

These notes refer to the Child Maintenance Act (Northern Ireland) 2008 (c.10) which received Royal Assent on 2 July 2008

Child Maintenance Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Child Support etc.

Collection and enforcement

Section 12: Use of deduction from earnings orders as basic method of payment

Section 12 concerns Article 29 of the Child Support (Northern Ireland) Order 1991, which sets out provisions for the collection of child support maintenance. Paragraph (3)(b) of Article 29 provides the Department with the power to make regulations as to the method by which payments of child support maintenance should be made.

This section inserts new *paragraphs (4) and (5)* into Article 29 of the Order to make it clear that such regulations can include deduction from earnings orders as an initial method of collection. The intention is to pilot the use of deduction from earnings orders as a primary method of collection for employed non-resident parents.

New *paragraph (4)* requires that any regulations which allow deduction from earnings orders to be used as an initial method of collection also include provision that this method should not be used where there is good reason not to use it. The regulations must also include a right of appeal to a court of summary jurisdiction against a decision that there is no good reason not to use a deduction from earnings order to collect maintenance.

New *paragraph (5)* prevents a court of summary jurisdiction, on an appeal made under regulations under *paragraph (4)*, from questioning the maintenance calculation by reference to which the deduction from earnings order was made.

New *paragraph (6)* provides that regulations may include provision with respect to the period within which an appeal must be made and the powers of the court of summary jurisdiction in relation to such an appeal.

New *paragraph (7)* enables regulations to set out what matters should be considered (or not considered) in determining whether there is a good reason not to use a deduction from earnings order as an initial method to collect maintenance. For example, the regulations could provide that there would be a good reason not to use a deduction from earnings order if doing so could compromise the employment status of a non-resident parent, or raise privacy issues. It also enables regulations to prescribe circumstances in which a good reason not to use a deduction from earnings order does, or does not, exist.

Section 13: Deduction from earnings orders: the liable person's earnings

This section replaces *paragraph (8)* of Article 31 of the Order, and inserts a new *paragraph (9)*. The intent of the change is to define what will be considered as 'earnings' for the purpose of deduction from earnings orders.

Article 31 of the Order concerns deduction from earnings orders, and the existing *paragraph (8)* provides that 'earnings' has such meaning as may be prescribed.

The definition in the new *paragraph (8)* will include the following as earnings:

- wages or salary;
- payments by way of pensions including any annuity payable for the purpose of providing a pension;
- periodical payments which are compensation for loss of employment or reduced remuneration; and
- statutory sick pay.

The impact of this change is that all pension payments, whether as a result of a private or occupational pension scheme, will be included as earnings for the purposes of deduction from earnings orders.

The new *paragraph (9)* sets out that for the purposes of Articles 31 and 32 of the Child Support (Northern Ireland) Order 1991, any person paying a sum covered by new *paragraph (8)* to a liable person should be treated as their 'employer'.

Section 14: Orders for regular deductions from accounts

This section inserts new *Articles 32A, 32B, 32C and 32D* which relate to orders for regular deductions from accounts, into the Child Support (Northern Ireland) Order 1991.

Article 32A enables the Department to make an order to collect regular deductions of maintenance from an account held by a non-resident parent with a deposit-taker, where the non-resident parent has failed to pay child support maintenance.

Paragraph (2) of *Article 32A* sets out that both arrears and maintenance payments which will become due under the calculation in place can be collected through deduction orders.

Paragraph (3) allows a deduction order to be made on an account even where there is an ongoing appeal against the maintenance calculation. This can only happen, however, in cases where the Department concludes that the outcome of the outstanding appeal will not affect the amount of the liability covered by the order or, if the outcome of the appeal would have such an effect, the Department still considers making the order to be fair in all of the circumstances.

Paragraph (4) prevents a deduction order being made against certain accounts, such as joint accounts. However, if it becomes clear that non-resident parents are moving monies into joint accounts to avoid their responsibilities, the Department may close this loop-hole by making regulations to include such accounts as accounts upon which deduction orders can be made.

Paragraphs (5), (6) and (7) set out that the order will specify which account it is made against and the date it has effect. The order will operate as an instruction to the deposit-taker to make deductions from the specified account and pay them to the Department. Copies of the order shall be served on the deposit-taker, the non-resident parent against whom it is made, and, if the order is in respect of a joint account, the other account holders.

Paragraph (8) provides that the deposit-taker is under a duty to comply with the order for regular deductions from accounts. However, it also protects the deposit-taker from any liability if they do not comply with the order during the seven day period beginning with the day the order is served on them.

