

2009 No. 422

FAMILY LAW

CHILD SUPPORT

**The Child Support (Management of Payments and Arrears)
Regulations (Northern Ireland) 2009**

Made - - - - - *15th December 2009*

Coming into operation - - - - - *25th January 2010*

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SCHEDULE — Revocations

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 16(3), 28J(3), 38C(1), 40A, 47(1) and (2)(d), (e) and (f), 48(3) and (4) of the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b).

PART 1
General

Citation and commencement

1. These Regulations may be cited as the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 and shall come into operation on 25th January 2010.

Interpretation

2.—(1) In these Regulations—

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

“old scheme case” means a case in respect of which the provisions of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(c) have not been brought into operation in accordance with Article 3 of the Child Support, Pensions and Social Security (2000 Act) (Commencement No. 9) Order (Northern Ireland) 2003(d);

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

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(f);

“non-resident parent” includes a person treated as a non-resident parent by virtue of regulations made under Article 39 of the Order(g);

“relevant person” means—

- (a) a person with care; or

(a) S.I. 1991/2628 (N.I. 23) Article 16(3) was amended by paragraph 14(b) of Schedule 6, and Schedule 7, to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) (“the 1998 Order”); Article 28J was inserted by section 19(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4)(N.I.) (“the 2000 Act”); Article 38C was inserted by section 22 of the Child Maintenance Act (Northern Ireland) 2008 (c. 10) (“the 2008 Act”); Article 40A was inserted by section 29 of the 2008 Act; Article 47(2) was amended by paragraph 31 of Schedule 6 to the 1998 Order and section 1(2) of, and paragraph 27 of Schedule 3 to, the 2000 Act; Article 48(3) was amended by section 24(2) of the 2000 Act

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

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

(d) S.R. 2003 No. 53 (C. 4)

(e) S.R. 1992 No. 342

(f) S.R. 1999 No. 162

(g) Article 39 is amended by paragraph 11 of Schedule 3 to the 2000 Act in respect of certain cases only

- (b) a non-resident parent,
in respect of whom a maintenance calculation is or has been in force.

(2) In the application of these Regulations to an old scheme case, any reference to expressions in the Order (including “non-resident parent” and “maintenance calculation”), or to regulations made under the Order, are to be read with the necessary modifications.

Arrears notices

3.—(1) This regulation applies to a case where—

- (a) the Department is arranging for the collection of child support maintenance under Article 29 of the Order^(a); and
- (b) the non-resident parent has failed to make one or more payments of child support maintenance due.

(2) Where the Department is considering taking action with regard to a case falling within paragraph (1), it must serve a notice on the non-resident parent.

(3) The notice must—

- (a) itemize the payments of child support maintenance due and not paid;
- (b) set out in general terms the provisions as to arrears contained in this regulation and regulation 8 of the AIAMA Regulations^(b); and
- (c) request the non-resident parent make payment of all outstanding arrears.

(4) Where a notice has been served under paragraph (2), no duty to serve a further notice under that paragraph arises in relation to further arrears unless those further arrears have arisen after an intervening continuous period of not less than 12 weeks during the course of which all payments of child support maintenance due from the non-resident parent have been paid on time in accordance with regulations made under Article 29 of the Order.

Attribution of payments

4. Where a maintenance calculation is or has been in force and there are arrears of child support maintenance, the Department may attribute any payment of child support maintenance made by a non-resident parent to child support maintenance due as it thinks fit.

PART 2

Set Off

Set off of liabilities to pay child support maintenance

5.—(1) The circumstance prescribed for the purposes of Article 38C(1)(a) of the Order, in which the Department may set off liabilities to pay child support maintenance, are set out in paragraph (2).

