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STATUTORY RULES OF NORTHERN IRELAND

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**2001 No. 18**

**The Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001**

**Part I**

**General**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Child Support (Maintenance Calculations and Special Cases) Regulations (Northern Ireland) 2001 and shall come into operation as follows—

- (a) subject to sub-paragraph (b), in relation to a particular case on the day on which section 1(3) of, and Schedule 1 to, the Act comes into operation in relation to that type of case;
- (b) regulation 4(1) and (2) and, for the purposes of those provisions, this regulation shall come into operation on 31st January 2001.

(2) In these Regulations—

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

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1);

“the Great Britain Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(2);

“the Children Order” means the Children (Northern Ireland) Order 1995(3);

“the Jobseekers Order” means the Jobseekers (Northern Ireland) Order 1995(4);

“the Act” means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000(5);

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

“couple” means a man and a woman who are—

- (a) married to each other and are members of the same household; or
- (b) not married to each other but are living together as husband and wife;

“course of advanced education” means—

- (a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a Diploma of Higher Education, a higher national

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(1) 1992 c. 7

(2) 1992 c. 4

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

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

(5) 2000 c. 4 (N.I.)

diploma, a higher national diploma or higher national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority or a teaching qualification; or

- (b) any other full-time course which is a course of a standard above that of an ordinary national diploma, a national diploma or national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority, the advanced level of the General Certificate of Education, a Scottish certificate of education (higher level), a Scottish certificate of sixth year studies or a Scottish National Qualification at Higher Level;

“day” includes any part of a day;

“day to day care” means—

- (a) care of not less than 104 nights in total during the 12 month period ending with the relevant week; or
- (b) where, in the opinion of the Department, a period other than 12 months is more representative of the current arrangements for the care of the child in question, care during that period of not less in total than the number of nights which bears the same ratio to 104 nights as that period bears to 12 months,

and for the purpose of this definition—

- (i) where a child is a boarder at a boarding school, or is a patient in a hospital or other circumstances apply, such as where the child stays with a person who is not a parent of the child, and which the Department regards as temporary, the person who, but for those circumstances, would otherwise provide day to day care of the child shall be treated as providing day to day care during the periods in question, and
- (ii) “relevant week” shall have the meaning ascribed to it in the definition in this paragraph, except that in a case where notification is given under regulation 7C of the Decisions and Appeals Regulations(6) to the relevant persons on different dates, “relevant week” means the period of 7 days immediately preceding the date of the latest notification;

“the Decisions and Appeals Regulations” means the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(7);

“disabled person’s tax credit” means a disabled person’s tax credit under section 128 of the Contributions and Benefits Act(8);

“effective date” means the date on which a maintenance calculation takes effect for the purposes of the Order;

“employed earner” means a person—

- (a) who is gainfully employed in the United Kingdom or the Republic of Ireland either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E or, as the case may be, chargeable under the legislation of the Republic of Ireland which is analogous to income tax under Schedule E; or
- (b) to whom Article 41(2A) of the Order applies(9);

“family” means—

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(6) Regulation 7C was inserted by regulation 2(8) of S.R. 2001 No. 23

(7) S.R. 1999 No. 162; relevant amending regulations are S.R. 2001 No. 23

(8) Section 128 was amended by Article 12(2) of, and paragraph 32 of Schedule 1 to, the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 17 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)) and sections 1(2) and 14(4) of, and paragraph 4(h) of Schedule 1 to, the Tax Credits Act 1999 (c. 10)

(9) Paragraph (2A) was inserted by section 21(3) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

- (a) a couple (including the members of a polygamous marriage) and any member of the same household for whom one or more of them is responsible and who is a child; or
- (b) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child;

“home” means—

- (a) the dwelling in which a person and any family of his normally live; or
- (b) if he or they normally live in more than one home, the principal home of that person and any family of his,

and for the purpose of determining the principal home in which a person normally lives no regard shall be had to residence in a residential care home or a nursing home during a period which does not exceed 52 weeks or, where it appears to the Department that the person will return to his principal home after that period has expired, such longer period as the Department considers reasonable to allow for the return of that person to that home;