Paragraph (9) provides, for the avoidance of doubt, that where regulations have been made under Article 29(3)(a) of the Order, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through, the person specified in, or by virtue of, the regulations.

Article 32B provides that in the case of a deduction order against a joint account, the Department shall offer each account holder the opportunity to make representations about the proposal to make the order, and the amounts to be deducted under the order. The Department shall take account of such representations, and the amounts being contributed to the account by each account holder, before deciding what amount would be a fair deduction in the circumstances.

Article 32C provides regulation-making powers to the Department with regard to the practicalities and procedure relating to account deduction orders. The following subsections give examples of provision that may be made by the regulations.

Paragraphs (2)(a) to (2)(c) of Article 32C – the regulations may require that the order specifies the amount in respect of which it is made, the amounts to be deducted in order to meet liabilities, and the dates deductions are to be made.

Paragraph (2)(d) – the regulations may limit the rate of deduction under a deduction order. It is envisaged that an order will be limited to an amount

which is a percentage of the non-resident parent's income. If the circumstances of a non-resident parent change it will be their responsibility to inform the Department so that the amount in the order might be changed and the deposit-taker notified. Only amounts in credit will be deducted from an account.

Paragraph (2)(e) – the regulations may allow for certain circumstances when amounts of money held in an account should be disregarded in respect of the deduction order. This could be if the money is being held on behalf of another person, for instance.

Paragraph (2)(f) – the regulations may include provision concerning the payment of money deducted by a deposit-taker to the Department.

Paragraph (2)(g) – the regulations may allow the deposit-taker to deduct an amount from the non-resident parent's account towards its administrative costs.

Paragraph (2)(h) – the regulations may provide for notifications to be given to a non-resident parent against whom the deduction order is made regarding amounts deducted and paid under the order.

Paragraph (2)(i) – the regulations may require the deposit-taker to notify the Department, within a specified period of time, if the account specified in the order does not exist, or if the non-resident parent who is the subject of the order has any other accounts.

Paragraph (2)(j) – the regulations may require the deposit-taker to notify the Department, within a specified period of time, if a non-resident parent subject to a deduction order closes the account specified in the order, or opens a new account.

Paragraph (2)(k) – the regulations may allow the deposit-taker, 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, to apply to the Department for a deduction order to be reviewed, in certain circumstances, and may provide for how the Department is to carry out such a review.

Paragraph (2)(l) – the regulations may allow the Department to vary an order. Regulations will prescribe the circumstances when this might occur, for example, as a result of a review, or if some of the arrears have been settled.

Paragraph (2)(m) – the regulations may provide powers similar to those in Article 32A(8) in relation to the variation of an order, whereby although the deposit-taker has a duty to comply with the order as varied, they will not be liable for non-compliance during the first seven days from being given notice of the variation.

Paragraph (2)(n) – the regulations may provide that an order will lapse in prescribed circumstances. This might include, for example, provisions that an order will lapse if the non-resident parent no longer holds an account with the deposit-taker to whom the order was directed.

Paragraph (2)(o) – the regulations may provide for an order to be revived in certain circumstances. This could be where it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.

Paragraph (2)(p) – the regulations may make provision allowing or requiring an order to be discharged.

Paragraph (2)(q) – the regulations may require the Department to give notice to the deposit-taker in the case of an order lapsing or ceasing to have effect.

Paragraph (3) provides regulation-making powers to the Department with regard to the priority of an account deduction order and:

- any other order in place; and
- any other type of order which makes deductions from the same account.

Paragraphs (4), (5) and (6) allow the Department to provide by regulations that any person affected should have a right of appeal to a court against a deduction order, or against any decision made by the Department following an application for a review of the order. On such an appeal, the court is prevented from questioning the maintenance calculation by reference to which the deduction order was made. Regulations may include provision with respect to the period within which an appeal must be made and the powers of the court in relation to any such appeal.

Article 32D sets out that it will be an offence for a person not to comply with the requirements of an account deduction order or any designated regulation under *Article 32C*. A person found guilty of such an offence may be liable for a fine. However there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.

Section 15: Lump sum deduction orders

This section inserts seven new *Articles 32E, 32F, 32G, 32H, 32I, 32J and 32K* into the Child Support (Northern Ireland) Order 1991. These Articles relate to lump sum deduction orders, which enable the Department to collect payments from the accounts of non-resident parents. Lump sum deduction orders, however, may be used only to collect arrears and not regular maintenance.

