

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (GREAT BRITAIN RECIPROCAL
ARRANGEMENTS) (AMENDMENT) REGULATIONS (NORTHERN
IRELAND) 2014

2014 No. 167

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 87(5) and (10) of the Northern Ireland Act 1998 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These Regulations make provision to amend the basis for determining the territory in which a case is administered in cases where the parents live in different jurisdictions. The amendments made under this Rule will mean that an application must be made in the applicant's jurisdiction and, once further application requirements are satisfied, will be transferred to the non-resident parent's jurisdiction where the case will be administered.
- 2.2. Residents in Northern Ireland will not be charged an application fee; this amendment ensures applicants are correctly charged or not charged the application fee depending on the jurisdiction in which they reside.
- 2.3. The amendments made by these Regulations come into operation on 30 June 2014 and will impact only on those applying to the 2012 Child Maintenance Scheme ("the 2012 scheme").

3. Background

- 3.1 These Regulations make amendments to the Child Support (Great Britain Reciprocal Arrangements) Regulations (Northern Ireland) 1993 ("the Reciprocal Arrangements Regulations"). The Reciprocal Arrangements Regulations give legal effect to the provisions of a Memorandum of Arrangements between Great Britain and Northern Ireland. The Arrangements enable the separate statutory child maintenance schemes of Great Britain and Northern Ireland to operate for administrative purposes as a single system.
- 3.2 The Child Support (Northern Ireland) Order 1991 ("the Order") and the Child Support Act 1991 make provision for the calculation, collection and enforcement of child maintenance, which is an amount of money that the parent who does not normally live with the children concerned (the "non-resident parent") pay as a contribution to the upkeep of their children (the "qualifying children").

- 3.3 The child support scheme under the Order was substantially amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, which introduced a second scheme of child support maintenance. The Order was further amended by the Child Maintenance Act (Northern Ireland) 2008, effectively introducing a third scheme and it is only to that scheme that these amendments will apply.
- 3.4 The Child Support Fees Regulations 2014 (S.I. 2014/612) make provision for the charging of fees by the Secretary of State, including an application fee payable when an applicant makes an application to the statutory child maintenance scheme. Residents of Northern will not be charged an application fee. The Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland 2014) will make provision for the ending of liability in cases in existing child maintenance schemes (“case closure”). These Regulations are being made so that Northern Ireland applicants will not be charged an application fee and to make provision for when cases affected by case closure will transfer from one jurisdiction to the other.
- 3.5 On the previous occasions when the Reciprocal Arrangements Regulations were amended, the amending Regulations included letters sent by the Secretary of State for Work and Pensions (in 1995, the Department for Social Security) and the Minister for the Department for Social Development (in 1995, the Department of Health and Social Services in Northern Ireland). Those letters contained their agreement to make changes to the Memorandum of Arrangements included in the Reciprocal Arrangements Regulations. These Regulations continue that practice by including the letters between the two Ministers in a new Schedule to the Reciprocal Arrangement Regulations.
- 3.6 The current Memorandum of Arrangements provides that, in a 2012 scheme case where the primary carer of a qualifying child (the “person with care”) and the non-resident parent live in different jurisdictions, the case must be administered in the jurisdiction in which the non-resident parent resides.
- 3.7 These Regulations alter this arrangement so that, in a 2012 scheme case, an application must be made in the jurisdiction of the applicant and, once other requirements are satisfied, will be transferred (if necessary) to the jurisdiction of the non-resident parent to be administered.
- 3.8 This amendment will ensure that residents of Northern Ireland will not be charged an application fee when applying to the 2012 scheme. This is intended to make it convenient for parents to apply within their jurisdiction, but for case activity (particularly matters concerning payment of child support) to be owned by the non-resident parent’s jurisdiction. This is because case activity will involve contact with, and action by the non-resident parent.

- 3.9 Where an application is made, and where a case is administratively owned, has no impact on the amount of child maintenance payable, since both territories have the same calculation rules.
- 3.10 The amendment also makes provision for applications made in response to the parties in an existing child maintenance case, being administered on one of the older child maintenance schemes (the 1993 scheme or the 2003 scheme) and in the process of being closed under schedule 2 to the Child Maintenance Act (Northern Ireland) 2008, being required to choose whether to stay in the statutory scheme or make their own family-based arrangements for supporting their children financially. In addition, it provides for the handling of new applications linked to such cases. Cases are treated as 'linked', in most instances, when they involve the same non-resident parent and therefore the calculation of the maintenance which should be paid in such cases can only be done correctly by including all children across all the cases for which the a non-resident parent is responsible in one calculation.
- 3.11 In such cases, it is intended there should be similarity of treatment between cases in which all parents are in one jurisdiction and cases where the parents reside in different jurisdictions. These Regulations are designed to assist with the administration of this in respect of, first, the time parents get to consider their child maintenance options before being required to decide whether to remain within the statutory scheme, and also the time new applicants with 'linked' cases have to wait before being admitted to the 2012 child maintenance scheme while parents with 'linked' cases in the 1993 and 2003 schemes consider their options. Provision is made so that transfer from the jurisdiction of the applicant to the jurisdiction of the non-resident parent will not take place until the end liability date in the existing (1993 or 2003) case has passed. The end liability date is the date beyond which no further liability accrues in relation to the existing case in accordance with the regulations made in the relevant territory.

4. Consultation

- 4.1. There has been no consultation on this amendment which is effectively an administrative change. Both jurisdictions have identical 2012 scheme calculation rules, so where the case is dealt with has no bearing on the amount of child support payable.

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 a cost 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 section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. Not applicable

10. Parity or Replicatory Measure

- 10.1. The corresponding Great Britain Regulations are the Child Support (Northern Ireland Reciprocal Arrangements) Amendment Regulations 2014. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998

11. Additional Information

- 11.1. Not applicable