is not legally qualified, that person must confirm that authorisation in writing to the Department.

(a) Article 13 was amended by paragraph 11 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and paragraph 1(29)(a) of Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008 and is substituted by section 1(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008 and Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 and amended by section 8 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

PART 2

APPLICATION FOR A MAINTENANCE CALCULATION

Applications under Article 7

9.—(1) The Department may determine the form in which an application for a maintenance calculation is to be made and may require the applicant to provide such information or evidence as it reasonably requires in order to process the application (including, in the case of an application by a person with care, information sufficient to enable the person named as the non-resident parent to be identified).

(2) The application is to be taken to have been made when the application has been submitted to the Department in the required form and the information required under paragraph (1) has been provided.

Multiple applications

10.—(1) Where two or more applications for a maintenance calculation are made with respect to the same child the Department may determine which to proceed with.

(2) In making a determination under paragraph (1) an earlier application has priority over one made later.

(3) Where in relation to an application under Article 7(a)—

- (a) both parents of a qualifying child are named as non-resident parents; or
- (b) it is made by both non-resident parents of a qualifying child,

the Department must proceed with the application in relation to each non-resident parent, treating it as a single application for a maintenance calculation in respect of that qualifying child.

Notice of application

11.—(1) Where an application has been made under Article 7 the Department must, as soon as reasonably practicable, give written notice to the non-resident parent—

- (a) requesting such information as the Department may require to make the maintenance calculation; and
- (b) where relevant, advising the non-resident parent of the power of the Department to make an estimate of income or a default maintenance decision.

(2) The notice must be sent by ordinary post to the last known address of the non-resident parent.

(a) Article 7 was amended by Article 12(1) of the Child Support (Northern Ireland) Order 1995 and Schedule 7 to the Social Security (Northern Ireland) Order 1998 and is amended by sections 1(2) and 2 of, and paragraphs 11 and 13 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

PART 3
DECISION MAKING
CHAPTER 1
MAKING THE MAINTENANCE CALCULATION

Initial effective date

12. The effective date of a decision under Article 13 is the date on which notice is given to the non-resident parent in accordance with regulation 11.

Effect of variation applied for before a maintenance calculation is made

13.—(1) Subject to paragraph (2), where an application for a variation is made in the circumstances referred to in Article 28A(3) and the application is agreed to, the effective date of the maintenance calculation which takes account of the variation is—

- (a) where the ground giving rise to the variation existed from the initial effective date, that date; or
- (b) where the ground giving rise to the variation arose after the initial effective date, the day on which the ground arose.

(2) Where—

- (a) the ground for the variation applied for under Article 28A(3) is a ground in regulation 64 or 66; and
- (b) payments falling within the relevant regulation which have been made by the non-resident parent constitute voluntary payments for the purposes of Article 28J(a) and regulations made under that Article,

the date from which the maintenance calculation is to take account of the variation on this ground is to be the date on which the non-resident parent is notified under regulation 25 of the amount of the non-resident's liability to pay child support maintenance.

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

CHAPTER 2
REVISION

Grounds for revision

14.—(1) A decision to which Article 18(1A)(b) applies may be revised by the Department—

- (a) if the Department receives an application for the revision of a decision either—
 - (i) under Article 18, or
 - (ii) by way of application under Article 28G,within 30 days after the date of notification of the decision or within such longer time as may be allowed under regulation 15;

(a) Article 28J is inserted by section 19(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(b) Paragraph (1A) was inserted by section 8(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

- (b) if the Department is satisfied that the decision was wrong due to a misrepresentation of, or failure to disclose, a material fact and that decision was more advantageous to the person who misrepresented or failed to disclose that fact than it would have been but for the wrongness of the decision;
- (c) if an appeal is made under Article 22(a) against a decision within the time limit prescribed by the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(b) but that appeal has not been determined;
- (d) if the Department commences action leading to the revision of the decision within 30 days after the date of notification of the decision;
- (e) if the decision arose from official error;
- (f) if the information held by HMRC in relation to a tax year in respect of which the Department has determined historic income for the purposes of regulation 34 or unearned income for the purposes of regulation 68 has since been amended; or
- (g) if the ground for revision is that a person with respect to whom a maintenance calculation was made was not, at the time the calculation was made, a parent of a child to whom the calculation relates.

(2) A decision may not be revised because of a change of circumstances that occurred since the decision had effect or is expected to occur.

(3) An interim maintenance decision or default maintenance decision made under Article 14 may be revised at any time.

(4) In paragraph (1)(e) “official error” means an error made by an officer of the Department or HMRC acting as such to which no person outside the Department or HMRC materially contributed, but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Child Support Commissioner or a court.

Late application for a revision

15.—(1) The time limit for making an application for a revision specified in regulation 14(1)(a) may be extended where the conditions specified in the following provisions of this regulation are satisfied.

(2) An application for an extension of time must be made by one of the parties or that party’s authorised representative.

(3) An application for an extension of time must contain particulars of the grounds on which the extension is sought and must contain sufficient details of the decision which it is sought to have revised to enable that decision to be identified.

(4) An application for an extension of time may not be granted unless the applicant satisfies the Department that—

- (a) it is reasonable to grant the application;
- (b) the application for revision has merit; and
- (c) special circumstances are relevant to the application and because of those special circumstances it was not practicable for the application to be made within the time limit specified in regulation 14(1)(a).

(5) In determining whether it is reasonable to grant an application for an extension of time, the Department must have regard to the principle that the greater the amount of time that has elapsed between the end of the time specified in regulation 14(1)(a) for applying for a revision and the making of the application for an extension of time, the more compelling should be the special circumstances on which the application is based.

(a) Article 22 is substituted by Article 42 of the Social Security (Northern Ireland) Order 1998 and section 10 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(b) S.R. 1999 No. 162

(6) In determining whether it is reasonable to grant the application for an extension of time, no account shall be taken of the following—

- (a) that the applicant, or any person acting for the applicant, was unaware of or misunderstood the law applicable to the case (including ignorance or misunderstanding of the time limits imposed by these Regulations); or
- (b) that a Child Support Commissioner or a court has taken a different view of the law from that previously understood and applied.

(7) An application under this regulation for an extension of time which has been refused may not be renewed.

(8) In paragraph (6)(b) the reference to a Child Support Commissioner shall be read as including a reference to the Upper Tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007(a).

Effective date of a revision

16. Where a decision is revised and the date from which the original decision took effect is found to be wrong, the decision as revised takes effect from the date on which the original decision would have taken effect had the error not been made.

CHAPTER 3 SUPERSESSION

Grounds for supersession

17.—(1) A decision mentioned in Article 19(1)(b) may be superseded by a decision of the Department, on an application or on the Department’s own initiative, where—

- (a) there has been a relevant change of circumstances since the decision had effect or it is expected that a relevant change of circumstances will occur;
- (b) the decision was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) the decision was wrong in law (unless it was a decision made on appeal).

(2) The circumstances in which a decision may be superseded include where the relevant change of circumstances causes the maintenance calculation to cease by virtue of paragraph 16 of Schedule 1(c) or where the Department no longer has jurisdiction by virtue of Article 41(d).

(3) A decision may be superseded by a decision made by the Department where it receives an application for the supersession of a decision by way of an application under Article 28G.

(4) A decision may not be superseded in circumstances where it may be revised.

(5) A decision to refuse an application for a maintenance calculation may not be superseded.

(6) In making a supersession decision under Article 19(1) the Department need not consider any issue that is not raised by the application or, as the case may be, did not cause the decision to be made on the Department’s own initiative.

(7) This regulation is subject to any provision in Chapter 4 relating to the circumstances in which a supersession decision may be made.

(a) 2007 c. 15

(b) Paragraph (1) is amended by section 9(2) of, and Schedule 9 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(c) Paragraph 16 was amended by paragraph 32(5) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, section 1(2) of, and paragraphs 11 and 28(c) of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 1(29)(b) of Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008

(d) Article 41 is amended by paragraph 26 of Schedule 6 to the Social Security (Northern Ireland) Order 1998, sections 1(2)(a) and 21 of, and paragraph 11 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 128 of Schedule 1 to S.I. 2009/1941

Effective dates for supersession decisions

18.—(1) This regulation sets out cases and circumstances in which a supersession decision takes effect on a date other than the date mentioned in Article 19(4)(a).

(2) Where the ground for the supersession decision is that a relevant change of circumstances is expected to occur or that a ground for a variation is expected to occur, the decision takes effect from the date on which that change or that ground is expected to occur.

