

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (AMENDMENTS RELATING TO ELECTRONIC COMMUNICATIONS) ORDER (NORTHERN IRELAND) 2022

S.R. 2022 No. 178

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.

This Order is made under sections 1 and 2 of the Electronic Communications Act (Northern Ireland) 2001.

2. Purpose

- 2.1. This instrument authorises and facilitates the option of electronic communications between the Child Maintenance Service (“CMS”), customers and third parties for the purposes of calculating, collecting and enforcing child support maintenance.

3. Background

Legislative Context

- 3.1. Current legislation prescribes that in certain circumstances, CMS must send customer notifications by post.
- 3.2. This instrument amends four regulations in order to authorise and facilitate the option of electronic communication between CMS, customers and third parties for the purposes of calculating, collecting and enforcing child support maintenance. The regulations are:
- (a) The Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 390);
 - (b) The Child Support Information Regulations (Northern Ireland) 2008 (S.R. 2008 No. 403);
 - (c) The Child Support (Management of Payments and Arrears Regulations (Northern Ireland) 2009 (S.R. 2009 No. 422); and
 - (d) The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 (S.R. 2012 No. 427).
- 3.3. The amendments are to provisions made under Child Support (Northern Ireland) Order 1991 powers, three of which attract the affirmative resolution procedure: Articles 32C, 32J and 38E.
- 3.4. However, the powers under the Child Support (Northern Ireland) Order 1991 are not specifically targeted to enabling electronic communications. Therefore, we have elected to use the more specific power in section 1 of the Electronic Communications Act (Northern Ireland) 2001 (ECA 2001) to make these

amendments. Section 2(3) and (4) of the ECA 2001 states a negative procedure must be used when exercising section 1 powers.

- 3.5. In making the decision both to use the section 1 ECA 2001 power and the negative procedure we have considered our aims and are satisfied it is appropriate to use this power and the procedure is commensurate to the weight and effect of the amendments for the reasons set out below.
- 3.6 We are acting within the scope of section 1 of the ECA 2001, which allows the appropriate Department to amend existing legislation to authorise, and facilitate, the option of electronic communication for a range of purposes. We are proposing to use the section 1 power in precisely the way it appears to be intended for use, to amend a range of enactments in a coordinated manner.
- 3.7 We are using the section 1 power and negative procedure in order to facilitate coordination and consistency and not to evade procedural burdens.
- 3.8 There are safeguards to the proposed use of electronic communications, including that the instrument requires any electronic communication as well as its form and the address to be agreed with the recipient. Customers will be able to challenge decisions sent by electronic means in accordance with the statutory system of revisions, supersessions and appeals, and these appeal rights are not affected by the amendments. For example, there are appeal rights to the Appeal Tribunal against decisions concerning maintenance calculations, and to the Magistrates Court against Deduction from Earnings Orders and Deduction Orders.

Policy Background

- 3.3. Child Maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. The main objective of child maintenance legislation is to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents. The CMS continuously strives to modernise and improve services to both parents and thus legislative amendments are being made to support this aspiration.

4. Consultation

- 4.1. A public consultation was carried out by the Department for Work and Pensions (DWP), “Child Maintenance: modernising and improving our service” on GOV.UK between 18th June and 6th August 2021. The consultation invited comments to specific questions on proposals to introduce electronic communications.
- 4.2. Respondents to the consultation were generally in favour of improving communication delivery through the use of digital methods, as long as they were appropriate and did not disadvantage any customer.
- 4.3. Some concerns were voiced in relation to the possible impact on customers going through difficult times, with portal issues causing access problems and occasionally language barriers. In these instances, communication via post would be preferable.

- 4.4. This instrument will only give CMS the option to communicate with customers electronically where they consent to this, so we will retain other methods of communication such as postal and telephone for customers who still wish to use them.
- 4.5. Data collection and retention processes will comply with the UK General Data Protection Regulations (Retained Regulation EU 2016/679), and the Data Protection Act 2018.

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 this Order 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. There is no, or no significant, impact on business, charities or voluntary bodies or on the public sector.

7. Financial Implications

- 7.1. The amendments made by this Order will generate on going savings due to making use of electronic applications. There may also be savings associated with fraud identification and prevention.

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 this Order:
 - 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 (Amendments Relating to Electronic Communications and Information) (England and Wales and Scotland) Regulations 2022 (S.I. 2022/503).
- 10.2. In line with the long-standing policy of parity in social security, the Child Support (Amendments Relating to Electronic Communications) Order (Northern Ireland) 2022 will come into operation on 26th May 2022. 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.