

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (ENDING LIABILITY IN EXISTING CASES AND
TRANSITION TO NEW CALCULATION RULES) REGULATIONS
(NORTHERN IRELAND) 2014

2014 No. 191

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 sections 11 and 36(1) and (2) and paragraphs 2, 3, 5 and 6 of Schedule 2 to the Child Maintenance Act (Northern Ireland) 2008 and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These regulations make provision to end liability on the 1993 and 2003 child maintenance schemes, and specify the mechanism by which existing clients on the 1993 and 2003 schemes of child maintenance can exercise their choice to remain in the statutory scheme.
- 2.2. The regulations will allow the Department to close down the 1993 and 2003 child maintenance schemes, so that clients exercising their choice to remain on the statutory scheme will be handled on the new scheme (the 2012 scheme), which was fully introduced, for all new applicants, in November 2013. The powers are to be exercised in such a way that they minimise payment disruption to existing cases on the 1993 and 2003 schemes as far as this is possible

3. Background

- 3.1 A statutory child maintenance scheme has been in operation since 1993 and was established through the Child Support (Northern Ireland) Order 1991. A second statutory scheme was introduced by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 for all applications received after March 2003 and currently operates alongside the 1991 scheme.
- 3.2 The Child Maintenance Act (Northern Ireland) 2008 (“the 2008 Act”) introduced a new way of calculating child support maintenance, based on historic income, and introduced a number of other important changes to the statutory child maintenance scheme.
- 3.3 The 2012 child maintenance scheme (“the 2012 scheme”), which uses the new rules set out in the 2008 Act, opened to all new applications from 25 November 2013.

- 3.4 The 2012 scheme will continue to run alongside the 1993 and 2003 schemes until all liabilities in the latter schemes are ended and only the 2012 scheme remains.
- 3.5 The 2008 Act gave the Department the power to require the interested parties (the absent parent/non-resident parent and the parent with care) in relation to an existing case on the 1993 or 2003 scheme to choose whether or not to stay in the statutory scheme, so far as accrual of child maintenance liability is concerned. These regulations set out the detail as to how this power will work in practice, including:
- the timing of when the power will be exercised;
 - principles regarding the order in which existing cases will have their child maintenance liability ended;
 - the procedure to be followed in relation to the exercise of the power;
 - the timing in which interested parties must exercise their choice to remain within the statutory scheme; and
 - the form in which interested parties must exercise their choice.

A further level of detail on exactly how the power will be exercised will be contained in a “scheme” provided for under the 2008 Act, which has been prepared by the Department and approved by the Minister and will be published on the Departmental website.

- 3.6 The use of this power will not negate the Department’s focus on pursuing arrears of child maintenance that have accrued under the 1993 and 2003 schemes, and ensuring that parents meet their financial responsibilities for their children. Arrears will remain due and parents will not be relieved of their liability to pay, unless those arrears meet the limited criteria for write off, for example where the parent with care no longer wants the arrears collected.
- 3.7 The new powers will achieve the policy intent stated in paragraph 2.2, specifically by making provisions for clients with an existing 1993 or 2003 scheme case to exercise their choice to remain in the statutory scheme, and setting out the factors which will inform the order in which cases will have their 1993 or 2003 liability ended.
- 3.8 The period during which the power to end liability in existing 1993 and 2003 scheme cases will be known as the “transition period”. This is expected to run for approximately 3 to 4 years from these Regulations coming into operation. The transition period is detailed in the scheme which accompanies these regulations.
- 3.9 From November 2013, all new applications for child maintenance are processed on the 2012 scheme. Where a new application is linked to an existing case on the 1993 or 2003 schemes, the new application will cause the liability to end on the existing case. This is because all linked cases

must be handled according to the same scheme. An existing case will be linked to a new application where the non-resident parent in the new application is also a non-resident parent for a different case on the 1993 or 2003 scheme, and the person with care in the new application is not also the person with care in the existing case; or where the non-resident parent in the new application is the partner of a non-resident parent for a different case on the 1993 or 2003 scheme, and either or both of them are in receipt of a prescribed benefit.

