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## 2008 CHAPTER 10

### **PART 1**

#### **ADDITIONAL FUNCTIONS OF THE DEPARTMENT**

##### **Promotion of child maintenance**

1 The Department must take such steps as it thinks appropriate for the purpose of raising awareness among parents of the importance of—

- (a) taking responsibility for the maintenance of their children, and
- (b) making appropriate arrangements for the maintenance of children of theirs who live apart from them.

##### **Provision of information and guidance**

2.—(1) The Department must provide to parents such information and guidance as it thinks appropriate for the purpose of helping to secure the existence of effective maintenance arrangements for children who live apart from one or both of their parents.

(2) The Department may provide information for other purposes in the course of exercising its function under subsection (1).

##### **Fees**

3.—(1) The Department may by regulations make provision about the charging of fees by the Department in connection with the exercise of its functions relating to child support.

- (2) Regulations under subsection (1) may, in particular, make provision
  - (a) about when a fee may be charged;

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- (b) about the amount which may be charged;
- (c) for the supply of information needed for the purpose of determining the amount which may be charged;
- (d) about who is liable to pay any fee charged;
- (e) about when any fee charged is payable;
- (f) about the recovery of fees charged;
- (g) about waiver, reduction or repayment of fees.

(3) The power conferred by subsection (1) includes power to make provision for the charging of fees which are not related to costs.

(4) The Department may by regulations provide that the provisions of the Child Support (Northern Ireland) Order 1991 (NI 23) (in this Act referred to as “the Child Support Order”) with respect to—

- (a) the collection of child support maintenance,
- (b) the enforcement of any obligation to pay child support maintenance,

shall apply equally (with any necessary modifications) to fees payable by virtue of regulations under subsection (1).

(5) The Department may by regulations make provision for a person affected by a decision of the Department under regulations under subsection (1) to have a right of appeal against the decision to an appeal tribunal.

(6) Paragraphs (3) to (5), (7) and (8) of Article 22 of the Child Support Order (appeals to appeal tribunals) apply to appeals under regulations under subsection (5) as they apply to appeals under that Article.

#### **Agency arrangements and provision of services**

**4.—**(1) Arrangements may be made between the Department and any relevant authority for—

- (a) any functions of one of them to be exercised on their behalf by, or by members of staff of, the other;
- (b) the provision of administrative, professional or technical services by one of them for the other.

(2) The reference in subsection (1)(a) to functions does not include functions of making, confirming or approving statutory rules.

(3) The Department may make arrangements under this section on such terms and conditions as it thinks fit.

(4) In this section “relevant authority” means—

- (a) any Northern Ireland department;
- (b) a public body specified in regulations made by the Department for the purposes of this section.

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(5) For the purposes of this section, functions of the Department are functions relating to child support.

### **Contracting out**

**5.—**(1) Any function relating to child support may be exercised by, or by employees of, such person (if any) as the Department may authorise for the purpose.

(2) An authorisation given by virtue of subsection (1) may authorise the exercise of the function concerned—

- (a) either wholly or to such extent as may be specified in the authorisation,
- (b) either generally or in such cases or areas as may be so specified, and
- (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.

(3) An authorisation given by virtue of subsection (1)—

- (a) may specify its duration,
- (b) may be revoked at any time by the Department, and
- (c) shall not prevent the Department or any other person from exercising the function to which the authorisation relates.

(4) Where a person is authorised to exercise any function by virtue of subsection (1), anything done or omitted to be done by or in relation to that person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by or in relation to the Department.

(5) Subsection (4) shall not apply—

- (a) for the purposes of so much of any contract made between the authorised person and the Department as relates to the exercise of the function, or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of that person).

(6) Where—

- (a) a person is authorised to exercise any function by virtue of subsection (1), and
- (b) the authorisation is revoked at a time when a relevant contract is subsisting, the authorised person shall be entitled to treat the relevant contract as repudiated by the Department (and not as frustrated by reason of the revocation).

(7) In subsection (6), the reference to a relevant contract is to so much of any contract made between the authorised person and the Department as relates to the exercise of the function.

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### Supplementary provisions

6.—(1) In this Part, “child” has the same meaning as in the Child Support Order.

(2) The Department may by regulations make provision about when a child is, or is not, to be regarded for the purposes of this Part as living apart from a parent.

(3) In this Part, “functions relating to child support” means functions of the Department under

- (a) this Act or under any provision made under this Act;
- (b) the Child Support Order or under any provision made under that Order;
- (c) the Child Support (Northern Ireland) Order 1995 (NI 13) or under any provision made under that Order.

## PART 2

### CHILD SUPPORT ETC.

#### *Removal of compulsion for benefit claimants*

### Repeal of Articles 9 and 43

7 The following provisions of the Child Support Order cease to have effect—

- (a) Article 9 (under which the claim of benefit by or in respect of a parent with care, or the payment of benefit to or in respect of such a person, triggers an application by her or him for child support maintenance), and
- (b) Article 43 (which enables the Department in certain circumstances to reduce the benefit of a person in relation to whom Article 9 triggers the making of an application for child support maintenance).

#### Commencement Information

- II** S. 7 wholly in operation at 27.10.2008; s. 7 not in operation at Royal Assent see s. 41(1); s. 7(b) in operation at 14.7.2008 by S.R. 2008/291, art. 2(1)(a); s. 7(a) in operation at 14.7.2008 by S.R. 2008/291, art. 2(2)(a) (with art. 2(3)(4)); s. 7(a) in operation at 27.10.2008 in so far as not already in operation by S.R. 2008/399, art. 2(2)(a) (with art. 3(4))

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VALID FROM 03/12/2012

### *Maintenance calculations*

#### **Changes to the calculation of maintenance**

**8** Schedule 1 (which makes various changes to the provisions about the calculation of maintenance) has effect.

#### **Power to regulate supersession**

**9** In Article 19 of the Child Support Order (decisions superseding earlier decisions), for paragraphs (2) and (3) substitute—

“(2) The Department may by regulations make provision with respect to the exercise of the power under paragraph (1).

(3) Regulations under paragraph (2) may, in particular—

- (a) make provision about the cases and circumstances in which the power under paragraph (1) is exercisable, including provision restricting the exercise of that power by virtue of change of circumstance;
- (b) make provision with respect to the consideration by the Department, when acting under paragraph (1), of any issue which has not led to its so acting;
- (c) make provision with respect to procedure in relation to the exercise of the power under paragraph (1).”.

VALID FROM 10/12/2012

#### **Determination of applications for a variation**

**10.**—(1) Article 28D of the Child Support Order is amended as follows.

(2) After paragraph (2) insert—

“(2A) Paragraph (2B) applies if

- (a) the application for a variation is made by the person with care, and
- (b) it appears to the Department that consideration of further information or evidence may affect its decision under paragraph (1)(a) whether or not to agree to a variation.

(2B) Before making the decision under paragraph (1)(a) the Department must—

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(a) consider any such information or evidence that is available to it, and

(b) where necessary, take such steps as the Department considers appropriate to obtain any such further information or evidence.”.

(3) In paragraph (3), after “duties” insert “, apart from the duty under paragraph (2B) ”.

VALID FROM 18/06/2014

### **Transfer of cases to new rules**

**11** Schedule 2 (which makes provision for, and in connection with, enabling the Department to require existing cases to transfer to the new maintenance calculation rules or to leave the statutory scheme, so far as future accrual of liability is concerned) has effect.

## *Collection and enforcement*

### **Use of deduction from earnings orders as basic method of payment**

**12** In Article 29 of the Child Support Order (under which payments of child support maintenance are to be made in accordance with regulations) at the end add—

“(4) If the regulations include provision for payment by means of deduction in accordance with an order under Article 31, they must make provision—

(a) for that method of payment not to be used in any case where there is good reason not to use it; and

(b) for the person against whom the order under Article 31 would be made to have a right of appeal to a court of summary jurisdiction against a decision that the exclusion required by sub-paragraph (a) does not apply.

(5) On an appeal under regulations made under paragraph (4)(b) the court shall not question the maintenance calculation by reference to which the order under Article 31 would be made.

(6) Regulations under paragraph (4)(b) may include—

(a) provision with respect to the period within which a right of appeal under the regulations may be exercised;

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(b) provision with respect to the powers of a court of summary jurisdiction in relation to an appeal under the regulations.

(7) If the regulations include provision for payment by means of deduction in accordance with an order under Article 31, they may make provision

- (a) prescribing matters which are, or are not, to be taken into account in determining whether there is good reason not to use that method of payment;
- (b) prescribing circumstances in which good reason not to use that method of payment is, or is not, to be regarded as existing.”.

