

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (DEDUCTION ORDERS AND FEES)
(AMENDMENT AND MODIFICATION) REGULATIONS (NORTHERN
IRELAND) 2016

2016 No. 193

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development (“the Department”) to accompany the Statutory Rule (details above), which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 32C(1) and (2)(l), (n) and (p), 32J(1) and (2)(g) and (i) and 47(1) and 48(4) of the Child Support (Northern Ireland) Order 1991 and sections 3(1) to (3) and 36(1) and (2) of the Child Maintenance Act (Northern Ireland) 2008.
- 1.3. The rule is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1. These regulations make modifications to the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 (the “Collection and Enforcement Regulations”) and amend the Child Support Fees Regulations (Northern Ireland) 2014 (the “Fees Regulations”).
- 2.2. The provisions allow the Department to waive collection and enforcement fees on the 2012 child maintenance scheme for a specific group of cases for a limited period in order to determine the most appropriate maintenance payment option.
- 2.3. These regulations also amend the circumstances under which Regular Deduction Orders (RDOs) are varied; and Regular Deduction Orders and Lump Sum Deductions (LSDOs) are lapsed or discharged to enable the recovery of outstanding collection fees and enforcement charges alongside any maintenance due. It also allows an RDO made on the 2012 child maintenance scheme (‘the 2012 scheme’) to be varied for the purpose of collecting arrears of child maintenance which have accrued under one of the older child maintenance schemes.

3. Background

The segment 5 compliance opportunity

- 3.1 A statutory child maintenance scheme has been in operation since 1993 and was established through the Child Support (Northern Ireland) Order 1991 (the Order). 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 1993 scheme (the 1993 and 2003 schemes are collectively known as the “legacy schemes”. The Order was further amended by the Child Maintenance Act (Northern Ireland) 2008, effectively introducing a third scheme. The 2012 scheme was fully commenced for all new applicants in November 2013.

- 3.2 The Child Maintenance Service (CMS) began a programme in June 2014 of ending non-resident parent (NRP) liabilities on all existing cases on the legacy schemes following the introduction of the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014 and associated scheme.
- 3.3 When a liability is ended no further maintenance accrues on a case. Cases on the legacy schemes are having their liabilities ended in phases or 'segments'. Where a legacy case is closed with arrears outstanding, work will be done to ensure the arrears balance is stable. Once this work has been completed details of the balance owed to the Parent with Care (PWC) will be transferred to the 2012 scheme. To protect the continuity of maintenance payments and ensure payment disruption in cases is minimised, cases where an enforced method of payment was in place, or wider enforcement action was being undertaken, will have their liabilities ended as the final of the five segments.
- 3.4 Where a case is closed on one of the legacy schemes, the parties have a choice as to whether to make their own family based arrangements for maintenance or enter into a statutory agreement on the 2012 scheme. If a statutory agreement is made the parties must choose between two 'service types': a 'Direct pay' arrangement (whereby CMS prepares a calculation of maintenance due and leaves the parties to arrange payment between themselves); or asking the Department to collect and enforce payment of maintenance. Where the Department collects and enforces payment ('Collect and Pay'), fees are payable by both parties.
- 3.5 A compliance opportunity will be introduced which will allow the non-resident parent (NRP) to demonstrate compliant behaviour by making voluntary payments towards their child maintenance liability. The 'compliance opportunity' will be offered where the following criteria are satisfied:
- An application is made before the date on which liability on their legacy case ends.
 - The parties cannot agree on a service type at the point of application.
- 3.6 The compliance opportunity will be introduced over the first 6 months of the 2012 scheme case to allow the NRP to demonstrate compliant behaviour by making regular voluntary payments on time and in full to an agreed schedule towards their child maintenance liability. For the majority of the cases these payments will amount to 50% of the total regular liability, with the remaining 50% being collected by either Deduction from Earnings Order (DEO) or Deduction from Earnings Request (DER) as a means of payment safeguard.
- 3.7 In order to do this all cases will be administered on the 2012 scheme 'Collect and Pay' service type. We do not currently have the power to split a liability across two methods of payment in the manner described.

Achieving this will require further changes to be made to existing legislation. This will be done via new regulations consequential upon these regulations.

- 3.8 In the 2012 scheme both administering a case on 'Collect and Pay' and collecting payments via DEO and DER would attract charges. Regulation 3 amends the existing Fees Regulations to allow for a fee waiver for clients undergoing the compliance opportunity. This ensures that clients will not need to pay these charges until they have demonstrated that they cannot make payments voluntarily. The waiver only applies for the duration of the compliance opportunity.
- 3.9 Where the NRP makes all agreed payments on time and in full this will be recorded as a 'pass'. Where the NRP fails to make all the required payments, and no good reason is offered, this will be recorded as a fail. The outcome of the compliance opportunity will then be used to inform a decision as to whether the case should be administered on the Collect and Pay or Direct Pay service types.
- 3.10 The Policy objectives of the Child Support (Northern Ireland) Order 1991 are to ensure that NRP's fulfil their obligations to provide financial support to their children. By providing evidence to inform a decision as to which service type a case should be administered on, the compliance opportunity ensures that cases are managed appropriately, minimising the risk of payment disruption and maximising the collection of child maintenance while ensuring that clients need only pay fees when it is absolutely necessary.
- 3.11 The 2012 statutory child maintenance scheme applies additional charges where it becomes necessary for the Department to take an appropriate enforcement action to secure payment and encourage future compliance. These powers are already in force and amendments in these regulations contain technical amendments to ensure the Collection and Enforcement Regulations align with the policy intent underpinning enforcement fees in the 2012 scheme.
- 3.12 Regulation 3 furthers the policy objective of the Child Support (Northern Ireland) Order 1991 by introducing technical amendments to existing powers which will increase operational efficiency by allowing for the collection of fees in certain circumstances not already covered by existing regulations and facilitating the collection of arrears accruing from the earlier child maintenance schemes.

4. Consultation

- 4.1. Informal consultation activity was undertaken in the form of a stakeholder briefing. A broad range of stakeholders were invited representing the interests of PWCs, NRPs and children. The briefing allowed for a meaningful discussion with groups that understand the complexity of the child maintenance system and are better equipped to understand in full the

impact of any change, and to argue persuasively in the interests of their clients.

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 (Deduction Orders and Fees) (Amendment and Modification) Regulations 2016.

11. Additional Information

- 11.1. Not applicable