(3) Where the ground for the supersession decision is that a relevant change of circumstances of the following kind has occurred, the decision takes effect from the date on which the change occurred—

- (a) a child ceases to be a qualifying child, a relevant other child, or a child supported under another arrangement;
- (b) the person with care dies or ceases to be a person with care in relation to a qualifying child;
- (c) the person with care, the non-resident parent or a qualifying child ceases to be habitually resident in the United Kingdom;
- (d) the non-resident parent begins or ceases to receive a benefit mentioned in regulation 43(1) or begins or ceases to be a person who receives, or whose partner receives, a benefit referred to in regulation 43(2).

(4) Where the ground for the supersession decision is that a relevant change of circumstances affecting the non-resident parent's current income has occurred and the non-resident parent was required to report that change in accordance with regulations under Article 16(1)(b), the decision takes effect from the date on which the change occurred.

(5) Where the ground for the supersession decision is that there is a new qualifying child in relation to the non-resident parent, the decision takes effect from the date which would be the initial effective date in relation to an application under Article 7 in relation to that child if there were no maintenance calculation already in force.

(6) Where paragraphs (2) to (5) do not apply—

- (a) if the supersession decision is made on an application by one of the parties, the decision takes effect from the date of the application;
- (b) if the supersession decision is made on the Department's own initiative on the basis of information provided by a third party, the decision takes effect from the date on which that information is provided; and
- (c) if the supersession decision is made on the Department's own initiative and sub-paragraph (b) does not apply, the decision takes effect from the date on which it is made.

(7) In paragraph (3)—

- (a) the reference to a child supported under another arrangement is to a child supported under a qualifying maintenance arrangement mentioned in paragraph 5A of Schedule 1(c) or a child mentioned in regulation 51; and
- (b) the reference to the date on which a person begins or ceases to receive a benefit is to the date on which entitlement to the benefit commences or ceases.

(8) This regulation is subject to any provision in Chapter 4 relating to the date from which a supersession decision made under that Chapter takes effect.

(a) Paragraph 4 is amended by section 9(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
(b) Article 16(1) is amended by section 12 of, and paragraph 16 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008
(c) Paragraph 5A is inserted by paragraph 5(2) of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008

CHAPTER 4
UPDATING GROSS WEEKLY INCOME

Setting the review date

19.—(1) The Department must, in relation to each application for a maintenance calculation, fix a date at which the non-resident parent's gross weekly income is to be reviewed by reference to an updated HMRC figure ("the review date").

(2) Subject to paragraph (3), the first review date falls 12 months after the initial effective date and subsequent review dates fall on each anniversary of that date, unless the Department decides in any particular case or class of case to fix a different date.

(3) Where a maintenance calculation is in force and there is a further application in relation to the non-resident parent in respect of a new qualifying child, the review dates are to be aligned so that the first review date in respect of the new application is the next review date for the calculation already in force.

(4) Where an application for a maintenance calculation in relation to both non-resident parents of a qualifying child is treated as a single application by virtue of regulation 10(3) the Department may fix different review dates in respect of each non-resident parent.

Updating gross weekly income at the review date

20.—(1) Where an updated figure is provided by HMRC for the latest available tax year in accordance with a request under regulation 34(2)(b), that figure applies, for the purposes of determining historic income, on or after the review date.

(2) If the non-resident parent's gross weekly income, as calculated in accordance with Chapter 1 of Part 4 by reference to that updated figure, has changed, the Department may make a supersession decision with effect from the review date.

Updating unearned income at the review date

21.—(1) This regulation applies where, in relation to a maintenance calculation in force, additional income has been taken into account by virtue of a variation previously agreed to under regulation 68.

(2) When the Department makes a request to HMRC for the purposes of reviewing the non-resident parent's gross weekly income in accordance with regulation 20 the Department may also request information relating to the non-resident parent's unearned income for the latest available tax year and, where appropriate, make a supersession decision on the basis of that information with effect from the review date.

Periodic current income check

22.—(1) Where—

(a) the non-resident parent's gross weekly income is based on an amount of current income by virtue of regulation 33(2); and

(b) no supersession decision changing that amount has been made within the past 11 months, the Department may, for the purposes of validating that amount, require evidence of current income to be provided by the non-resident parent.

(2) Where the non-resident parent fails to provide evidence as requested under paragraph (1) the Department may make a supersession decision determining the non-resident parent's gross weekly income on the basis of historic income.

(3) Where the Department is provided with sufficient information on which to make a new determination of current income, it may make a supersession decision applying the general rule in regulation 33(2).

(4) Subject to paragraph (5), a supersession decision under this regulation has effect from the date on which it is made.

(5) Where the Department makes a supersession decision under paragraph (3) and the relevant change of circumstances affecting the non-resident parent's current income was one that the non-resident parent was required to report in accordance with regulations under Article 16(1), the decision takes effect from the date on which the change occurred.

25 per cent. tolerance for changes outside annual review or periodic current income check

23.—(1) This regulation applies where the non-resident parent's gross weekly income is based on an amount of current income by virtue of regulation 33(2) and, before the next review date, there is a change of circumstances affecting the amount of that current income.

(2) No supersession decision giving effect to that change may be made unless the amount of that current income has changed by at least 25 per cent.

(3) Paragraph (1) does not prevent a supersession decision that—

- (a) is made on the Department's own initiative under regulation 20 or 22;
- (b) is made on the ground mentioned in regulation 17(1)(c); or
- (c) supersedes a decision determining the non-resident parent's gross weekly income on the basis of regulation 41.

(4) Where the condition in paragraph (2) is satisfied, the current income (as changed) is to apply even if it does not differ from historic income by an amount that is at least 25 per cent of historic income.

CHAPTER 5

NOTIFICATION OF DECISIONS

Notification – general

24.—(1) Notification of a decision made by the Department under Article 13, 14 or 19 or of any revision of such a decision under Article 18 must be given to the parties in accordance with this Chapter.

(2) Any such notification must include information as to the provisions relating to the revision and supersession of, and appeals from, decisions made under the Child Support Order.

Notification of a maintenance calculation

25.—(1) Notification of a decision made under Article 13 or 14(2)(a) must set out—

- (a) the effective date of the maintenance calculation;
- (b) where relevant, the non-resident parent's gross weekly income, including—
 - (i) whether that is based on historic income or current income, and
 - (ii) if based on current income, whether that income has been estimated in accordance with regulation 41;
- (c) the number of qualifying children;
- (d) the number of relevant other children;
- (e) the weekly rate;

(a) Paragraph (2) was amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

- (f) the amounts calculated in accordance with Part 1 of Schedule 1(a) and, where there has been an agreement to a variation or a variation has otherwise been taken into account, Part 5 of these Regulations;
 - (g) where the weekly rate is adjusted by apportionment or to take account of shared care;
 - (h) where the amount of child support maintenance is decreased—
 - (i) to take account of a child supported under a qualifying maintenance arrangement mentioned in paragraph 5A of Schedule 1; or
 - (ii) in accordance with regulation 51 or 52.
- (2) A notification of a maintenance calculation made under Article 14(1) must set out—
- (a) the effective date of the maintenance calculation;
 - (b) the default rate;
 - (c) the number of qualifying children on which the rate is based; and
 - (d) whether apportionment has been applied under regulation 48,
- and must state the nature of the information required to enable a calculation decision to be made.
- (3) Except with the written permission of the person concerned, a notice under this regulation must not include—
- (a) the address of any person other than the recipient of the notice (other than the address of the relevant office of the Department) or any other information the use of which could reasonably be expected to lead to any such persons being located; and
 - (b) any other information the use of which could reasonably be expected to lead to any person other than the qualifying child or a party to the application being identified.

Notification of a revision or supersession

26.—(1) A notification of a decision made following the revision or supersession of a decision made under Article 13, 14 or 19, whether as originally made or revised under Article 18, must, subject to the qualification in regulation 25(3), set out the information mentioned in regulation 25(1) and (2) in relation to the decision in question.

(2) The requirement in paragraph (1) does not apply where the Department has decided not to supersede a decision and in that case the Department must, where appropriate and as far as reasonably practicable, notify the parties of that decision.

Notification of cessation of a maintenance calculation

27. Where the Department decides that a maintenance calculation has ceased or is to cease to have effect, the Department must immediately notify the non-resident parent and person with care so far as that is reasonably practicable.

(a) Part I was amended by paragraph 4(7) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 32(1) and (2) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, paragraphs 10 and 11 of Schedule 24 to the Civil Partnership Act 2004 and paragraph 2(8) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by paragraph 12 of Schedule 24 to the Civil Partnership Act 2004 and Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008

CHAPTER 6
MISCELLANEOUS MATTERS RELATING TO APPEALS

Decisions involving issues that arise on appeal in other cases

- 28.**—(1) For the purposes of Article 28ZA(2)(b)(a)—
- (a) a case in which there is no maintenance calculation in force is a prescribed case; and
 - (b) the prescribed basis on which the Department may make the decision is as if—
 - (i) the appeal in relation to the different matter, which is referred to in Article 28ZA(1)(b) had already been determined, and
 - (ii) for the purposes of making that decision, the appeal had been determined in a way that resulted in the lowest possible amount of child support maintenance in the circumstances of that case being payable.
- (2) The circumstances prescribed under Article 28ZA(4)(c) are that the Department—
- (a) certifies in writing that an appeal against that decision is being considered; and
 - (b) considers that, if such an appeal were to be determined in a particular way—
 - (i) there would be no liability for child support maintenance, or
 - (ii) such liability would be less than would be the case were an appeal not made.