Article 32E enables the Department to make an interim lump sum deduction order if it appears to it that a non-resident parent has failed to pay an amount of child support maintenance and an amount of money to which *paragraph (2)* applies, is due or accruing to the non-resident parent from a third party.

Paragraph (2)(a) limits the type of account where against which a lump sum deduction order can be made. For example, business and joint accounts will be excluded. However, *paragraph (2)(b)* does provide for a deduction order against a joint account if, and only if, the Department makes regulations which will allow such a deduction to be made.

Paragraph (3) allows the Department to make regulations which will set out the conditions to be disregarded in deciding whether a lump sum of money which is to become due to the non-resident parent (for example, the proceeds from the sale of a house) can be subject to a lump sum deduction order.

Paragraph (4) sets out that an interim lump sum order will be directed at the third party in question and will specify the amount of arrears in respect of which the Department intends to make a final lump sum order. While in force, the order will operate as an instruction to the third party not to do anything that would reduce the amount to which *paragraph (1)* applies, so that it becomes less than the amount of arrears stated in the order. If it is already less, it instructs the third party to do nothing which would reduce it further.

Paragraph (5) allows an interim lump sum deduction order to be made even where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Department concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order, or if it will have such an effect, it still considers making the order to be fair in all the circumstances.

Paragraph (6) requires the Department to serve a copy of the order on the third party at whom the order is directed, the non-resident parent responsible for the arrears and, if the order is in respect of a joint account, the other account holders.

Paragraph (7) provides that the order will come into force at the time it is served on the third party at which it is directed.

Paragraph (8) stipulates when an interim order will cease to be in force. It will be the earliest of the following:

- when the prescribed period ends;
- when the order lapses or is discharged, which may be where, for example, the non-resident parent has paid their arrears, or they have made representations to the Department which then chooses to discharge the order; or
- when a final lump sum deduction order is served.

Paragraph (9) provides, for the avoidance of doubt, that where regulations have been made under Article 29(3)(a) of the Child Support (Northern Ireland) Order 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to or through the person specified in, or by virtue of, the regulations.

Following the making of an interim deduction order, the Department can decide whether to impose a final deduction order. *Article 32F* provides powers to enable the Department to do this.

Paragraph (1) of Article 32F stipulates that a final deduction order can only be made if an interim one is in force, the prescribed period for the

making of representations has passed, and the Department has considered any representations made to it, for example, by the non-resident parent.

Paragraph (2) sets out that the order will be directed at the third party at which the interim order was directed and will specify both the details of the account to which the order applies and the amount of arrears.

Paragraph (3) provides that the amount of arrears specified in the final deduction order must not exceed the amount specified in the interim order less any of those arrears which have subsequently been paid by the non-resident parent. If the account is a joint account, the amount is not to exceed an amount determined by the Department to be fair in all the circumstances of the case.

Paragraph (4) stipulates that, where the account is a joint account, the Department shall consider the amounts contributed to the account by each of the account holders, and any other matters which may be prescribed.

Paragraph (5) allows a final order to be made where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Department concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order or, if it will have such an effect, the Department still considers making the order to be fair in all the circumstances.

Paragraph (6) requires the Department to serve a copy of the order on the third party at which it is directed, the person liable for the arrears to which it relates and, if the account is a joint account, the other account holders.

Article 32G paragraphs (1) and (2) provide for the order to operate, during the relevant period, as an instruction to the third party not to do anything that would reduce the amount to which *Article 32E(1)* applies, so that it becomes less than the amount of arrears stated in the order, or if it is already less, it instructs the third party to do nothing which would reduce it further.

Paragraph (3) allows exceptions to *paragraphs (1) and (2)* to be prescribed.

Paragraphs (4) (5) and (6) define the ‘relevant period’ as being from the date the final order is served to the end of the period of time during which an appeal can be brought by the non-resident parent. If an appeal is brought, the relevant period ends when it has been concluded and any further period to appeal has passed.

Paragraph (7) stipulates that references to an amount due to the non-resident parent in *Articles 32H and 32J* include monies held in accounts and monies which may become due, such as proceeds from the sale of a house.

Article 32H provides for a lump sum deduction order to continue to have effect, where the deduction made does not satisfy the outstanding liability, for example, if the amount deducted is less than the amount of arrears specified in the order.

Paragraph (2) of Article 32H states that the lump sum deduction order will remain in operation until the relevant time, and operate as an instruction to the

third party to pay the Department any amounts to which *Article 32E(1)* applies (up to the amount specified in the order that is still outstanding) and not to do anything else that would reduce the amount held. For example, any further money deposited into an account held with a deposit-taker will be subject to the order and should be paid to the Department.

