

These notes refer to the Child Maintenance Act (Northern Ireland) 2008 (c.10) which received Royal Assent on 2 July 2008

Child Maintenance Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Child Support etc.

Collection and enforcement

Section 15: Lump sum deduction orders

This section inserts seven new *Articles 32E, 32F, 32G, 32H, 32I, 32J and 32K* into the Child Support (Northern Ireland) Order 1991. These Articles relate to lump sum deduction orders, which enable the Department to collect payments from the accounts of non-resident parents. Lump sum deduction orders, however, may be used only to collect arrears and not regular maintenance.

Article 32E enables the Department to make an interim lump sum deduction order if it appears to it that a non-resident parent has failed to pay an amount of child support maintenance and an amount of money to which *paragraph (2)* applies, is due or accruing to the non-resident parent from a third party.

Paragraph (2)(a) limits the type of account where against which a lump sum deduction order can be made. For example, business and joint accounts will be excluded. However, *paragraph (2)(b)* does provide for a deduction order against a joint account if, and only if, the Department makes regulations which will allow such a deduction to be made.

Paragraph (3) allows the Department to make regulations which will set out the conditions to be disregarded in deciding whether a lump sum of money which is to become due to the non-resident parent (for example, the proceeds from the sale of a house) can be subject to a lump sum deduction order.

Paragraph (4) sets out that an interim lump sum order will be directed at the third party in question and will specify the amount of arrears in respect of which the Department intends to make a final lump sum order. While in force, the order will operate as an instruction to the third party not to do anything that would reduce the amount to which *paragraph (1)* applies, so that it becomes less than the amount of arrears stated in the order. If it is already less, it instructs the third party to do nothing which would reduce it further.

Paragraph (5) allows an interim lump sum deduction order to be made even where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Department concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order, or if it will have such an effect, it still considers making the order to be fair in all the circumstances.

Paragraph (6) requires the Department to serve a copy of the order on the third party at whom the order is directed, the non-resident parent responsible for the arrears and, if the order is in respect of a joint account, the other account holders.

Paragraph (7) provides that the order will come into force at the time it is served on the third party at which it is directed.

Paragraph (8) stipulates when an interim order will cease to be in force. It will be the earliest of the following:

- when the prescribed period ends;
- when the order lapses or is discharged, which may be where, for example, the non-resident parent has paid their arrears, or they have made representations to the Department which then chooses to discharge the order; or
- when a final lump sum deduction order is served.

Paragraph (9) provides, for the avoidance of doubt, that where regulations have been made under Article 29(3)(a) of the Child Support (Northern Ireland) Order 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to or through the person specified in, or by virtue of, the regulations.

Following the making of an interim deduction order, the Department can decide whether to impose a final deduction order. *Article 32F* provides powers to enable the Department to do this.

Paragraph (1) of *Article 32F* stipulates that a final deduction order can only be made if an interim one is in force, the prescribed period for the making of representations has passed, and the Department has considered any representations made to it, for example, by the non-resident parent.

Paragraph (2) sets out that the order will be directed at the third party at which the interim order was directed and will specify both the details of the account to which the order applies and the amount of arrears.

Paragraph (3) provides that the amount of arrears specified in the final deduction order must not exceed the amount specified in the interim order less any of those arrears which have subsequently been paid by the non-resident parent. If the account is a joint account, the amount is not to exceed an amount determined by the Department to be fair in all the circumstances of the case.

Paragraph (4) stipulates that, where the account is a joint account, the Department shall consider the amounts contributed to the account by each of the account holders, and any other matters which may be prescribed.

Paragraph (5) allows a final order to be made where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Department concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order or, if it will have such an effect, the Department still considers making the order to be fair in all the circumstances.

Paragraph (6) requires the Department to serve a copy of the order on the third party at which it is directed, the person liable for the arrears to which it relates and, if the account is a joint account, the other account holders.

Article 32G paragraphs (1) and (2) provide for the order to operate, during the relevant period, as an instruction to the third party not to do anything that would reduce the amount to which *Article 32E(1)* applies, so that it becomes less than the amount of arrears stated in the order, or if it is already less, it instructs the third party to do nothing which would reduce it further.

Paragraph (3) allows exceptions to *paragraphs (1) and (2)* to be prescribed.

Paragraphs (4) (5) and (6) define the ‘relevant period’ as being from the date the final order is served to the end of the period of time during which an appeal can be brought by the non-resident parent. If an appeal is brought, the relevant period ends when it has been concluded and any further period to appeal has passed.

Paragraph (7) stipulates that references to an amount due to the non-resident parent in *Articles 32H and 32J* include monies held in accounts and monies which may become due, such as proceeds from the sale of a house.