Appeals involving issues that arise in other cases

- 29.** The circumstances prescribed for the purposes of Article 28ZB(6)(c)(b), are where the Department—
- (a) certifies in writing that an appeal against that decision in question is being considered; and
 - (b) considers that, if such an appeal were already determined, it would affect the determination of the appeal described in Article 28ZB(1)(a).

Tribunal decision made pending outcome of a related appeal

30. Where, in accordance with Article 28ZB(5) the Department makes a decision superseding the decision of an appeal tribunal or Child Support Commissioner, the superseding decision takes effect from the date on which the decision of the appeal tribunal or, as the case may be, the Child Support Commissioner would have taken effect had it been decided in accordance with the determination of the Child Support Commissioner or the court in the appeal referred to in Article 28ZB(1)(b).

Supersession of tribunal decision made in error due to misrepresentation etc.

- 31.**—(1) Where—
- (a) a decision made by an appeal tribunal or Child Support Commissioner is superseded on the ground that it was erroneous due to 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 otherwise have been but for that error,

(a) Article 28ZA was inserted by Article 43 of the Social Security (Northern Ireland) Order 1998 and is amended by paragraph 19(b) of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(b) Article 28ZB was inserted by Article 43 of the Social Security (Northern Ireland) Order 1998 and amended by paragraph 20 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

the superseding decision takes 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.

Supersession of look-alike case where law reinterpreted by a Child Support Commissioner or a court

32. Any supersession decision made under Article 19(a) in consequence of a determination which is a relevant determination for the purposes of Article 28ZC(b) takes effect from the date of the relevant determination.

PART 4

THE MAINTENANCE CALCULATION RULES

CHAPTER 1

DETERMINATION OF GROSS WEEKLY INCOME

The general rule for determining gross weekly income

33.—(1) The gross weekly income of a non-resident parent for the purposes of a calculation decision is a weekly amount determined at the effective date of the decision on the basis of either historic income or current income in accordance with this Chapter.

(2) The non-resident parent's gross weekly income is to be based on historic income unless—

- (a) current income differs from historic income by an amount that is at least 25 per cent. of historic income; or
- (b) the amount of historic income is nil or no historic income is available.

(3) For the purposes of paragraph (2)(b) no historic income is available if HMRC did not, when a request was last made by the Department for the purposes of regulation 34, have the required information in relation to a relevant tax year.

(4) "Relevant tax year" has the meaning given in regulation 4(2).

(5) This regulation is subject to regulation 23(4).

Historic income – general

34.—(1) Historic income is determined by—

- (a) taking the HMRC figure last requested from HMRC in relation to the non-resident parent;
- (b) adjusting that figure where required in accordance with paragraph (3); and
- (c) dividing by 365 and multiplying by 7.

(2) A request for the HMRC figure is to be made by the Department—

- (a) for the purposes of a decision under Article 13 no more than 30 days before the initial effective date; and
- (b) for the purposes of updating that figure, no more than 30 days before the review date.

(a) Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(b) Article 28ZC was inserted by Article 44 of the Social Security (Northern Ireland) Order 1998 and is amended by section 1(2)(a) of, and paragraph 21 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, paragraph 57 of Schedule 9 to the Constitutional Reform Act 2005 (c. 4) and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(3) Where the non-resident parent has made relievable pension contributions during the tax year to which the HMRC figure relates and those contributions have not been deducted under net pay arrangements, the HMRC figure is, if the non-resident parent so requests and provides such information as the Department requires, to be adjusted by deducting the amount of those contributions.

Historic income – the HMRC figure

35.—(1) The HMRC figure is the amount identified by HMRC from information provided in a self-assessment return or under the PAYE Regulations, as the sum of the income on which the non-resident parent was charged to tax for the latest available tax year—

- (a) under Part 2 of the Earnings and Pensions Act;
- (b) under Part 9 of that Act;
- (c) under Part 10 of that Act but only in so far as that income comprises the following taxable UK benefits listed in Table A(a) in Chapter 3 of that Part—
 - (i) incapacity benefit,
 - (ii) contributory employment and support allowance,
 - (iii) jobseeker’s allowance, and
 - (iv) income support, and
- (d) under Part 2 of the Trading and Other Income Act.

(2) The amount identified as income for the purposes of paragraph (1)(a) is to be taken—

- (a) after any deduction for relievable pension contributions made by the non-resident parent’s employer in accordance with net pay arrangements; and
- (b) before any deductions under Part 5 of the Earnings and Pensions Act.

(3) The amount identified as income for the purposes of paragraph (1)(b) is not to include a UK social security pension.

(4) The amount identified as income for the purposes of paragraph (1)(d) is to be taken after deduction of any relief under section 83 of the Income Tax Act 2007(b).

(5) Where, for the latest available tax year, HMRC has both information provided in a self-assessment return and information provided under the PAYE Regulations, the amount identified for the purposes of paragraph (1) is to be taken from the former.

Current income – general

36.—(1) Current income is the sum of the non-resident parent’s income—

- (a) as an employee or office-holder;
- (b) from self-employment; and
- (c) from a pension,

calculated or estimated as a weekly amount at the effective date of the relevant calculation decision in accordance with regulations 37 to 41.

(2) Where payment is made in a currency other than sterling, an amount equal to any banking charge payable in converting that payment to sterling is to be disregarded in calculating the current income of a non-resident parent.

(a) Table A was amended by paragraph 24(3) of Schedule 3 to the Welfare Reform Act 2007 (c. 5)
(b) 2007 c. 3

Current income as an employee or office-holder

37.—(1) The non-resident parent's current income as an employee or office-holder is income of a kind that would be taxable earnings within the meaning of section 10(2) of the Earnings and Pensions Act and is to be calculated as follows.

(2) As regards any part of the non-resident parent's income that comprises salary, wages or other amounts paid periodically—

- (a) if it appears to the Department that the non-resident parent is (or is to be) paid a regular amount according to a settled pattern that is likely to continue for the foreseeable future, that part of the non-resident parent's income is to be calculated as the weekly equivalent of that amount; and
- (b) if sub-paragraph (a) does not apply (for example where the non-resident parent is a seasonal worker or has working hours that follow an irregular pattern) that part of the non-resident parent's income is to be calculated as the weekly average of the amounts paid over such period preceding the effective date of the relevant calculation decision as appears to the Department to be appropriate.

(3) Where the income from the non-resident parent's present employment or office has, during the past 12 months, included bonus or commission or other amounts paid separately from, or in relation to a longer period than, the amounts referred to in paragraph (2), the amount of that income is to be calculated by aggregating those payments, dividing by 365 and multiplying by 7.

(4) Where the earnings from the non-resident parent's present employment or office have, in the past 12 months, included amounts treated as earnings under Chapters 2 to 11 of Part 3 of the Earnings and Pensions Act the non-resident parent's current income is to be taken to include the amount of those benefits as last obtained by HMRC divided by 365 and multiplied by 7.

(5) Where the non-resident parent's employer makes deductions of relievable pension contributions from the payments referred to in paragraph (2) or (3) the amount of those payments is to be calculated after those deductions.

Current income from self-employment

38.—(1) The non-resident parent's current income from self-employment is to be determined by reference to the profits of any trade, profession or vocation carried on by the non-resident parent at the effective date of the relevant calculation decision.

(2) The profits referred to in paragraph (1) are the profits determined in accordance with Part 2 of the Trading and Other Income Act for the most recently completed relevant period or, if no such period has been completed, the estimated profits for the current relevant period.

(3) The weekly amount is calculated by dividing the amount of those profits by the number of weeks in the relevant period.

(4) In paragraphs (2) and (3) the "relevant period" means a tax year or such other period in respect of which the non-resident parent should, in the normal course of events, report the profits or losses of the trade, profession or vocation in question to HMRC in a self assessment return.

(5) In the case of a non-resident parent who carries on a trade, profession or vocation in partnership, the profits referred to in this regulation are the profits attributable to the non-resident parent's share of the partnership.

(6) The profits of a trade, profession or vocation that the non-resident parent has ceased to carry on at the effective date of the relevant calculation decision are to be taken as nil.

Deduction for pension contributions relievable at source

39. Where the non resident parent—

- (a) has current income from self-employment or as an employee or office-holder at the effective date of the relevant calculation decision; and

- (b) makes relievable pension contributions which are not taken into account under regulation 37(5),

there is to be deducted from the sum of any amounts calculated in accordance with regulation 37 or 38 an amount determined by the Department as representing the weekly average of those contributions.