“the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(10);

“the Maintenance Calculation Procedure Regulations” means the Child Support (Maintenance Calculation Procedure) Regulations 2001(11);

“net weekly income” has the meaning given in the Schedule;

“nursing home” has the same meaning as in regulation 19(2) of the Income Support Regulations(12);

“occupational pension scheme” means such a scheme within the meaning in section 1 of the Pension Schemes (Northern Ireland) Act 1993(13) and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988(14);

“partner” means—

- (a) in relation to a member of a couple, the other member of that couple;
- (b) in relation to a member of a polygamous marriage, any other member of that marriage with whom he lives;

“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(15) or a young offenders centre within the meaning of section 2 of the Treatment of Offenders Act (Northern Ireland) 1968(16)) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(17);

“person” does not include an authority;

“personal pension scheme” means such a scheme within the meaning in section 1 of the Pension Schemes (Northern Ireland) Act 1993(18) and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988;

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(10) S.R. 1987 No. 459; relevant amending rules are S.R. 1988 No. 318, S.R. 1990 No. 131, S.R. 1993 No. 149, S.R. 1996 No. 288 and S.R. 2000 No. 38

(11) S.R. 2001 No. 17

(12) The definition of “nursing home” was substituted by paragraph 6(5)(b) of Schedule 2 to S.R. 1993 No. 149

(13) 1993 c. 49

(14) 1988 c. 33

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

(16) 1968 c. 29; section 2 was amended by the Treatment of Offenders (Northern Ireland) Order 1989 (S.I. 1989/1344 (N.I. 15)) and the Criminal Justice (Children) Northern Ireland) Order 1998

(17) S.R. 1975 No. 109; relevant amending regulations are S.R. 1992 No. 453

(18) The definition of “personal pension scheme” was amended by paragraph 2(1)(a) of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and in respect of which any ceremony of marriage took place under the law of a country which at the time of that ceremony permitted polygamy;

“prisoner” means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person whose detention is under the Mental Health (Northern Ireland) Order 1986<sup>(19)</sup>;

“relevant training scheme” means—

- (a) arrangements under section 1 of the Employment and Training Act (Northern Ireland) 1950<sup>(20)</sup> (general functions of Department of Higher and Further Education, Training and Employment as to employment and training for employment);
- (b) arrangements made by the Secretary of State 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<sup>(21)</sup> (power of Defence Council to make regulations as to engagement of persons in regular forces),

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

“relevant week” means—

- (a) in relation to an application for child support maintenance—
  - (i) where the application is made by a non-resident parent, the period of 7 days immediately before the application is made, and
  - (ii) in any other case, the period of 7 days immediately before the date of notification to the non-resident parent and for this purpose “the date of notification to the non-resident parent” means the date on which the non-resident parent is first given notice by the Department under the Maintenance Calculation Procedure Regulations that an application for a maintenance calculation has been made, or treated as made, as the case may be, in relation to which the non-resident parent is named as the parent of the child to whom the application relates;
- (b) where a decision (“the original decision”) is to be—
  - (i) revised under Article 18 of the Order<sup>(22)</sup>, or
  - (ii) superseded by a decision under Article 19 of the Order<sup>(23)</sup> on the grounds that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact or was erroneous in point of law,
 the period of 7 days which was the relevant week for the purposes of the original decision;
- (c) where a decision (“the original decision”) is to be superseded under Article 19 of the Order—
  - (i) on an application made for the purpose on the basis that a material change of circumstances has occurred since the original decision was made, the period of 7 days immediately preceding the date on which that application was made;

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<sup>(19)</sup> S.I. 1986/595 (N.I. 4)

<sup>(20)</sup> 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 by Article 5 of the Industrial Training (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8)). See S.R. 1999 No. 481

<sup>(21)</sup> 1966 c. 45

<sup>(22)</sup> Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and is amended by section 8 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