#### Commencement Information

- I2** S. 12 wholly in operation at 27.10.2008; s. 12 not in operation at Royal Assent see s. 41(1); s. 12 in operation for certain purposes at 29.9.2008 and in operation at 27.10.2008 in so far as not already in operation by S.R. 2008/399, art. 2(1)

PROSPECTIVE

#### Deduction from earnings orders: the liable person's earnings

**13** In Article 31 of the Child Support Order (deduction from earnings orders), for paragraph (8) substitute—

“(8) In this Article and Article 32 “earnings” means (subject to such exceptions as may be prescribed) any sums payable to a person which fall within one or more of the following sub-paragraphs—

- (a) sums payable by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service);
- (b) periodical payments by way of pension (including an annuity payable for the purpose of providing a pension), whether or not in respect of past services;
- (c) periodical payments by way of compensation for the loss, abolition or relinquishment, or diminution in the emoluments, of any office or employment;
- (d) sums payable by way of statutory sick pay.

(9) For the purposes of this Article and Article 32 any person who (as a principal and not as a servant or agent) pays to the liable person any earnings is to be treated as having the liable person in his employment; and the following are to be read accordingly—

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- (a) in this Article and Article 32, references to the liable person's employer; and
- (b) in Article 32(3), “employment”, “employed” and “re-employed”.”.

### **Orders for regular deductions from accounts**

**14** After Article 32 of the Child Support Order insert—

#### **“Orders for regular deductions from accounts**

**32A.**—(1) If in relation to any person it appears to the Department—

- (a) that the person has failed to pay an amount of child support maintenance; and
- (b) that the person holds an account with a deposit-taker;

it may make an order against that person to secure the payment of any amount due under the maintenance calculation in question by means of regular deductions from the account

(2) An order under this Article may be made so as to secure the payment of—

- (a) arrears of child support maintenance payable under the calculation;
- (b) amounts of child support maintenance which will become payable under the calculation; or
- (c) both such arrears and such future amounts.

(3) An order under this Article may be made in respect of amounts due under a maintenance calculation which is the subject of an appeal only if it appears to the Department—

- (a) that liability for the amounts would not be affected were the appeal to succeed; or
- (b) where sub-paragraph (a) does not apply, that the making of an order under this Article in respect of the amounts would nonetheless be fair in all the circumstances.

(4) An order under this Article—

- (a) may not be made in respect of an account of a prescribed description; and
- (b) may be made in respect of a joint account which is held by the person against whom the order is made and one or more other persons, and which is not of a description prescribed under sub-paragraph (a), if (but only if) regulations made by the Department so provide.



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- (5) An order under this Article—
- (a) shall specify the account in respect of which it is made;
  - (b) shall be expressed to be directed at the deposit-taker with which the account is held; and
  - (c) shall have effect from such date as may be specified in the order.
- (6) An order under this Article shall operate as an instruction to the deposit-taker at which it is directed to—
- (a) make deductions from the amount (if any) standing to the credit of the account specified in the order; and
  - (b) pay the amount deducted to the Department.
- (7) The Department shall serve a copy of any order made under this Article on—
- (a) the deposit-taker at which it is directed;
  - (b) the person against whom it is made; and
  - (c) if the order is made in respect of a joint account, the other account holders.
- (8) Where—
- (a) an order under this Article has been made; an
  - (b) a copy of the order has been served on the deposit-taker at which it is directed,

it shall be the duty of that deposit-taker to comply with the order; but the deposit-taker shall not be under any liability for non-compliance before the end of the period of 7 days beginning with the day on which the copy was served on the deposit-taker.

(9) Where regulations have been made under Article 29(3)(a), a person liable to pay an amount of child support maintenance is to be taken for the purposes of this Article to have failed to pay an amount of child support maintenance unless it is paid to or through the person specified in, or by virtue of, the regulations for the case in question.

### **Orders under Article 32A: joint accounts**

**32B.**—(1) Before making an order under Article 32A in respect of a joint account the Department shall offer each of the account-holders an opportunity to make representations about—

- (a) the proposal to make the order; and
- (b) the amounts to be deducted under the order, if it is made.

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(2) The amounts to be deducted from a joint account under such an order shall not exceed the amounts that appear to the Department to be fair in all the circumstances.

(3) In determining those amounts the Department shall have particular regard to—

- (a) any representations made in accordance with paragraph (1)(b);
- (b) the amount contributed to the account by each of the account-holders; and
- (c) such other matters as may be prescribed.

### **Regulations about orders under Article 32A**

**32C.**—(1) The Department may by regulations make provision with respect to orders under Article 32A.

(2) Regulations under paragraph (1) may, in particular, make provision—

- (a) requiring an order to specify the amount or amounts in respect of which it is made;
- (b) requiring an order to specify the amounts which are to be deducted under it in order to meet liabilities under the maintenance calculation in question;
- (c) requiring an order to specify the dates on which deductions are to be made under it;
- (d) for the rate of deduction under an order not to exceed such rate as may be specified in, or determined in accordance with, the regulations;
- (e) as to circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of Article 32A
- (f) as to the payment of sums deducted under an order to the Department;
- (g) allowing the deposit-taker at which an order is directed to deduct from the amount standing to the credit of the account specified in the order a prescribed amount towards its administrative costs before making any deduction required by Article 32A(6)(a);
- (h) with respect to notifications to be given to the person against whom an order is made (and, in the case of an order made in respect of a joint account, to the other account holders) of amounts deducted, and amounts paid, under the order;
- (i) requiring the deposit-taker at which an order is directed to notify the Department in the prescribed manner and within a prescribed period—

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- (i) if the account specified in the order does not exist at the time at which the order is served on the deposit-taker;
  - (ii) of any other accounts held with the deposit-taker at that time by the person against whom the order is made;
- (j) requiring the deposit-taker at which an order is directed to notify the Department in the prescribed manner and within a prescribed period if, after the time at which the order is served on the deposit-taker—
- (i) the account specified in the order is closed;
  - (ii) a new account of any description is opened with the deposit-taker by the person against whom the order is made;
- (k) as to circumstances in which the deposit-taker at which an order is directed, the person against whom the order is made and (in the case of an order made in respect of a joint account) the other account-holders may apply to the Department for it to review the order and as to such a review;
- (l) for the variation of orders;
- (m) similar to that made by Article 32A(8), in relation to any variation of an order;
- (n) for an order to lapse in such circumstances as may be prescribed;
- (o) as to the revival of an order in such circumstances as may be prescribed;
- (p) allowing or requiring an order to be discharged;
- (q) as to the giving of notice by the Department to the deposit-taker that an order has lapsed or ceased to have effect.
- (3) The Department may by regulations make provision with respect to priority as between an order under Article 32A and—
- (a) any other order under that Article;
  - (b) any order under any other statutory provision which provides for deductions from the same account.
- (4) The Department shall by regulations make provision for any person affected to have a right to appeal to a court
- (a) against the making of an order under Article 32A;
  - (b) against any decision made by the Department on an application under regulations made under paragraph (2)(k).
- (5) On an appeal under regulations made under paragraph (4)(a), the court shall not question the maintenance calculation by reference to which the order was made.

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- (6) Regulations under paragraph (4) may include—
- (a) provision with respect to the period within which a right of appeal under the regulations may be exercised;
  - (b) provision with respect to the powers of the court to which the appeal under the regulations lies.

### Orders under Article 32A: offences

- 32D.**—(1) A person who fails to comply with the requirements of—
- (a) an order under Article 32A, or
  - (b) any regulation under Article 32C which is designated by the regulations for the purposes of this sub-paragraph,

commits an offence.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that the person took all reasonable steps to comply with the requirements in question.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

#### Commencement Information

- I3** S. 14 wholly in operation at 3.8.2009; s. 14 not in operation at Royal Assent see s. 41(1); s. 14 in operation for certain purposes at 1.6.2009 and wholly in operation at 3.8.2009 by S.R. 2009/216, art. 2(1)(a)

### Lump sum deduction orders

**15** After Article 32D of the Child Support Order (inserted by section 14) insert—

#### “Lump sum deductions: interim orders

**32E.**—(1) The Department may make an order under this Article if it appears to the Department that a person (referred to in this Article and Articles 32F to 32J as “the liable person”) has failed to pay an amount of child support maintenance and—

- (a) an amount stands to the credit of an account held by the liable person with a deposit-taker; or
- (b) an amount not within sub-paragraph (a) that is of a prescribed description is due or accruing to the liable person from another person (referred to in this Article and Articles 32F to 32J as the “third party”).

