

2009 No. 363

FAMILY LAW

CHILD SUPPORT

**The Child Support (Miscellaneous Amendments No. 2)
Regulations (Northern Ireland) 2009**

Made - - - - 9th November 2009

Coming into operation in accordance with regulation 1

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 3(1)(c)(ii), (3), (6) and (7), 19(3) and (5), 41(3)(a), 47(1), (2)(b) and 48(4) of the Child Support (Northern Ireland) Order 1991(a), and now vested in it(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2009 and shall come into operation on 10th November 2009 except for regulations 2(2) and (3) and 3 which shall come into operation on 4th December 2009.

(2) In these Regulations—

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

Amendment of the Child Support (Maintenance Assessment Procedure) Regulations

2.—(1) The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992(c) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 19(d) (supersession of decisions), after paragraph (3) insert—

“(3A) For the purposes of paragraph 2 of Schedule 4C to the Order(e) (decisions and appeals: departure directions and reduced benefit directions, etc.), the circumstances in which a decision may be superseded under paragraph (2) or (3) include where the material change of circumstances causes the maintenance assessment to cease by virtue of paragraph

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- (a) S.I. 1991/2628 (N.I. 23); Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and is amended by section 9 of, and Part 1 to, Schedule 9 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and was amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008 (c.10 (N.I.)); Article 41 is amended by section 21(4) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000; Article 47(2)(b) was amended by paragraph 31(b) of Schedule 6 to Social Security (Northern Ireland) Order 1998 and is amended by section 27(b) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000
- (b) See Article 8(b) of S.R. 1999 No. 481
- (c) S.R. 1992 No. 340; relevant amending Regulations are S.R. 1999 Nos. 152 and 167, S.R. 2003 No. 224, S.R. 2005 No. 125 and S.R. 2009 No. 133
- (d) Regulation 19 was substituted by regulation 2(12) of S.R. 1999 No. 167 and paragraph (3) was amended by regulation 4(4) of S.R. 2000 No. 215 and regulation 2(4) of S.R. 2005 No. 125
- (e) Schedule 4C was inserted by paragraph 37 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and paragraph (2) was amended by paragraph 1(29)(c)(i) of Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008

16(1) of Schedule 1 to the Order(a) (maintenance assessments) or where the Department no longer has jurisdiction by virtue of Article 41 of the Order(b) (jurisdiction).”

(3) In regulation 22(c) (date from which a superseding decision takes effect) after paragraph (21), insert—

“(21A) Where a superseding decision is made in a case to which regulation 19(3A) applies and the material circumstance is—

- (a) a qualifying child dies or ceases to be a qualifying child;
- (b) the person with care ceases to be a person with care in relation to a qualifying child; or
- (c) the person with care, the absent parent or a qualifying child ceases to be habitually resident in the United Kingdom,

the decision takes effect from the first day of the maintenance period in which the change occurred.”.

(4) In Schedule 1 (meaning of “child” for the purposes of the Order)—

(a) for paragraph 1(d) (persons of 16 or 17 years of age who are not in full-time non-advanced education), substitute—

“Persons of 16 or 17 years of age who are not in full-time non-advanced education

1. The conditions which must be satisfied for a person to be a child within Article 3(1)(c) of the Order are that the person—

- (a) is registered for training with a qualifying body; and
- (b) is a person in respect of whom child benefit is payable.

Period for which a person is to be treated as continuing to fall within Article 3(1) of the Order

1A. Where a person (“P”) has ceased to fall within Article 3(1) of the Order, P is to be treated as continuing to fall within that paragraph for any period during which P is a person in respect of whom child benefit is payable.”;

(b) for paragraph 2(e) (meaning of “advanced education” for the purposes of Article 3 of the Order), substitute—

“Meaning of “advanced education” for the purposes of Article 3 of the Order

2. For the purposes of Article 3 of the Order “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), a Scottish national qualification (higher or advanced higher).”;

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- (a) Paragraph 16(1) was amended by paragraph 32(5) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and is amended by section 1(2) of, and paragraph 11 of Schedule 3 to, the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and was amended by paragraph 1(29)(b) of Schedule 4 to the Child Maintenance Act (Northern Ireland) 2008
 - (b) Article 41 was amended by paragraph 26 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 and is amended by 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
 - (c) Regulation 22 was substituted by regulation 2(12) of S.R. 1999 No. 167 and paragraph (21) was added by regulation 2(5) of S.R. 2005 No. 125
 - (d) Paragraph 1 was amended by regulation 3(a) of S.R. 1999 No. 152 and regulation 2(3) of S.R. 2009 No. 133
 - (e) Paragraph 2 was amended by regulation 4(15) of S.R. 1993 No. 164

- (c) in paragraph 4(a) (interruption of full-time education) for sub-paragraph (2), substitute—
“(2) The provisions of sub-paragraph (1) do not apply to any period of interruption of a person’s full-time education which is followed immediately by a period during which child benefit ceases to be payable in respect of that person.”;
- (d) omit paragraph 5 (circumstances in which a person who has ceased to receive full-time education is to be treated as continuing to fall within Article 3(1) of the Order);
- (e) for paragraph 6(b) (interpretation), substitute—

“Interpretation

6. In this Schedule “qualifying body” has the same meaning as in regulation 5(4) of the Child Benefit (General) Regulations 2006(c) (extension period: 16 and 17 year olds).”.