<sup>(23)</sup> Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and is amended by section 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

- (ii) subject to sub-paragraph (b), in a case where a relevant person is given notice under regulation 7C of the Decisions and Appeals Regulations, the period of 7 days immediately preceding the date of the notification,

except that where, under paragraph 15 of Schedule 1 to the Order, the Department makes separate maintenance calculations in respect of different periods in a particular case, because it is aware of one or more changes of circumstances which occurred after the date which is applicable to that case, the relevant week for the purposes of each separate maintenance calculation made to take account of each such change of circumstances shall be the period of 7 days immediately before the date on which notification was given to the Department of the change of circumstances relevant to that separate maintenance calculation;

“residential care home” has the same meaning as in regulation 19(2) of the Income Support Regulations(24);

“retirement annuity contract” means an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision of a life annuity in old age or the provision of an annuity for a partner or dependant and in respect of which relief from income tax may be given on any premium;

“self-employed earner” means a person who is gainfully employed in the United Kingdom or the Republic of Ireland otherwise than in employed earner’s employment (whether or not he is also employed in such employment);

“student” means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or who is aged 19 or over and attending a full-time course of study at an educational establishment; and for the purposes of this definition—

- (a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the last day of the course or such earlier date as he abandons it or is dismissed from it;
- (b) a person on a sandwich course (within the meaning of regulation 5(2) of the Education (Student Support) Regulations (Northern Ireland) 2000(25)) shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

“training allowance” means an allowance payable under section 1 of the Employment and Training Act (Northern Ireland) 1950;

“working families' tax credit” means a working families' tax credit under section 127 of the Contributions and Benefits Act(26); and

“year” means a period of 52 weeks.

(3) The other description of children prescribed for the purposes of paragraph 10C(2)(b) of Schedule 1 to the Order (relevant other children) is children other than qualifying children in respect of whom the non-resident parent or his partner would receive child benefit under Part IX of the Contributions and Benefits Act but who do not solely because the conditions set out in section 142 of that Act (persons outside Northern Ireland) are not met.

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(24) The definition of “residential care home” was inserted by paragraph 1(3)(a) of Schedule 1 to S.R. 1993 No. 149

(25) S.R. 2000 No. 213

(26) Section 127 was amended by paragraph 16 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 and section 1(2) of, and paragraph 4(h) of Schedule 1 to, the Tax Credits Act 1999

## Part II

### Calculation of Child Support Maintenance

#### Calculation of amounts

2.—(1) Where any amount is to be considered in connection with any calculation made under these Regulations or under Schedule 1 to the Order, it shall be calculated as a weekly amount and, except where the context otherwise requires, any reference to such an amount shall be construed accordingly.

(2) Subject to paragraph (3), where any calculation made under these Regulations or under Schedule 1 to the Order results in a fraction of a penny that fraction shall be treated as a penny if it is either one half or exceeds one half, otherwise it shall be disregarded.

(3) Where the calculation of the basic rate of child support maintenance or the reduced rate of child support maintenance results in a fraction of a pound that fraction shall be treated as a pound if it is either one half or exceeds one half, otherwise it shall be disregarded.

(4) In taking account of any amounts or information required for the purposes of making a maintenance calculation, the Department shall apply the dates or periods specified in these Regulations as applicable to those amounts or information, provided that if it becomes aware of a material change of circumstances occurring after such date or period, but before the effective date, it shall take that change of circumstances into account.

(5) Information required for the purposes of making a maintenance calculation in relation to the following shall be the information applicable at the effective date—

- (a) the number of qualifying children;
- (b) the number of relevant other children;
- (c) whether the non-resident parent receives a benefit, pension or allowance prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Order;
- (d) whether the non-resident parent or his partner receives a benefit prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Order; and
- (e) whether paragraph 5(a) of Schedule 1 to the Order applies to the non-resident parent.