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- (2) An order under this Article—
  - (a) may not be made by virtue of paragraph (1)(a) in respect of an account of a prescribed description; an
  - (b) may be made by virtue of paragraph (1)(a) in respect of a joint account which is held by the liable person and one or more other persons, and which is not of a description prescribed under sub-paragraph (a) of this paragraph, if (but only if) regulations made by the Department so provide.
- (3) The Department may by regulations make provision as to conditions that are to be disregarded in determining whether an amount is due or accruing to the liable person for the purposes of paragraph (1)(b).
- (4) An order under this Article—
  - (a) shall be expressed to be directed at the deposit-taker or third party in question;
  - (b) if made by virtue of paragraph (1)(a), shall specify the account in respect of which it is made; and
  - (c) shall specify the amount of arrears of child support maintenance in respect of which the Department proposes to make an order under Article 32F.
- (5) An order under this Article may specify an amount of arrears due under a maintenance calculation which is the subject of an appeal only if it appears to the Department—
  - (a) that liability for the amount would not be affected were the appeal to succeed; or
  - (b) where sub-paragraph (a) does not apply, that the making of an order under Article 32F in respect of the amount would nonetheless be fair in all the circumstances.
- (6) The Department shall serve a copy of any order made under this Article on—
  - (a) the deposit-taker or third party at which it is directed;
  - (b) the liable person; and
  - (c) if the order is made in respect of a joint account, the other account-holders.
- (7) An order under this Article shall come into force at the time at which it is served on the deposit-taker or third party at which it is directed.
- (8) An order under this Article shall cease to be in force at the earliest of the following—
  - (a) the time at which the prescribed period ends;

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(b) the time at which the order under this Article lapses or is discharged; and

(c) the time at which an order under Article 32F made in pursuance of the proposal specified in the order under this Article is served on the deposit-taker or third party at which that order is directed.

(9) Where regulations have been made under Article 29(3)(a), a person liable to pay an amount of child support maintenance is to be taken for the purposes of this Article to have failed to pay the amount unless it is paid to or through the person specified in, or by virtue of, the regulations for the case in question.

### **Lump sum deductions: final order**

**32F.**—(1) The Department may make an order under this Article in pursuance of a proposal specified in an order under Article 32E if—

(a) the order in which the proposal was specified (“the interim order”) is in force;

(b) the period prescribed for the making of representations to the Department in respect of the proposal specified in the interim order has expired; and

(c) the Department has considered any representations made to it during that period.

(2) An order under this Article—

(a) shall be expressed to be directed at the deposit-taker or third party at which the interim order was directed;

(b) if the interim order was made by virtue of Article 32E(1)(a), shall specify the account specified in the interim order; and

(c) shall specify the amount of arrears of child support maintenance in respect of which it is made.

(3) The amount so specified—

(a) shall not exceed the amount of arrears specified in the interim order which remain unpaid at the time at which the order under this Article is made; and

(b) if the order is made in respect of a joint account, shall not exceed the amount that appears to the Department to be fair in all the circumstances.

(4) In determining the amount to be specified in an order made in respect of a joint account the Department shall have particular regard—

(a) to the amount contributed to the account by each of the account-holders; and

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(b) to such other matters as may be prescribed.

(5) An order under this Article may specify an amount of arrears due under a maintenance calculation which is the subject of an appeal only if it appears to the Department—

(a) that liability for the amount would not be affected were the appeal to succeed; or

(b) where sub-paragraph (a) does not apply, that the making of an order under this Article in respect of the amount would nonetheless be fair in all the circumstances.

(6) The Department shall serve a copy of any order made under this Article on—

(a) the deposit-taker or third party at which it is directed;

(b) the liable person; an

(c) if the order is made in respect of a joint account, the other account-holders.

#### **Orders under Articles 32E and 32F: freezing of accounts etc.**

**32G.**—(1) During the relevant period, an order under Article 32E or 32F which specifies an account held with a deposit-taker shall operate as an instruction to the deposit-taker not to do anything that would reduce the amount standing to the credit of the account below the amount specified in the order (or, if already below that amount, that would further reduce it).

(2) During the relevant period, any other order under Article 32E or 32F shall operate as an instruction to the third party at which it is directed not to do anything that would reduce the amount due to the liable person below the amount specified in the order (or, if already below that amount, that would further reduce it).

(3) Paragraphs (1) and (2) have effect subject to regulations made under Article 32I(1).

(4) In this Article “the relevant period”, in relation to an order under Article 32E, means the period during which the order is in force.

(5) In this Article and Article 32H “the relevant period”, in relation to an order under Article 32F, means the period which—

(a) begins with the service of the order on the deposit-taker or third party at which it is directed; and

(b) (subject to paragraph (6)) ends with the end of the period during which an appeal can be brought against the order by virtue of regulations under Article 32J(5).

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(6) If an appeal is brought by virtue of the regulations, the relevant period ends at the time at which—

- (a) proceedings on the appeal (including any proceedings on a further appeal) have been concluded; and
- (b) any period during which a further appeal may ordinarily be brought has ended.

(7) References in this Article and Articles 32H and 32J to the amount due to the liable person are to be read as references to the total of any amounts within Article 32E(1)(b) that are due or accruing to the liable person from the third party in question.

### **Orders under Article 32F: deductions and payments**

**32H.**—(1) Once the relevant period has ended, an order under Article 32F which specifies an account held with a deposit-taker shall operate as an instruction to the deposit-taker—

- (a) if the amount standing to the credit of the account is less than the remaining amount, to pay to the Department the amount standing to the credit of the account; and
- (b) otherwise, to deduct from the account and pay to the Department the remaining amount

(2) If an amount of arrears specified in the order remains unpaid after any payment required by paragraph (1) has been made, the order shall operate until the relevant time as an instruction to the deposit-taker—

- (a) to pay to the Department any amount (not exceeding the remaining amount) standing to the credit of the account specified in the order; and
- (b) not to do anything else that would reduce the amount standing to the credit of the account.

(3) Once the relevant period has ended, any other order under Article 32F shall operate as an instruction to the third party at which it is directed—

- (a) if the amount due to the liable person is less than the remaining amount, to pay to the Department the amount due to the liable person; and
- (b) otherwise, to deduct from the amount due to the liable person and pay to the Department the remaining amount.

(4) If an amount of arrears specified in the order remains unpaid after any payment required by paragraph (3) has been made, the order shall operate until the relevant time as an instruction to the third party—

- (a) to pay to the Department any amount (not exceeding the remaining amount) due to the liable person; and



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(b) not to do anything else that would reduce any amount due to the liable person.

(5) This Article has effect subject to regulations made under Articles 32I(1) and 32J(2)(c).

(6) In this Article—

“the relevant time” means the earliest of the following—

- (a) the time at which the remaining amount is paid;
- (b) the time at which the order lapses or is discharged; and
- (c) the time at which a prescribed event occurs or prescribed circumstances arise;

“the remaining amount”, in relation to any time, means the amount of arrears specified in the order under Article 32F which remains unpaid at that time.

#### **Power to disapply Articles 32G(1) and (2) and 32H(2)(b) and (4)(b)**

**32I.**—(1) The Department may by regulations make provision as to circumstances in which things that would otherwise be in breach of Articles 32G(1) and (2) and 32H(2)(b) and (4)(b) may be done.

(2) Regulations under paragraph (1) may require the Department's consent to be obtained in prescribed circumstances.

(3) Regulations under paragraph (1) which require the Department's consent to be obtained may provide for an application for that consent to be made

- (a) by the deposit-taker or third party at which the order under Article 32E or 32F is directed;
- (b) by the liable person; and
- (c) if the order is made in respect of a joint account, by any of the other account-holders.

(4) If regulations under paragraph (1) require the Department's consent to be obtained, the Department shall by regulations provide for a person of a prescribed description to have a right of appeal to a court against the withholding of that consent.

(5) Regulations under paragraph (4) may include—

- (a) provision with respect to the period within which a right of appeal under the regulations may be exercised;
- (b) provision with respect to the powers of the court to which the appeal under the regulations lies.

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### **Regulations about orders under Article 32E or 32F**

**32J.—**(1) The Department may by regulations make provision with respect to orders under Article 32E or 32F.

(2) The regulations may, in particular, make provision—

- (a) as to circumstances in which amounts standing to the credit of an account are to be disregarded for the purposes of Articles 32E, 32G and 32H;
- (b) as to the payment to the Department of sums deducted under an order under Article 32F;
- (c) allowing a deposit-taker or third party at which an order under Article 32F is directed to deduct from the amount standing to the credit of the account specified in the order, or due to the liable person, a prescribed amount towards its administrative costs before making any payment to the Department required by Article 32H;
- (d) with respect to notifications to be given to the liable person (and, in the case of an order made in respect of a joint account, to the other account-holders) as to amounts deducted, and amounts paid, under an order under Article 32F;
- (e) requiring a deposit-taker or third party at which an order under Article 32E or 32F is directed to supply information of a prescribed description to the Department, or to notify the Department if a prescribed event occurs or prescribed circumstances arise;
- (f) for the variation of an order under Article 32E or 32F;
- (g) for an order under Article 32E or 32F to lapse in such circumstances as may be prescribed;
- (h) as to the revival of an order under Article 32E or 32F in such circumstances as may be prescribed;
- (i) allowing or requiring an order under Article 32E or 32F to be discharged.