Amendment of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations

3. Omit regulation 7 of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992(d) (cancellation of a maintenance assessment on grounds of lack of jurisdiction).

Amendment of the Child Support (Maintenance Calculation Procedure) Regulations

4.—(1) Schedule 1 to the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001(e) (meaning of “child” for the purposes of the Order) is amended in accordance with paragraphs (2) to (6).

(2) For paragraph 1(f) (persons of 16 or 17 years of age who are not in full-time non-advanced education), substitute—

“Persons of 16 or 17 years of age who are not in full-time non-advanced education

1. The conditions which must be satisfied for a person to be a child within Article 3(1)(c) of the Order are that the person—

- (a) is registered for training with a qualifying body; and
- (b) is a person in respect of whom child benefit is payable.

Period for which a person is to be treated as continuing to fall within Article 3(1) of the Order

1A. Where a person (“P”) has ceased to fall within Article 3(1) of the Order, P is to be treated as continuing to fall within that paragraph for any period during which P is a person in respect of whom child benefit is payable.”;

(3) For paragraph 2 (meaning of “advanced education” for the purposes of Article 3 of the Order), substitute—

“Meaning of “advanced education” for the purposes of Article 3 of the Order

2. For the purposes of Article 3 of the Order “advanced education” means education for the purposes of—

(a) Paragraph 4 was amended by regulation 3(a) of S.R. 1999 No. 152 and regulation 2(25) of S.R. 1999 No. 167
 (b) Paragraph 6 was amended by regulation 3(b) of S.R. 1999 No. 152
 (c) S.I. 2006/223.
 (d) S.R. 1992 No. 466: regulation 7 was amended by regulation 3(2) of S.R. 1993 No. 164, Article 13(4) of S.R. 1999 No. 246 (C. 20) and regulation 3(7) of S.R. 2001 No. 16
 (e) S.R. 2001 No. 17; relevant amending Regulations are S.R. 2008 No. 286.
 (f) Paragraph 1 was amended by regulation 25 of S.R. 2008 No. 286

- (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), a Scottish national qualification (higher or advanced higher).”;
- (4) In paragraph 4 (interruption of full-time education), for sub-paragraph (2) substitute—
- “(2) The provisions of sub-paragraph (1) do not apply to any period of interruption of a person’s full-time education which is followed immediately by a period during which child benefit ceases to be payable in respect of that person.”.
- (5) Omit paragraph 5 (circumstances in which a person who has ceased to receive full-time education is to be treated as continuing to fall within Article 3(1) of the Order).
- (6) For paragraph 6 (interpretation), substitute—

“Interpretation

6. In this Schedule “qualifying body” has the same meaning as in regulation 5(4) of the Child Benefit (General) Regulations 2006(a) (extension period: 16 and 17 year olds).”.

Transitional provisions – qualifying child

- 5.—(1) Where the circumstances in paragraph (2) apply the effective date of—
- (a) a maintenance assessment or maintenance calculation made following an application under Article 7 of the Order(b) (child support maintenance); or
 - (b) a supersession decision made under Article 19 of the Order(c) (decisions superseding earlier decisions) where the relevant change of circumstances is that a person has become a qualifying child by virtue of these Regulations,
- is the day on which this regulation comes into operation.
- (2) The circumstances are—
- (a) before these Regulations came into operation there was a maintenance assessment or maintenance calculation in force in relation to the qualifying child to whom the application or supersession relates;
 - (b) a person (“C”) who was a qualifying child to whom that maintenance assessment or maintenance calculation relates, ceased to be a qualifying child on or after 10th April 2006 by virtue of no longer falling within the provisions of—
 - (i) Schedule 1 to the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 (meaning of “child” for the purposes of the Order); or, as the case may be,
 - (ii) Schedule 1 to the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001 (meaning of “child” for the purposes of the Order); and
 - (c) child benefit was payable in respect of C on the day C ceased to be a qualifying child and is payable in respect of C on the day on which this regulation comes into operation.
- (3) Where an application under Article 7 of the Order is made in a case to which the circumstances in paragraph (2) apply in respect of a maintenance assessment, regulation 28 of the

(a) S.I. 2006/223.

