

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT FEES REGULATIONS (NORTHERN IRELAND)
2014

2014 No. 182

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 sections 5(1)(q) and 165(4) of the Social Security Administration (Northern Ireland) Act 1992 and Articles 40(1) and 47(1) of the Child Support (Northern Ireland) Order 1991 and sections 3(1) to (4) and 36(1) and (2) of the Child Maintenance Act (Northern Ireland) 2008 and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These regulations enable the Department to charge collection and enforcement fees in relation to the statutory child maintenance scheme introduced in 2012. It sets out the levels of those fees, who is liable to pay those fees, when those fees are payable and how collection and enforcement fees may be recovered. These regulations also make provision for waiver of an enforcement fee in certain circumstances.

3. Background

- 3.1 A statutory child maintenance scheme has been in operation since 1993 and was established through the Child Support (Northern Ireland) Order 1991. A second statutory scheme was introduced by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 for all applications received after March 2003 and currently operates alongside the 1991 scheme.
- 3.2 The Child Maintenance Act (Northern Ireland) 2008 (“the 2008 Act”) introduced a new way of calculating child support maintenance, based on historic income, and introduced a number of other important changes to the statutory child maintenance scheme.
- 3.3 The 2012 child maintenance scheme (“the 2012 scheme”), which uses the new rules set out in the 2008 Act, opened to all new applications from 25 November 2013.
- 3.4 The 2012 scheme will continue to run alongside the 1993 and 2003 schemes until all liabilities in the latter schemes are ended and only the 2012 scheme remains.
- 3.5 The 2008 Act gave the Department the power to charge fees in relation to child support maintenance.

- 3.6 Fees are being introduced for some services in the 2012 statutory child maintenance scheme. This is to encourage collaboration on the part of parents to reach their own family-based arrangements (instead of using the statutory scheme) or to pay each other direct within the statutory scheme if they cannot reach their own family-based arrangement. This is because the Department believes that such collaboration between parents is in the best interests of children.
- 3.7 In January 2011 the Green Paper '*Strengthening families, promoting parental responsibility: the future of child maintenance*' (Cm 7990) was published, setting out its proposals for how the fee making primary powers in the 2008 Act would be used.
- 3.8 The Green Paper proposed: a flat rate application fee of £100 for applicants to the statutory scheme; collection fees based on a percentage of the amount of child maintenance that the non-resident parent is liable to pay and, for a person with care, a percentage of maintenance actually paid to the person with care (with a range of 15% to 20% and 7% to 12% respectively); and enforcement fees payable by the non-resident parent where the Department has taken specific action to enforce payments.
- 3.9 These proposals were reaffirmed in the Command Paper '*Supporting separated families: securing children's futures*' (Cm 8399) published in July 2012.
- 3.10 This Paper set out a reduced application fee of £20, which the Minister for Social Development decided not to introduce in Northern Ireland, specified a non-resident parent collection fee of 20% of the child maintenance which that parent is liable to pay and consulted on a proposed person with care collection fee of 7% of the child maintenance paid to that person with care. In the subsequent Government response (Cm 8742) response, it was agreed to reduce the proposed person with care collection fee to 4%.
- 3.11 The paper also specified enforcement charges of: £300 for a Liability Order (where legal liability for a debt is established in Court); £200 for a Lump sum Deduction Order (where a lump sum is deducted from a person's bank account); £50 for a Deduction from Earnings Order (where money is regularly deducted by the employer from a person's pay); and £50 for a Regular Deduction Order (where money is regularly deducted from a person's bank account).
- 3.12 These regulations reflect these post-consultation changes.
- 3.13 These regulations prescribe circumstances in which the enforcement fee may be waived by the Department. One of these circumstances is where an enforcement fee becomes payable in circumstance where a deduction from earnings order, a regular deduction order, or a lump sum deduction order lapses or is discharged due to error or maladministration by the Department. Whether or not there has been maladministration will depend

on the circumstances of each case. Maladministration covers a wide range of circumstances, including neglect, inattention, delay, bias, incompetence, inaptitude, perversity, turpitude and arbitrariness.

4. Consultation

- 4.1. Consultations on the Command Papers referred to in this Explanatory Memorandum were conducted in Great Britain. The consultation documents were published on the Department for Work and Pensions website. The consultations were also published on the Department for Social Development Website and issued to Northern Ireland Stakeholders and Section 75 representative groups to ensure that these groups, individuals and organisations in Northern Ireland were included in the consultation process.

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. The proceeds of fees applied will be off-set against the costs of operating the Statutory Scheme and will therefore reflect further improved and sustainable Value for Money for the Tax Payer.

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 Fees 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