

EXPLANATORY MEMORANDUM TO

The Child Support (Miscellaneous Amendments No. 3) Regulations (Northern Ireland) 2019

S.R. 2019 No. 221

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is to be laid before the Northern Ireland Assembly.
- 1.2. These Regulations are made under Articles 16(1) and (3), 32A(4)(a) and (b), 32C(1) and (2)(h), (k), (l), (n), (o) and (p), 32D(1)(b), 32E(2)(a) and (b), 32F(1)(b), 32I, 32J(1) and (2)(d), (e) and (i), 32K(1)(b), 37(11), 38E, 47(1) and (2)(i), 48(4) and paragraph 4(1) of the Child Support (Northern Ireland) Order 1991 and are subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These Regulations revoke and re-enact the provisions of the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 which would otherwise cease to have effect by virtue of Article 48(2) of the Child Support (Northern Ireland) Order 1991. The Regulations provide for powers which were introduced in December 2018 to continue in force.

3. Background

Legislative Context

- 3.1. The Child Support (Northern Ireland) Order 1991 (“the 1991 Order”) as amended introduced statutory child maintenance to ensure that parents no longer living with their children continue to fulfil their obligations to make financial provision for those children.
- 3.2. These Regulations have been made using the following powers:
 - Paragraph 4(1) of Schedule 4B to the 1991 Order enables the Department to make regulations prescribing cases in which a variation can be made to a maintenance calculation. These Regulations amend the Child Support Maintenance (Calculation) Regulations (Northern Ireland) 2012 to allow for a variation on the grounds of notional income from assets.
 - Articles 16, 32A, 32C and 32D of the 1991 Order make provision for regular deduction order in respect of joint and unlimited partnership accounts for which a liable non-resident parent (NRP) is an account-holder. These Regulations set out how these provisions will be applied.
 - Articles 16, 32E, 32F, 32I, 32J, 32K of the 1991 Order make provision for lump sum deduction orders in respect of joint, sole trader and unlimited

partnership accounts for which a liable NRP is an account-holder. These Regulations set out how these provisions will be applied.

- Under Article 38E of the 1991 Order the Department has a discretion to write off arrears only if it considers that it would be unfair or inappropriate to enforce the liability and the circumstances of the case are specified in regulations. These circumstances are set out in the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009.
- This package of regulations amends the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 by extending our powers to write off non-paying debt that built up under legacy schemes in certain specific circumstances.

Policy Background

- 3.3. The policy objective of the parent legislation (the 1991 Order) is to ensure that NRPs fulfil their obligations to provide financial support to their children. The changes made will help prevent NRPs with complex financial arrangements from artificially lowering their child maintenance liability, as well as closing loopholes that currently exist by introducing new provision for orders which would enable regular or lump sum deductions to be made from joint, sole trader and unlimited partnership accounts.
- 3.4. Changes made also introduce powers to allow for arrears which accrued on the legacy schemes to be written off in certain circumstances. With the final closure of the CSA approaching, all CSA cases will need to be closed. These powers allow the Department to give certainty to clients over the approach to this debt, while focussing on collecting money that will benefit children today, in line with the policy objective of the 1991 Order.

Child maintenance calculation amendments

- 3.5. The Child Maintenance Calculation Regulations (Northern Ireland) 2012 are amended to go some way towards addressing concerns that a small number of wealthy NRPs are currently able to use complex arrangements of assets to artificially lower their child maintenance liability, or avoid it entirely. The legacy schemes had provisions to determine a notional income from assets held that were not carried forward to the 2012 scheme, as the method of calculation on that scheme allowed for a more comprehensive range of income types to be taken into account – i.e. earned and unearned income (subject to taxation by HM Revenue & Customs).
- 3.6. With the maturity of the current scheme, we recognise that there are still some NRPs for whom adding a notional income from assets provision would lead to a more appropriate income figure being used to calculate a maintenance liability. These Regulations include this power for use in the 2012 scheme, to ensure our approach to the calculation of maintenance liabilities results in NRPs paying an amount that more accurately reflects their means.

- 3.7. This enables a notional income to be taken into account where the NRP holds assets of a high value. This provision is particularly appropriate in situations where an individual has an affluent lifestyle, and a source of income cannot be identified but ownership of significant assets can be.
- 3.8. When an asset falls within this power, it will be considered to be producing an income according to a set percentage. Eight percent has been chosen as the set percentage as it was used for this purpose on the 2003 scheme and was subject to public consultation.
- 3.9. Protections within these Regulations are present to ensure the use of the power is proportionate.
- a) To provide a minimum single value of £31,250 below which CMS would not use the power. This is to prevent large numbers of low value assets being targeted, as this would be difficult to administer. It also allows for the minimum level of notional income to be set at £2,500 per year. This is the same as the current threshold for variation based on unearned income, so ensures the overall approach remains consistent.
 - b) To disregard the primary residence of the NRP, or any child of the NRP. This is to ensure that there is no risk of the NRP and dependents losing their home where it is necessary to sell the property in order to pay any additional maintenance which would become payable as a result of taking the property into account.
 - c) In the case of an asset which is subject to a mortgage or charge, only the value of the equity in the property will be taken into account.
 - d) An asset already producing an income stream captured by the standard calculation or other variation provisions is disregarded. This is to prevent income being generated twice for an asset.
 - e) Assets used in the course of the NRPs business, will not be taken into account.