(2) The Department may set off the liability to pay child support maintenance of one person (“A”) against the liability to pay child support maintenance of another person (“B”) where—

- (a) A is liable to pay child support maintenance under a maintenance calculation, whether that calculation is current or no longer in force, in relation to which B is the person with care; and

(a) Article 29 was amended by section 1(2) of the 2000 Act, and section 12 of, and Schedule 5 to, the 2008 Act
(b) Regulation 8 was substituted by regulation 5(2) of S.R. 1995 No. 475 and was amended by regulation 22(1) of S.R. 1996 No. 289 and regulation 2(7) of S.R. 2001 No. 15

- (b) B is liable to pay child support maintenance under a maintenance calculation, whether that calculation is current or no longer in force, in relation to which A is the person with care.

(3) There shall be no set off in relation to any amount which if paid could be retained under Article 38 of the Order(a).

Set off of payments against child support maintenance liability

6.—(1) The circumstances prescribed for the purposes of Article 38C(1)(b) of the Order, in which the Department may set off a payment against a person's liability to pay child support maintenance, are set out in paragraph (2).

(2) The Department may set off a payment against a non-resident parent's liability to pay child support maintenance where—

- (a) the payment falls within paragraph (3); and
- (b) the person with care agreed to the making of the payment.

(3) A payment is of a prescribed description for the purposes of Article 38C(1)(b) of the Order if it was made by the non-resident parent in respect of—

- (a) a mortgage or loan taken out on the security of the property which is the qualifying child's home where that mortgage or loan was taken out to facilitate the purchase of, or to pay for essential repairs or improvements to, that property;
- (b) rent on the property which is the qualifying child's home;
- (c) mains-supplied gas, water or electricity charges at the qualifying child's home;
- (d) rates payable by the person with care in relation to the qualifying child's home;
- (e) essential repairs to the heating system in the qualifying child's home; or
- (f) repairs which are essential to maintain the fabric of the qualifying child's home.

Application of set off

7.—(1) In setting off a person's liability for child support maintenance under this Part, the Department may apply the amount to be set off to reduce any arrears of child support maintenance due under any current maintenance calculation, or any previous maintenance calculation made in respect of the same relevant persons.

(2) Where there are no arrears of child support maintenance due, or an amount remains to be set off after the application of paragraph (1), the Department may adjust the amount payable in relation to the current maintenance calculation by such amount as it considers appropriate in all the circumstances of the case, having regard in particular to—

- (a) the circumstances of the relevant persons; and
- (b) the amount to be set off and the period over which it would be reasonable to adjust the amount payable to set off that amount.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

(a) Article 38 was amended by paragraph (9) of Schedule 3 to the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)); sections 1(2) and 17(1) of, and paragraph 11 of Schedule 3 to, the 2000 Act, and paragraph 1(29) of Schedule 4, and Schedule 5, to the 2008 Act

PART 3

Overpayments and Voluntary Payments

Application of overpayments

8.—(1) Where for any reason, including the retrospective effect of a maintenance calculation, there has been an overpayment of child support maintenance, the Department may apply the amount overpaid to reduce any arrears of child support maintenance due under any previous maintenance calculation in respect of the same relevant persons.

(2) Where there is no previous maintenance calculation, or an amount of the overpayment remains after the application of paragraph (1), the Department may adjust the amount payable in relation to the current maintenance calculation by such amount as it considers appropriate in all the circumstances of the case, having regard in particular to—

- (a) the circumstances of the relevant persons; and
- (b) the amount of the overpayment and the period over which it would be reasonable to adjust the amount payable for the overpayment to be rectified.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

Application of voluntary payments

9.—(1) Where there has been a voluntary payment, the Department may apply the amount of the voluntary payment to reduce any arrears of child support maintenance due under any previous maintenance calculation in respect of the same relevant persons.

(2) Where there is no previous maintenance calculation, or an amount of the voluntary payment remains after the application of paragraph (1), the Department may adjust the amount payable in relation to the current maintenance calculation by such amount as it considers appropriate in all the circumstances of the case, having regard in particular to—

- (a) the circumstances of the relevant persons; and
- (b) the amount of the voluntary payment and the period over which it would be reasonable to adjust the amount payable for the voluntary payment to be taken into account.