(3) Where regulations under paragraph (1) make provision for the variation of an order under Article 32E or 32F, the power to vary the order shall not be exercised so as to increase the amount of arrears of child support maintenance specified in the order.

(4) The Department may by regulations make provision with respect to priority as between an order under Article 32F and—

- (a) any other order under that Article;

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(b) any order under any other statutory provision which provides for payments to be made from amounts to which the order under Article 32F relates.

(5) The Department shall by regulations make provision for any person affected by an order under Article 32F to have a right to appeal to a court against the making of the order.

(6) On an appeal under regulations under paragraph (5), the court shall not question the maintenance calculation by reference to which the order under Article 32F was made.

(7) Regulations under paragraph (5) may include—

(a) provision with respect to the period within which a right of appeal under the regulations may be exercised;

(b) provision with respect to the powers of the court to which the appeal under the regulations lies.

#### **Lump sum deduction orders: offences**

**32K.—**(1) A person who fails to comply with the requirements of—

(a) an order under Article 32E or 32F; or

(b) any regulation under Article 32J which is designated by the regulations for the purposes of this sub-paragraph,

commits an offence.

(2) It shall be a defence for a person charged with an offence under paragraph (1) to prove that the person took all reasonable steps to comply with the requirements in question.

(3) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

#### **Commencement Information**

**I4** S. 15 wholly in operation at 3.8.2009; s. 15 not in operation at Royal Assent see s. 41(1); s. 15 in operation for certain purposes at 1.6.2009 and wholly in operation at 3.8.2009 by S.R. 2009/216, art. 2(1)(b)

VALID FROM 20/12/2010

#### **Orders preventing avoidance**

**16** After Article 32K of the Child Support Order (inserted by section 15) insert—

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### “Orders preventing avoidanc

**32L.—(1)** The Department may apply to the court, on the grounds that a person—

- (a) has failed to pay an amount of child support maintenance, and
- (b) with the intention of avoiding payment of child support maintenance, is about to make a disposition or to transfer out of the jurisdiction or otherwise deal with any property,

for an order restraining the person from doing so.

(2) The Department may apply to the court, on the grounds that a person—

- (a) has failed to pay an amount of child support maintenance, and
- (b) with the intention of avoiding payment of child support maintenance, has at any time made a reviewable disposition,

for an order setting aside the disposition.

(3) If the court is satisfied of the grounds mentioned in paragraph (1) or (2) it may make an order under that paragraph.

(4) Where the court makes an order under paragraph (1) or (2) it may make such consequential provision by order or directions as it thinks fit for giving effect to the order (including provision requiring the making of any payments or the disposal of any property).

(5) Any disposition is a reviewable disposition for the purposes of paragraph (2), unless it was made for valuable consideration (other than marriage) to a person who, at the time of the disposition, acted in relation to it in good faith and without notice of an intention to avoid payment of child support maintenance.

(6) Paragraph (7) applies where an application is made under this Article with respect to—

- (a) a disposition or other dealing with property which is about to take place, or
- (b) a disposition which took place after the making of the application on which the maintenance calculation concerned was made.

(7) If the court is satisfied—

- (a) in a case falling within paragraph (1), that the disposition or other dealing would (apart from this Article) have the consequence of making ineffective a step that has been or may be taken to recover the amount outstanding, or
- (b) in a case falling within paragraph (2), that the disposition has had that consequence,

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it is to be presumed, unless the contrary is shown, that the person who disposed of or is about to dispose of or deal with the property did so or, as the case may be, is about to do so, with the intention of avoiding payment of child support maintenance.

(8) In this Article “disposition” does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise.

(9) This Article does not apply to a disposition made before the coming into operation of section 16 of the Child Maintenance Act (Northern Ireland) 2008

(10) In this Article “the court” means the High Court.”.

PROSPECTIVE

### **Administrative liability orders**

**17** After Article 32L of the Child Support Order (inserted by section 16) insert—

#### **“Liability orders**

**32M.**—(1) If it appears to the Department that a person has failed to pay an amount of child support maintenance, it may make an order against the person in respect of that amount.

(2) An order under paragraph (1) (a “liability order”) may be made in respect of an amount due under a maintenance calculation which is the subject of an appeal only if it appears to the Department—

- (a) that liability for the amount would not be affected were the appeal to succeed, or
- (b) where sub-paragraph (a) does not apply, that the making of a liability order in respect of the amount would nonetheless be fair in all the circumstances.

(3) A liability order shall not come into force before—

- (a) the end of the period during which an appeal can be brought under Article 22 against the making of the order, and
- (b) if an appeal is brought under Article 22, the time at which proceedings on the appeal (including any proceedings on a further appeal) have been concluded and any period during which a further appeal may ordinarily be brought has ended.

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(4) Where regulations have been made under Article 29(3)(a), a person liable to pay an amount of child support maintenance is to be taken for the purposes of this Article to have failed to pay the amount, unless it is paid to or through the person specified in, or by virtue of, the regulations for the case in question.

### **Regulations about liability orders**

**32N.**—(1) The Department may by regulations make provision with respect to liability orders.

(2) Regulations under paragraph (1) may, in particular—

- (a) make provision about the form and content of a liability order;
- (b) make provision for a liability order not to come into force if, before it does so, the whole of the amount in respect of which it is made is paid;
- (c) make provision for the discharge of a liability order;
- (d) make provision for the revival of a liability order in prescribed circumstances.”

PROSPECTIVE

### **Disqualification for holding or obtaining travel authorisation**

**18** Before Article 37 of the Child Support Order insert—

#### **“Disqualification for holding or obtaining travel authorisation**

**36B.**—(1) The Department may apply to the court for an order under this Article against a person where—

- (a) it has sought to recover an amount from the person by virtue of Article 35;
- (b) the whole or any part of the amount remains unpaid; and
- (c) the Department is of the opinion that there has been wilful refusal or culpable neglect on the part of the person.

(2) A person against whom an order under this Article is made is disqualified for holding or obtaining a travel authorisation while the order has effect.

(3) On an application under paragraph (1) for an order against a person the court shall (in the presence of that person) inquire as to—

- (a) whether the person needs a travel authorisation to earn a living;
- (b) the person's means;

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(c) whether there has been wilful refusal or culpable neglect on the part of the person.

(4) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person, it may make an order under this Article.

(5) The court may not take action under both this Article and Article 37.

(6) On an application under paragraph (1) the court shall not question—

(a) the liability order by reference to which the Department acted as mentioned in sub-paragraph (a) of that paragraph; or

(b) the maintenance calculation by reference to which that liability order was made.

(7) An order under this Article shall specify the amount in respect of which it is made, which shall be the aggregate of—

(a) the amount sought to be recovered as mentioned in paragraph (1) (a), or so much of it as remains unpaid; and

(b) an amount (determined in accordance with regulations made by the Department) in respect of the costs of the application under this Article.

(8) A court which makes an order under this Article shall require the person to whom it relates to produce any travel authorisation that the person holds.

(9) The court shall send to the prescribed person any travel authorisation produced to the court under paragraph (8)

(10) Where a court—

(a) makes an order under this Article, or

(b) allows an appeal against such an order,

it shall send notice of that fact to the Department; and the notice shall contain such particulars and be sent in such manner and to such address as the Department may determine.

(11) In this Article “travel authorisation” means—

(a) a United Kingdom passport (within the meaning of the Immigration Act 1971);

(b) an ID card issued under the Identity Cards Act 2006 that records that the person to whom it has been issued is a British citizen.

(12) In this Article (except for the purposes of paragraph (10)(b)) and in Articles 36C to 36E, “court” means a court of summary jurisdiction.

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### **Period for which orders under Article 36B are to have effect**

**36C.**—(1) Disqualification by an order under Article 36B shall be for such period not exceeding 2 years as the court may specify in the order.

(2) On making an order under Article 36B, the court may include in the order provision suspending the running of the period for which the order is to have effect until such day and on such conditions (if any) as the court thinks just.

(3) After making such an order the court may by order suspend the running of the period for which it has effect until such day and on such conditions (if any) as the court thinks just.

