

EXPLANATORY MEMORANDUM

THE CHILD SUPPORT MAINTENANCE (MEANING OF CHILD AND NEW CALCULATION RULES) (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 438

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), 16(1), 29(3) and (3A), 47(1) and (2) and 48(4) of the Child Support (Northern Ireland) Order 1991 (“the Order”) and sections 36(2) and 38(2) of the Child Maintenance Act (Northern Ireland) 2008 (“the Act”) and is subject to the negative 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 Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 (“the Maintenance Calculation Regulations”) set out the rules and procedures for a new child maintenance scheme provided for by the Act.

3. Purpose

- 3.1. The Regulations make provision consequential on, or connected with—
 - (a) the coming into operation of the changes to the meaning of “child” for the purposes of the Order provided for by section 26 of the Act; and
 - (b) the changes to the rules for the calculation of child support maintenance provided for by Schedule 1 to the Act and the Maintenance Calculation Regulations.

- 3.2. Regulations 2 and 3 provide the circumstances in which children aged 16-19 are qualifying children for the purposes of the 1993 and 2003 schemes. The main situations are where a person is a person in respect of whom child benefit is payable or where the person is in full-time non-advanced education.
- 3.3. Regulation 4 allows the Department to schedule payments equally over twelve monthly instalments and provides employers with multiple payment frequency options from which they will be required to select and apply the appropriate frequency (either weekly, two weekly, four weekly or monthly) for their employee. Responsibility for the calculation of protected earnings is being transferred to employers, who will be required to calculate 60% of the non-resident parent's net earnings and ensure that amount is protected when deductions in respect of child maintenance are made. The amendments relating to deduction from earnings orders will apply to those cases to which the new scheme rules apply. They will also apply to arrears only cases once notification has been given to the non-resident parent by the Department that the amendments apply.
- 3.4. Regulation 5 makes minor consequential amendments to the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992.
- 3.5. Regulation 6 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 by removing provisions relating to child support maintenance which are now provided for in the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012.
- 3.6. Regulation 7 makes minor consequential amendments to the Child Support (Voluntary Payments) Regulations (Northern Ireland) 2001.
- 3.7. Regulation 8 introduces a duty for non-resident parents whose maintenance liabilities are based on current income to notify the Department where they have an increase in that income of at least 25% and a duty on those non-resident parents whose liability is assessed as nil as a result of current income to notify an increase in gross weekly income to £5 or more. This duty will only apply in cases where the Department has notified the individual that they are required to report such a change. Any change must be notified within 14 days from the date the change occurred, unless another period is specified in the notification from the Department. This is to ensure that where there are significant changes to a non-resident parent's income, action is taken to update the maintenance liability.
- 3.8. Regulation 9 revokes a number of sets of Regulations which are replaced by the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 and also makes consequential revocations.

- 3.9. Regulation 10 saves regulations 8, 10, 11 and 20 of the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 for the purpose of arrears-only cases as they have effect immediately before regulation 4(3) to (6) of these Regulations comes into operation until notice is given to the non-resident parent in such cases that the Regulations, as amended, apply in their case.
- 3.10. Regulation 11 makes transitional provision. Where a deduction from earnings order made under the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992, prior to the amendments by regulation 4(3) to (6) of these Regulations coming into operation, has effect immediately before those provisions come into operation in the case, the existing deduction from earnings order will continue to take effect until it lapses or is discharged. The existing order will be discharged, if it is still in effect, on the date on which the first order made under the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992, as amended by regulation 4(3) to (6), takes effect.

4. Consultation

- 4.1. There is no requirement to consult on these Regulations. Consultation exercises were conducted by the Department for Work and Pensions in Great Britain and the Department issued the consultation papers to interested organisations in Northern Ireland. The consultation documents were published on the Department's website.

5. Equality Impact

- 5.1. Proposals for the Act were subject to a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals 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. Not applicable

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 (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) 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.