Paragraph (3) provides that other final lump sum deduction orders shall continue to apply if an amount remains in the account which is sufficient to pay a liability which is still outstanding.

If the amount still outstanding cannot be met by the amounts remaining in the account, *paragraph (4)* stipulates that the order will remain in operation so that the third party will have to pay the Department any monies which subsequently become due to the non-resident parent. It also provides that the third party shall do nothing to reduce any amount held by the non-resident parent so that monies held will fall below the specified amount.

Paragraph (5) allows the instruction not to do anything to reduce the amount held to be subject to prescribed exceptions. Provisions may be made to make an exception where, for example, the non-resident parent requires a payment to be made to prevent unnecessary hardship.

Paragraph (6) defines ‘the relevant time’ for the purposes of this section as meaning until one of the following occur: the remaining amount is paid; the order lapses or is discharged; or a prescribed event occurs or prescribed circumstances arise. It also defines “the remaining amount” as the amount of arrears which remains unpaid at any particular time.

Article 32I gives the Department power to make regulations which may allow third parties to reduce the amounts held in accounts which would bring the account below the specified amount. The regulations will stipulate the circumstances when this may be allowed. For example, in cases of financial hardship the non-resident parent may be permitted to withdraw money to alleviate that hardship.

Paragraph (2) stipulates that the Department’s consent may be required before such monies could be released, and *paragraph (3)* sets out the parties who may apply to the Department for that consent to be granted. Such parties would include the deposit-taker or third party, the liable person or, in the case of joint account, any of the other account holders.

Paragraph (4) allows regulations to be made to allow a person who has applied for consent to appeal the Department’s decision, should that decision be to withhold consent.

Paragraph (5) allows the Department to make regulations which would set out the period of time within which an appeal should be made, and the powers of the court to which the appeal lies.

Article 32J provides regulation-making powers to the Department with regard to the practicalities and process relating to lump sum deduction interim and final

orders. The following paragraphs give examples of provision that may be made by the regulations.

Paragraph (2)(a) – the regulations may make provision for conditions that are to be disregarded when determining whether amounts to which *Articles 32E, 32G and 32H* apply are amounts due or accruing to the non-resident parent.

Paragraph (2)(b) – the regulations may make provision for the payment to the Department of sums deducted under a lump sum final order.

Paragraph (2)(c) – the regulations may allow the third party who deducts and pays an amount under a lump sum deduction order to deduct an amount towards administration costs.

Paragraph (2)(d) – the regulations may provide for notifications to be given to the non-resident parent who is subject to a lump sum deduction order regarding the amounts deducted and paid under the order. Such notification must also be sent to other account holders in the case of an order made against a joint account.

Paragraph (2)(e) – the regulations may require the third party at which the order is directed to supply prescribed information to the Department or to notify them if a prescribed circumstance occurs.

Paragraph (2)(f) – the regulations may allow the Department to vary an order. They could include, for example, provision that the Department may vary an order if some of the arrears have been settled.

Paragraph (2)(g) – the regulations may provide that an order will lapse in prescribed circumstances.

Paragraph (2)(h) – the regulations may allow an order which has lapsed to be revived in certain circumstances. The regulations may provide that an order may be revived if it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.

Paragraph (2)(i) – the regulations may allow or require an order to be discharged, for example, where the arrears have been paid in full.

Paragraph (3) of Article 32J prevents an order being varied to result in an increase in the amount of arrears stated in the order.

Paragraph (4) provides regulation-making powers to the Department, with regard to the priority of a lump sum deduction order and:

- any other lump sum deduction orders in place; and
- any other type of order which provides for payments to be made by the same third party from amounts due or accruing to the person liable for the arrears.

Paragraph (5) provides regulation-making powers to the Department to provide a right of appeal against the making of a lump sum final order, to a court.

Paragraph (6) prevents the court hearing an appeal against the order being made, from questioning the maintenance calculation from which it is derived.

Paragraph (7) provides that regulations regarding the appeals against the order being made may include provisions regarding:

- the length of time a non-resident parent has to make an appeal; and
- the powers of the court with respect to an appeal.

Article 32K provides that it will be an offence for a person not to comply with a lump sum deduction order or a designated regulation. A person found guilty of such an offence will be liable for a fine of up to level 2 on the standard scale (£500). However, there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.

Section 16: Orders preventing avoidance

This section inserts *Article 32L* into the Child Support (Northern Ireland) Order 1991. The Article will provide the Department with power to apply for a freezing order where it appears that a non-resident parent is about to dispose of assets with the intention of avoiding child maintenance payments.