(4) The powers conferred by paragraphs (2) and (3) may be exercised by the court only—

- (a) if the person against whom the order under Article 36B is made agrees to pay the amount specified in the order; or
- (b) if the court is satisfied that the suspension in question is justified by exceptional circumstances.

(5) The Department may make a further application under Article 36B if the amount specified in an order under that Article has not been paid in full by the end of the period for which the order has effect.

### **Power to order search**

**36D.**—(1) On making an order under Article 36B the court may order the person against whom the order is made to be searched.

(2) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount specified under Article 36B(7); and the balance (if any) shall be returned to the person searched.

(3) The court shall not allow the application under paragraph (2) of money found on a search under paragraph (1) if it is satisfied that the money does not belong to the person searched

### **Variation and revocation of orders following payment**

**36E.**—(1) If part of the amount specified in an order under Article 36B is paid to any person authorised to receive it, the court may, on an application made by the Department or the person against whom the order is made, by order—

- (a) reduce the period for which the order under Article 36B is to have effect; or
- (b) revoke the order under Article 36B.



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(2) If the whole of the amount specified in an order under Article 36B is paid to any person authorised to receive it, the court shall, on an application made by the Department or the person against whom the order is made, by order revoke the order under Article 36B.

(3) The Department may make representations to the court as to the amount which should be paid before it would be appropriate to make an order under paragraph (1) revoking an order under Article 36B, and the person against whom the order was made may reply to those representations.

(4) The court may exercise the powers conferred on it by paragraph (1) or (2) without the need for an application where money found on a search under Article 36D(1) is applied towards payment of the amount specified in the order under Article 36B.

(5) Where a court makes an order under this Article, it shall send notice of that fact to the Department; and the notice shall contain such particulars and be sent in such manner and to such address as the Department may determine.

### **Power to make supplementary provision**

**36F** The Department may by regulations—

- (a) make provision in relation to orders under Article 36B corresponding to the provision that may be made under Article 37(11);
- (b) make provision for Articles 36C to 36E to have effect with prescribed modifications in cases where a person against whom an order under Article 36B has effect is outside the United Kingdom.”.

PROSPECTIVE

### **Curfew orders**

**19** After Article 36F of the Child Support Order (inserted by section 18) insert—

#### **“Applications for curfew order**

**36G.**—(1) The Department may apply to the court for an order requiring a person to remain, for periods specified in the order, at a place so specified (a “curfew order”) where—

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- (a) it has sought to recover an amount from the person by virtue of Article 35;
  - (b) the whole or any part of the amount remains unpaid; and
  - (c) the Department is of the opinion that there has been wilful refusal or culpable neglect on the part of the person.
- (2) On an application for a curfew order the court shall (in the presence of the person from whom the Department has sought to recover the amount) inquire as to—
- (a) the person's means; and
  - (b) whether there has been wilful refusal or culpable neglect on the part of the person.
- (3) On an application for a curfew order the court shall not question—
- (a) the liability order by reference to which the Department acted as mentioned in paragraph (1)(a); or
  - (b) the maintenance calculation by reference to which that liability order was made.
- (4) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom the Department has sought to recover the amount, it may make a curfew order against the person.
- (5) The court may not make a curfew order against a person who is under the age of 18.
- (6) In this Article and Articles 36H to 36O “the court” means a court of summary jurisdiction.

#### **Curfew orders: duration etc.**

- 36H.**—(1) The periods and places specified as mentioned in Article 36G(1) may include different periods and different places for different days, but shall not include periods which amount to less than 2 hours or more than 12 hours in any one day.
- (2) A curfew order shall specify the period for which the requirements imposed by the order shall have effect.
- (3) The period so specified—
- (a) shall not exceed 6 months; and
  - (b) shall begin to run with the day on which the order is made unless the order provides (subject to such conditions, if any, as may be specified in the order) for it to begin to run with a later day.
- (4) The court shall (so far as practicable) ensure that any requirement imposed by a curfew order is such as to avoid—

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- (a) any conflict with the religious beliefs of the person against whom the order is made; and
  - (b) any interference with the times (if any) at which that person normally works or attends any educational establishment.
- (5) On making a curfew order the court may not specify in the order any place outside Northern Ireland.

### **Recovery of costs relating to curfew orders**

**36I.—(1)** On making a curfew order the court shall also make an order requiring the person against whom the curfew order is made to pay an amount (determined in accordance with regulations made by the Department) specified in the order in respect of—

- (a) the costs of the application for the curfew order; and
  - (b) the costs of monitoring compliance with the requirements imposed by the curfew order.
- (2) The provisions of this Order with respect to—
- (a) the collection of child support maintenance; and
  - (b) the enforcement of an obligation to pay child support maintenance,

apply equally (with any necessary modifications) to amounts which a person is required to pay by an order under this Article.

### **Curfew orders: the amount due**

**36J.—(1)** A curfew order shall specify the amount in respect of which it is made, which shall be the aggregate of—

- (a) the amount sought to be recovered as mentioned in Article 36G(1)(a), or so much of it as remains unpaid; and
- (b) the amount which the person against whom the curfew order is made is required to pay by the order under Article 36I.

(2) If part of the amount in respect of which a curfew order was made is paid to any person authorised to receive it, the court may, on an application by the Department or the person against whom the curfew order was made, by order—

- (a) reduce the period for which the requirements imposed by the curfew order have effect;
- (b) provide for that period to begin to run with a day later than that with which it would otherwise have begun to run;

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(c) suspend the running of that period, or provide for any existing such suspension to be extended, until a day specified in the order;  
or

(d) revoke the curfew order.

(3) An order under paragraph (2)(b) or (c) may include provision for its effect to be subject to specified conditions.

(4) On the hearing of an application made under paragraph (2) the Department may make representations to the court as to which of the powers conferred by that paragraph it would be appropriate for the court to exercise, and the person against whom the curfew order was made may reply to those representations

(5) If the whole of the amount in respect of which a curfew order was made is paid to any person authorised to receive it, the court shall, on an application by the Department or the person against whom the order was made, by order revoke the curfew order.

(6) The Department may make a further application under Article 36G if the amount in respect of which a curfew order was made has not been paid in full when the requirements imposed by the order cease to have effect.

### **Power to order search**

**36K.**—(1) On making a curfew order, the court may order the person against whom the order is made to be searched.

(2) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount in respect of which the curfew order is made; and the balance (if any) shall be returned to the person searched.

(3) The court shall not allow the application under paragraph (2) of money found on a search under this Article if it is satisfied that the money does not belong to the person searched.

(4) The court may exercise the powers conferred on it by Article 36J(2) and (5) without the need for an application where money found on a search under this Article is applied towards payment of the amount in respect of which a curfew order is made.

### **Monitoring of curfew orders**

**36L.**—(1) A curfew order shall—

(a) provide for a person's compliance with the requirements imposed by the order to be monitored; and

*Status: Point in time view as at 26/11/2009. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Child Maintenance Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 06 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) make a person specified in the order responsible for that monitoring.
- (2) The court may not make a curfew order unless—
- (a) it has been notified by the Department that arrangements for monitoring compliance with the requirements imposed by such orders are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn;
  - (b) it is satisfied that the necessary provision can be made under those arrangements; and
  - (c) it has the consent of any person (other than the person against whom the order is to be made) whose co-operation is necessary to secure the monitoring of compliance with the requirements imposed by the order.
- (3) If a curfew order cannot be made because of the absence of any consent required by paragraph (2)(c), the court may treat the application for the order as an application under Article 37
- (4) The Department may by regulations make provision as to—
- (a) the cases or circumstances in which the person responsible for monitoring a person's compliance with the requirements imposed by a curfew order may allow that person to be absent from the place specified in the curfew order during a period so specified; and
  - (b) the requirements which may be imposed in connection with such an absence.

### **Breaches of curfew orders**

**36M.**—(1) The person responsible for monitoring a person's compliance with the requirements imposed by a curfew order, or the Department, may apply to the court where it appears that the person subject to the requirements in question has failed to comply with—

- (a) any of those requirements; or
- (b) any requirements imposed by virtue of Article 36L(4).

(2) On any such application the court shall (in the presence of the person subject to the requirements in question) inquire as to whether the person has failed without reasonable excuse to comply with any of those requirements.

(3) If the court is of the opinion that the person has failed without reasonable excuse to comply with any of those requirements, it may—

- (a) issue a warrant of commitment against that person; or

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(b) by order provide for the requirements imposed by the curfew order to have effect for a specified further period.

(4) A warrant issued under paragraph (3)(a) shall order the person against whom it is issued—

(a) to be imprisoned for a period specified in the warrant; but

(b) to be released (unless in custody for some other reason) on payment of the amount in respect of which the curfew order in question was made.

(5) A warrant issued under paragraph (3)(a) may be directed to such person or persons as the court issuing it thinks fit.