(3) An adjustment of the amount payable in relation to the current maintenance calculation under paragraph (2) may reduce the amount payable to nil.

PART 4

Recovery from Estates

Application and interpretation

10.—(1) This Part applies in relation to the estate of a person who dies on or after the day on which these Regulations come into operation.

(2) In this Part, “child support maintenance” means child support maintenance for the collection of which the Department is authorised to make arrangements.

Recovery of arrears from a deceased person’s estate

11. Arrears of child support maintenance for which a deceased person was liable immediately before death are a debt payable by the deceased’s executor or administrator out of the deceased’s estate to the Department.

Appeals and other proceedings

12.—(1) The deceased’s executor or administrator has the same rights, subject to the same procedures and time limits, as the deceased person had immediately before death to institute, continue or withdraw any proceedings under the Order, whether by appeal or otherwise.

(2) Regulation 34 of the Decisions and Appeals Regulations shall apply to a case where the non-resident parent is the deceased party to the proceedings as if for paragraphs (1) and (2) there were substituted the following paragraph—

“(1) In any proceedings, on the death of a non-resident parent, the Department must appoint the deceased’s executor or administrator to proceed with the appeal in place of the deceased, unless there is no such person in which circumstances it may appoint such person as it thinks fit to proceed with the appeal.”.

Disclosure of information

13.—(1) The Department may disclose information held for the purposes of the Order to the deceased’s executor or administrator where, in the opinion of the Department, such information is essential to enable the executor or administrator to administer the deceased’s estate, including, where necessary, to institute, continue or withdraw proceedings under the Order.

(2) Any application for information under this regulation shall be made to the Department in writing setting out the reasons for the application.

(3) Except where a person gives written permission to the Department that the information mentioned in sub-paragraphs (a) and (b) in relation to that person may be disclosed to other persons, any information disclosed under paragraph (1) must not contain—

- (a) the address of any person, except that of the recipient of the information in question and the office of the officer concerned who is exercising functions of the Department under the Order, or any other information the use of which could reasonably be expected to lead to any such person being located;
- (b) any other information the use of which could reasonably be expected to lead to any person, other than a party to the maintenance calculation, being identified.

PART 5

Revocations and Savings

Revocations

14. The statutory provisions specified in the Schedule are revoked to the extent specified there.

Savings

15.—(1) Where before these Regulations come into operation, an adjustment has been made under regulation 10(1)(a) of the AIAMA Regulations in an old scheme case, regulations 10(2) and (3) and 11 to 17 of those Regulations(b) continue to apply to that case for the purposes of—

- (a) making and determining any appeal against the adjustment;
- (b) making and determining any application for a revision of the adjustment;
- (c) determining any application for a supersession made before these regulations come into operation.

(a) Regulation 10 was substituted by regulation 3(3) of S.R. 1995 No. 162 and paragraph (1) is amended by Article 10(4) of S.R. 1999 No. 246 (C. 20), and regulation 2(10) of S.R. 2001 No. 15

(b) Regulations 10(2) and (3), and 11 to 17 are revoked by regulation 4(a) of S.R. 2001 No. 23 with savings provisions

(2) Where before these Regulations come into operation, an adjustment has been made under regulation 10(1) or (3A)(a) of the AIAMA Regulations in a case other than an old scheme case, regulation 30A(b) of the Decisions and Appeals Regulations continues to apply to that case for the purposes of making and determining any appeal against the adjustment.

Sealed with the Official Seal of the Department for Social Development on 15th December 2009

(L.S.)

