

CHILD MAINTENANCE ACT (NORTHERN IRELAND) 2008

CHAPTER 10

(Only the provisions which are currently in operation are reproduced below. Sections of the Act which amend the Child Support (Northern Ireland) Order 1991 will not be reproduced.)

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An Act to amend the law relating to child support; and for connected purposes.
[2nd July 2008]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

ADDITIONAL FUNCTIONS OF THE DEPARTMENT

Promotion of child maintenance

1. The Department must take such steps as it thinks appropriate for the purpose of raising awareness among parents of the importance of—

- (a) taking responsibility for the maintenance of their children, and
- (b) making the appropriate arrangements for the maintenance of children of theirs who live apart from them.

Provision of information and guidance

2.—(1) The Department must provide to parents such information and guidance as it thinks appropriate for the purpose of helping to secure the existence of effective maintenance arrangements for children who live apart from one or both of their parents.

(2) The Department may provide information for other purposes in the course of exercising its functions under subsection (1).

Fees

3.—(1) The Department may by regulations make provision about the charging of fees by the Department in connection with the exercise of its functions relating to child support.

(2) Regulations under subsection (1) may, in particular, make provision—

- (a) about when a fee may be charged;
- (b) about the amount which may be charged;
- (c) for the supply of information needed for the purpose of determining the amount which may be charged;
- (d) about who is liable to pay any fee charged ►¹ (including provision for the apportionment of fees and the matters to be taken into account in determining an apportionment) ◀;
- (e) about when any fee charged is payable;
- (f) about the recovery of fees charged;
- (g) about ►² ◀ reduction or repayment of fees;
- ³ (h) about waiver of fees (including the matters to be taken into account in determining a waiver) ◀

(3) The power conferred by subsection (1) includes power to make provision for the charging of fees which are not related to costs.

►⁴(3A) The Department must review the effect of the first regulations made under subsection (1).

(3B) The review must take place before the end of the period of 30 months beginning with day on which those regulations come into operation.

(3C) After the review, the Department must make and publish a report containing-

(a) the conclusion of the review; and

(b) a statement as to what the Department proposes to do in view of those conclusions.

(3D) The report must be laid before the Assembly by the Department. ◀

(4) The Department may by regulations provide that the provisions of the Child Support (Northern Ireland) Order 1991 (NI 23)(in this Act referred to as “the Child Support Order”) with respect to—

(a) the collection of child support maintenance,

(b) the enforcement of any obligation to pay child support maintenance,

shall apply equally (with any necessary modifications) to fees payable by virtue of regulations under subsection (1).

(5) The Department may by regulations make provision for a person affected by a decision of the Department under regulations under subsection (1) to have a right of appeal against the decision to an appeal tribunal.

(6) Paragraphs (3) to (5), (7) and (8) of Article 22 of the Child Support Order (appeals to appeal tribunals) apply to appeals under regulations under subsection (5) as they apply to appeals under that Article.

Agency arrangements and provision of services

4.—(1) Arrangements may be made between the Department and any relevant authority for—

(a) any functions of one of them to be exercised on their behalf by, or by members of staff of, the other;

(b) the provision of administrative, professional or technical services by one of them for the other.

(2) The reference in subsection (1)(a) to functions does not include functions of making, confirming or approving statutory rules.

(3) The Department may make arrangements under this section on such terms and conditions as it thinks fit.

(4) In this section “relevant authority” means—

(a) any Northern Ireland department;

(b) a public body specified in regulations made by the Department for the purposes of this section.

(5) For the purposes of this section, functions of the Department are functions relating to child support.

Contracting out

5.—(1) Any function relating to child support may be exercised by, or by employees of, such person (if any) as the Department may authorise for the purpose.

(2) An authorisation given by virtue of subsection (1) may authorise the exercise of the function concerned—

- (a) either wholly or to such extent as may be specified in the authorisation,
- (b) either generally or in such cases or areas as may be so specified, and
- (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.

(3) An authorisation given by virtue of subsection (1)—

- (a) may specify its duration,
- (b) may be revoked at any time by the Department, and
- (c) shall not prevent the Department or any other person from exercising the function to which the authorisation relates.

(4) Where a person is authorised to exercise any function by virtue of subsection (1), anything done or omitted to be done by or in relation to that person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by or in relation to the Department.

(5) Subsection (4) shall not apply—

- (a) for the purposes of so much of any contract made between the authorised person and the Department as relates to the exercise of the function, or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of that person).

(6) Where—

- (a) a person is authorised to exercise any function by virtue of subsection (1), and
- (b) the authorisation is revoked at a time when a relevant contract is subsisting,

the authorised person shall be entitled to treat the relevant contract as repudiated by the Department (and not as frustrated by reason of the revocation).

(7) In subsection (6), the reference to a relevant contract is to so much of any contract made between the authorised person and the Department as relates to the exercise of the function.

Supplementary provisions

6.—(1) In this Part, “child” has the same meaning as in the Child Support Order.