(6) The power conferred by paragraph (3)(b) may not be exercised so as to provide for the requirements imposed by the curfew order to have effect for a period exceeding 6 months after the making of the order under that paragraph.

(7) Where, following the issue of a warrant under paragraph (3)(a), part of the amount specified in the curfew order is paid to any person authorised to receive it, the court may, on an application by the Department or the person against whom the warrant was issued—

(a) reduce the period specified in the warrant; or

(b) order the release of the person against whom the warrant was issued.

(8) On the hearing of an application made under paragraph (7) the Department may make representations to the court as to which of the powers conferred by that paragraph it would be appropriate for the court to exercise, and the person against whom the warrant was issued may reply to those representations.

### **Effect of custody on curfew orders and power to make curfew orders**

**36N.**—(1) The court may not make a curfew order against a person at any time when the person is in custody for any reason.

(2) The running of the period during which the requirements imposed by a curfew order have effect shall be suspended for the whole of any day during any part of which the person against whom the order is made is in custody for any reason.

(3) If the period during which the requirements imposed by a curfew order have effect would have begun to run but for its being suspended by virtue of this Article, that period shall instead begin to run with the first day when its running is no longer suspended.

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### **Power to make supplementary provision about curfew orders**

**36O.**—(1) The Department may by regulations make provision with respect to curfew orders.

(2) The regulations may, in particular, make provision—

- (a) as to the form and content of a curfew order;
- (b) allowing an application for a curfew order to be renewed where no curfew order is made;
- (c) that a statement in writing to the effect that wages of any amount have been paid during any period to a person, purporting to be signed by or on behalf of that person's employer, shall be evidence of the facts stated;
- (d) that a lay magistrate may issue a summons to a person to appear before the court and (if that person does not appear) may issue a warrant for that person's arrest;
- (e) that, for the purpose of securing a person's presence before the court, a lay magistrate may issue a warrant for that person's arrest without issuing a summons;
- (f) as to the execution of a warrant for arrest;
- (g) for the amendment or revocation of requirements imposed by a curfew order, on an application made to the court by the Department or the person against whom the order was made;
- (h) similar to that made by Articles 36I, 36K and 36L(2) and (3), in relation to any amendment of a curfew order
- (i) as to the exercise by the court of the powers conferred by Articles 36J(2) and (3) and 36M(7).”.

PROSPECTIVE

### **Commitment to prison**

**20.**—(1) In Article 37 of the Child Support Order (commitment to prison), before paragraph (3) insert—

“(2A) The Department may apply to the court for the issue of a warrant committing a person to prison where—

- (a) it has sought to recover an amount from the person by virtue of Article 35;
- (b) the whole or any part of the amount remains unpaid; and

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- (c) the Department is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom it has sought to recover the amount (“the liable person”).
- (2B) On an application under paragraph (2A) the court shall (in the presence of the liable person) inquire as to—
  - (a) the liable person's means; and
  - (b) whether there has been wilful refusal or culpable neglect on the part of the liable person.
- (2C) On an application under paragraph (2A) the court shall not question—
  - (a) the liability order by reference to which the Department acted as mentioned in sub-paragraph (a) of that paragraph; or
  - (b) the maintenance calculation by reference to which that liability order was made.”.
- (2) For paragraph (10) of that Article, substitute—
  - “(10) On acting as mentioned in paragraph (3), the court may order the liable person to be searched.
    - (10A) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the relevant amount; and the balance (if any) shall be returned to the person searched.
    - (10B) The reference in paragraph (10A) to the relevant amount is—
      - (a) where the order under paragraph (10) is made by virtue of the court acting under paragraph (3)(a), to the amount mentioned in paragraph (4)(a);
      - (b) where the order under paragraph (10) is made by virtue of the court acting under paragraph (3)(b), to the amount mentioned in paragraph (4)(a)(i).
    - (10C) The court shall not allow the application under paragraph (10A) of money found on a search under paragraph (10) if it is satisfied that the money does not belong to the person searched.”.

PROSPECTIVE

### **Disqualification for driving**

**21.—**(1) In Article 37A of the Child Support Order (disqualification from driving), for the heading and paragraph (1) substitute—



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### **“Disqualification for holding or obtaining driving licence**

**37A.—(A1)** The Department may apply to the court for an order disqualifying a person for holding or obtaining a driving licence where—

- (a) it has sought to recover an amount from the person by virtue of Article 35;
- (b) the whole or any part of the amount remains unpaid; and
- (c) the Department is of the opinion that there has been wilful refusal or culpable neglect on the part of the person from whom it has sought to recover the amount (“the liable person”).

(A2) Disqualification by an order under paragraph (A1) (a “disqualification order”) shall be for such period not exceeding 2 years as the court may specify in the order.

(A3) On an application under paragraph (A1) the court shall (in the presence of the liable person) inquire as to—

- (a) whether the liable person needs a driving licence to earn a living;
- (b) the liable person's means; and
- (c) whether there has been wilful refusal or culpable neglect on the part of the liable person.

(A4) On an application under paragraph (A1) the court shall not question—

- (a) the liability order by reference to which the Department acted as mentioned in sub-paragraph (a) of that paragraph; or
- (b) the maintenance calculation by reference to which that liability order was made.

(1) If, but only if, the court is of the opinion that there has been wilful refusal or culpable neglect on the part of the liable person, it may—

- (a) make a disqualification order against the liable person; or
- (b) make such an order but suspend its operation until such time and on such conditions (if any) as it thinks just.”.

(2) For paragraph (10) of that Article, substitute—

“(10) On making a disqualification order, the court may order the liable person to be searched.

(10A) Any money found on such a search shall, unless the court otherwise directs, be applied towards payment of the amount due; and the balance (if any) shall be returned to the person searched.

(10B) The court shall not allow the application under paragraph (10A) of money found on a search under paragraph (10) if it is satisfied that the money does not belong to the person searched.

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(10C) The court may exercise the powers conferred on it by paragraph (5) without the need for an application where money found on a search under paragraph (10) is applied towards payment of the amount due.”

### *Debt management powers*

#### **Power to treat liability as satisfied**

**22** After Article 38B of the Child Support Order insert—

##### **“Power to treat liability as satisfied**

**38C.**—(1) The Department may by regulations—

- (a) make provision enabling the Department in prescribed circumstances to set off liabilities to pay child support maintenance to which this Article applies;
- (b) make provision enabling the Department in prescribed circumstances to set off against a person's liability to pay child support maintenance to which this Article applies a payment made by the person which is of a prescribed description.

(2) Liability to pay child support maintenance shall be treated as satisfied to the extent that it is the subject of setting off under regulations under paragraph (1).

(3) In paragraph (1), the references to child support maintenance to which this Article applies are to child support maintenance for the collection of which the Department is authorised to make arrangements.”

#### **Commencement Information**

- I5** S. 22 wholly in operation at 25.1.2010; s. 22 not in operation at Royal Assent see s. 41(1); s. 22 in operation for certain purposes at 26.11.2009 and wholly in operation at 25.1.2010 by S.R. 2009/380, art. 2(1)

VALID FROM 03/12/2012

#### **Power to accept part payment of arrears in full and final satisfaction**

**23** After Article 38C of the Child Support Order (inserted by section 22) insert—

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**“Power to accept part payment of arrears in full and final satisfaction**

**38D.**—(1) The Department may, in relation to any arrears of child support maintenance, accept payment of part in satisfaction of liability for the whole.

(2) The Department must by regulations make provision with respect to the exercise of the power under paragraph (1).

(3) The regulations must provide that unless one of the conditions in paragraph (4) is satisfied the Department may not exercise the power under paragraph (1) without the written consent of the person with care with respect to whom the maintenance calculation was made.

(4) The conditions are—

(a) that the Department would be entitled to retain the whole of the arrears under Article 38(2) if it recovered them;

(b) that the Department would be entitled to retain part of the arrears under Article 38(2) if it recovered them, and the part of the arrears that the Department would not be entitled to retain is equal to or less than the payment accepted under paragraph (1).”.

VALID FROM 03/12/2012

**Power to write off arrears**

**24** After Article 38D of the Child Support Order (inserted by section 23) insert—

**“Power to write off arrears**

**38E.**—(1) The Department may extinguish liability in respect of arrears of child support maintenance if it appears to it—

(a) that the circumstances of the case are of a description specified in regulations made by the Department, and

(b) that it would be unfair or otherwise inappropriate to enforce liability in respect of the arrears.

(2) The Department may by regulations make provision with respect to the exercise of the power under paragraph (1).”.