Current income from a pension

40. The non-resident parent’s current income from a pension is to be calculated as the weekly average, over such period as the Department considers appropriate, of amounts received by the non-resident parent from a pension or annuity or other income (excluding UK social security pensions) of a kind that would be charged to tax under Part 9 of the Earnings and Pensions Act.

Estimate of current income where insufficient information available

41.—(1) Where—

- (a) current income applies by virtue of regulation 33(2)(b); and
- (b) the information available in relation to current income is insufficient or unreliable,

the Department may estimate that income and, in doing so, may make any assumption as to any fact.

(2) Where the Department is satisfied that the non-resident parent is engaged in a particular occupation, whether as an employee, office-holder or a self-employed person, the assumptions referred to in paragraph (1) may include an assumption that the non-resident parent has the average weekly income of a person engaged in that occupation in the UK or in any part of the UK.

CHAPTER 2

RATES OF CHILD SUPPORT MAINTENANCE

Reduced rate

42. The reduced rate is an amount calculated as follows—

$$F + (A \times T)$$

where—

F is the flat rate liability applicable to the non-resident parent;

A is the amount of the non-resident parent’s gross weekly income between £100 and £200; and

T is the percentage determined in accordance with the following Table—

	Number of relevant other children of the non-resident parent	T (%)
1 qualifying child of the non-resident parent	0	19
	1	16.4
	2	15.6
	3 or more	15.2
2 qualifying children of the non-resident parent	0	27
	1	23.5
	2	22.5
	3 or more	21.9
3 or more qualifying children of the non-resident parent	0	33
	1	28.8
	2	27.7
	3 or more	26.9

Flat rate

43.—(1) The following benefits, pensions and allowances are prescribed for the purposes of paragraph 4(1)(b) of Schedule 1—

- (a) under the Contributions and Benefits Act—
 - (i) bereavement allowance,
 - (ii) category A retirement pension,
 - (iii) category B retirement pension,
 - (iv) category C and category D retirement pension,
 - (v) incapacity benefit,
 - (vi) carer’s allowance,
 - (vii) maternity allowance,
 - (viii) severe disablement allowance,
 - (ix) industrial injuries benefit,
 - (x) widowed mother’s allowance,
 - (xi) widowed parent’s allowance, and
 - (xii) widow’s pension;
- (b) contribution-based jobseeker’s allowance under the Jobseekers (Northern Ireland) Order 1995(a);
- (c) a social security benefit paid by a country other than the United Kingdom;
- (d) a training allowance (other than in respect of a relevant training scheme);
- (e) a war disablement pension within the meaning of section 146(2) of the Contributions and Benefits Act(b) or a pension which is analogous to such a pension paid by the government of a country outside the United Kingdom;
- (f) a war widow’s pension within the meaning of that section, or a war widower’s pension or surviving civil partner’s war pension;
- (g) a payment under a scheme mentioned in section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004(c); and
- (h) contributory employment and support allowance.

(2) The following benefits are prescribed for the purposes of paragraph 4(1)(c) of Schedule 1—

- (a) income support;
- (b) income-based jobseeker’s allowance;
- (c) income-related employment and support allowance; and
- (d) state pension credit.

(3) Where the conditions referred to in paragraph 4(2) of Schedule 1 are satisfied the flat rate of maintenance payable is half the flat rate that would otherwise apply.

(a) S.I. 1995/2705 (N.I. 15)

(b) The definition of “war disablement pension” was amended by paragraph 201(3) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 and the definition of “war widow’s pension” was amended by paragraph 201(4) of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 and paragraph 102(2) of Schedule 24 to the Civil Partnership Act 2004

(c) 2004 c. 32

(4) In paragraph (1)(d) “training allowance” means a payment under section 1 of the Employment and Training Act (Northern Ireland) 1950(a) which is paid to a person for that person’s maintenance while undergoing training.

Nil rate

44.—(1) The nil rate is payable where the non-resident parent is—

- (a) a child;
- (b) a prisoner or a person serving a sentence of imprisonment detained in hospital;
- (c) a person who is 16 or 17 years old and—
 - (i) in receipt of income support, income-based jobseeker’s allowance or income-related employment and support allowance, or
 - (ii) a member of a couple whose partner is in receipt of income support, income-based jobseeker’s allowance or income-related employment and support allowance;
- (d) a person receiving an allowance in respect of a relevant training scheme; or
- (e) a person who is resident in a residential care home, nursing home or an independent hospital who—
 - (i) is in receipt of a pension, benefit or allowance specified in regulation 43(1) or (2), or
 - (ii) has the whole or part of the cost of the accommodation met by the Regional Health and Social Care Board or an HSC trust.

(2) For the purposes only of determining whether paragraph 5(b) of Schedule 1(b) applies, the gross weekly income of the non-resident parent is to include any payments made by way of benefits, pensions and allowances referred to in regulation 43(1) or (2).

(3) In this regulation—

an “HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991(c), by which functions are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994;

“independent hospital” has the meaning assigned to it by Article 2(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(d);

“nursing home” has the meaning assigned to it by Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“person serving a sentence of imprisonment detained in hospital” means a person who—

- (a) is being detained under Article 53 of the Mental Health (Northern Ireland) Order 1986(e); and
- (b) in any case where there is in relation to that person a release date within the meaning of Article 56(3) of that Order, is being detained on or before the day which the Department certifies to be that release date;

(a) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)) and Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8))

(b) Part 1 is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 5 of Schedule 1 was amended by paragraph 2 of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008

(c) S.I. 1991/194 (N.I. 1); Article 10 was amended by Schedule 2 to the Health Services (Primary Care) (Northern Ireland) Order 1997 (S.I. 1997/1177 (N.I. 7)) and section 43 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3 (N.I.))

(d) S.I. 2003/431 (N.I. 9)

(e) S.I. 1986/595 (N.I. 4); Article 53 was amended by paragraph 27 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) and Article 56(3) was substituted by section 296(3) of the Criminal Justice Act 2003 (c. 44) and amended by paragraph 28 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998

“prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under sentence imposed by court other than a person who is detained in hospital under the provisions of the Mental Health (Northern Ireland) Order 1986;

“the Regional Health and Social Care Board” means the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009(a);

“residential care home” has the meaning assigned to it by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.

Decrease for shared care

45.—(1) This regulation and regulation 46 apply where the Department determines the number of nights which count for the purposes of the decrease in the amount of child support maintenance under paragraphs 7 and 8 of Schedule 1(b).

(2) Subject to paragraph (3), the determination is to be based on the number of nights for which the non-resident parent is expected to have the care of the qualifying child overnight during the 12 months beginning with the effective date of the relevant calculation decision.

(3) The Department may have regard to a period of less than 12 months where it considers a shorter period is appropriate (for example where the parties have an agreement in relation to a shorter period) and, if the Department does so, paragraphs 7(3) and 8(2) of Schedule 1 are to have effect as if—

- (a) the period mentioned there were that shorter period; and
- (b) the number of nights mentioned in the Table in paragraph 7(4), or in paragraph 8(2), of that Schedule were reduced proportionately.

(4) When making a determination under paragraphs (1) to (3) the Department must consider—

- (a) the terms of any agreement made between the parties or of any court order providing for contact between the non-resident parent and the qualifying child; or
- (b) if there is no agreement or court order, whether a pattern of shared care has already been established over the past 12 months (or such other period as the Department considers appropriate in the circumstances of the case).

(5) For the purposes of this regulation—

- (a) a night will count where the non-resident parent has the care of the qualifying child overnight and the child stays at the same address as the non-resident parent;
- (b) the non-resident parent has the care of the qualifying child when the non-resident parent is looking after the child; and
- (c) where, on a particular night, a child is a boarder at a boarding school, or an in-patient in a hospital, the person who would, but for those circumstances, have the care of the child for that night, shall be treated as having care of the child for that night.

Assumption as to number of nights of shared care

46.—(1) This regulation applies where the Department is required to make a determination under regulation 45 for the purposes of a calculation decision.

(a) 2009 c. 1 (N.I.)

(b) Paragraphs 7 and 8 are substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and paragraph 7 is amended by paragraph 6 of Schedule 1 and paragraph 1(25) of Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008 and paragraph 8 by paragraph 7 of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008

- (2) If it appears to the Department that—
- (a) the parties agree in principle that the care of a qualifying child is to be shared during the period mentioned in regulation 45(2) or (3); but
 - (b) there is insufficient evidence to make that determination on the basis set out in regulation 45(4) (for example because the parties have not yet agreed the pattern of frequency or the evidence as to a past pattern is disputed),

the Department may make the decision on the basis of an assumption that the non-resident parent is to have the care of the child overnight for one night per week.