Deductions from joint and unlimited partnership accounts

- 3.10. In order to do more to prevent parents from evading their financial obligations to their children the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 are amended to extend the Department's ability to use regular and lump sum deduction orders in relation to joint and unlimited partnership bank accounts and use lump sum deduction orders in relation to sole trader accounts.
- 3.11. It has become evident over the years that a loophole exists where NRPs are able to place all their funds into joint or unlimited partnership accounts rendering them inaccessible.
- 3.12. The Department has been clear that it wishes to strike a balance between recovering money from NRPs who are refusing to pay child support maintenance while protecting the rights of other account holders. A

number of safeguards have been put in place to prevent the other account holder's fund being deducted.

- 3.13. Before action is taken, the last six months banks statements will be checked to establish ownership of funds. In a small number of cases, where despite investigation it is not possible to establish how much of the funds within the account belong to the NRP (for example, because no evidence is furnished as to ownership), a pro-rata approach will be adopted. This will assume the NRP has an equal share of the funds as the other account holders.
- 3.14. All account holders will be notified that action is to be taken and given the opportunity to make representations in relation to the funds targeted. Representation periods will be set at 14 days for Regular Deduction Orders (RDOs) and 28 days for Lump Sum Deduction Orders (LSDOs).
- 3.15. For regular and lump sum deductions orders all joint account-holders will have the right to apply for a review or variation of the order made. Where appropriate the Department may make the decision to lapse either or both an RDO or LSDO, and may choose to revive these deduction orders where appropriate. All account holders will have appeal rights.

Historic debt built up on Child Support Agency schemes

- 3.16. The extension of the Department's write-off powers is necessary to end the uncertainty for families about how the historic arrears owed to parents that built up under the legacy schemes are to be handled.
- 3.17. A range of options have been considered to address these historic arrears which are included in our consultation that can be found at www.gov.uk/government/consultations/child-maintenance-a-new-compliance-and-arrears-strategy .
- 3.18. Some of the things considered included selling the debt to debt collection agency although investigations revealed this was not a commercially viable option.
- 3.19. To attempt to collect all of the CSA debt owed to parents and government would involve having to work every case and result in excessive expenditure with likely low levels of collection due to NRPs simply not having the resources to pay these debts.
- 3.20. To continue maintaining the historic debt on CSA IT systems would incur significant technology costs – an annual cost potentially lasting for decades.
- 3.21. Moving all the debt to the CMS system would also not represent value for money, requiring a check of the debt balance for each case before it is moved to ensure it is correct. Each of these options would require significant amounts of taxpayer funding while doing nothing to increase the amount of money flowing to children.
- 3.22. Taking action now to address these historic arrears allows the Department to draw a final line under the problems of the previous child support systems and focus on building on the success of the CMS. It gives the Department the opportunity to offer PWCs a final chance at collection,

where it is cost effective to do so and reasonably certain the action would be successful.

- 3.23. These Regulations amend the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 by providing additional circumstances in which the Department may exercise the power to write off arrears.
- 3.24. The Regulations allow representations to be sought from clients who have a 1993 or 2003 CSA scheme case where there has not been a payment in the last three months. The client will need to make a representation to the CMS if they would like a last attempt to collect the debt, where:
 - the case started on or before 1 November 2008 and the debt is more than £1000;
 - the case started after 1 November 2008 and the debt is more than £500; or
 - the arrears accrued under a 1993 or 2003 scheme case which have transferred to the CMS system and the debt is more than £500.
- 3.25. Where no representations are received, or collection of the debt is not possible, the Department may exercise the power to write off the debt.
- 3.26. The regulations also enable CSA debt to be written off without seeking representations from clients, where there has not been a payment in the last three months and:
 - the case started on or before 1 November 2008 and the debt is less than £1000;
 - the case started after 1 November 2008 and the debt is less than £500; or
 - the arrears accrued under a 1993 or 2003 scheme case which have transferred to the CMS system and the debt is less than £500.
- 3.27. It is not cost effective to attempt collection on individual debts of less than £500 (or debts of less than £1000 where the case is ten or more years old). It costs on average between £500 and £1000 to investigate and take actions on these cases. This average cost includes some of the cases going forward for collection activity in our arrears teams and some cases being put through legal enforcement processes. The thresholds based on age of case and amount of debt provide a reasonable cut off point to ensure that cases are not pursued at disproportionate cost to the taxpayer.
- 3.28. Where a case has CSA debt under £65 and payments have not been received in the last three months, these regulations enable it to be written off without notice to the parties.
- 3.29. If a case has debt subject to sequestration (Scottish insolvency) these regulations will enable it to be written off when the sequestration expires. This technical amendment will apply to both CSA and CMS cases, as this debt becomes legally uncollectable due to the way sequestration operates.
- 3.30. In respect of these circumstances, the Regulations amend exiting provisions relating to the Department's duties to send written notice;

consider representations; and notify the parties of the decision to write off the arrears.

