

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 14: Orders for regular deductions from accounts

This section inserts new *Articles 32A, 32B, 32C and 32D* which relate to orders for regular deductions from accounts, into the Child Support (Northern Ireland) Order 1991.

Article 32A enables the Department to make an order to collect regular deductions of maintenance from an account held by a non-resident parent with a deposit-taker, where the non-resident parent has failed to pay child support maintenance.

Paragraph (2) of Article 32A sets out that both arrears and maintenance payments which will become due under the calculation in place can be collected through deduction orders.

Paragraph (3) allows a deduction order to be made on an account 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 the amount of the liability covered by the order or, if the outcome of the appeal would have such an effect, the Department still considers making the order to be fair in all of the circumstances.

Paragraph (4) prevents a deduction order being made against certain accounts, such as joint accounts. However, if it becomes clear that non-resident parents are moving monies into joint accounts to avoid their responsibilities, the Department may close this loop-hole by making regulations to include such accounts as accounts upon which deduction orders can be made.

Paragraphs (5), (6) and (7) set out that the order will specify which account it is made against and the date it has effect. The order will operate as an instruction to the deposit-taker to make deductions from the specified account and pay them

to the Department. Copies of the order shall be served on the deposit-taker, the non-resident parent against whom it is made, and, if the order is in respect of a joint account, the other account holders.

Paragraph (8) provides that the deposit-taker is under a duty to comply with the order for regular deductions from accounts. However, it also protects the deposit-taker from any liability if they do not comply with the order during the seven day period beginning with the day the order is served on them.

Paragraph (9) provides, for the avoidance of doubt, that where regulations have been made under Article 29(3)(a) of the Order, 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.

Article 32B provides that in the case of a deduction order against a joint account, the Department shall offer each account holder the opportunity to make representations about the proposal to make the order, and the amounts to be deducted under the order. The Department shall take account of such representations, and the amounts being contributed to the account by each account holder, before deciding what amount would be a fair deduction in the circumstances.

Article 32C provides regulation-making powers to the Department with regard to the practicalities and procedure relating to account deduction orders. The following subsections give examples of provision that may be made by the regulations.

Paragraphs (2)(a) to (2)(c) of Article 32C – the regulations may require that the order specifies the amount in respect of which it is made, the amounts to be deducted in order to meet liabilities, and the dates deductions are to be made.

Paragraph (2)(d) – the regulations may limit the rate of deduction under a deduction order. It is envisaged that an order will be limited to an amount which is a percentage of the non-resident parent's income. If the circumstances of a non-resident parent change it will be their responsibility to inform the Department so that the amount in the order might be changed and the deposit-taker notified. Only amounts in credit will be deducted from an account.

Paragraph (2)(e) – the regulations may allow for certain circumstances when amounts of money held in an account should be disregarded in respect of the deduction order. This could be if the money is being held on behalf of another person, for instance.

Paragraph (2)(f) – the regulations may include provision concerning the payment of money deducted by a deposit-taker to the Department.

Paragraph (2)(g) – the regulations may allow the deposit-taker to deduct an amount from the non-resident parent's account towards its administrative costs.

Paragraph (2)(h) – the regulations may provide for notifications to be given to a non-resident parent against whom the deduction order is made regarding amounts deducted and paid under the order.

Paragraph (2)(i) – the regulations may require the deposit-taker to notify the Department, within a specified period of time, if the account specified in the order does not exist, or if the non-resident parent who is the subject of the order has any other accounts.

Paragraph (2)(j) – the regulations may require the deposit-taker to notify the Department, within a specified period of time, if a non-resident parent subject to a deduction order closes the account specified in the order, or opens a new account.

Paragraph (2)(k) – the regulations may allow the deposit-taker, the person against whom the order is made and (in the case of an order made in respect of a joint account) the other account holders, to apply to the Department for a deduction order to be reviewed, in certain circumstances, and may provide for how the Department is to carry out such a review.

Paragraph (2)(l) – the regulations may allow the Department to vary an order. Regulations will prescribe the circumstances when this might occur, for example, as a result of a review, or if some of the arrears have been settled.

Paragraph (2)(m) – the regulations may provide powers similar to those in Article 32A(8) in relation to the variation of an order, whereby although the deposit-taker has a duty to comply with the order as varied, they will not be liable for non-compliance during the first seven days from being given notice of the variation.

Paragraph (2)(n) – the regulations may provide that an order will lapse in prescribed circumstances. This might include, for example, provisions that an order will lapse if the non-resident parent no longer holds an account with the deposit-taker to whom the order was directed.

Paragraph (2)(o) – the regulations may provide for an order to be revived in certain circumstances. This could be where it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.

Paragraph (2)(p) – the regulations may make provision allowing or requiring an order to be discharged.

Paragraph (2)(q) – the regulations may require the Department to give notice to the deposit-taker in the case of an order lapsing or ceasing to have effect.

Paragraph (3) provides regulation-making powers to the Department with regard to the priority of an account deduction order and:

- any other order in place; and
- any other type of order which makes deductions from the same account.

Paragraphs (4), (5) and (6) allow the Department to provide by regulations that any person affected should have a right of appeal to a court against a deduction order, or against any decision made by the Department following an application for a review of the order. On such an appeal, the court is prevented from questioning the maintenance calculation by reference to which the deduction order was made. Regulations may include provision with respect to the period within which an appeal must be made and the powers of the court in relation to any such appeal.

Article 32D sets out that it will be an offence for a person not to comply with the requirements of an account deduction order or any designated regulation under *Article 32C*. A person found guilty of such an offence may be liable for a fine. However there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.