

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (DEDUCTION FROM EARNINGS ORDERS,
AMENDMENT AND MODIFICATION AND MISCELLANEOUS AMENDMENTS)
REGULATIONS (NORTHERN IRELAND) 2016

2016 No. 390

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Communities (“the Department”) to accompany the Statutory Rule (details above), which is laid before the Northern Ireland Assembly.
- 1.2. These Regulations are made under Articles 29(2) and (3), 32(1), (2)(n) and (5), 47(1) and 48(4) of the Child Support (Northern Ireland) Order 1991 and sections 36(1) and (2) of, and paragraphs 5 and 6(1) and (2) of Schedule 2 to, the Child Maintenance Act (Northern Ireland) 2008.
- 1.3. These Regulations are subject to the negative resolution procedure.

2. Purpose

- 2.1. There are currently three child support maintenance schemes in place; the 1993 scheme and 2003 scheme (collectively known as the ‘legacy schemes’) and the 2012 scheme. The process of closing down all existing legacy scheme cases began in June 2014. The ‘Ending Liability Scheme’ sets out the approach to the case closure process, including the order in which legacy scheme cases will be selected for closure and how much notice must be given to clients of the date on which liability will end on their case.
- 2.2. In all three child support maintenance schemes the Department can specify that a Deduction from Earnings Order (DEO) (an administrative order instructing employers to deduct money directly from a non-resident parent’s (NRP’s) earnings) will be put in place for the purpose of collecting on-going maintenance and arrears owed under article 31 of the Child Support (Northern Ireland) Order 1991.
- 2.3. In the 2012 scheme DEOs are administered under a different set of rules to DEOs on the legacy schemes. This is because on the 2012 scheme the amount of money owed for child maintenance is calculated using information about the NRPs gross income, and not their net income.
- 2.4. These Regulations amend and modify the Child Maintenance (Collection and Enforcement) Regulations (Northern Ireland) 1992 and amends the Child Support (Meaning of Child and New Calculation Rules)(Consequential and Miscellaneous Amendment) Regulations (Northern Ireland) 2012 to ensure that the rules relating to DEOs operate as described in section 3 below for the purpose of case closure, including a process which will require non-resident parents with a poor history of compliance to demonstrate a change of behaviour. This is known as a ‘compliance opportunity’. The aim of the compliance opportunity is to minimise payment disruption by ensuring that if these clients apply to the new 2012 scheme their cases are managed appropriately.

- 2.5. These Regulations relate to the Child Support (Fees and Deduction Orders) (Amendments and Modifications) Regulation (Northern Ireland) 2016 as both make temporary amendments and modifications needed in order to implement the compliance opportunity.

3. Background

What is being done and Why

- 3.1 In June 2014 the Department began its programme of ending NRP liabilities on all existing cases in the legacy schemes following the introduction of the new 2012 scheme, administered by the Child Maintenance Service (CMS). When a liability ends in a legacy scheme case no further maintenance accrues on the case.
- 3.2 The Regulations allow the Department to discharge a DEO where liability has ceased to accrue because it has been closed as part of the case closure process. This is to ensure orders are not left in place when they are no longer required.
- 3.3 Liabilities in legacy schemes cases are being ended in five phases or 'segments' based on case characteristics. To ensure payment disruption is minimised, liabilities will be ended first in cases where no money is flowing while cases where an enforced method of payment is in place, or wider enforcement action is being undertaken, will be ended last. These are known as 'segment 5' cases.
- 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 maintenance arrangements or enter into a statutory arrangement. If a statutory arrangement is made the parties must choose between two 'service types': a 'Direct Pay' arrangement (whereby the CMS prepares a calculation of maintenance due and leaves the parties to arrange payment between themselves); or an arrangement whereby the Department collects and enforces payment of maintenance. Where the Department collects and enforces payment ('Collect and Pay'), collection fees are payable by both parties.
- 3.5 A compliance opportunity will be offered to those segment 5 clients who choose to apply to the 2012 scheme, do so before liability ends on their old case and cannot agree on a service type at the point of application. The compliance opportunity will allow the NRP to demonstrate compliant behaviour by making voluntary payments towards their child maintenance liability. The outcome will inform a decision over which of the two service types the case will be administered on should the parties not agree between themselves.
- 3.6 The policy objectives of the parent Order are to ensure that NRPs fulfil their obligations to provide financial support to their children. Providing evidence to inform a decision about which service type to apply to a case ensures that cases are managed appropriately. This minimises 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.
- 3.7 The compliance opportunity will take place over the first 6 months of the new 2012 scheme case. Over this period the NRP will be expected to make regular voluntary

