

EXPLANATORY MEMORANDUM TO
The Child Support (Management of Payments and Arrears) Regulations
(Northern Ireland) 2009

2009 No. 422

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by the Child Support (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations introduce new provisions enabling the Department to:-
 - offset parents' liabilities to pay each other child maintenance,
 - offset prescribed payments against a person's liability to pay child maintenance, and
 - recover arrears of child support maintenance from a deceased person's estate.
- 2.2. The Regulations also consolidate existing provisions for managing arrears, voluntary payments and overpayments of child maintenance.

3. Background

- 3.1. Child maintenance is an amount of money that parents who do not normally live with the children concerned (referred to as the "absent parent" in the old scheme and the "non-resident parent" in the new scheme) pay as a contribution to the upkeep of their children. These are called "qualifying children".
- 3.2. The Child Support (Northern Ireland) Order 1991 ("the 1991 Order"), makes provision for the calculation, collection and enforcement of child maintenance. Child maintenance legislation is focused around the general principle that all parents take financial responsibility for all of their children.
- 3.3. The body responsible for the delivery of the child maintenance system in Northern Ireland is the Child Maintenance and Enforcement Division ("the Division"). The Division calculates, collects and enforces child maintenance liabilities. A body of child support regulations exists to facilitate the Division's exercise of its responsibilities.
- 3.4. The child support scheme in the 1991 Order was substantially amended by the Child Support, Pensions and Social Security Act (Northern Ireland)

2000 (“the 2000 Act”). Some of the amendments are fully in operation, whilst others have so far been brought into operation for the purposes of specified cases only. Effectively, this means there are two schemes.

- 3.5. In this memorandum, the scheme in operation prior to the amendments to the 1991 Order made by the 2000 Act is referred to as “the old scheme”; and the scheme in operation following those amendments is referred to as “the new scheme”. These amendments will be made to regulations governing both the old and new schemes.
- 3.6. Further amendments to the child support scheme have been made by the Child Maintenance Act (Northern Ireland) 2008 (“the 2008 Act”) which inserted new powers to the Order. The regulations setting off parents’ liabilities and setting off payments against liability are made under the new power conferred by Article 38C of the Order. The regulations which permit the recovery of arrears from the estate of a deceased person’s estate are made under the power conferred by Article 40A of the Order.
- 3.7. During their upbringing, where parents no longer live together, a child may move from the care of one parent to the other. At present, the Department is unable to offset any outstanding arrears from the previous arrangement against the new liability. Consequently, the new non-resident parent may find that he or she is faced with paying child maintenance to the parent who owes him or her arrears. Parents find this illogical and are reluctant to pay.
- 3.8. Similarly, a separated couple who have more than one child together may each have at least one child living with them. In such cases, either or both parents may accrue arrears of child maintenance and at present the Department must pursue both sets of arrears.
- 3.9. Parents may also sometimes agree between themselves that ongoing maintenance or arrears may be paid “in kind” in addition to, or instead of, the normal child maintenance payments to the Department. This may happen, for example, when the non-resident parent agrees to pay an urgent utility bill on behalf of the parent with care. At present, as there is no provision to offset such payments, a non-resident parent may effectively be expected to pay maintenance twice over.
- 3.10. The Regulations enable the Department to offset arrears of child maintenance owed by each parent to the other, and to offset a parent’s liability to pay current child maintenance owed to them by the other parent.
- 3.11. They also enable payments made for specified purposes related to maintaining a home for the qualifying children to be offset against a non-resident parent’s liability for child maintenance. Such payments will only be offset if the parent with care agrees to the payments being made. The Department expects to exercise this power only in relation to occasional payments of this nature. If parents agree to child maintenance being paid in this way as a matter of course, they will be invited to do so under a voluntary maintenance agreement outside the statutory child maintenance scheme.

- 3.12. The introduction of offsetting in these circumstances responds to parents' wishes that the Department should be able to make sensible decisions reflecting the realities of life.
- 3.13. At present when a non-resident parent has died owing arrears of child maintenance, those arrears are not pursued. It is considered to be in the interests of children that those arrears should be recovered from the estate of the deceased non-resident parent. The regulations provide that arrears outstanding immediately before death are a debt payable out of the deceased's estate. This will allow the Department to contact the administrator or executor of a deceased's estate requesting payment of any arrears due from that estate and enable administrators or executors to pay the debt due from the estate in accordance with their duties and the law on the administration of estates.
- 3.14. The Regulations group the new provisions with existing measures dealing with arrears and the treatment of overpayments and voluntary payments. The existing provisions, contained in the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992, are revoked and replaced with similar provisions, subject to the following changes.
- 3.15. Currently, the amount of child maintenance payable cannot be reduced to below the flat rate of £5 per week. A change will be introduced to allow the rate to be reduced to nil in order to recover either outstanding child maintenance arrears in a case where the non-resident parent owes arrears but is also owed arrears by the parent with care, or an overpayment or voluntary payment of child maintenance.
- 3.16. There will be no right of appeal against the decision to adjust the amount of child maintenance to take account of an overpayment or voluntary payment. This simplifies the appeal system by removing from it decisions which are not about the maintenance calculation or the underlying liability to pay child maintenance. Decisions made prior to the date the regulations come into operation will retain the right of appeal already accrued.

4. Consultation

- 4.1. An additional consultation exercise on these regulations was conducted in Great Britain. The consultation document was published on the Department for Work and Pensions website. A report on responses to the consultation exercise was published on the same website on 2 November 2009.

5. Equality Impact

- 5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have

significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

- 7.1. Not Applicable

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Child Support (Management of Payment and Arrears) Regulations (Northern Ireland) 2009 are not incompatible with Convention Rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable

10. Parity or Replicatory Measure

- 10.1. The Regulations mirror the Great Britain Regulations and are in keeping with the principle of parity between Northern Ireland and Great Britain in child support and social security matters.

11. Additional Information

- 11.1. Not applicable