Paragraph (1) provides that the Department may apply to the courts for a restraining order where a person has failed to pay an amount of child support maintenance and is about to make a disposition or transfer out of the jurisdiction.

Paragraph (2) provides that the Department may apply for the reversal of an asset disposition where that has already occurred and where the disposition was done specifically for the purpose of avoiding a child maintenance payment.

Paragraph (3) provides the court with the power to make an order under *paragraphs (1)* or *(2)* if it is satisfied that the purpose of the disposition is to avoid payment of child maintenance.

Paragraph (4) allows the court to deal with any consequential matters it thinks fit to give effect to the order, such as ordering payments or disposal of the asset.

Paragraph (5) provides that the disposal of an asset is reviewable, except where the asset has been acquired by someone who acted in good faith, and who was unaware that the asset was being disposed of for the purpose of avoiding a child maintenance payment.

Paragraphs (6) and *(7)* allow the court to presume that, where it is satisfied an asset has been disposed of, or is about to be disposed of, for the specific purpose of making ineffective a step which has been taken to recover an amount outstanding, the person did so with the intention of making the recovery ineffective. The court can make this presumption unless the contrary has been demonstrated.

Paragraph (8) excepts any disposition made in a will or a codicil to a will.

Paragraph (9) stipulates that *Article 32L* will not apply to any disposition made before the Child Maintenance Act (Northern Ireland) 2008 comes into operation.

Paragraph (10) stipulates that the relevant court for dealing with orders preventing avoidance shall be the High Court.

Section 17: Administrative liability orders

This section inserts *Articles 32M* and *32N* into the Child Support (Northern Ireland) Order 1991. This introduces a new liability order which will be made administratively by the Department. The order will effectively certify the amount owed by the non-resident parent, and will be the first step to enforcement action through the Enforcement of Judgments Office. There will no longer be a need to apply to the courts for a liability order.

Article 32M enables the Department to make an administrative liability order against a non-resident parent if they have failed to pay an amount of child support maintenance due.

Paragraph (2) of *Article 32M* allows an administrative liability order to be made in respect of an amount of maintenance arrears where there is an ongoing appeal against the maintenance calculation. The administrative liability order can only be made in such circumstances if the Department concludes that the appeal outcome will not affect the amount of arrears stated in the order, or if it will, it still considers that making the order is fair in all the circumstances.

Paragraph (3) prevents the order from coming into force until the end of the period during which an appeal can be made, and if an appeal is made, until the appeal proceedings have been concluded and any period during which a further appeal may ordinarily be brought has ended.

Paragraph (4) provides for the avoidance of doubt, that where regulations have been made under *Article 29(3)(a)* of the Child Support (Northern Ireland) Order 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through the person specified in, or by virtue of, the regulations for their case.

Article 32N provides regulation-making powers to the Department with respect to the practical process regarding administrative liability orders.

Paragraph (2)(a) of *Article 32N* – the regulations may make provision about the form and content of an administrative liability order.

Paragraph (2)(b) – the regulations may prevent the liability order coming into force if, before it does, the non-resident parent pays in full the arrears covered by the order.

Paragraph (2)(c) and *(d)* – the regulations may provide for the order to be discharged or revived. The regulations may provide, for example, that an order may be discharged if the non-resident parent pays off all of the arrears.

Section 18: Disqualification for holding or obtaining a travel authorisation

This section inserts five new *Articles, 36B, 36C, 36D, 36E and 36F* into the Child Support (Northern Ireland) Order 1991 and provides the Department with a power to apply to a court for an order to disqualify a non-resident parent for holding or obtaining a travel authorisation.

New *Article 36B* enables the Department to apply to a court of summary jurisdiction to disqualify a non-resident parent, against whom a liability order has been made, for holding or obtaining a travel authorisation if:

- it has sought to recover the arrears through the use of the Enforcement of Judgments Office;
- the whole or any part of the arrears remains unpaid; and
- it is of the opinion that that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

Paragraph (2) determines that the non-resident parent against whom an order is made, will be subject to disqualification for holding or obtaining a travel authorisation for the period the order has effect.

Paragraph (3) of *Article 36B* requires the court to inquire about (in the presence of the person against whom the order is made), that person's means, whether he requires a travel authorisation to earn a living, and whether he has wilfully refused or culpably neglected to pay maintenance.

Paragraph (4) prevents the court from making an order under *Article 36B* unless it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

Paragraph (5) prevents the court from both disqualifying the non-resident parent for holding a travel authorisation and sending him to prison.