payments on time and in full to an agreed schedule. For the majority of cases these payments will amount to 50% of the total regular liability, with the remaining 50% being collected by a DEO as a means of payment safeguard.

- 3.8 These Regulations also introduce changes to enable a DEO to be put in place as a payment safeguard during the compliance opportunity. These changes mean that where the Department specifies that a portion of child maintenance payable will be collected by a voluntary method of payment the rest can be collected by a DEO during this period. Payments collected by a DEO need not be made by equal instalments and the Department may discharge the order at the end of the compliance opportunity if all the payments due have been made and discharging the order would be reasonable in the circumstances of the case.
- 3.9 A further related amendment removes the requirement for the Department to consider the 'good reasons' not to impose a DEO as a method of payment and the requirement to make regulations to this effect as specified in Articles 29(4) to (7) of the Child Support (Northern Ireland) Order 1991 as well as the associated right of appeal. This only applies to segment 5 cases and is intended to ensure that the compliance opportunity can be set up promptly.
- 3.10 Where liability stops accruing on a legacy case there may be arrears in place. These continue to be owed and will be checked to ensure that the arrears balance is stable. Once this is completed the arrears amount will be transferred to the 2012 scheme computer system. This is known as 'financial transition' and these regulations require that the notice sent to the NRP when arrangements for collection are made should include the amount of any legacy scheme arrears that have been moved to the 2012 scheme as part of financial transition.
- 3.11 If a DEO in a legacy case was in place at the point that liability stopped accruing it will continue to collect any arrears that are owed until the point of financial transition, at which point the order will be discharged. Powers introduced under this rule will ensure that these DEOs will continue to operate under legacy scheme rules during this period.
- 3.12 Where the Department wishes to end the liability on a legacy scheme case for the purpose of case closure he must give the parties notice of this in writing. The Ending Liability Scheme, made under 'the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014, requires that this notice must be given no less than 180 days and no more than 272 days before the liability end date. This rule amends this so notice is given no less than 180 days but no more than 200 days before the liability end date. Under a previous proposal the intention was that a compliance opportunity would be offered to all segment 5 clients as part of their case closure journey, regardless of whether they intended to apply to the 2012 scheme or not. This would have required a 9 month (272 day) case closure journey for these clients, rather than the 6 month (200 day) journey all other clients received. Under our new proposal segment 5 clients will not need an extended case closure journey so we are reducing the notice period to reflect this.
- 3.13 The powers described in paragraphs 3.2, 3.8 and 3.9 are only required to support the case closure process and the compliance opportunity, both of which are events which

take place over a fixed period of time. As such the powers under these regulations will lapse on the 19 June 2021.

4. Consultation

- 4.1. The proposal to deliver the compliance opportunity on the 2012 scheme was subject to consultation via a stakeholder workshop. A broad range of stakeholders were invited representing the interests of those directly affected by the proposal - namely PWCs, NRPs and children. Consulting via workshops 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. Stakeholders were broadly supportive of the proposal, understanding both why we were offering the compliance opportunity and agreeing with the intent.

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 from Earnings Orders Amendment and Modification and Miscellaneous Amendments) Regulations 2016.

11. Additional Information

11.1. Not applicable