(3) Where the Department makes a decision under paragraph (2) the assumption applies until an application is made under Article 19 for a supersession of that decision and the evidence provided is sufficient to enable a determination to be made on the basis set out in regulation 45(4).

Non-resident parent party to another maintenance arrangement

47.—(1) An agreement described in paragraph (2) is an agreement of a prescribed description for the purposes of paragraph 5A(6)(b) of Schedule 1(a).

- (2) The agreement may be oral or written and satisfy the following conditions—
- (a) it must relate to a child of the non-resident parent who is habitually resident in the UK;
 - (b) it must be between the non-resident parent and a person with whom the child resides (but not in the same household as the non-resident parent) and who usually provides day to day care for that child; and
 - (c) it must provide for the non-resident parent to make regular payments for the benefit of the child.

(3) The payments mentioned in paragraph (2)(c) may include payments made by the non-resident parent direct to the person mentioned in paragraph (2)(b) or payments to other persons.

CHAPTER 3

DEFAULT MAINTENANCE DECISIONS

Default rate

48.—(1) Where the Department makes a default maintenance decision under Article 14(1)(b) the default rate is set out in paragraph (2).

- (2) The default rate is—
- (a) £39 where there is one qualifying child;
 - (b) £51 where there are two qualifying children; or
 - (c) £64 where there are three or more qualifying children,

apportioned, where the non-resident parent has more than one qualifying child and in relation to them there is more than one person with care, as provided in paragraph 6(2) of Schedule 1.

(a) Paragraph 5A is inserted by paragraph 5(2) of Schedule 1 to the Child Maintenance Act (Northern Ireland) 2008
(b) Article 14(1) was substituted by paragraph 12(1) of Schedule 6 to the Social Security (Northern Ireland) Order 1998

CHAPTER 4
SPECIAL CASES

Parent treated as a non-resident parent in shared care cases

49.—(1) Where the circumstances of a case are that—

- (a) an application is made by a person with care under Article 7(a); and
- (b) the person named in that application as the non-resident parent of the qualifying child also provides a home for that child (in a different household from the applicant) and shares the day to day care of that child with the applicant,

the case is to be treated as a special case for the purposes of the Child Support Order.

(2) For the purposes of this special case, the person mentioned in paragraph (1)(b) is to be treated as the non-resident parent if, and only if, that person provides day to day care to a lesser extent than the applicant.

(3) Where the applicant is receiving child benefit in respect of the qualifying child the applicant is assumed, in the absence of evidence to the contrary, to be providing day to day care to a greater extent than any other person.

Child in care who is allowed to live with a parent

50.—(1) Where the circumstances of a case are that a qualifying child who is in the care of an authority is allowed by the authority to live with a parent of that child under Article 27(5) of the Children Order, that case is to be treated as a special case for the purposes of the Child Support Order.

(2) For the purposes of this case, Article 4(3)(b) is to be modified so that, for the reference to the person who usually provides day to day care for the child there is substituted a reference to the parent of the child with whom the authority has allowed the child to live.

Non-resident parent liable to maintain a child of the family or a child abroad

51.—(1) A case is to be treated as a special case for the purposes of the Child Support Order where—

- (a) an application for a maintenance calculation has been made or a maintenance calculation is in force with respect to a qualifying child and a non-resident parent;
- (b) there is a different child in respect of whom no application for a maintenance calculation may be made but whom the non-resident parent is liable to maintain—
 - (i) in accordance with a maintenance order made in respect of that child as a child of the non-resident parent's family, or
 - (ii) in accordance with an order made by a court outside Northern Ireland or under the legislation of a jurisdiction outside the United Kingdom; and
- (c) the weekly rate of child support maintenance, apart from this regulation, would be the basic rate, or the reduced rate, or would be calculated following agreement to a variation where the rate would otherwise be a flat rate or the nil rate.

(2) In any such case the amount of child support maintenance is to be calculated in accordance with paragraph 5A of Schedule 1 as if the child in question were a child with respect to whom the non-resident parent was a party to a qualifying maintenance arrangement.

(a) Article 7 was amended by Article 12(1) of the Child Support (Northern Ireland) Order 1995 and Schedule 7 to the Social Security (Northern Ireland) Order 1998 and is amended by sections 1(2) and 2 and paragraphs 11 and 13 of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(3) For the purposes of this regulation “child” includes a person who has not attained the age of 20 whom the non-resident parent is liable to maintain in accordance with paragraph (1)(b)(ii).

Care provided in part by an authority

52.—(1) This regulation applies where paragraph (2) applies and the rate of child support maintenance payable is the basic rate, or the reduced rate, or has been calculated following agreement to a variation where the non-resident parent’s liability would otherwise have been the flat rate or the nil rate.

(2) Where the circumstances of a case are that the care of the qualifying child is shared between the person with care and an authority and—

- (a) the qualifying child is in the care of the authority for 52 nights or more in the period of 12 months ending with the effective date of the relevant calculation decision;
- (b) where, in the opinion of the Department, a period other than the period of 12 months mentioned in sub-paragraph (a) is more representative of the current arrangements for the care of the qualifying child, the qualifying child is in the care of the authority during that period for no fewer than the number of nights which bears the same ratio to 52 nights as that period bears to 12 months; or
- (c) it is intended that the qualifying child is to be in the care of the authority for a number of nights in a period beginning with the day after the effective date and—
 - (i) if that period were a period of 12 months, the number of nights is 52 nights or more, or
 - (ii) if that period were a period other than 12 months, the number of nights is no fewer than the number of nights which bears the same ratio to 52 nights as that period bears to 12 months,

that case is to be treated as a special case for the purpose of the Child Support Order.

(3) In a case where this regulation applies, the amount of child support maintenance which the non-resident parent is liable to pay the person with care of that qualifying child is the amount calculated in accordance with the provisions of Part I of Schedule 1 and decreased in accordance with this regulation.

(4) First, there is to be a decrease according to the number of nights spent or to be spent by the qualifying child in the care of the authority during the period under consideration.

(5) Where paragraph (2)(b) or (c) applies, the number of nights in the period under consideration shall be adjusted by the ratio which the period of 12 months bears to the period under consideration.

(6) After any adjustment under paragraph (5), the amount of the decrease for one child is set out in the following Table—

<i>Number of nights in care of an authority</i>	<i>Fraction to subtract</i>
52-103	One-seventh
104-155	Two-sevenths
156-207	Three-sevenths
208-259	Four-sevenths
260-262	Five-sevenths

(7) If the non-resident parent and the person with care have more than one qualifying child, the applicable decrease is the sum of the appropriate fractions in the Table divided by the number of such qualifying children.

(8) In a case where the amount of child support maintenance which the non-resident parent is liable to pay in relation to the same person with care is to be decreased in accordance with the provisions of both this regulation and of paragraph 7 of Part I of Schedule 1, read with these

Regulations, the applicable decrease is the sum of the appropriate fractions derived under those provisions.

(9) If the application of this regulation would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to less than the flat rate referred to in paragraph 4(1) of Schedule 1 (or in that sub-paragraph as modified by regulations under paragraph 10A of that Schedule), the non-resident parent is instead liable to pay child support maintenance at a rate equivalent to that rate, apportioned (if appropriate) in accordance with paragraph 6 of Schedule 1.

(10) If the number of nights calculated for the purposes of applying the Table in paragraph (6) is 263 or more, the amount of child support maintenance payable by the non-resident parent in respect of the child in question is nil.

(11) Where a qualifying child is a boarder at a boarding school or is an in-patient at a hospital, the qualifying child shall be treated as being in the care of an authority for any night that the authority would otherwise have been providing such care.

(12) A child is in the care of an authority for any night in which that child is being looked after by the authority within the meaning of Article 25 of the Children Order(a).

Care provided for relevant other child by an authority

53. Where a child, other than a qualifying child, is cared for in part or in full by an authority and the non-resident parent or the non-resident parent's partner receives child benefit for that child the child is a relevant other child for the purposes of Schedule 1.

Child who is a boarder or an in-patient in hospital

54.—(1) Where the circumstances of the case are that—

- (a) a qualifying child is a boarder at a boarding school or is an in-patient in a hospital; and
- (b) by reason of those circumstances, the person who would otherwise provide day to day care is not doing so,

that case is to be treated as a special case for the purposes of the Child Support Order.

(2) For the purposes of this case, Article 4(3)(b) is to be modified so that for the reference to the person who usually provides day to day care for the child there is substituted a reference to the person who would usually provide day to day care for that child but for the circumstances specified in paragraph (1).

PART 5

VARIATIONS

CHAPTER 1

GENERAL

Application for a variation

55.—(1) Where an application for a variation is made other than in writing it is treated as made on the date on which the applicant notifies the Department that the applicant wishes to make such an application.

