
STATUTORY INSTRUMENTS

1998 No. 1506

The Social Security (Northern Ireland) Order 1998

PART II

DECISIONS AND APPEALS

CHAPTER III

CHILD SUPPORT DECISIONS AND APPEALS

Child support: revision of decisions

40. For Article 18 of the Child Support Order there shall be substituted the following Article—

“Revision of decisions

18.—(1) Any decision of the Department under Article 13, 14 or 19 may be revised by the Department—

- (a) either within the prescribed period or in prescribed cases or circumstances; and
- (b) either on an application made for the purpose or on the Department's own initiative,

and regulations may prescribe the procedure by which a decision of the Department may be so revised.

(2) In making a decision under paragraph (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 Department to act on its own initiative.

(3) Subject to paragraphs (4) and (5) and Article 28ZC, a revision under this Article shall take effect as from the date on which the original decision took (or was to take) effect.

(4) Regulations may provide that, in prescribed cases or circumstances, a revision under this Article shall take effect as from such other date as may be prescribed.

(5) Where a decision is revised under this Article, for the purpose of any rule as to the time allowed for bringing an appeal, the decision shall be regarded as made on the date on which it is so revised.

(6) Except in prescribed circumstances, an appeal against a decision of the Department shall lapse if the decision is revised under this Article before the appeal is determined.”

Child support: decisions superseding earlier decisions

41. For Articles 19 to 21 of the Child Support Order there shall be substituted the following Article—

Changes to legislation: The Social Security (Northern Ireland) Order 1998, CHAPTER III is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“Decisions superseding earlier decisions

19.—(1) Subject to paragraph (2), the following, namely—

- (a) any decision of the Department under Article 13 or 14 or this Article, whether as originally made or as revised under Article 18;
- (b) any decision of an appeal tribunal under Article 22; and
- (c) any decision of a Child Support Commissioner on an appeal from such a decision as is mentioned in sub-paragraph (b),

may be superseded by a decision made by the Department, either on an application made for the purpose or on the Department's own initiative.

(2) In making a decision under paragraph (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 Department to act on its own initiative.

(3) Regulations may prescribe the cases and circumstances in which, and the procedure by which, a decision may be made under this Article.

(4) Subject to paragraph (5) and Article 28ZC, a decision under this Article shall take effect as from the date on which it is made or, where applicable, the date on which the application was made.

(5) Regulations may provide that, in prescribed cases or circumstances, a decision under this Article shall take effect as from such other date as may be prescribed.”

Child support: appeals to appeal tribunals

42

[^{F1}For Articles 22 to 23 of the Child Support Order there shall be substituted the following Article—

“Appeals to appeal tribunals

22.—(1) Where an application for a maintenance assessment is refused, the person who made that application shall have a right of appeal to an appeal tribunal against the refusal.

(2) Where a maintenance assessment is in force, the absent parent or person with care with respect to whom it was made shall have a right of appeal to an appeal tribunal against the amount of the assessment or the date from which the assessment takes effect.

(3) Where a maintenance assessment is cancelled, or an application for the cancellation of a maintenance assessment is refused, the absent parent or person with care with respect to whom the maintenance assessment in question was, or remains, in force, shall have a right of appeal to an appeal tribunal against the cancellation or refusal.

(4) A person with a right of appeal under this Article shall be given such notice of that right and, in the case of a right conferred by paragraph (1) or (3), such notice of the decision as may be prescribed.

(5) Regulations may make—

- (a) provision as to the manner in which, and the time within which, appeals are to be brought; and
- (b) such provision with respect to proceedings before appeal tribunals as the Department considers appropriate.

(6) The regulations may in particular make any provision of a kind mentioned in Schedule 4 to the Social Security (Northern Ireland) Order 1998.

Changes to legislation: *The Social Security (Northern Ireland) Order 1998, CHAPTER III is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (7) In deciding an appeal under this Article, an appeal tribunal—
- (a) need not consider any issue that is not raised by the appeal; and
 - (b) shall not take into account any circumstances not obtaining at the time when the decision or assessment appealed against was made.”].