#### Reduced Rate

3. 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 under paragraph 4 of Schedule 1 to the Order;

A is the amount of the non-resident parent's net 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	1 qualifying child of the non-resident parent			2 qualifying children of the non-resident parent			3 or more qualifying children of the non-resident parent					
	1	2	3 or more	0	1	2	3 or more	0	1	2	3 or more	
T%	25	20.5	19	17.5	35	29	27	25	45	37.5	35	32.5

### Flat rate

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

(a) under the Contributions and Benefits Act—

- (i) bereavement allowance under section 39B(27);
- (ii) category A retirement pension under section 44(28);
- (iii) category B retirement pension under section 48C(29);
- (iv) category C and category D retirement pensions under section 78(30);
- (v) incapacity benefit under section 30A(31);
- (vi) invalid care allowance under section 70(32);
- (vii) maternity allowance under section 35(33);
- (viii) severe disablement allowance under section 68(34);
- (ix) industrial injuries benefit under section 94;
- (x) widowed mother's allowance under section 37;
- (xi) widowed parent's allowance under section 39A(35), and
- (xii) widow's pension under section 38;

(b) contribution-based jobseeker's allowance under Article 3 of the Jobseekers Order(36);

(c) a social security benefit paid by a country other than the United Kingdom;

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(27) Section 39B was inserted by Article 51 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(28) Section 44 was amended by paragraph 11 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 and Article 125(2) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(29) Section 48C was inserted by paragraph 3(1) of Schedule 2 to the Pensions (Northern Ireland) Order 1995 and amended by paragraph 6 of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(30) Section 78 was amended by paragraph 14 of Schedule 2 to the Pensions (Northern Ireland) Order 1995

(31) Section 30A was inserted by Article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994

(32) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370

(33) Section 35 was amended by Article 4(a) of the Still-Birth (Definition) (Northern Ireland) Order 1992 (S.I. 1992/1310 (N.I. 10)), regulation 2 of S.R. 1994 No. 176 and Article 50 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(34) Section 68 is repealed prospectively with savings by Article 62 of, and Part IV of Schedule 10 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999

(35) Section 39A is inserted prospectively by Article 52(2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(36) Article 3 was amended by paragraph 3 of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999



- (d) a training allowance (other than a relevant training scheme); and
  - (e) a war disablement pension or war widow's pension within the meaning of section 146(2) of the Contributions and Benefits Act or a pension which is analogous to such a pension paid by the government of a country outside the United Kingdom.
- (2) The benefits prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Order are—
- (a) income support under section 123 of the Contributions and Benefits Act<sup>(37)</sup>;
  - (b) an income-based jobseeker's allowance under Article 3 of the Jobseekers Order.
- (3) Where the non-resident parent is liable to pay a flat rate by virtue of paragraph 4(2) of Schedule 1 to the Order—
- (a) if he has one partner, then the amount payable by the non-resident parent shall be half the flat rate; and
  - (b) if he has more than one partner, then the amount payable by the non-resident parent shall be the result of apportioning the flat rate equally among him and his partners.

### Nil rate

- 5.—(1) The rate payable is nil where the non-resident parent is—
- (a) a student;
  - (b) a child within the meaning given in Article 3 of the Order;
  - (c) a prisoner;
  - (d) a person who is 16 or 17 years old and—
    - (i) in receipt of income support or an income-based jobseeker's allowance, or
    - (ii) a member of a couple whose partner is in receipt of income support or an income-based jobseeker's allowance;
  - (e) a person receiving an allowance in respect of a relevant training scheme;
  - (f) a person in a residential care home or nursing home who—
    - (i) is in receipt of a pension, benefit or allowance specified in regulation 4(1) or (2), or
    - (ii) has the whole or part of the cost of his accommodation met by a Health and Social Services Board or an HSS trust;
  - (g) a patient in hospital who is in receipt of income support whose applicable amount includes an amount under paragraph 1(a) or (b) of Schedule 7 to the Income Support Regulations<sup>(38)</sup> (patient for more than 6 weeks);
  - (h) a person in receipt of a benefit specified in regulation 4(1) the amount of which has been reduced in accordance with the provisions of regulations 4(d)<sup>(39)</sup> and 6<sup>(40)</sup> of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975 (circumstances in which personal benefit is to be adjusted and adjustment of personal benefit after 52 weeks in hospital);
  - (i) a person who would be liable to pay the flat rate because he satisfies the description in paragraph 4(1)(c) of Schedule 1 to the Order but his net weekly income, inclusive of—