Paragraph (6) prevents the court from questioning the liability order on which the application for disqualification for holding a travel authorisation is made, or the original maintenance calculation which is the basis of the liability order.

Paragraph (7) sets out that the amount specified in the order will be an aggregate of the amount stated in the liability order as remains outstanding, and an amount to be recovered by the Department in respect of costs arising from making the application for the order.

Paragraph (8) stipulates that the court shall require the person against whom it makes an order under this *Article* to surrender to the court any travel authorisation he holds.

Paragraph (9) provides that the court shall forward any travel authorisation it obtains under *paragraph (8)* to a prescribed person.

Paragraph (10) requires the court to send notice of any order it makes under this Article, or of any appeal allowed against such an order, to the Department. The Department may determine the details which such a notice should contain.

Paragraph (11) sets out definitions for the purposes of the Article. In particular, travel authorisation means:

- a UK passport (within the meaning of the Immigration Act 1971);
- 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.

Paragraph (12) defines a court, for the purposes of the Article, as a court of summary jurisdiction (with exception relating to appeals).

Article 36C concerns the duration of an order made under this Article.

Paragraph (1) of Article 36C sets out that the order will specify for how long it will have effect. This period cannot exceed two years.

Paragraphs (2), (3) and (4) enable the court to suspend an order in exceptional circumstances on such conditions as it thinks just. It may also suspend an order where the non-resident parent agrees to pay the amount specified in the liability order.

Paragraph (5) provides that the Department may make another application for an order disqualifying a person for holding or obtaining a travel authorisation if, when the effective period of the original order has ended, an amount specified in that order remains outstanding.

Article 36D provides a power for the court to order a search of a non-resident parent against whom it has made an order to disqualify for holding or obtaining a travel authorisation.

Paragraph (2) of Article 36D sets out that during a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount due on the affirmation or revision of the order, and the balance, if any, returned to the non-resident parent.

Paragraph (3) prevents the court from taking any money found on the non-resident parent if it was satisfied that it did not belong to the non-resident parent.

Where the non-resident parent makes part payment of the amount stated in the order, *Article 36E* enables the court to either revoke, or reduce the period of, that order.

Paragraph (2) states that the court must, on application by the Department or the non-resident parent, revoke the order where the amount specified in the order is paid in full to the person authorised to receive it.

Paragraph (3) provides the opportunity for the Department to make representations to the court as to the amounts it will accept before the court

should revoke the order. The non-resident parent is also provided with the opportunity to reply to those representations.

Paragraph (4) allows the court to either revoke or reduce the period of the order where it has found money during a search of the non-resident parent, and that money is applied to the maintenance outstanding. No application by the Department or the non-resident parent is necessary.

Paragraph (5) requires the court to send notice of any order it makes under this Article to the Department. The Department may determine the details which such a notice should contain.

Article 36F provides regulation-making powers to the Department with regard to the practicalities and procedure relating to orders to disqualify a non-resident parent for holding or obtaining a travel authorisation. The regulations may also make provision for the implementation of Articles 36C to 36E where the non-resident parent, against whom the order has been made, is resident outside the United Kingdom.

Section 19: Curfew orders

Section 19 inserts nine new *Articles*, 36G, 36H, 36I, 36J, 36K, 36L, 36M, 36N and 36O into the Child Support (Northern Ireland) Order 1991 and provides the Department with a power to apply to a court for a curfew order to be made against a non-resident parent who fails to pay maintenance.

The new *Article 36G* enables the Department to apply to the court for a curfew order against a non-resident parent if:

- it has sought to recover the arrears through the use of the Enforcement of Judgments Office;
- the whole or any part of the arrears remains unpaid; and
- it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

Paragraph (2) requires the court to inquire about (in the presence of the non-resident parent against whom the liability order has been made) that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.

Paragraph (3) prevents a court, when considering an application for a curfew, from questioning the liability order on which an application for a curfew order has been made, or the original maintenance calculation which is the basis of the liability order.

Paragraph (4) prevents the court from making a curfew order, unless it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

Paragraph (5) prevents the court from making an order against a person who is under the age of eighteen.

Paragraph (6) provides that for the purposes of this Article and *Articles 36H to 36O* the ‘court’ means a court of summary jurisdiction.

Article 36H concerns the duration of a curfew order.

Paragraph (1) of *Article 36H* stipulates that a curfew order must be limited to between two and twelve hours in any one day, but may include different periods and different places for different days.