F1 Art. 42 repealed (3.3.2003 for certain purposes, otherwise prosp.) by **Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 67, 68(2), Sch. 9 Pt. I; S.R. 2003/53, art. 3(1), Sch.**

Child support: decisions and appeals dependent on other cases

- 43.** After Article 28 of the Child Support Order there shall be inserted the following Articles—

“Decisions and appeals dependent on other cases

Decisions involving issues that arise on appeal in other cases

28ZA.—(1) This Article applies where—

- (a) a decision by the Department falls to be made under Article 13, 14, 18 or 19 in relation to a maintenance assessment; and
- (b) an appeal is pending against a decision given in relation to a different maintenance assessment by a Child Support Commissioner or a court.

(2) If the Department considers it possible that the result of the appeal will be such that, if it were already determined, it would affect the decision in some way—

- (a) the Department need not, except in such cases or circumstances as may be prescribed, make the decision while the appeal is pending;
- (b) the Department may, in such cases or circumstances as may be prescribed, make the decision on such basis as may be prescribed.

(3) Where the Department acts in accordance with paragraph (2)(b), following the determination of the appeal it shall, if appropriate, revise its decision (under Article 18) in accordance with that determination.

(4) For the purposes of this Article, an appeal against a decision is pending if—

- (a) an appeal against the decision has been brought but not determined;
- (b) an application for leave to appeal against the decision has been made but not determined; or
- (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.

(5) In sub-paragraphs (a), (b) and (c) of paragraph (4), any reference to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for, or for leave to apply for, judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978.

Appeals involving issues that arise on appeal in other cases

28ZB.—(1) This Article applies where—

Changes to legislation: *The Social Security (Northern Ireland) Order 1998, CHAPTER III is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (a) an appeal (“appeal A”) in relation to a decision falling within Article 22(1) or (3), or an assessment falling within Article 22(2), is made to an appeal tribunal, or from an appeal tribunal to a Child Support Commissioner; and
- (b) an appeal (“appeal B”) is pending against a decision given in a different case by a Child Support Commissioner or a court.

(2) If the Department considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the determination of appeal A, the Department may serve notice requiring the tribunal or Child Support Commissioner—

- (a) not to determine appeal A but to refer it to the Department; or
- (b) to deal with the appeal in accordance with paragraph (4).

(3) Where appeal A is referred to the Department under paragraph (2)(a), following the determination of appeal B and in accordance with that determination, the Department shall if appropriate—

- (a) in a case where appeal A has not been determined by the tribunal, revise (under Article 18) its decision which gave rise to that appeal; or
- (b) in a case where appeal A has been determined by the tribunal, make a decision (under Article 19) superseding the tribunal's decision.

(4) Where appeal A is to be dealt with in accordance with this paragraph, the appeal tribunal or Child Support Commissioner shall either—

- (a) stay appeal A until appeal B is determined; or
- (b) if the tribunal or Child Support Commissioner considers it to be in the interests of the appellant to do so, determine appeal A as if—
 - (i) appeal B had already been determined; and
 - (ii) the issues arising on appeal B had been decided in the way that was most unfavourable to the appellant.

In this paragraph “the appellant” means the person who appealed or, as the case may be, first appealed against the decision or assessment mentioned in paragraph (1)(a).

(5) Where the appeal tribunal or Child Support Commissioner acts in accordance with paragraph (4)(b), following the determination of appeal B the Department shall, if appropriate, make a decision (under Article 19) superseding the decision of the tribunal or Child Support Commissioner in accordance with that determination.

- (6) For the purposes of this Article, an appeal against a decision is pending if—
- (a) an appeal against the decision has been brought but not determined;
 - (b) an application for leave to appeal against the decision has been made but not determined; or
 - (c) in such circumstances as may be prescribed, an appeal against the decision has not been brought (or, as the case may be, an application for leave to appeal against the decision has not been made) but the time for doing so has not yet expired.

(7) In this Article—

- (a) the reference in paragraph (1)(a) to an appeal to a Child Support Commissioner includes a reference to an application for leave to appeal to a Child Support Commissioner; and
- (b) any reference in sub-paragraph (a), (b) or (c) of paragraph (6) to an appeal, or to an application for leave to appeal, against a decision includes a reference to an application for, or for leave to apply for, judicial review of the decision under section 18 of the Judicature (Northern Ireland) Act 1978.

(8) Regulations may make provision supplementing that made by this Article.”.