(2) Where an application for a variation is made in writing it is treated as made on the date that the Department receives it.

(a) Article 25 was amended by section 2(1) of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11 (N.I.))

(3) Two or more applications for a variation with respect to the same maintenance calculation or application for a maintenance calculation may be considered together.

(4) The Department may treat an application for a variation made on one ground as made on another ground if that other ground is more appropriate to the facts alleged in that case.

Rejection of an application following preliminary consideration

56.—(1) The circumstances prescribed for the purposes of Article 28B(2)(c)(a) are—

- (a) the applicant does not state a ground for variation or provide sufficient information to enable a ground to be identified;
- (b) although a ground is stated, the Department is satisfied that the application would not be agreed to because—
 - (i) the facts alleged do not bring the case within the ground, or
 - (ii) no facts are alleged that would support the ground or could reasonably form the basis of further enquiries;
- (c) a default maintenance decision is in force;
- (d) the non-resident parent is liable to pay a flat rate or nil rate because either the non-resident parent or partner is in receipt of a benefit listed in regulation 43(2);
- (e) in the case of an application made by the non-resident parent on the grounds mentioned in Chapter 2—
 - (i) the amount of the expenses does not exceed the relevant threshold,
 - (ii) the amount of maintenance for which the non-resident parent is liable is equal to or less than the flat rate referred to in paragraph 4(1) of Schedule 1 (or in that subparagraph as modified by regulations under paragraph 10A of that Schedule),
 - (iii) the amount of the non-resident parent's gross weekly income would exceed the capped amount after deducting special expenses, or
 - (iv) the non-resident parent's gross weekly income has been determined on the basis of regulation 41, or
- (f) in the case of an application on any of the grounds mentioned in Chapter 3 the amount of the non-resident parent's gross weekly income (without taking that ground into account) is the capped amount.

(2) The circumstances set out in paragraph (1) are circumstances prescribed for the purposes of Article 28F(3)(b)(b) in which the Department must not agree to a variation.

Provision of information

57.—(1) Where the Department has received an application for a variation it may request further information or evidence from the applicant to enable that application to be determined.

(2) Any such information or evidence requested in accordance with paragraph (1) must be provided within 14 days after the date of notification of the request or such longer period as the Department is satisfied is reasonable in the circumstances of the case.

(3) Where any information or evidence requested is not provided within the time specified in paragraph (2), the Department may, where able to do so, proceed to determine the application in the absence of the requested information or evidence.

(a) Article 28B was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 and is substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000. *See also* S.R. 2001 No. 24

(b) Article 28F was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995, is substituted by section 5(5) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008. *See also* S.R. 2001 No. 24

Procedure in relation to a variation

58.—(1) Where the Department has given the preliminary consideration to an application for a variation and not rejected it, it—

- (a) must give notice of the application to any other party informing them of the grounds on which the application has been made and any relevant information or evidence given by the applicant or obtained by the Department, except information or evidence falling within paragraph (5); and
- (b) may invite representations (which need not be in writing but must be in writing if in any case the Department so directs) from the other party on any matter relating to that application, to be submitted to the Department within 14 days after the date of notification or such longer period as the Department is satisfied is reasonable in the circumstances of the case.

(2) The Department need not act in accordance with paragraph (1) if—

- (a) it is satisfied on the information or evidence available that the application would not be agreed to;
- (b) in the case of an application for a variation on the ground mentioned in regulation 68, the information from HMRC for the latest available tax year does not disclose unearned income exceeding the relevant threshold and the Department is not in possession of other information or evidence that would merit further enquiry; or
- (c) regulation 74 applies.

(3) Where the Department receives representations from the other party—

- (a) it may, if it is satisfied that it is reasonable to do so, inform the applicant of the representations concerned (excluding material falling within paragraph (5)) and invite comments within 14 days or such longer period as the Department is satisfied is reasonable in the circumstances of the case; and
- (b) where the Department acts under sub-paragraph (a) it must not proceed to determine the application until such comments are received or the period referred to in that sub-paragraph has expired.

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

(5) The information or evidence referred to in paragraph (1)(a) is as follows—

- (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 63 where the applicant requests they should not be disclosed and the Department is satisfied that disclosure is not necessary in order to be able to determine the application;
- (b) medical evidence or medical advice which has not been disclosed to the applicant or the other party and which the Department considers would be harmful to the health of the applicant or that party if disclosed; or
- (c) the address of the other party or qualifying child, or any other information which could reasonably be expected to lead to that party or child being located, where the Department considers that there would be a risk of harm or undue distress to that other party or that child or any other children living with that other party if the address or information were disclosed.

Factors not taken into account for the purposes of Article 28F

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

- (a) the fact that the conception of the qualifying child was not planned by one or both of the parents;

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

Procedure on revision or supersession of a previously determined variation

60.—(1) Subject to paragraph (2), where the Department has received an application under Article 18 or 19(a) in connection with a previously determined variation which has effect on a maintenance calculation in force, regulations 57 to 59 apply in relation to that application as if it were an application for a variation that had not been rejected after preliminary consideration.

(2) The Department need not act in accordance with regulation 58(1) if—

- (a) 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; or
- (b) it appears to the Department that representations of the other party would not be relevant to the decision.

Regular payments condition

61.—(1) For the purposes of Article 28C(2)(b)(b) the payments are those fixed by the interim maintenance decision or the maintenance calculation in force, as the case may be, adjusted to take account of the variation applied for by the non-resident parent as if that variation had been agreed.

(2) The Department may refuse to consider the application for a variation where a regular payments condition has been imposed and the non-resident parent fails to make such payments, which are due and unpaid, within one month after being required to do so by the Department or such other period as the Department may in the particular case decide.

CHAPTER 2

GROUNDS FOR VARIATION: SPECIAL EXPENSES

Contact costs

62.—(1) Subject to the following provisions of this regulation and regulation 67, the following costs incurred or reasonably expected to be incurred by the non-resident parent, whether in respect of the non-resident parent or the qualifying child or both, for the purpose of maintaining contact with that child, constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B(c)—

- (a) the cost of purchasing a ticket for travel;

-
- (a) Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 and amended by section 8 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008 and Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008
 - (b) Article 28C was inserted by Article 3(1) of the Child Support (Northern Ireland) Order 1995 and is substituted by section 5(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000. *See also* S.R. 2001 No. 24
 - (c) Schedule 4B was inserted by section 3(3) of the Child Support (Northern Ireland) Order 1995 and is substituted by section 6(2) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

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

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

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

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

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

Illness or disability of relevant other child

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

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

(2) For the purposes of this regulation and regulation 62—

- (a) a person is “disabled” for a period in respect of which—
 - (i) a disability living allowance is paid to or in respect of that person,
 - (ii) that person would receive disability living allowance if it were not for the fact that the person is a patient, though remaining part of the applicant’s family, or
 - (iii) that person is registered as blind in a register maintained by or on behalf of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972(a),and “disability” is to be construed accordingly;
- (b) “disability living allowance” means the care component of a disability living allowance, payable under section 72 of the Contributions and Benefits Act(b);
- (c) “health services” has the same meaning as in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972;
- (d) “long-term illness” means an illness from which the child is suffering at the date of the application or the date from which the variation, if agreed, would take effect and which is likely to last for at least 12 months after that date, or, if likely to be shorter than 12 months, for the remainder of the child’s life;
- (e) “relevant other child” has the meaning given in paragraph 10C(2) of Schedule 1(c).

(3) Where, at the date on which the non-resident parent makes the variation application—

- (a) the non-resident parent or a member of the non-resident parent’s household has received, is in receipt of, or will receive any financial assistance from any source in respect of the long-term illness or disability of the relevant other child; or

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

(b) Section 72 was amended by Article 64(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), sections 48 and 54(2) of, and Schedule 8 to, the Welfare Reform Act (Northern Ireland) 2007 and regulation 2(4) of S.R. 2011 No. 356

(c) Paragraph 10C is inserted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and was amended by paragraph 12 of Schedule 24 to the Civil Partnership Act 2004

(b) a disability living allowance is received by the non-resident parent or the member of the non-resident parent's household on behalf of the relevant other child, only the net amount of the costs incurred in respect of the items listed in paragraph (1), after the deduction of the financial assistance or the amount of the allowance, constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(4) For the purpose of paragraph (2)(a)—

- (a) “patient” means a person (other than a person who is serving a sentence of imprisonment or detention in a juvenile justice centre within the meaning of Article 51 of the Criminal Justice (Children) (Northern Ireland) Order 1998^(a) or a young offenders centre within the meaning of section 2 of the Treatment of Offenders Act (Northern Ireland) 1968^(b) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 2005^(c); and
- (b) where a person has ceased to be registered in a register as referred to in head (iii) of that sub-paragraph, having regained their eyesight, that person is to be treated as though registered blind, for a period of 28 days after the day on which that person ceased to be registered in such a register.