Anne McCleary
A senior officer of the Department for Social Development

(a) Paragraph (3A) was inserted by regulation 2(10) of S.R. 2001 No. 15
(b) Regulation 30A was inserted by regulation 2(11) of S.R. 2001 No. 23 and was amended by regulation 6(8) of S.R. 2009 No. 133

SCHEDULE

Regulation 14

Revocations

<i>Citation</i>	<i>S.R. Number</i>	<i>Extent of Revocation</i>
The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992	S.R. 1992 No. 342	Regulations 2, 5 and 9 to 17
The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1993	S.R. 1993 No. 164	Regulation 2(3), (4) and (5)
The Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995	S.R. 1995 No. 162	Regulation 3(2) and (3)
The Child Support (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1995	S.R. 1995 No. 475	Regulation 5(3)
The Social Security and Child Support (Jobseeker's Allowance)(Consequential Amendments) Regulations (Northern Ireland) 1996	S.R. 1996 No. 289	Regulation 22(2)(a) and (c)
The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999	S.R. 1999 No. 162	Regulation 30A
The Social Security (1998 Order)(Commencement No. 6 and Consequential and Transitional Provisions) Order (Northern Ireland) 1999	S.R. 1999 No. 246 (C. 20)	Article 10(4)(a) and (b)
The Child Support (Collection and Enforcement and Miscellaneous Amendments) Regulations (Northern Ireland) 2001	S.R. 2001 No. 15	Regulation 2(4)(b) and (c); (6)(a) and (c); (8); (9); (10)(a)(ii), (b) and (c)(ii) and (iii); (11)(a); and (12)
The Social Security and Child Support (Decisions and Appeals)(Amendment) Regulations (Northern Ireland) 2001	S.R. 2001 No. 23	Regulation 2(11)

The State Pension Credit
(Consequential, Transitional
and Miscellaneous Provisions)
Regulations (Northern Ireland)
2003

S.R. 2003 No. 191

Regulation 27(3)

The Child Support and Social
Security (Miscellaneous
Amendments) Regulations
(Northern Ireland) 2009

S.R. 2009 No. 133

Regulations 4 and 6(8)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers in the Child Support (Northern Ireland) Order 1991 (“the Order”) and come into operation on 25th January 2010. They are, in part, consolidating regulations which revoke and re-enact some provisions of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992, with some changes.

Regulation 3 requires the Department to serve a notice on a non-resident parent where it is considering taking action in relation to arrears of child support maintenance due.

Regulation 4 allows the Department to attribute any payment of child support maintenance made by the non-resident parent to child support maintenance due as it thinks fit.

Regulation 5 provides that where the parent with care and the non-resident parent each owes child support maintenance to the other, the Department may set off one person’s liability against the other person’s liability.

Regulation 6 allows prescribed payments made by a non-resident parent to be set off against their liability.

Regulation 7 makes provision as to how any amount should be set off against liability.

Regulations 8 and 9 provide for the adjustment of arrears and amounts of child support maintenance payable to take account of overpayments and voluntary payments. They re-enact regulation 10 of the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 (“the AIAMA Regulations”), with a change which allows the amount payable to be reduced to nil.

Regulation 10 limits the application of Part 4 of the Regulations to those cases where the Department is authorised to collect child support maintenance and the person dies on or after the date these Regulations come into operation.

Regulation 11 provides that arrears of child support maintenance owed by a deceased person immediately before death are a debt payable by the deceased’s executor or administrator out of the deceased’s estate.

Regulation 12(1) provides for the executor or administrator of the estate to have the same rights as the deceased person prior to death to institute, continue or withdraw proceedings under the Order, whether by way of appeal or otherwise.

Regulation 12(2) modifies regulation 34 of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 (“the Decisions and Appeals Regulations”) so that the Department must appoint a deceased non-resident parent’s executor or administrator to proceed with any appeal, unless there is no such person, in which case the Department may appoint such person as it thinks fit.

Regulation 13 makes provision for the disclosure of information to the deceased’s executor or administrator where it is essential, in the Department’s opinion, for the proper administration of the estate, including the bringing, continuing or withdrawing of proceedings under the Order.

Regulation 14 and the Schedule, revokes various provisions in the AIAMA Regulations and related provisions in the Decisions and Appeals Regulations, some of which deal with the appeal of decisions to adjust the amount payable to take account of an overpayment or voluntary payment.

Regulation 15 saves the relevant provisions for specified purposes where the decision to adjust the amount payable was made before these Regulations come into operation.

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