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PROSPECTIVE

## Transfer of arrears

### 25 After Article 45 of the Child Support Order insert—

#### “Transfer of arrears

**45A.**—(1) The Department may by regulations make provision enabling the Department in prescribed circumstances to enter into arrangements (“transfer arrangements”) under which liability in respect of arrears of child support maintenance becomes debt due to the person with whom the arrangements are entered into (“the transferee”).

(2) Liability which is the subject of transfer arrangements—

(a) ceases to be liability in relation to which the Department's functions with respect to collection and enforcement are exercisable, and

(b) becomes debt in which only the transferee has an interest.

(3) Regulations under paragraph (1) must provide that unless one of the conditions in paragraph (4) is satisfied the Department may not enter into transfer arrangements in relation to arrears of child support maintenance without the written consent of the person with care with respect to whom the maintenance calculation was made.

(4) The conditions are—

(a) that the Department would be entitled to retain the whole of the arrears under Article 38(2) if it recovered them;

(b) that the Department would be entitled to retain part of the arrears under Article 38(2) if it recovered them, and the part of the arrears that the Department would not be entitled to retain is equal to or less than the transfer payment.

(5) In paragraph (4)(b), “transfer payment” means—

(a) the payment that the Department would receive from the transferee on the arrangements taking effect, and

(b) such other payments under the transfer arrangements as may be prescribed

(6) Regulations under paragraph (1) may, in particular—

(a) specify when arrears of child support maintenance may be the subject of transfer arrangements;

(b) specify the descriptions of person with whom transfer arrangements may be entered into;

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- (c) specify terms and conditions which transfer arrangements must include;
  - (d) provide that a payment made to the Department under transfer arrangements may be treated for prescribed purposes as if it were a payment of child support maintenance.
- (7) Regulations under paragraph (1) may include—
- (a) provision with respect to the recovery of debt to which a person is entitled by virtue of transfer arrangements;
  - (b) provision enabling the Department in prescribed circumstances to prevent a person entitled to debt by virtue of transfer arrangements from taking steps to recover it;
  - (c) provision enabling the Department to supply information of a prescribed description to a person entitled to debt by virtue of transfer arrangements for the purpose of enabling the debt to be recovered.”.

### Miscellaneous

VALID FROM 03/12/2012

#### Meaning of “child”

**26** For Article 3 of the Child Support Order substitute—

##### “Meaning of “child”

**3.—(1)** In this Order, “child” means (subject to paragraph (2)) a person who—

- (a) has not attained the age of 16, or
- (b) has not attained the age of 20 and satisfies such conditions as may be prescribed.

(2) A person who is or has been party to a marriage or civil partnership is not a child for the purposes of this Order.

(3) For the purposes of paragraph (2), “marriage” and “civil partnership” include a void marriage and a void civil partnership respectively.”.

#### Offence of failing to notify change of address

**27.—(1)** In Article 16A of the Child Support Order (information – offences), after paragraph (3) insert—

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“(3A) In the case of regulations under Article 16 which require a person liable to make payments of child support maintenance to notify a change of address, a person who fails to comply with the requirement is guilty of an offence.”

(2) In that Article, in paragraph (4), after “paragraph (3)” insert “ or (3A) ”

#### Commencement Information

**16** S. 27 wholly in operation at 27.10.2008; s. 27 not in operation at Royal Assent see s. 41(1); s. 27 in operation for certain purposes at 29.9.2008 and in operation at 27.10.2008 in so far as not already in operation by S.R. 2008/399, art. 2(1)

VALID FROM 03/12/2012

#### Additional special case

**28** In Article 39(2) of the Child Support Order (examples of cases in relation to which the power under paragraph (1) to prescribe circumstances in which a case is to be treated as a special case for the purposes of the Order may be exercised), at the end add—

- “(g) the same persons are the parents of 2 or more children and each parent is—
- (i) a non-resident parent in relation to one or more of the children, and
  - (ii) a person with care in relation to one or more of the children.”

#### Recovery of arrears from deceased's estate

**29** After Article 40 of the Child Support Order insert—

##### “Recovery of arrears from deceased's estate

**40A.**—(1) The Department may by regulations make provision for the recovery from the estate of a deceased person of arrears of child support maintenance for which the deceased person was liable immediately before death.

(2) Regulations under paragraph (1) may, in particular—

- (a) make provision for arrears of child support maintenance for which a deceased person was so liable to be a debt payable by the deceased's executor or administrator out of the deceased's estate to the Department;

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- (b) make provision for establishing the amount of any such arrears;
  - (c) make provision about procedure in relation to claims under the regulations.
- (3) Regulations under paragraph (1) may include provision for proceedings (whether by appeal or otherwise) to be instituted, continued or withdrawn by the deceased's executor or administrator.”.

## PROSPECTIVE

### Disclosure of information relating to family proceedings

**30** After Article 45A of the Child Support Order (inserted by section 25), insert—

#### “Disclosure of information relating to family proceedings

**45B.**—(1) Where this Article applies, a disclosure of information relating to family proceedings, made to the Department, or to a person providing services to the Department, by a party to the proceedings is not (if it would otherwise be) a contempt of court or punishable as a contempt of court.

(2) This Article applies if—

- (a) the party is a person with care or non-resident parent in relation to a child
- (b) child support maintenance is payable, or an application for a maintenance calculation has been made, in respect of the child, and
- (c) the party reasonably considers that the information is relevant to the exercise of the Department's functions relating to child support in relation to the child.

(3) A disclosure by a party's representative is to be treated for the purposes of this Article as a disclosure by the party, if the representative is instructed by the party to make the disclosure.

(4) In this Article, “representative” means—

- (a) a barrister or solicitor who has been instructed to act for a party in relation to the proceedings; or
- (b) such other persons as may be prescribed in regulations made by the Department with the consent of the Lord Chancellor.

(5) This Article does not apply if the court dealing with the proceedings so directs.

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### **Meaning of “family proceedings”**

**45C.—(1)** In Article 45B, “family proceedings” means any of the following proceedings commenced on or after the day on which that Article comes into operation—

- (a) proceedings for ancillary relief (within the meaning of paragraph (2));
  - (b) proceedings under section 17 of the Married Women's Property Act 1882 (questions between husband and wife as to property);
  - (c) proceedings under any of the following provisions of the 1978 Order—
    - (i) Article 29 (financial provision in cases of neglect to maintain);
    - (ii) Article 37 (alteration of maintenance agreements);
  - (d) proceedings under the Domestic Proceedings (Northern Ireland) Order 1980 (powers of court to make orders for financial provision);
  - (e) proceedings under Part 4 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (financial relief in Northern Ireland after overseas divorce etc.);
  - (f) proceedings under Articles 11 to 19 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (occupation orders);
  - (g) proceedings under any of the following provisions of the 2004 Act—
    - (i) section 191 (disputes between civil partners about property);
    - (ii) paragraph 36 of Schedule 15 (orders where failure to maintain);
    - (iii) paragraph 62 of Schedule 15 (alteration of maintenance agreements by the court)
    - (iv) Schedule 16 (financial relief in courts of summary jurisdiction etc.);
    - (v) Schedule 17 (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership).
- (2) In paragraph (1)(a), “ancillary relief” means any of the following—
- (a) an order under Article 39(2)(b) or (c) of the 1978 Order or paragraph 67(3) or (4) of Schedule 15 to the 2004 Act (avoidance of disposition orders);



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- (b) any of the orders mentioned in Article 23(1) of the 1978 Order (except an order under Article 29(6) of that Order) or any of the orders mentioned in paragraph 2(1) of Schedule 15 to the 2004 Act (financial provision orders) made under Part 1 of that Schedule;
- (c) an order under Article 24 of the 1978 Order (orders for maintenance pending suit);
- (d) an order under paragraph 33 of Schedule 15 to the 2004 Act (orders for maintenance pending outcome of proceedings);
- (e) any of the orders mentioned in Article 23(2) of the 1978 Order or any of the orders mentioned in paragraph 7(1) of Schedule 15 to the 2004 Act (property adjustment orders);
- (f) an order under Article 33 of the 1978 Order or an order under Part 10 of Schedule 15 to the 2004 Act (variation orders);
- (g) an order under Article 26B of the 1978 Order or an order under paragraph 10 of Schedule 15 to the 2004 Act (pension sharing orders).

(3) The Department may by order amend this Article so as to provide that “family proceedings” in Article 45B includes proceedings of a description specified in the order, other than proceedings commenced before the day on which the order comes into operation.

(4) An order under paragraph (3) may be made only with the consent of the Lord Chancellor.

(5) In this Article—

“the 1978 Order” means the Matrimonial Causes (Northern Ireland) Order 1978;

“the 2004 Act” means the Civil Partnership Act 2004.”.