4. Consultation

- 4.1. The Department for Work and Pensions issued a public consultation (Northern Ireland included in scope) on proposed changes to child maintenance legislation on 14 December 2017 and it closed on 08 February 2018. The consultation attracted 99 responses: 11 were from organisations and 88 from private individuals of which 21 identified as paying parents and 24 as receiving parents.
- 4.2. The consultation invited responses to 15 questions covering the following measures included in this package:
 - how child maintenance liabilities are calculated;
 - new enforcement powers for the CMS; and
 - how to deal with CSA arrears.
- 4.3. The overall response to the proposals for improving the calculation of child maintenance liabilities was positive.
- 4.4. Respondents offered a range of views on the proposed new power to allow the CMS to derive a notional income from an asset for the purpose of varying a calculation.
- 4.5. There was no clear consensus on the percentage rate that should be used to derive a notional income or the minimum value of assets this should be applied to. It was therefore decided to proceed with the statutory rate of interest prescribed for a judgement debt (8%) and set the minimum aggregate value of assets at £31,250.
- 4.6. For joint and unlimited partnership business accounts, a number of respondents expressed concern that the other account holder's funds could be deducted when deductions from joint and business accounts are introduced. To address these concerns additional checks have been put in place for joint and business accounts to ensure the other account holders funds are not deducted in error, as well as introducing representation periods for all account holders of 14 days for regular deductions orders (RDOs) and 28 days for lump sum deduction orders (LSDOs).
- 4.7. For RDOs, since funds cannot be frozen, once deducted from the NRP's account they will be held by the Department for a period of time before being paid to the PWC, although this will be in procedures and is not provided for in these regulations. A minimum of £2000 will be left in unlimited partnership business accounts to safeguard businesses and allow them to continue to trade, this will not be included in the regulations so we can monitor how it is working.
- 4.8. On the whole the proposals for tackling the arrears built up under CSA were well received. Many respondents agreed that clients should be given certainty over the status of this debt. Respondents also understood why

efforts should be focussed of collection on those cases where there was a reasonable certainty of success.

- 4.9. It was proposed to give parents with care the opportunity to make written representations to them about whether their arrears should be written-off, for which they would have 60 days to respond.
- 4.10. The responses to this question were considered carefully when the policy was developed. There was no clear consensus amongst respondents on what period would be best; some felt a shorter period would be preferable as it would ultimately allow for action to be taken quicker. Others felt that 60 days or longer was appropriate. It was ultimately decided to retain the 60 day period as it offers clients sufficient time to make what is a very important decision, without unduly delaying any action the Department could take.
- 4.11. Views were also sought on what type of information should be contained in letters about writing off debt. Responses were mixed on whether we should include final debt balances and details about accrual periods. On this basis it was decided to continue with the proposal not to include accrual periods in any of these letters and to only include debt balances where the debt relates to a case with an effective date after 1st November 2008.
- 4.12. The consultation sought views on whether the thresholds for not offering the opportunity to make representations were reasonable. These thresholds are based upon age of case and amount of debt. Views were also sought on the proposal not to send letters in cases with debt balances under £65 notifying the parties that the debt is to be written off. The majority of respondents agreed with the proposals. Some respondents disagreed with the level of thresholds but did not suggest an alternative amount and accepted that having a threshold was the right approach. On this basis it was decided to proceed with the stated proposals. The full consultation response can be found at:
<https://www.gov.uk/government/consultations/child-maintenance-a-new-compliance-and-arrears-strategy>

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 proposals for these Regulations and concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. Any additional costs of implementation to businesses, ie deposit takers, are estimated to be minimal as this is an extension of an existing process. This is easily offset by the additional money generated for children.

7. Financial Implications

- 7.1. The closure of legacy IT Systems will result in IT savings for the Department.

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 that these Regulations:
- a) are not incompatible with any of the Convention rights;
 - b) are not incompatible with Community law;
 - c) do not discriminate against a person or class of person on the ground of religious belief or political opinion; and
 - d) do 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 (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/1279).
- 10.2. In line with the long-standing policy of parity in social security, the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 came into operation on the same date as the corresponding Great Britain Regulations. 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. It was, therefore, necessary to make those Regulations during the period of interregnum.
- 10.3. These Regulations will continue in force the provisions brought forward in the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2018 which in turn corresponds to provision made by the Secretary of State for Work and Pensions.

11. Additional Information

- 11.1. Not applicable.