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<sup>(37)</sup> Section 123 was amended by paragraph 13 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995

<sup>(38)</sup> Paragraph 1(a) and (b) was amended by regulation 22 of, and paragraph 17(a)(i) of Schedule 1 to, S.R. 1988 No. 318, regulation 19(a) of S.R. 1990 No.131, regulation 5(5)(a) of S.R. 1996 No. 288 and Part I of Schedule 5 to S.R. 2000 No. 38

<sup>(39)</sup> Regulation 4(d) was amended by regulation 2(3)(b) and (c) of S.R. 1987 No. 391

<sup>(40)</sup> Regulation 6 was amended by regulation 3(2) of S.R. 1977 No. 316, Article 19(1)(a) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)), regulation 2(2) of S.R. 1987 No. 12 and regulation 2(6) of S.R. 1987 No. 391



- (i) any benefit, pension or allowance that he receives which is prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the Order, and
  - (ii) any benefit that he or his partner receives which is prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the Order,
- is less than £5 a week.

(2) In this regulation—

- (a) a “Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(41)</sup>;
- (b) an “HSS trust” means a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991<sup>(42)</sup>, 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<sup>(43)</sup>.

### **Apportionment**

6. If, in making the apportionment required by regulation 4(3) or paragraph 6 of Schedule 1 to the Order<sup>(44)</sup>, the effect of the application of regulation 2(2) (rounding) would be such that the aggregate amount of child support maintenance payable by a non-resident parent would be different from the aggregate amount payable before any apportionment, the Department shall adjust that apportionment so as to eliminate that difference; and that adjustment shall be varied from time to time so as to secure that, taking one week with another and so far as is practicable, each person with care receives the amount which that person with care would have received if no adjustment had been made under this paragraph.

### **Shared care**

7.—(1) For the purposes of paragraphs 7 and 8 of Schedule 1 to the Order a night will count for the purposes of shared care where the non-resident parent—

- (a) has the care of a qualifying child overnight; and
- (b) the qualifying child stays at the same address as the non-resident parent.

(2) For the purposes of paragraphs 7 and 8 of Schedule 1 to the Order, a non-resident parent has the care of a qualifying child when he is looking after the child.

(3) Subject to paragraph (4), in determining the number of nights for the purposes of shared care, the Department shall consider the 12 month period ending with the relevant week and for this purpose “relevant week” has the same meaning as in the definition of day to day care in regulation 1(2).

(4) The circumstances in which the Department may have regard to a number of nights over less than a 12 month period are where there has been no pattern for the frequency with which the non-resident parent looks after the qualifying child for the 12 months preceding the relevant week, or the Department is aware that a change in that frequency is intended, and in that case it shall have regard to such lesser period as may seem to the Department to be appropriate, and the Table in paragraph 7(4) and the period in paragraph 8(2) of Schedule 1 to the Order shall have effect subject to the adjustment described in paragraph (5).

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<sup>(41)</sup> S.I. 1972/1265 (N.I. 14)

<sup>(42)</sup> S.I.1991/194 (N.I. 1); Article 10 was amended by Article 3(8) of the Health and Personal Social Services (Northern Ireland) Order 1994 (S.I. 1994/429 (N.I. 2))

<sup>(43)</sup> S.I. 1994/429 (N.I. 2)

<sup>(44)</sup> Part I of Schedule 1 was substituted by section 1(3) of, and Schedule 1 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

(5) Where paragraph (4) applies, the Department shall adjust the number of nights in that lesser period by applying to that number the ratio which the period of 12 months bears to that lesser period.