- 3.10 Unless it is linked to an existing case (as explained in paragraph 3.9), liability will not be ended in cases where the last or only qualifying child will have reached the age of 20 before the end of the transition period. This is because these cases will come to a natural end on the 1993 or 2003 scheme, so there is no need to end the liability on the existing case and require the interested parties to make a choice about whether to remain in the statutory scheme.
- 3.11 Cases that do not fall into either of the exceptions described in paragraphs 3.9 and 3.10 will be selected in segments so that the liability can be ended. The order will depend on the characteristics of the case and is intended to minimise payment disruption to existing clients on the 1993 and 2003 schemes (cases that have been selected in a segment could then become linked to a new application on the 2012 scheme, as described in paragraph 3.9. If this happens the link to the new application will take precedence over the fact that the case has been selected in a segment).
- 3.12 It is intended that the first segment of cases that will be closed will be those where the maintenance liability has been assessed or calculated at the “nil rate”, i.e. the non-resident parent in these cases are not liable to pay maintenance, and as a result there will be no payments to disrupt on these cases when the liability is ended.
- 3.13 The detail of the order in which cases will be selected is contained in the scheme which accompanies these regulations.
- 3.14 At the appropriate time in each case, the Department will give notice to the interested parties to inform them of the date that their liability will end, and what they need to do in order to stay within the statutory scheme.
- 3.15 In order to exercise the choice to remain within the statutory scheme, an application must be made to the 2012 scheme, following the standard application process (during which parents will be encouraged to consider alternatives to the statutory scheme where appropriate). This application must be made before the date that liability is due to end. This process is intended to ensure that all clients carefully consider whether they want to stay within the statutory scheme or make a family based arrangement. It also means that where they do exercise the choice the choice to remain in the statutory scheme, they will not experience any break in the non-resident parent’s underlying liability to pay child maintenance.

- 3.16 Where a client exercises their choice to remain within the statutory scheme by way of a new application, as described in paragraph 3.15, the new maintenance calculation resulting from this application will be based on information available at the time the non-resident parent is notified of the application (although either party is able to report changes, such as a change of more than 25% in the non-resident parent's income, and these will be taken into account). However, the calculation will not take effect until the day after liability ends on the 1993 or 2003 scheme.
- 3.17 Where a case is selected for the liability to be ended, but it becomes apparent that the case was selected in error, the Department will have the power to withdraw the notice informing the interested parties of the date their liability is due to end. This will mean the case will continue to be handled on the 1993 or 2003 scheme until further notice.
- 3.18 This power will only be used where the error comes to light more than 30 days before the liability is due to end. The Department will have discretion as to whether the power should be exercised in any given case. The intention is to only use this power in exceptional circumstances. The circumstances in which the power should be used are described in more detail in the draft scheme that accompanies these regulations.
- 3.19 In cases which fall into the scenario covered in paragraph 3.9, the liability will end no fewer than 30 days after the interested parties are notified as described in paragraph 3.14. This is to balance the interests of the parent with care on the new application and the parent with care in the existing case. The existing parent with care should be given enough time to consider their choice about whether to remain within the statutory scheme, but without causing significant delay in starting the liability on the new parent with care's case.
- 3.20 In all other cases, except those noted in paragraph 3.10, the liability will end between 180 and 272 days after the interested parties are notified as described in paragraph 3.14. This is to allow the interested parties plenty of time to consider whether they want to remain within the statutory scheme or not.
- 3.21 Where a case is selected in a segment so that liability can be ended, as per paragraph 3.11, but more than 30 days before the liability end date is reached it becomes linked to a new application as per paragraph 3.9, a new notice will be issued to amend the end liability date. The liability end date will be at least 30 days from the second notice.
- 3.22 Where the non-resident parent's method of payment on the 1993 or 2003 scheme case was deducted from earnings order or regular deduction order (i.e. a deduction directly from their bank account), this method may continue to be used where an application is made to the 2012 scheme, if the Department is of the opinion that the non-resident parent is "unlikely to pay" the parent with care directly on the 2012 scheme. This is intended to minimise disruption to payments, as compliance on the 1993 or 2003

case may have been hard won. This does not guarantee that there will be no disruption to payments whatsoever, but it will minimise any break in payment that the parent with care experiences.

- 3.23 Where there is an outstanding application on the 1993 or 2003 scheme, but an assessment or calculation has not yet been made, the Department has the discretion to treat this application as “withdrawn”, if none of the interested parties exercise their choice to remain within the statutory maintenance scheme.

4. Consultation

- 4.1. The proposals for these Regulations were consulted on in the Command Paper ‘*Supporting separated families; securing children’s futures*’, (Cm8399) published in July 2012.
- 4.2. The Consultation was published on the Department for Social Development Website and issued to Northern Ireland Stakeholders and Section 75 representative groups to ensure that that these groups, individuals and organisations in Northern Ireland were included in the consultation process.

5. Equality Impact

- 5.1. 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 significant 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. It is anticipated that the cost of implementation within NI will be offset against the reduced future costs of delivering the 2012 Statutory Scheme.

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 (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014. 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

11. Additional Information

- 11.1. Not applicable