

STATUTORY INSTRUMENTS

1995 No. 2702 (N.I. 13)

The Child Support (Northern Ireland) Order 1995 ^{F1}

- - - - - 18th October 1995

F1 functions transf. by SR 1999/481

Introductory

Title and commencement

1.—(1) This Order may be cited as the Child Support (Northern Ireland) Order 1995.

(2) This Order and the Order of 1991 may be cited together as the Child Support (Northern Ireland) Orders 1991 and 1995.

(3) This Order, except paragraph 17 of Schedule 3, shall come into operation on such day or days as the Head of the Department may by order appoint^{F2}.

(4) Paragraph 17 of Schedule 3 shall come into operation on the day appointed under Article 1(2) of the Children (Northern Ireland) Order 1995^{F3} for the coming into operation of paragraph 182 of Schedule 9 to that Order.

F2 partly exercised by SR 1995/428; 1995/474; 1996/492

F3 1995 NI 2

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F4} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the Order of 1991” means the Child Support (Northern Ireland) Order 1991^{F5}.

(3) Expressions in this Order which are used in the Order of 1991 have the same meaning in this Order as they have in that Order.

F4 1954 c. 33 (NI)

F5 1991 NI 23

Departure directions, etc.

Departure from usual rules for determining maintenance assessments

3.—(1) In the Order of 1991, after Article 28 there shall be inserted the following Articles—

“Departure from usual rules for determining maintenance assessments

Application for a departure direction

28A.—(1) Where a maintenance assessment (“the current assessment”) is in force, the person with care, or absent parent, with respect to whom it was made may apply to the Department for a direction under Article 28F (a “departure direction”).

(2) An application for a departure direction shall state in writing the grounds on which it is made and shall, in particular, state whether it is based on—

- (a) the effect of the current assessment; or
- (b) a material change in the circumstances of the case since the current assessment was made.

(3) In other respects, an application for a departure direction shall be made in such manner as may be prescribed.

(4) An application may be made under this Article even though—

- (a) an application for a review has been made under Article 19 or 20 with respect to the current assessment; or
- (b) a child support officer is conducting a review of the current assessment under Article 18 or 21.

(5) If the Department considers it appropriate to do so, the Department may by regulations provide for the question whether a change of circumstances is material to be determined in accordance with the regulations.

(6) Schedule 4A shall have effect in relation to departure directions.

Preliminary consideration of applications

28B.—(1) Where an application for a departure direction has been duly made to the Department, it may give the application a preliminary consideration.

(2) Where the Department does so the Department may, on completing the preliminary consideration, reject the application if it appears to the Department—

- (a) that there are no grounds on which a departure direction could be given in response to the application; or
- (b) that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Department for the purposes of this paragraph and Article 28F(4).

(3) In paragraph (2)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment; and

“the revised amount” means the amount of child support maintenance which, but for paragraph (2)(b), would be fixed if a fresh maintenance assessment were to be made as a result of a departure direction allowing the departure applied for.

(4) Before completing any preliminary consideration, the Department may refer the current assessment to a child support officer for it to be reviewed as if an application for a review had been made under Article 19 or 20.

(5) A review initiated by a reference under paragraph (4) shall be conducted as if paragraph (4) of Article 19, or (as the case may be) paragraph (8) of Article 20, were omitted.

(6) Where, as a result of a review of the current assessment under Article 18, 19, 20 or 21 (including a review initiated by a reference under paragraph (4)), a fresh maintenance assessment is made, the Department—

- (a) shall notify the applicant and such other persons as may be prescribed that the fresh maintenance assessment has been made; and
- (b) may direct that the application is to lapse unless, before the end of such period as may be prescribed, the applicant notifies the Department that he wishes it to stand.

Imposition of a regular payments condition

28C.—(1) Where an application for a departure direction is made by an absent parent, the Department may impose on him one of the conditions mentioned in paragraph (2) (“a regular payments condition”).

(2) The conditions are that—

- (a) the applicant must make the payments of child support maintenance fixed by the current assessment;
- (b) the applicant must make such reduced payments of child support maintenance as may be determined in accordance with regulations made by the Department.

(3) Where the Department imposes a regular payments condition, the Department shall give written notice to the absent parent and person with care concerned of the imposition of the condition and of the effect of failure to comply with it.

(4) A regular payments conditions shall cease to have effect on the failure or determination of the application.

(5) For the purposes of paragraph (4), an application for a departure direction fails if—

- (a) it lapses or is withdrawn; or
- (b) the Department rejects if on completing a preliminary consideration under Article 28B.