(6) Where a child is a boarder at a boarding school, or is a patient in a hospital, the person who, but for those circumstances, would otherwise have care of the child overnight, shall be treated as providing that care during the periods in question.

## Part III

### Special Cases

#### **Persons treated as non-resident parents**

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

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) at least one of those persons is a parent of the child,

that case shall be treated as a special case for the purposes of the Order.

(2) For the purposes of this case a parent who provides day to day care for a child of his is to be treated as a non-resident parent for the purposes of the Order in the following circumstances—

- (a) a parent who provides such care to a lesser extent than the other parent, person or persons who provide such care for the child in question; or
- (b) where the persons mentioned in paragraph (1)(a) include both parents and the circumstances are such that care is provided to the same extent by both but each provides care to an extent greater than or equal to any other person who provides such care for that child—
  - (i) the parent who is not in receipt of child benefit for the child in question, or
  - (ii) if neither parent is in receipt of child benefit for that child, the parent who, in the opinion of the Department, will not be the principal provider of day to day care for that child.

(3) For the purposes of this regulation and regulation 10 “child benefit” means child benefit payable under Part IX of the Contributions and Benefits Act(45).

#### **Care provided in part by an authority**

**9.—**(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 a 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 an authority for 52 nights or more in the 12 month period ending with the relevant week;
- (b) where, in the opinion of the Department, a period other than the 12 month period 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 an authority during that

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(45) Part IX was amended by paragraph 185 of Schedule 9 to the Children (Northern Ireland) Order 1995 and section 63 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000

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 shall be in the care of an authority for a number of nights in a period from the effective date,

that case shall be treated as a special case for the purposes of the 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 to the Order 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 an 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 Schedule 1 to the Order, read with regulation 7, 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 rate stated in or prescribed for the purposes of paragraph 4(1) of Schedule 1 to the Order, he 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 to the Order and regulation 6.

(10) 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.

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

#### **Care provided for relevant other child by an authority**

**10.** 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 his partner receives child benefit for that child, the child is a relevant other child for the purposes of Schedule 1 to the Order.

### **Non-resident parent liable to pay maintenance under a maintenance order**

11.—(1) Subject to paragraph (2), where the circumstances of a case are that—

- (a) an application for child support maintenance is made or treated as made, as the case may be, with respect to a qualifying child and a non-resident parent; and
- (b) an application for child support maintenance for a different child cannot be made under the Order but that non-resident parent is liable to pay maintenance under a maintenance order for that child,

that case shall be treated as a special case for the purposes of the Order.

(2) This regulation applies where 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 a flat rate or the nil rate.

(3) Where this regulation applies, the amount of child support maintenance payable by the non-resident parent shall be ascertained by—

- (a) calculating the amount of maintenance payable as if the number of qualifying children of that parent included any children with respect to whom he is liable to make payments under an order referred to in paragraph (1)(b); and
- (b) apportioning the amount so calculated between the qualifying children and the children with respect to whom he is liable to make payments under the order referred to in paragraph (1)(b),

and the amount payable shall be the amount apportioned to the qualifying children, and the amount payable to each person with care shall be that amount subject to the application of apportionment under paragraph 6 of Schedule 1 to the Order and the shared care provisions in paragraph 7 of that Schedule.

(4) In a case where this regulation applies paragraph 7 of Schedule 1 to the Order (shared care) and regulation 9 (care provided in part by an authority) shall not apply in relation to a child in respect of whom the non-resident parent is liable to make payments under a maintenance order as provided in paragraph (1)(b).

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

12.—(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 shall be treated as a special case for the purposes of the Order.

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

### **Child who is allowed to live with his parent under Article 27(5) of the Children Order**

13.—(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 his under Article 27(5) of the Children Order, that case shall be treated as a special case for the purposes of the Order.

(2) For the purposes of this case, Article 4(3)(b) of the Order shall be modified so that for the reference to the person who usually provides day to day care for the child there shall be substituted

a reference to the parent of the child whom the authority allow the child to live with under Article 27(5) of the Children Order.