Paragraphs (2) and *(3)* require the period of the curfew to be specified in the order, that it not last for more than six months and that it begin on the day the order is made unless otherwise specified.

Paragraph (4) ensures that the curfew imposed does not conflict (so far as practicable) with the non-resident parent’s religious beliefs or interfere with the times at which they normally work or attend any educational establishment.

Paragraph (5) prevents a court from specifying a curfew location outside Northern Ireland.

Article 36I provides that where a curfew order has been made, the court shall also make an order requiring the non-resident parent for whom the order has been made, to pay an amount in respect of the costs of the application and the monitoring of the curfew order.

Paragraph (2) of *Article 36I* provides that the powers available for the Department to collect and enforce child support maintenance also apply to the collection and enforcement of the costs incurred by making an order under this Article.

Article 36J sets out provisions about the relationship between the amount of maintenance outstanding and the curfew order imposed.

Paragraph (1) of *Article 36J* stipulates that a curfew order will be made in respect of an amount of money which totals both the amount sought to be recovered which remains outstanding, and the costs ordered by the court under *Article 36I* in relation to the application for a curfew order and monitoring compliance with that order.

Where part of the amount in respect of which a curfew order has been made is paid to the person authorised to receive it, *paragraph (2)* allows the court (on application by either the non-resident parent or the Department) discretion to:

- reduce the period the curfew order is in place;
- allow the curfew to start on a day later than the day the order would otherwise begin to run;
- suspend the curfew or extend any existing suspension; or

- revoke the curfew order.

Paragraph (3) enables the start date for a curfew, or the ability to suspend it, to be subject to specified conditions.

Where a non-resident parent has paid some of the arrears, *paragraph (4)* allows the Department to make representations to the courts as to which of the powers conferred by *paragraph (2)* should be exercised. The non-resident parent may reply to such representations.

Paragraph (5) requires the court (on application by the non-resident parent or the Department) to revoke a curfew order if the whole amount specified in the curfew order has been paid by the non-resident parent to the person authorised to receive it.

Paragraph (6) enables the Department to make a further application to the court if by the end of the curfew period the amount specified in the order has not been paid in full.

Article 36K provides a power for the court to order the search of a non-resident parent in respect of whom a curfew order has been made.

Paragraph (2) of *Article 36K* sets out that during a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount specified in the curfew order (the balance, if any, would be returned to the non-resident parent).

Paragraph (3) prevents the court from taking any money if it is satisfied that it does not belong to the non-resident parent.

Paragraph (4) gives some flexibility to the court enabling it to exercise its powers to reduce, postpone, suspend or revoke the order (under *Article 36J*) without the need for a separate application, where money is found and put towards the amount owed by the non-resident parent.

Article 36L sets out the provisions relating to how a curfew will be monitored.

Paragraph (1) of *Article 36L* requires the non-resident parent's compliance with a curfew order to be monitored by a person or body specified in the order.

Paragraph (2) prevents the court from imposing a curfew order unless:

- it has been notified by the Department that suitable monitoring arrangements are available in the place specified in the order;
- it is satisfied with those arrangements; and
- it has the consent of any third party whose co-operation is necessary for monitoring the curfew order, for example, a landlord who must give permission for a monitoring system to be installed in the home of a non-resident parent.

Where a third party's consent cannot be obtained, *paragraph (3)* enables the court to treat the application for a curfew order as an application for committal to prison.

Paragraph (4) provides the Department with regulation-making powers to enable the responsible officer to allow the non-resident parent to be absent from the place specified in the curfew order during the curfew period in certain cases or circumstances, and also the power to set out the requirements which may be imposed in relation to such an absence.

Article 36M concerns breaches of curfew orders.

Paragraph (1) of *Article 36M* allows the person responsible for monitoring compliance with the curfew order, or the Department, to apply to the court should the non-resident parent not meet the requirements of the curfew order, or subsequent requirements imposed by virtue of *Article 36L(4)*.

Paragraphs (2) and *(3)* require the court to establish (in the presence of the non-resident parent) whether the curfew order has been breached without reasonable excuse, and if it is found to have been, the court can issue a warrant to commit the non-resident parent to prison or extend the period of the curfew order.

Paragraph (4) sets out that a warrant for committal to prison shall order that the non-resident parent be imprisoned for the period specified in the warrant but released (unless in custody for a different reason) should they pay the full amount due in respect of the curfew order made.

Paragraph (5) provides that a warrant may be directed to such person or persons as the court sees fit.

