

EXPLANATORY MEMORANDUM

THE CHILD SUPPORT MAINTENANCE CALCULATION REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 427

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 3(1)(b), 4(3), 8(3), 14(4) and (5), 16(1) and (1A), 18(1), (4) and (6), 19(2), (3) and (5), 28ZA(2)(b) and (4)(c); 28ZB(6)(c) and (8), 28A(5), 28B(2)(c), 28C(2)(b) and (5), 28F(2)(b), (3)(b) and (5), 28G(2) and (3), 39, 47(1) and (2) and 48(4) of, and paragraphs 3(2) and (3), 4(1) and (2), 5, 5A(6)(b), 7(3), 8(2), 9, 10(1) and (2), 10C(2)(b) and 11 of Schedule 1, paragraphs 2, 4 and 5 of Schedule 4A and paragraphs 2(2) to (5) and 4 to 6 of Schedule 4B to, the Child Support (Northern Ireland) Order 1991 (“the Order”) and is subject to the confirmatory resolution procedure.

2. Background

- 2.1. Child maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. The main objectives of the legislation are to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents, to encourage parents to make and keep effective voluntary maintenance arrangements and to support parents in making applications for statutory child maintenance.
- 2.2. A statutory child maintenance scheme was established under the Child Support (Northern Ireland) Order 1991 and has been in operation since 1993. That scheme was amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and introduced a second scheme for all applications received after March 2003 and currently operates alongside the 1993 scheme.
- 2.3. The 2003 scheme was intended to provide a simpler system than the highly complex system of calculation in the 1993 scheme and although it provided some improvements from the 1993 scheme the gathering of income information to calculate maintenance was cumbersome and time consuming and did not allow for a quick and effective method of getting money to the children who needed it.
- 2.4. The Child Maintenance Act (Northern Ireland) 2008 (“the Act”) provided for a new child maintenance scheme.

3. Purpose

- 3.1. These Regulations set out the rules and procedures for the new child maintenance scheme which will apply to applications for child maintenance made to the new scheme in relation to any particular case from the day on which paragraph 2 of Schedule 1 to the Act comes into operation in relation to that case.
- 3.2. The majority of maintenance calculations will be based on gross weekly income provided by HMRC thus avoiding many of the delays experienced currently as a result of relying on non-resident parents to provide net income information. Under the new scheme, taxable income of non-resident parents who are auxiliary coastguards, part-time fire-fighters, part-time lifeboat crew members, reserve or territorial force members and councillors will no longer be disregarded, as is currently the case. The definition of current income for self-employed people will be from taxable profits from trade over an accounting period, usually one year. Tax credits awarded to a non-resident parent's second household will no longer be considered income as is currently the case.
- 3.3. A non-resident parent's gross weekly income will be reviewed on an annual basis using income figures supplied by HMRC meaning that calculations will be more cost-effective, with fewer manual in-year changes being required.
- 3.4. In order for either parent to request a change to the maintenance calculation, the Regulations provide that the change must result in a 25 per cent. increase or decrease in gross income in order to reduce the disruption to maintenance liabilities that can currently arise where frequent and small changes of income have to be considered. Most incomes do not change greatly from year to year and it is envisaged that apart from major changes, such as the addition of another child or the loss of a job, the maintenance liability will remain largely stable throughout the year which offers greater certainty to parents in what they should expect to pay or receive.
- 3.5. Current legislation allows for additional financial factors to be taken into account which are not captured in the maintenance calculation – this is known as a variation to the maintenance calculation. The new statutory scheme will bring about changes to the types of variation that parents with care can claim. The grounds available to parents with care will focus on capturing a non-resident parent's actual unearned income, such as income from savings, property and investments rather than establishing a notional income, which is the current method of calculating unearned income. Parents with care will no longer be required to provide evidence to support a variation, as they must do currently, as, in most cases, information will be available from HMRC.
- 3.6. Where parents have no agreement in place regarding shared care of their children or there is no identifiable pattern of shared care, the Department can assume an amount of such care equivalent to one night a week. Any

assumption of shared care will continue until the parents reach an agreement or an order is made by the court as a result of family proceedings. This will remove a difficult area of decision-making which often resulted in cases remaining indefinitely paused while awaiting evidence from either party.

- 3.7. In equal shared care cases, a non-resident parent will be treated as such, if, and only if they provide day to day care to a lesser extent than the parent with care. Where the parent with care is receiving child benefit in respect of a qualifying child that person will be assumed to be the main carer of the child in the absence of evidence to the contrary.
- 3.8. To encourage parents to make their own maintenance arrangements children supported outside of the statutory scheme through a family-based arrangement, court order or under a child maintenance scheme abroad will be acknowledged in the same way as qualifying children within the maintenance calculation. Non-resident parents will be required to provide evidence of a formal or informal agreement.
- 3.9. Effective dates (the dates on which a liability or a change to the child maintenance liability takes effect) will be aligned with the date of the change, or the date the change was reported, to make the scheme simpler to administer and easier for clients to understand how a maintenance liability is calculated than is currently the case.
- 3.10. Allowances for children in the current household of a non-resident parent have been reduced from present levels to produce a more equal treatment of children in first and second families.
- 3.11. The flat rate of child maintenance payable by a non-resident parent whose gross weekly income is more than £5 per week and less than £100 per week or who is in receipt of certain prescribed benefits, will remain at £5 per week until such time as the new scheme is open to all applications.
- 3.12. A default maintenance decision is imposed on a non-resident parent where there is insufficient information regarding their circumstances to make a full calculation. To increase further the amount of money flowing to children the default maintenance, which will be reviewed periodically, will be £39 for one child, £51 for two children and £64 for three or more children.

4. Consultation

- 4.1. There is no requirement to consult on these Regulations. A consultation exercise was conducted by the Department for Work and Pensions in Great Britain and the Department issued the consultation paper to interested organisations in Northern Ireland. The consultation document was published on the Department's website.

5. Equality Impact

- 5.1. Proposals for the Act were subject to a full Equality Impact Assessment. The assessment of impacts concluded that, whilst the reforms were largely positive, they may have an adverse, differential impact on one section 75 group (gender) as the majority of parents with care are female and the majority of non-resident parents are male.
- 5.2. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on proposals for these Regulations and has concluded that the proposals do not have any additional implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose a cost on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. The Regulations do not have any financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
 - (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable

10. Parity or Replicatory Measure

- 10.1. The corresponding Great Britain Regulations are the Child Support Maintenance Calculation Regulations 2012. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.