Article 32H provides for a lump sum deduction order to continue to have effect, where the deduction made does not satisfy the outstanding liability, for example, if the amount deducted is less than the amount of arrears specified in the order.

Paragraph (2) of Article 32H states that the lump sum deduction order will remain in operation until the relevant time, and operate as an instruction to the third party to pay the Department any amounts to which *Article 32E(1)* applies (up to the amount specified in the order that is still outstanding) and not to do anything else that would reduce the amount held. For example, any further money deposited into an account held with a deposit-taker will be subject to the order and should be paid to the Department.

Paragraph (3) provides that other final lump sum deduction orders shall continue to apply if an amount remains in the account which is sufficient to pay a liability which is still outstanding.

If the amount still outstanding cannot be met by the amounts remaining in the account, *paragraph (4)* stipulates that the order will remain in operation so that the third party will have to pay the Department any monies which subsequently

become due to the non-resident parent. It also provides that the third party shall do nothing to reduce any amount held by the non-resident parent so that monies held will fall below the specified amount.

Paragraph (5) allows the instruction not to do anything to reduce the amount held to be subject to prescribed exceptions. Provisions may be made to make an exception where, for example, the non-resident parent requires a payment to be made to prevent unnecessary hardship.

Paragraph (6) defines ‘the relevant time’ for the purposes of this section as meaning until one of the following occur: the remaining amount is paid; the order lapses or is discharged; or a prescribed event occurs or prescribed circumstances arise. It also defines “the remaining amount” as the amount of arrears which remains unpaid at any particular time.

Article 32I gives the Department power to make regulations which may allow third parties to reduce the amounts held in accounts which would bring the account below the specified amount. The regulations will stipulate the circumstances when this may be allowed. For example, in cases of financial hardship the non-resident parent may be permitted to withdraw money to alleviate that hardship.

Paragraph (2) stipulates that the Department’s consent may be required before such monies could be released, and *paragraph (3)* sets out the parties who may apply to the Department for that consent to be granted. Such parties would include the deposit-taker or third party, the liable person or, in the case of joint account, any of the other account holders.

Paragraph (4) allows regulations to be made to allow a person who has applied for consent to appeal the Department’s decision, should that decision be to withhold consent.

Paragraph (5) allows the Department to make regulations which would set out the period of time within which an appeal should be made, and the powers of the court to which the appeal lies.

Article 32J provides regulation-making powers to the Department with regard to the practicalities and process relating to lump sum deduction interim and final orders. The following paragraphs give examples of provision that may be made by the regulations.

Paragraph (2)(a) – the regulations may make provision for conditions that are to be disregarded when determining whether amounts to which *Articles 32E, 32G and 32H* apply are amounts due or accruing to the non-resident parent.

Paragraph (2)(b) – the regulations may make provision for the payment to the Department of sums deducted under a lump sum final order.

Paragraph (2)(c) – the regulations may allow the third party who deducts and pays an amount under a lump sum deduction order to deduct an amount towards administration costs.

Paragraph (2)(d) – the regulations may provide for notifications to be given to the non-resident parent who is subject to a lump sum deduction order regarding the amounts deducted and paid under the order. Such notification must also be sent to other account holders in the case of an order made against a joint account.

Paragraph (2)(e) – the regulations may require the third party at which the order is directed to supply prescribed information to the Department or to notify them if a prescribed circumstance occurs.

Paragraph (2)(f) – the regulations may allow the Department to vary an order. They could include, for example, provision that the Department may vary an order if some of the arrears have been settled.

Paragraph (2)(g) – the regulations may provide that an order will lapse in prescribed circumstances.

Paragraph (2)(h) – the regulations may allow an order which has lapsed to be revived in certain circumstances. The regulations may provide that an order may be revived if it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.

Paragraph (2)(i) – the regulations may allow or require an order to be discharged, for example, where the arrears have been paid in full.

Paragraph (3) of Article 32J prevents an order being varied to result in an increase in the amount of arrears stated in the order.

Paragraph (4) provides regulation-making powers to the Department, with regard to the priority of a lump sum deduction order and:

- any other lump sum deduction orders in place; and
- any other type of order which provides for payments to be made by the same third party from amounts due or accruing to the person liable for the arrears.

Paragraph (5) provides regulation-making powers to the Department to provide a right of appeal against the making of a lump sum final order, to a court.

Paragraph (6) prevents the court hearing an appeal against the order being made, from questioning the maintenance calculation from which it is derived.

Paragraph (7) provides that regulations regarding the appeals against the order being made may include provisions regarding:

- the length of time a non-resident parent has to make an appeal; and
- the powers of the court with respect to an appeal.

Article 32K provides that it will be an offence for a person not to comply with a lump sum deduction order or a designated regulation. A person found guilty of such an offence will be liable for a fine of up to level 2 on the standard scale (£500). However, there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.