#### **Person with part-time care who is not a non-resident parent**

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

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) those persons do not include any parent who is treated as a non-resident parent of that child by regulation 8(2),

that case shall be treated as a special case for the purposes of the Order.

(2) For the purposes of this case—

- (a) the person whose application for a maintenance calculation is being proceeded with shall, subject to sub-paragraph (b), be entitled to receive all of the child support maintenance payable under the Order in respect of the child in question;
- (b) on request being made to the Department by—
  - (i) that person, or
  - (ii) any other person who is providing day to day care for that child and who intends to continue to provide that care,

the Department may make arrangements for the payment of any child support maintenance payable under the Order to the persons who provide such care in the same ratio as that in which it appears to the Department that each is to provide such care for the child in question;

- (c) before making an arrangement under sub-paragraph (b), the Department shall consider all of the circumstances of the case and in particular the interests of the child, the present arrangements for the day to day care of the child in question and any representations or proposals made by the persons who provide such care for that child.

## Part IV

### Revocation and Savings

#### **Revocation and savings**

**15.—**(1) Subject to paragraphs (2) to (4), the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992(46) (“the 1992 Regulations”) shall be revoked with respect to a particular case with effect from the date that these Regulations come into operation with respect to that type of case (“the commencement date”).

(2) Where before the commencement date in respect of a particular case—

- (a) an application was made and not determined for—
  - (i) a maintenance assessment;
  - (ii) a departure direction, or
  - (iii) a revision or supersession of a decision;
- (b) the Department had begun but not completed a revision or supersession of a decision on its own initiative;

- (c) any time limit provided for in Regulations for making an application for a revision or a departure direction had not expired; or
- (d) any appeal was made but not decided or any time limit for making an appeal had not expired,

the provisions of the 1992 Regulations shall continue to apply for the purposes of—

- (aa) the decision on the application referred to in sub-paragraph (a);
- (bb) the revision or supersession referred to in sub-paragraph (b);
- (cc) the ability to apply for the revision or the departure direction referred to in sub-paragraph (c) and the decision whether to revise or to give a departure direction following any such application;
- (dd) the appeal outstanding or made during the time limit referred to in sub-paragraph (d); or
- (ee) the revision, supersession, appeal or application for a departure direction in relation to a decision, ability to apply or appeal referred to in sub-paragraphs (aa) to (dd).

(3) Where immediately before the commencement date in respect of a particular case an interim maintenance assessment was in force, the provisions of the 1992 Regulations shall continue to apply for the purposes of the decision under Article 19 of the Order(47) to make a maintenance assessment calculated in accordance with Part I of Schedule 1 to the Order before its amendment by the Act and any revision, supersession or appeal in relation to that decision.

(4) Where under regulation 28(1) of the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(48) an application for a maintenance calculation is treated as an application for a maintenance assessment, the provisions of the 1992 Regulations shall continue to apply for the purposes of the determination of the application and any revision, supersession or appeal in relation to any such assessment made.

(5) Where after the commencement date a maintenance assessment is revised from a date which is prior to the commencement date the 1992 Regulations shall apply for the purposes of that revision.

(6) For the purposes of this regulation—

- (a) “departure direction”, “maintenance assessment” and “interim maintenance assessment” have the same meaning as in Article 2(2) of the Order(49) before its amendment by the Act; and
- (b) “revision or supersession” means a revision or supersession of a decision under Article 18 or 19 of the Order(50) before their amendment by the Act.

Sealed with the Official Seal of the Department for Social Development on 23rd January 2001.

L.S.

*John O'Neill*  
Senior Officer of the  
Department for Social Development

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(47) Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998

(48) S.R. 2001 No. 19

(49) The definition of “departure direction” was inserted by paragraph 2 of Schedule 3 to the Child Support (Northern Ireland) Order 1995

(50) Article 18 was substituted by Article 40 of the Social Security (Northern Ireland) Order 1998