VALID FROM 14/02/2015

### **Disclosure of information to credit reference agencies**

**31** After Article 45C of the Child Support Order (inserted by section 30) insert—

#### **“Disclosure of information to credit reference agency**

**45D.**—(1) Subject to paragraph (3), the Department may supply qualifying information to a credit reference agency for use for the purpose of furnishing information relevant to the financial standing of individuals.

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(2) The reference in paragraph (1) to qualifying information is to information which—

- (a) is held by the Department for the purposes of this Order,
- (b) relates to a person who is liable to pay child support maintenance, and
- (c) is of a prescribed description.

(3) Information may not be supplied under paragraph (1) without the consent of the person to whom it relates, unless a liability order against that person is in force.

(4) No provision may be made under Article 16(3) authorising the supply of information by the Department to credit reference agencies.

(5) In this Article, “credit reference agency” has the same meaning as in the Consumer Credit Act 1974.”.

VALID FROM 03/12/2012

### **Pilot schemes**

**32** After Article 47 of the Child Support Order insert—

#### **“Pilot schemes**

**47A.**—(1) Any regulations made under this Order may be made so as to have effect for a specified period not exceeding 24 months.

(2) Regulations which, by virtue of paragraph (1), are to have effect for a limited period are referred to in this Article as a “pilot scheme”.

(3) A pilot scheme may provide that its provisions are to apply only in relation to—

- (a) one or more specified areas or localities;
- (b) one or more specified classes of person;
- (c) persons selected by reference to prescribed criteria, or on a sampling basis.

(4) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period.

(5) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.”.

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### **Extinction of liability in respect of interest and fees**

- 33** Any outstanding liability in respect of the following is extinguished—
- (a) interest under the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 (SR 1992/342);
  - (b) fees under the Child Support Fees Regulations (Northern Ireland) 1993 (SR 1993/73)

### **Use of information**

**34** Schedule 3 (which makes provision about the use of information for purposes of public administration) has effect.

### **Liable relative provisions: exclusion of parental duty to maintain**

**35.—(1)** In section 100 of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (failure to maintain), for subsection (3) substitute—

“(3) Subject to subsection (4), for the purposes of this Part, a person shall be liable to maintain another person if that other person is—

- (a) his or her spouse or civil partner, or
- (b) a person whom he or she would be liable to maintain if section 74(6)(c) and (8) had effect for the purposes of this Part.”.

(2) In that section, in subsection (4), for the words from “a person” to the end, substitute “ subsection (3)(b) shall not apply ”.

## **PART 3**

### **GENERAL**

#### **Regulations: general**

**36.—(1)** Power to make regulations under this Act includes power to make incidental, supplementary, consequential or transitional provision or savings.

(2) Power to make regulations under this Act may be exercised so as to provide for a person to exercise a discretion in dealing with any matter.

(3) Subject to the following provisions of this section, any regulations made under this Act shall be subject to negative resolution.

(4) Regulations under section 3(1) or (4) or the first regulations under paragraphs 2(1), 3(1), 5(1) or (2), 6(1) or (3) or 7 of Schedule 2—

- (a) must be laid before the Assembly after being made; and

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- (b) take effect on such date as may be specified in the regulations, but (without prejudice to the validity of anything done thereunder or to the making of new regulations) cease to have effect upon the expiration of a period of 6 months from that date unless at some time before the expiration of that period the regulations are approved by a resolution of the Assembly.
- (5) This subsection applies to any regulations under this Act which—
  - (a) but for subsection (6), would be subject to negative resolution, and
  - (b) are contained in a statutory rule which includes any regulations subject to the confirmatory procedure.
- (6) Any regulations to which subsection (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.
- (7) In this section “the confirmatory procedure” means the procedure described in subsection (4).

### General interpretation

**37.—(1)** In this Act—

“the Child Support Order” means the Child Support (Northern Ireland) Order 1991 (NI 23);

“the Department” means the Department for Social Development;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(2) Where—

- (a) this Act amends or repeals a statutory provision contained in the Child Support Order which has been amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), and
- (b) the amendment by the 2000 Act has been brought into operation for limited purposes only,

the reference to the statutory provision shall, unless the contrary intention appears, be read as a reference to the statutory provision as it has effect apart from the 2000 Act, as well as to the statutory provision as amended by that Act.

#### Commencement Information

- I7** S. 37 wholly in operation at 9.7.2008; s. 37(1) in operation at Royal Assent, see s. 41(1); s. 37(2) in operation at 9.7.2008 by S.R. 2008/291, art. 2(5)

### Minor and consequential amendments

**38.—(1)** Schedule 4 (which makes minor and consequential amendments) has effect.

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(2) The Department may by regulations make provision consequential on this Act amending, repealing or revoking any statutory provision.

#### Commencement Information

**I8** S. 38 partly in operation; s. 38 not in operation at Royal Assent see s. 41(1); s. 38(2) in operation at 9.7.2008 by S.R. 2008/291, art. 2(5); s. 38(1) in operation for certain purposes at 27.10.2008 by S.R. 2008/399, art. 2(2)(b); s. 38(1) in operation for certain purposes at 1.11.2008 by S.R. 2008/419, art. 3(b); s. 38(1) in operation for certain purposes at 1.6.2009 and 3.8.2009 by S.R. 2009/216, art. 2(1)(c)(2)(a)

#### Repeals

**39** The statutory provisions specified in Schedule 5 are repealed to the extent specified.

#### Commencement Information

**I9** S. 39 partly in operation; s. 39 not in operation at Royal Assent see s. 41(1); s. 39 in operation for certain purposes at 27.10.2008 by S.R. 2008/399, art. 2(2)(b); s. 39 in operation for certain purposes at 1.11.2008 by S.R. 2008/419, art. 3(b); s. 39 in operation for certain purposes at 1.6.2009 by S.R. 2009/216, art. 2(2)(a)

#### Transition

**40.—(1)** The Department may, in relation to Article 9 or 43 of the Child Support Order, by regulations make provision for the Article to have effect with such modifications as the Department considers expedient in anticipation of the coming into operation of section 7.

(2) Articles 22(5A), 32A, 32E, 32F, 32J, 32L, 32M, 38C to 38E, 40A, 45A, 45B and 45D of the Child Support Order shall have effect as if “child support maintenance” included periodical payments required to be paid in accordance with a maintenance assessment under the Order.

(3) Articles 22(7A), 32A, 32C, 32E, 32F, 32J, 32L, 32M, 36B, 36G, 37, 37A and 45B of the Child Support Order shall have effect as if “maintenance calculation” included a maintenance assessment under the Order.

(4) Articles 35, 36B, 36G, 36J, 37, 37A and 45D of the Child Support Order shall have effect as if orders made under Article 33 of that Order had been made under Article 32M of that Order.

(5) An order may be made under Article 32M of the Child Support Order in respect of an amount even though the time within which an application could have been instituted under Article 33 of that Order for an order in respect of that amount has expired

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(6) The Department may by regulations make in connection with the coming into operation of any provision of this Act such transitional provision or savings as the Department considers necessary or expedient.

#### Commencement Information

**I10** S. 40 wholly in operation at 9.7.2008; s. 40(6) in operation at Royal Assent, see s. 41(1); s. 40(1)-(5) in operation at 9.7.2008 by S.R. 2008/291, art. 2(5)

#### Commencement

**41.—(1)** This Act (except sections 36, 37(1), 40(6), this section and section 42) shall come into operation on such day or days as the Department may by order appoint.

(2) An order under subsection (1) may include such transitional provision or savings as the Department considers necessary or expedient in connection with bringing any provision of this Act into operation.

(3) An order under subsection (1) appointing the day on which section 30 is to come into operation may be made only with the consent of the Lord Chancellor.

#### Subordinate Legislation Made

**P1** S. 41(1) power partly exercised: 9.7.2008 and 14.7.2008 appointed for specified provisions by S.R. 2008/291, art. 2;  
5.8.2008 appointed for specified provisions by S.R. 2008/331, art. 2;  
29.9.2008 and 27.10.2008 appointed for specified provisions by S.R. 2008/399, art. 2 (with transitional and savings provisions in art. 3);  
27.10.2008 and 1.11.2008 appointed for specified provisions by S.R. 2008/419, arts. 2, 3;  
5.12.2008 appointed for specified provisions by S.R. 2008/489, art. 2;  
1.6.2009 and 3.8.2009 appointed for specified provisions by S.R. 2009/216, art. 2;  
26.11.2009 and 25.1.2010 appointed for specified provisions by S.R. 2009/380, art. 2;  
20.12.2010 appointed for specified provision by S.R. 2010/416, art. 2

#### Short title

**42** This Act may be cited as the Child Maintenance Act (Northern Ireland) 2008.

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