Prior debts

64.—(1) Subject to the following provisions of this regulation and regulation 67, the repayment of debts to which paragraph (2) applies constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B where those debts were incurred—

- (a) before the non-resident parent became a non-resident parent in relation to the qualifying child; and
- (b) at the time when the non-resident parent and the person with care in relation to the child referred to in sub-paragraph (a) were a couple.

(2) This paragraph applies to debts incurred—

- (a) for the joint benefit of the non-resident parent and the person with care;
- (b) for the benefit of the person with care where the non-resident parent remains legally liable to repay the whole or part of the debt;
- (c) for the benefit of any person who is not a child but who at the time the debt was incurred—
 - (i) was a child,
 - (ii) lived with the non-resident parent and the person with care, and
 - (iii) of whom the non-resident parent or the person with care is the parent, or both are the parents;
- (d) for the benefit of the qualifying child referred to in paragraph (1); or
- (e) for the benefit of any child, other than the qualifying child referred to in paragraph (1), who, at the time the debt was incurred—
 - (i) lived with the non-resident parent and the person with care, and
 - (ii) of whom the person with care is the parent.

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

(b) 1968 c. 29 (N.I.); section 2 was amended by Article 13(5) of the Treatment of Offenders (Northern Ireland) Order 1989 (S.I. 1989/1344 (N.I. 15)), paragraph 3 of Schedule 5 to the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) and paragraph 6 of Schedule 1 and Schedule 2 to the Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15))

(c) S.R. 2005 No. 580

(3) Paragraph (1) does not apply to repayment of—

- (a) a debt which would otherwise fall within paragraph (1) where the non-resident parent has retained for the non-resident parent's own use and benefit the asset in connection with the purchase of which the debt was incurred;
- (b) a debt incurred for the purposes of any trade or business;
- (c) a gambling debt;
- (d) a fine imposed on the non-resident parent;
- (e) unpaid legal costs in respect of—
 - (i) separation from the person with care,
 - (ii) divorce from the person with care, or
 - (iii) dissolution of a civil partnership that had been formed with the person with care;
- (f) amounts due after use of a credit card;
- (g) a debt incurred by the non-resident parent to pay for any of the items listed in subparagraphs (c) to (f) and (j);
- (h) amounts payable by the non-resident parent under a mortgage or loan taken out on the security of any property, except where that mortgage or loan was taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which was, and continues to be, the home of the person with care and any qualifying child;
- (i) amounts payable by the non-resident parent in respect of a policy of insurance, except where that policy of insurance was obtained or retained to discharge a mortgage or charge taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which was, and continues to be, the home of the person with care and the qualifying child;
- (j) a bank overdraft except where the overdraft was at the time it was taken out agreed to be for a specified amount repayable over a specified period;
- (k) a loan obtained by the non-resident parent other than a loan obtained from a qualifying lender or the non-resident parent's current or former employer; or
- (l) any other debt which the Department is satisfied is reasonable to exclude.

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

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

(6) In paragraph (3)(h) "repairs or improvements" means repairs that the Department considers are major repairs necessary to maintain the fabric of the home and any of the following measures—

- (a) installation of a fixed bath, shower, wash basin or lavatory, and necessary associated plumbing;
- (b) damp-proofing measures;
- (c) provision or improvement of ventilation and natural light;
- (d) provision of electric lighting and sockets;
- (e) provision or improvement of drainage facilities;
- (f) improvement of the structural condition of the home;
- (g) improvements to the facilities for the storing, preparation and cooking of food;
- (h) provision of heating, including central heating;

- (i) provision of storage facilities for fuel and refuse;
- (j) improvements to the insulation of the home; or
- (k) other improvements which the Department considers reasonable in the circumstances.

Boarding school fees

65.—(1) Subject to the following provisions of this regulation and regulation 67, the maintenance element of boarding school fees, incurred or reasonably expected to be incurred by the non-resident parent, constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(2) Where the Department considers that the maintenance element of the boarding school fees cannot be distinguished with reasonable certainty from the total fees, the Department may instead determine the amount of the maintenance element and any such determination is not to exceed 35 per cent. of the total fees.

(3) Where—

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

a portion of the expenses incurred by the non-resident parent in respect of the boarding school fees, calculated in accordance with paragraph (4), constitutes special expenses for the purposes of paragraph 2(2) of Schedule 4B.

(4) For the purposes of paragraph (3), the portion in question is calculated as follows—

- (a) find the amount (A) that results from deducting from the amount of the boarding school fees the financial assistance, or the amount that another person is paying, as referred to in paragraph (3);
- (b) find the amount that bears the same proportion to A as the maintenance element of the fees referred to in paragraph (1) bears to the total fees referred to in that paragraph, and that amount is the portion in question.

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

(6) For the purposes of this regulation, “boarding school fees” means the fees payable in respect of attendance at a recognised educational establishment providing full-time education, which is not advanced education, for children under the age of 20 and where some or all of the pupils, including the qualifying child, are resident during term time.

(7) For the purposes of paragraph (6)—

“recognised educational establishment” means an establishment recognised by the Department for the purposes of that paragraph as being, or as comparable to, a university, college or school;

“advanced education” means education for the purposes of—

- (a) a course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a diploma of higher education or a higher national diploma; or
- (b) any other course which is of a standard above advanced GNVQ, or equivalent, including a course which is of a standard above a general certificate of education (advanced level) or a Scottish national qualification (higher or advanced higher).

Payments in respect of certain mortgages, loans or insurance policies

66.—(1) Subject to regulation 67, the payments to which paragraph (2) applies constitute special expenses for the purposes of paragraph 2(2) of Schedule 4B.

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

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

Thresholds

67.—(1) Subject to paragraphs (3) and (4), the costs or repayments referred to in regulations 62 and 64 to 66 are to be special expenses for the purposes of paragraph 2(2) of Schedule 4B only where they are equal to or exceed the threshold amount of £10 per week.

(2) Where the expenses fall within more than one description of expense referred to in paragraph (1), the threshold amount applies separately in respect of each description.

(3) Subject to paragraph (4), where the Department considers any expenses referred to in this Chapter to be unreasonably high or to have been unreasonably incurred it may substitute such lower amount as it considers to be reasonable, including an amount which is below the threshold amount or a nil amount.

(4) Any lower amount substituted by the Department under paragraph (3) in relation to contact costs under regulation 62 must not be so low as to make it impossible, in the Department’s opinion, for contact between the non-resident parent and the qualifying child to be maintained at the frequency specified in any court order made in respect of the non-resident parent and that child where the non-resident parent is maintaining contact at that frequency.

CHAPTER 3

GROUNDS FOR VARIATION: ADDITIONAL INCOME

Non-resident parent with unearned income

68.—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B where the non-resident parent has unearned income equal to or exceeding £2,500 per annum.

(2) For the purposes of this regulation unearned income is income of a kind that is chargeable to tax under Parts 3, 4 and 5 of the Trading and Other Income Act.

(3) Subject to paragraphs (5) and (6), the amount of the non-resident parent’s unearned income is to be determined by reference to information provided by HMRC at the request of the Department in relation to the latest available tax year and, where that information does not identify any income of a kind referred to in paragraph (2), the amount of the non-resident parent’s unearned income is to be treated as nil.

(4) For the purposes of paragraph (2), the information in relation to property income is to be taken after deduction of relief under section 118 of the Income Tax Act 2007(a).

(5) Where—

- (a) the latest available tax year is not the most recent tax year; or
- (b) the information provided by HMRC in relation to the latest available tax year does not include any information from a self-assessment return,

the Department may, if satisfied that there is sufficient evidence to do so, determine the amount of the non-resident parent's unearned income by reference to the most recent tax year; and any such determination must, as far as possible, be based on the information that would be required to be provided in a self assessment return.

(6) Where the Department is satisfied that, by reason of the non-resident parent no longer having any property or assets from which unearned income was derived in a past tax year and having no current source from which unearned income may be derived, the non-resident parent will have no unearned income for the current tax year, the amount of the non-resident parent's unearned income for the purposes of this regulation is to be treated as nil.

(7) Where a variation is agreed to under this regulation, the non-resident parent is to be treated as having additional weekly income of the amount determined in accordance with paragraph (3) or (5) divided by 365 and multiplied by 7.

Non-resident parent on a flat rate or nil rate with gross weekly income

69.—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B where—

- (a) the non-resident parent's liability to pay child support maintenance under a maintenance calculation which is in force or has been applied for is or would be—
 - (i) the nil rate by virtue of the non-resident parent being one of the persons referred to in paragraph (3), or
 - (ii) the flat rate by virtue of the non-resident parent receiving a benefit, pension or allowance mentioned in regulation 43(1);
- (b) the Department is satisfied that the non-resident parent has an amount of income that would be taken into account in the maintenance calculation as gross weekly income if sub-paragraph (a) did not apply; and
- (c) that income is equal to or more than £100 per week.