(2) The Department may by regulations make provision about when a child is, or is not, to be regarded for the purposes of the Part as living apart from a parent.

(3) In this Part, “functions relating to child support” means functions of the Department under—

- (a) this Act or under any provision made under this Act;
- (b) the Child Support Order or under any provision made under that Order;
- (c) the Child Support (Northern Ireland) Order 1995 (NI 13) or under any provision made under that Order.

PART 2

CHILD SUPPORT ETC.

Removal of compulsion for benefit claimants

Repeal of Articles 9 and 43

7. The following provisions of the Child Support Order cease to have effect—
- (a) Article 9 (under which the claim of benefit by or in respect of a parent with care, or the payment of benefit to or in respect of such a person, triggers an application by her or him for child support maintenance), and
 - (b) Article 43 (which enables the Department in certain circumstances to reduce the benefit of a person in relation to whom Article 9 triggers the making of an application for child support maintenance).

Transfer of cases to new rules

11. Schedule 2 (which makes provision for, and in connection with, enabling the Department to require existing cases to transfer to the new maintenance calculation rules or to leave the statutory scheme, so far as future accrual of liability is concerned) has effect.

Extinction of liability in respect of interest and fees

33. Any outstanding liability in respect of the following is extinguished—
- (a) interest under the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 (SR 1992/342);
 - (b) fees under the Child Support Fees Regulations (Northern Ireland) 1993 (SR 1993/73).

Use of information

34. Schedule 3 (which makes provision about the use of information for purposes of public administration) has effect.

PART 3

GENERAL

Regulations: general

36.—(1) Power to make regulations under this Act includes power to make incidental, supplementary, consequential or transitional provision or savings.

(2) Power to make regulations under this Act may be exercised so as to provide for a person to exercise a discretion in dealing with any matter.

(3) Subject to the following provisions of this section, any regulations made under this Act shall be subject to negative resolution.

(4) Regulations under section 3(1) or (4) or the first regulations under paragraphs 2(1), 3(1), 5(1) or (2), 6(1) or (3) or 7 of Schedule 2—

- (a) must be laid before the Assembly after being made; and
- (b) take effect on such date as may be specified in the regulations, but (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of 6 months from that date unless at some time before the expiration of that period the regulations are approved by a resolution of the Assembly.

(5) This subsection applies to any regulations under this Act which—

- (a) but for subsection (6), would be subject to negative resolution, and
- (b) are contained in a statutory rule which includes any regulations subject to the confirmatory procedure.

(6) Any regulations to which subsection (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.

(7) In this section “the confirmatory procedure” means the procedure described in subsection (4).

General interpretation

37.—(1) In this Act—

“the Child Support Order” means the Child Support (Northern Ireland) Order 1991 (NI 23);

“the Department” means the Department for Social Development;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(2) Where—

(a) this Act amends or repeals a statutory provision contained in the Child Support Order which has been amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), and

(b) the amendment by the 2000 Act has been brought into operation for limited purposes only,

the reference to the statutory provision shall, unless the contrary intention appears, be read as a reference to the statutory provision as it has effect apart from the 2000 Act, as well as to the statutory provision as amended by that Act.

Minor and consequential amendments

38.—(1)

(2) The Department may by regulations make provision consequential on this Act amending, repealing or revoking any statutory provision.

Transition

40.—(1) The Department may, in relation to Article 9 or 43 of the Child Support Order, by regulations make provision for the Article to have effect with such modifications as the Department considers expedient in anticipation of the coming into operation of section 7.

(2) Articles 22(5A), 32A, 32E, 32F, 32J, 32L, 32M, 38C to 38E, 40A, 45A, 45B and 45D of the Child Support Order shall have effect as if “child support maintenance”

included periodical payments required to be paid in accordance with a maintenance assessment under the Order.

(3) Articles 22(7A), 32A, 32C, 32E, 32F, 32J, 32L, 32M, 36B, 36G, 37, 37A and 45B of the Child Support Order shall have effect as if “maintenance calculation” included a maintenance assessment under the Order.

(4) Articles 35, 36B, 36G, 36J, 37, 37A and 45D of the Child Support Order shall have effect as if orders made under Article 33 of that Order had been made under Article 32M of that Order.

(5) An order may be made under Article 32M of the Child Support Order in respect of an amount even though the time within which an application could have been instituted under Article 33 of that Order for an order in respect of that amount has expired.

(6) The Department may by regulations make in connection with the coming into operation of any provision of this Act such transitional provision or savings as the Department considers necessary or expedient.

Commencement

41.—(1) This Act (except sections 36, 37(1), 40(6), this section and section 42) shall come into operation on such day or days as the Department may by order appoint.

(2) An order under subsection (1) may include such transitional provision or savings as the Department considers necessary or expedient in connection with bringing any provision of this Act into operation.

(3) An order under subsection (1) appointing the day on which section 30 is to come into operation may be made only with the consent of the Lord Chancellor.