(b) Article 7 was amended by Article 12(1) of the Child Support (Northern Ireland) Order 1995 (S.I. 1995/2702 (N.I. 13)), Schedule 7 to the Social Security (Northern Ireland) Order 1998 and is amended by sections 1(2), 2 and paragraphs 11 and 13(a) of Schedule 3 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and was amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

(c) Article 19 was substituted by Article 41 of the Social Security (Northern Ireland) Order 1998 and is amended by section 9 and Part 1 of Schedule 9 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and was amended by Schedule 5 to the Child Maintenance Act (Northern Ireland) 2008

Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001(a) (linking provisions), shall apply as if for paragraph (3) there were substituted—

“(3) For the purposes of paragraph (1) “the relevant period” means the period starting on the day immediately before the day the maintenance assessment ceased to have effect under paragraph 16(1) of Schedule 1 to the Order, to the day that the application referred to in paragraph (1) is made, in a case where the circumstances of regulation 5(2) (transitional provisions – qualifying child) of the Child Support (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2009 apply.”.

Revocations

6. The provisions specified in column (1) of the Schedule are revoked to the extent specified in column (3).

Sealed with the Official Seal of the Department for Social Development on 9th November 2009

(L.S.)

Heather Cousins
A senior officer of the Department for Social Development

(a) S.R. 2001 No. 19; regulation 28(3) was amended by regulation 7(1)(e) of S.R. 2008 No. 404

SCHEDULE

Regulation 6

Revocations

| <i>Column (1)</i> <i>Citation</i> | <i>Column (2)</i> <i>Reference</i> | <i>Column (3)</i> <i>Extent of revocation</i> |
|--|---------------------------------------|--|
| The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1993 | S.R. 1993 No. 164 | Regulations 3(2) and 4(15) |
| The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1999 | S.R. 1999 No. 152 | Regulation 3(b) |
| 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 13(4) |
| The Child Support (Information, Evidence and Disclosure and Maintenance Arrangements and Jurisdiction) (Amendment) Regulations (Northern Ireland) 2001 | S.R. 2001 No. 16 | Regulation 3(7) |
| The Employment and Support Allowance (Consequential Provisions) Regulations (Northern Ireland) 2008 | S.R. 2008 No. 286 | Regulation 25 |
| The Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 | S.R. 2009 No. 133 | Regulation 2(3) |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 (“the 1992 Regulations”), the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992 and the Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001 (“the 2001 Regulations”).

Regulation 2 amends the 1992 Regulations as follows:

- paragraph (2) inserts a new paragraph (3A) into regulation 19 to provide a ground for superseding a decision where a maintenance assessment has ceased by virtue of paragraph 16(1) of Schedule 1 to the Child Support (Northern Ireland) Order 1991 (“the Order”) or where the Department has no jurisdiction by virtue of Article 41 of the Order;
- paragraph (3) inserts a new paragraph (21A) into regulation 22 to provide that the day on which a decision made on the ground in regulation 19(3A) of the 1992 Regulations takes effect, is the first day of the maintenance period in which the specified material change of circumstances occurred;
- paragraph (4)(a) substitutes paragraph 1 of Schedule 1. The new paragraph 1 of that Schedule provides the prescribed conditions for the purposes of Article 3(1)(c) of the Order and inserts a new paragraph 1A into that Schedule to provide that, where a person ceases to fall within Article 3(1) of the Order, a person is to be treated as continuing to fall within that paragraph for any period during which that person is a person in respect of whom child benefit is payable, this is subject to the absolute bar in Article 3(8) of the Order ;
- paragraph (4)(b) substitutes paragraph 2 of Schedule 1 prescribing the meaning of “advanced education” for the purposes of Article 3 of the Order, the substituted paragraph mirrors the definition in regulation 1(3) of the Child Benefit (General) Regulations 2006;
- paragraph (4)(c) substitutes paragraph 4(2) of Schedule 1 to provide that paragraph 4(1) of that Schedule does not apply where a period of interruption to a person’s full-time education is followed immediately by a period during which child benefit ceases to be payable in respect of that person;
- paragraph (4)(d) omits paragraph 5 of Schedule 1. The provisions are otiose as a result of the insertion of paragraph 1A into that Schedule;
- paragraph (4)(e) substitutes the interpretation provision at paragraph 6 of Schedule 1 to reflect the amendments made by these Regulations.

Regulation 3 omits regulation 7 of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992 in consequence of the changes made by regulations 2(2) and (3).

Regulation 4 amends Schedule 1 to the 2001 Regulations. These amendments have the same effect as those made by regulation 2(4) to Schedule 1 to the 1992 Regulations.

Regulation 5 makes transitional provision. Paragraphs (1) and (2) provide that the day on which certain maintenance assessments or maintenance calculations made on an application under Article 7 of the Order or on a supersession decision made under Article 19 of that Order are to take effect is the day on which regulation 5 comes into operation, in specified circumstances. Paragraph (3) modifies regulation 28(3) of the Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001 (linking provisions) where the application made under Article 7 of the Order in a case to which the circumstances in regulation 5(2) of these Regulations apply, to change the meaning of “the relevant period” for the purposes of regulation 28(1) of those Regulations.

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