(6) Where an absent parent has failed to comply with a regular payments condition—

- (a) the Department may refuse to consider the application; and
- (b) in prescribed circumstances the application shall lapse.

(7) The question whether an absent parent has failed to comply with a regular payments condition shall be determined by the Department.

(8) Where the Department determines that an absent parent has failed to comply with a regular payments condition the Department shall give that parent, and the person with care, concerned, written notice of its decision.

Determination of applications

28D.—(1) Where an application for a departure direction has not failed, the Department shall—

- (a) determine the application in accordance with the relevant provisions of, or made under, this Order; or
- (b) refer the application to a child support appeal tribunal for the tribunal to determine it in accordance with those provisions.

(2) For the purposes of paragraph (1), an application for a departure direction has failed if—

- (a) it has lapsed or been withdrawn; or

Changes to legislation: *The Child Support (Northern Ireland) Order 1995 is up to date with all changes known to be in force on or before 09 May 2022. 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*

(b) the Department has rejected it on completing a preliminary consideration under Article 28B.

(3) In dealing with an application for a departure direction which has been referred to it under paragraph (1)(b), a child support appeal tribunal shall have the same powers, and be subject to the same duties, as would the Department if it were dealing with the application.

Matters to be taken into account

28E.—(1) In determining any application for a departure direction, the Department shall have regard both to the general principles set out in paragraph (2) and to such other considerations as may be prescribed.

(2) The general principles are that—

- (a) parents should be responsible for maintaining their children whenever they can afford to do so;
- (b) where a parent has more than one child, his obligation to maintain any one of them should be no less of an obligation than his obligation to maintain any other of them.

(3) In determining any application for a departure direction, the Department shall take into account any representations made to it by the person with care or absent parent concerned.

(4) In determining any application for a departure direction, no account shall be taken of the fact that—

- (a) any part of the income of the person with care concerned is, or would be if a departure direction were made, derived from any benefit; or
- (b) some or all of any child support maintenance might be taken into account in any manner in relation to any entitlement to benefit.

(5) In this Article “benefit” has such meaning as may be prescribed.

Departure directions

28F.—(1) The Department may give a departure direction if—

- (a) the Department is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
- (b) it is the Department's opinion that, in all the circumstances of the case, it would be just and equitable to give a departure direction.

(2) In considering whether it would be just and equitable in any case to give a departure direction, the Department shall have regard, in particular, to—

- (a) the financial circumstances of the absent parent concerned,
- (b) the financial circumstances of the person with care concerned, and
- (c) the welfare of any child likely to be affected by the direction.

(3) The Department may by regulations make provision—

- (a) for factors which are to be taken into account in determining whether it would be just and equitable to give a departure direction in any case;
- (b) for factors which are not to be taken into account in determining such a question.

(4) The Department shall not give a departure direction if it is satisfied that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Department for the purposes of this paragraph and Article 28B(2).

(5) In paragraph (4)—

“the current amount” means the amount of the child support maintenance fixed by the current assessment, and

“the revised amount” means the amount of child support maintenance which would be fixed if a fresh maintenance assessment were to be made as a result of the departure direction which the Department would give in response to the application but for paragraph (4).

(6) A departure direction shall—

- (a) require a child support officer to make one or more fresh maintenance assessments; and
- (b) specify the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of the direction.

(7) In giving a departure direction, the Department shall comply with the provisions of regulations made under Part II of Schedule 4B.

(8) Before the end of such period as may be prescribed, the Department shall notify the applicant for a departure direction, and such other persons as may be prescribed—

- (a) of its decision in relation to the application, and
- (b) of the reasons for its decision.

Effect and duration of departure directions

28G.—(1) Where a departure direction is given, it shall be the duty of the child support officer to whom the case is referred to comply with the direction as soon as is reasonably practicable.

(2) A departure direction may be given so as to have effect—

- (a) for a specified period; or
- (b) until the occurrence of a specified event.

(3) The Department may by regulations make provision for the cancellation of a departure direction in prescribed circumstances.

(4) The Department may by regulations make provision as to when a departure direction is to take effect.

(5) Regulations under paragraph (4) may provide for a departure direction to have effect from a date earlier than that on which the direction is given.

Appeals in relation to applications for departure directions

28H.—(1) Any qualifying person who is aggrieved by any decision of the Department on an application for a departure direction may appeal to a child support appeal tribunal against that decision.

(2) In paragraph (1), “qualifying person” means the person with care, or absent parent, with respect to whom the current assessment was made.

(3) Except with leave of the chairman of a child support appeal tribunal, no appeal under this Article shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.

(4) On an appeal under this Article, the tribunal shall—

- (a) consider the matter—