Short title

42. This Act may be cited as the Child Maintenance Act (Northern Ireland) 2008.

SCHEDULES

Schedule 2

Maintenance calculations: transfer of cases to new rules Section 11

Power to require a decision about whether to stay in the statutory scheme

1.—(1) The Department may require the interested parties in relation to an existing case to choose whether or not to stay in the statutory scheme, so far as future accrual of liability is concerned.

(2) The reference in sub-paragraph (1) to an existing case is to any of the following—

- (a) a maintenance assessment,
- (b) an application for a maintenance assessment,
- (c) a maintenance calculation made under existing rules, and
- (d) an application for a maintenance calculation which will fall to be made under existing rules.

(3) For the purposes of this paragraph, a maintenance calculation is made (or will fall to be made) under existing rules if the amount of the periodical payments required to be paid in accordance with it is (or will be) determined otherwise than in accordance with Part 1 of Schedule 1 to the Child Support Order as amended by this Act.

2.—(1) The Department may by regulations make provision about the exercise of the power under paragraph 1(1).

(2) Regulations under sub-paragraph (1) may, in particular—

- (a) make provision about timing in relation to exercise of the power;
- (b) make provision for exercise of the power in stages;
- (c) specify principles for determining the order in which particular cases are to be dealt with under the power;
- (d) make provision about procedure in relation to exercise of the power.

3.—(1) The Department shall by regulations make such provision as it thinks fit about exercise of the right to make a choice required under paragraph 1(1).

(2) Regulations under sub-paragraph (1) shall, in particular—

- (a) make provision about the time within which the choice must be made;
- (b) make provision for a choice to stay in the statutory scheme to be made by means of an application to the Department for a maintenance calculation;
- (c) make provision about the form and content of any application required by provision under paragraph (b).

4. If, in a particular case, any of the interested parties chooses not to stay in the statutory scheme, that person's choice shall be disregarded if any of the other interested parties choose to stay in the statutory scheme.

Effect on accrual of liability of exercise of power under paragraph 1

5.—(1) Where the power under paragraph 1(1) is exercised in relation to a maintenance assessment or maintenance calculation, liability under the assessment or calculation shall cease to accrue with effect from such date as may be determined in accordance with regulations made by the Department.

(2) Where the power under paragraph 1(1) is exercised in relation to an application for a maintenance assessment or maintenance calculation, liability under any assessment or calculation made in response to the application shall accrue only in respect of the period ending with such date as may be determined in accordance with regulations made by the Department.

Additional powers

6.—(1) The Department may by regulations make such provision as appears to it to be necessary or expedient for the purposes of, or in connection with, giving effect to a decision not to leave the statutory scheme.

(2) Regulations under sub-paragraph (1) may, in particular—

- (a) make provision about procedure in relation to determination of an application made in pursuance of regulations under paragraph 3;
- (b) make provision about the application of the Child Support Order in relation to a maintenance calculation made in response to such an application;
- (c) prescribe circumstances in which liability under such a maintenance calculation is to be subject to a prescribed adjustment.

(3) The Department may by regulations make provision enabling the Department to treat an application of the kind mentioned in paragraph 1(2)(b) or (d) as withdrawn if none of the interested parties chooses to stay in the statutory scheme.

Interpretation

7. In this Schedule—

“interested parties” has such meaning as may be prescribed;

“maintenance assessment” means an assessment of maintenance made under the Child Support Order;

“maintenance calculation” means a calculation of maintenance made under that Order;

“prescribed” means prescribed by regulations made by the Department;

“statutory scheme” means the scheme for child support maintenance under that Order.

Schedule 3

Use of Information

Section 34

1.—(1) This paragraph applies to information which is held for the purposes of functions relating to income tax, contributions, tax credits, child benefit or guardian's allowance—

- (a) by the Commissioners for Her Majesty's Revenue and Customs, or
- (b) by a person providing services to them, in connection with the provision of those services.

(2) Information to which this paragraph applies may be supplied—

- (a) to the Department or the Department for Employment and Learning, or
- (b) to a person providing services to either of those Departments,

for use for the purposes of functions relating to child support.

(3) In this paragraph, "contributions" means contributions under Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).

2.—(1) This paragraph applies to information which is held for the purposes of functions relating to child support—

- (a) by the Department or the Department for Employment and Learning, or
- (b) by a person providing services to either of those Departments, in connection with the provision of those services.

(2) Information to which this paragraph applies may be supplied—

- (a) to the Commissioners for Her Majesty's Revenue and Customs, or
- (b) to a person providing services to them,

for use for the purposes of any of their functions.

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- ¹ Inserted by Article 130(2)(a) of the Welfare Reform (Northern Ireland) Act as from 17 February 2016
 - ² Repealed by Article 130(2)(b) of the Welfare Reform (Northern Ireland) Act as from 17 February 2016
 - ³ Inserted by Article 130(2)(c) of the Welfare Reform (Northern Ireland) Act as from 17 February 2016
 - ⁴ Inserted by Article 130(3) of the Welfare Reform (Northern Ireland) Act as from 17 February 2016