Paragraph (6) provides that where a curfew order is extended because it has been breached, that order cannot be extended for more than six months from the date the extension of the order is made.

Paragraph (7) enables the court to release a non-resident parent from prison or reduce their sentence if they pay part of the amount specified in the curfew order, following an application from the Department or the non-resident parent.

Where part of the amount specified in the order is paid, *paragraph (8)* enables the Department to make representations to the court about whether the period specified in the warrant should be either reduced or whether the person imprisoned should be released. It also enables the non-resident parent to respond to those representations.

Article 36N prevents a court from making a curfew order against a non-resident parent who is in prison for any reason.

Paragraphs (2) and *(3)* of *Article 36N* suspend a curfew order if the non-resident parent is committed to prison, and commences it once the suspension is lifted because the non-resident parent is released from prison.

Article 36O provides the Department with regulation-making powers regarding the practical procedures relating to curfew orders.

Paragraph (2) of Article 36O sets out that the regulations may in particular include provisions relating to the following:

- form and content of a curfew order;
- allowing an application for a curfew order to be renewed if no order is made;
- allowing an employer's written statement as evidence that wages have been paid to a non-resident parent;
- enabling a lay magistrate to issue a summons for a person to appear in court and, where they do not, to issue a warrant for their arrest, or to issue a warrant for arrest without issuing a summons first, to secure a person's presence before it;
- the execution of a warrant for arrest;
- enabling a curfew order to be amended or revoked on application to the courts by the Department or the non-resident parent;
- in relation to any amendment, provision similar to that in *Article 36I* – determining the amount of costs the court can recover from a non-resident parent, *Article 36K* – ordering a search of a non-resident parent, *Articles 36L(2) and (3)* – requirement for monitoring arrangements to be in place; and
- how a court of summary jurisdiction exercises its power following part payment under *Articles 36J(2) and (3)* and *Article 36M(7)*.

Section 20: Commitment to prison

Section 20 inserts three new *paragraphs (2A), (2B) and (2C)* into Article 37 of the Child Support (Northern Ireland) Order 1991. These provisions will enable the Department to make a separate application to a court of summary jurisdiction to commit a non-resident parent to prison for failure to pay child support maintenance.

The new *paragraph (2A)* enables the Department to apply to a court of summary jurisdiction for the issue of a warrant committing a non-resident parent to prison if:

- it has sought to recover an amount through the use of the Enforcement of Judgments Office;
- the whole or any part of the amount due remains unpaid; and
- it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

New *paragraph (2B)* requires the court to inquire about (in the presence of the non-resident parent against whom the liability order has been made) that

person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.

New *paragraph (2C)* prevents a court, when considering an application for committal to prison, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.

Paragraph (2) of *Section 20* replaces paragraph (10) of Article 37, and provides that the court may order the search of a non-resident parent in respect of whom a commitment to prison order has been made. During a search, any money found on a non-resident parent can be taken by the court and put towards the amount specified in the order (the balance, if any, would be returned to the non-resident parent). The court is prevented from taking money if it is satisfied that it does not belong to the non-resident parent.

Section 21: Disqualification for driving

Section 21 amends Article 37A of the Child Support (Northern Ireland) Order 1991, to enable the Department to make a separate application to a court of summary jurisdiction to disqualify a non-resident parent for holding or obtaining a driving licence if they fail to pay child support maintenance.

Paragraph (A1) of the revised *Article 37A* enables the Department to apply to a court of summary jurisdiction for an order disqualifying a non-resident parent for holding or obtaining a driving licence if:

- it has sought to recover an amount through the use of the Enforcement of Judgments Office;
- the whole or any part of the amount due remains unpaid; and
- it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

Paragraph (A2) provides that the court may specify the length of the disqualification order, but that it will not exceed two years.

Paragraph (A3) requires the court to inquire about (in the presence of the non-resident parent against whom the liability order has been made) whether that person requires a driving licence to earn a living, that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.

Paragraph (A4) prevents a court, when considering an application made under this section, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.

Paragraph (1) provides that only if the court finds that there has been wilful refusal or culpable neglect on the part of the non-resident parent, it may make

a disqualification order against the non-resident parent, or make such an order but suspend it until such time and on such conditions as it thinks just.

Paragraph (2) replaces paragraph (10) of Article 37A, to enable the court to order a search of a non-resident parent in respect of whom a disqualification order has been made. During a search, any money found on a non-resident parent can be taken by the court and put towards the amount specified in the order (the balance, if any, would be returned to the non-resident parent). The court is prevented from taking any money if it is satisfied that it does not belong to the non-resident parent.