(2) Where a variation is agreed to under this regulation, the non-resident parent is treated as having additional income of the amount referred to in paragraph (1)(b).

(3) The persons referred to are—

- (a) a child;
- (b) a prisoner;
- (c) a person receiving an allowance in respect of work-based training for young people;
- (d) a person referred to in regulation 44(1)(e).

Diversion of income

70.—(1) A case is a case for a variation for the purposes of paragraph 4(1) of Schedule 4B where—

- (a) the non-resident parent ("P") has the ability to control, whether directly or indirectly, the amount of income that—
 - (i) P receives, or

(a) 2007 c. 3

- (ii) is taken into account as P's gross weekly income; and
- (b) the Department is satisfied that P has unreasonably reduced the amount of P's income which would otherwise fall to be taken into account as gross weekly income or as unearned income under regulation 68 by diverting it to other persons or for purposes other than the provision of such income for P.

(2) Where a variation is agreed to under this regulation, the additional income to be taken into account is the whole of the amount by which the Department is satisfied that P has reduced the amount that would otherwise be taken into account as P's income.

CHAPTER 4

EFFECT OF VARIATION ON THE MAINTENANCE CALCULATION

Effect on maintenance calculation – special expenses

71.—(1) Subject to paragraph (2) and regulation 73, where the variation agreed to is one falling within Chapter 2, effect is to be given to the variation in the maintenance calculation by deducting from the gross weekly income of the non-resident parent the weekly amount of those expenses referred to in that Chapter.

(2) Where the income which is taken into account in the maintenance calculation is the capped amount, then—

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

Effect on the maintenance calculation – additional income grounds

72.—(1) Subject to paragraph (2) and regulation 73, where the variation agreed to is one falling within Chapter 3, effect is to be given to the variation by increasing the gross weekly income of the non-resident parent which would otherwise be taken into account by the weekly amount of the additional income except that, where the amount of gross weekly income calculated in this way would exceed the capped amount, the amount of the gross weekly income taken into account is to be the capped amount.

(2) Where a variation is agreed to under this Chapter and the non-resident parent's liability would, apart from the variation, be a flat rate (or an amount equivalent to the flat rate), the amount of child support maintenance which the non-resident parent is liable to pay is a weekly amount calculated by adding an amount equivalent to the flat rate to the amount calculated by applying Schedule 1(a) to the additional income arising under the variation.

Effect on maintenance calculation – general

73.—(1) Subject to paragraph (5), where more than one variation is agreed to in respect of the same period, regulations 71 and 72 apply and the results are to be aggregated as appropriate.

(a) Part I was amended by paragraph 4(7) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995, paragraph 32(1) and (2) of Schedule 6 to the Social Security (Northern Ireland) Order 1998, paragraphs 10 and 11 of Schedule 24 to the Civil Partnership Act 2004 and paragraph 2(8) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and is substituted by Schedule 1 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and amended by paragraph 12 of Schedule 24 to the Civil Partnership Act 2004 and Schedules 1 and 4 to the Child Maintenance Act (Northern Ireland) 2008

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

(3) Subject to paragraphs (4) and (5), where the non-resident parent shares the care of a qualifying child within the meaning in Part 1 of Schedule 1, or where the care of such a child is shared with an authority, the amount of child support maintenance that the non-resident parent is liable to pay to the person with care, calculated to take account of any variation, is to be reduced in accordance with the provisions of paragraph 7 of that Part or regulation 52, as the case may be.

(4) If the application of paragraph (3) would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to the person with care (or all of them) to less than a figure equivalent to the flat rate referred to in paragraph 4(1) of Schedule 1 (or in that sub-paragraph as modified by regulations under paragraph 10A of that Schedule), the non-resident parent is instead liable to pay child support maintenance at a rate equivalent to the flat rate apportioned if appropriate as provided in paragraph 6 of Schedule 1.

(5) The effect of a variation is not to be applied for any period during which a circumstance referred to in regulation 56(1)(d) to (f) applies.

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

74.—(1) This regulation applies where—

- (a) a variation that has been agreed to has ceased to have effect in relation to the weekly amount of the non-resident parent’s liability for child support maintenance because—
 - (i) the non-resident parent has become liable to pay child support maintenance at the nil rate, or another rate which means that the variation cannot be taken into account, or
 - (ii) the decision as to the maintenance calculation has been replaced with a default maintenance decision under Article 14(1)(b)(a); and
- (b) the non-resident parent has subsequently become liable to pay a rate of child support maintenance which can be adjusted to take account of the variation by virtue of a decision under Article 18(1B) or 19.

(2) Where this regulation applies and the Department is satisfied, on the information or evidence available, that there has been no material change of circumstances relating to the variation since the date from which the variation ceased to have effect, the Department may, when making the decision referred to in paragraph (1)(b), take into account the effect of the variation upon the amount of liability for child support maintenance notwithstanding the fact that an application has not been made.

PART 6

MEANING OF TERMS IN THE CHILD SUPPORT ORDER

Meaning of “child” for the purposes of the Child Support Order

75. The prescribed condition for the purposes of Article 3(1)(b) is that the person is a qualifying young person as defined in section 138(2) of the Contributions and Benefits Act(c).

(a) Article 14(1) was substituted by paragraph 12(1) of Schedule 6 to Social Security (Northern Ireland) Order 1998
(b) Article 3 is substituted by section 26 of the Child Maintenance Act (Northern Ireland) 2008
(c) Section 138 was substituted by section 2(2) of the Child Benefit Act 2005

Relevant other child outside Northern Ireland

76. For the purposes of paragraph 10C(2)(b) of Schedule 1 “relevant other child” includes a child, other than a qualifying child, in respect of whom the non-resident parent or the non-resident parent’s partner would receive child benefit, but in respect of whom they do not do so, solely because the conditions set out in section 142 of the Contributions and Benefits Act(a) are not met.

Persons who are not persons with care

77.—(1) The following categories of person are not persons with care for the purposes of the Child Support Order—

- (a) an authority;
- (b) a person with whom a child who is looked after by an authority is placed by that authority under the provisions of the Children Order, except where that person is a parent of such a child and the authority allow the child to live with that parent under Article 27(5) of that Order;

(2) In paragraph (1) “a child who is looked after by an authority” has the same meaning as in Article 25 of the Children Order(b).

Sealed with the Official Seal of the Department for Social Development on 3rd 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 provide for a range of matters in relation to the calculation of child support maintenance under the Child Support (Northern Ireland) Order 1991 (“the Order”) and set out the rules and procedures for a new child support scheme.

Part 1 provides for general matters, including commencement, interpretation and the rules for rounding of calculations and service of documents.

Part 2 provides for applications for child support maintenance, including the priority rules where more than one application is made in relation to the same child.

Part 3 deals with decision making. Chapter 1 sets out the general rules for setting the effective date for a maintenance calculation. Chapter 2 sets out the general rules relating to revision of decisions in accordance with Article 18 of the Order. Chapter 3 sets out the circumstances in which a maintenance calculation may be adjusted by a supersession decision and the dates from which such decisions have effect. Chapter 4 provides for the updating of the gross weekly income figure on which a calculation has been based. Chapter 5 sets out the requirement to notify decisions. Chapter 6 sets out some miscellaneous matters in relation to appeals.

Part 4 contains provisions relating to the rules for calculation of child support maintenance, supplementing Part 1 of Schedule 1 to the Order. In particular Chapter 1 contains the rules for calculating the non-resident parent’s gross weekly income by reference to information provided by Her Majesty’s Revenue and Customs for the latest available tax year. Part 4 also provides for special cases, including provision for determining which parent is the non-resident parent where the care of a child is shared.

(a) Section 142 was substituted by section 56(2) of the Tax Credits Act 2002 and amended by paragraph 39 of Schedule 1 to the Child Benefit Act 2005

(b) Article 25 was amended by section 2(1) of the Children (Leaving Care) Act (Northern Ireland) 2002

Part 5 provides for the variation of the rules for calculating child support maintenance. These include provision for reducing the amount payable where the non-resident parent has special expenses or increasing the amount payable if the non-resident parent has sources of income not otherwise taken into account or diverts income to another person or for another purpose.

Part 6 provides for the interpretation of various terms in the Order.

Article 3 and paragraphs 5A, 8(2), 9 and 10(2) to Schedule 1 of the Order, some of the enabling provisions under which these Regulations are made, are inserted respectively by section 26 of, and paragraphs 5(2) and 7 to 9 of Schedule 1 to, the Child Maintenance Act (Northern Ireland) 2008. Those provisions 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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