Child support: cases of error

44. After Article 28ZB of the Child Support Order there shall be inserted the following Articles—

“Cases of error

Restrictions on liability in certain cases of error

28ZC.—(1) Subject to paragraph (2), this Article applies where—

- (a) the effect of the determination, whenever made, of an appeal to a Child Support Commissioner or the court (“the relevant determination”) is that the adjudicating authority's decision out of which the appeal arose was erroneous in point of law; and
- (b) after the date of the relevant determination a decision falls to be made by the Department in accordance with that determination (or would, apart from this Article, fall to be so made)—
 - (i) with respect to an application for a maintenance assessment (made after the commencement date);
 - (ii) as to whether to revise, under Article 18, a decision (made after the commencement date) with respect to such an assessment; or
 - (iii) on an application under Article 19 (made after the commencement date) for a decision with respect to such an assessment to be superseded.

(2) This Article does not apply where the decision of the Department mentioned in paragraph (1)(b)—

- (a) is one which, but for Article 28ZA(2)(a), would have been made before the date of the relevant determination; or
- (b) is one made in pursuance of Article 28ZB(3) or (5).

(3) In so far as the decision relates to a person's liability in respect of a period before the date of the relevant determination, it shall be made as if the adjudicating authority's decision had been found by the Commissioner or court not to have been erroneous in point of law.

(4) Paragraph (1)(a) shall be read as including a case where—

- (a) the effect of the relevant determination is that part or all of a purported regulation or order is invalid; and
- (b) the error of law made by the adjudicating authority was to act on the basis that the purported regulation or order (or the part held to be invalid) was valid.

(5) It is immaterial for the purposes of paragraph (1)—

- (a) where such a decision as is mentioned in sub-paragraph (b)(i) falls to be made; or
- (b) where such a decision as is mentioned in sub-paragraph (b)(ii) or (iii) falls to be made on an application under Article 18 or (as the case may be) Article 19,

whether the application was made before or after the date of the relevant determination.

(6) In this Article—

“adjudicating authority” means the Department or a child support officer;

“the commencement date” means the date of the coming into operation of Article 44 of the Social Security (Northern Ireland) Order 1998;

Changes to legislation: *The Social Security (Northern Ireland) Order 1998, CHAPTER III is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

“the court” means the High Court, the Court of Appeal, the Court of Session, the High Court or Court of Appeal in England and Wales, the House of Lords or the Court of Justice of the European Community.

(7) The date of the relevant determination shall, in prescribed cases, be determined for the purposes of this Article in accordance with any regulations made for that purpose.

(8) Regulations made under paragraph (7) may include provision—

- (a) for a determination of a higher court to be treated as if it had been made on the date of a determination of a lower court or a Child Support Commissioner; or
- (b) for a determination of a lower court or a Child Support Commissioner to be treated as if it had been made on the date of a determination of a higher court.

Correction of errors and setting aside of decisions

28ZD.—(1) Regulations may make provision with respect to—

- (a) the correction of accidental errors in any decision or record of a decision given under this Order; and
- (b) the setting aside of any such decision in a case where it appears just to set the decision aside on the ground that—
 - (i) a document relating to the proceedings in which the decision was given was not sent to, or was not received at an appropriate time by, a party to the proceedings or a party's representative or was not received at an appropriate time by the person who gave the decision; or
 - (ii) a party to the proceedings or a party's representative was not present at a hearing related to the proceedings.

(2) Nothing in paragraph (1) shall be construed as derogating from any power to correct errors or set aside decisions which is exercisable apart from regulations made by virtue of that paragraph.”

Changes to legislation:

The Social Security (Northern Ireland) Order 1998, CHAPTER III is up to date with all changes known to be in force on or before 24 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- power to am. (prosp.) by [1998 c. 47 s.87](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

- Act amended by [1999 c. 10 s.1\(2\)Sch.1 paras.16\(r\)](#)

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 2 para. 7A and cross-heading inserted by [S.I. 2015/2006 \(N.I.\) Sch. 2 para. 41\(3\)](#)
- Sch. 3 para. 3A inserted by [S.I. 2015/2006 \(N.I.\) Sch. 2 para. 42](#)
- art. 38(1A) inserted by [2010 c. 13 \(N.I.\) s. 16\(2\)](#)