

These notes refer to the Child Maintenance Act (Northern Ireland) 2008 (c.10) which received Royal Assent on 2 July 2008

Child Maintenance Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Additional functions of the Department

Section 1: Promotion of child maintenance

This section places a duty on the Department to take such steps as it considers appropriate to raise awareness among parents of the importance of taking responsibility for the maintenance of their children and if they live apart, making appropriate maintenance arrangements.

Section 2: Provision of information and guidance

Section 2 places a duty on the Department to provide relevant information and guidance to help establish effective and appropriate maintenance arrangements for children who live apart from one or both of their parents. The section also enables the Department to provide information for other purposes in the course of providing such information and guidance which might include, for example, information on other matters relating to parental separation such as housing or employment.

Section 3: Fees

Section 3 gives regulation-making powers to the Department to enable it to charge fees in connection with the exercise of its functions relating to child support.

Subsection (2) of the section gives a non-exhaustive list of provisions that may be included in regulations. This includes:

- when a fee may be charged;
- the amount of fee to be charged;
- the information required to determine the amount to be charged;
- who is liable to pay any fee charged;
- when a fee is payable;

- recovery of fees charged; and
- when a fee may be waived, reduced or repaid.

Subsection (3) provides that the regulations may permit the Department to charge fees which are not related to the cost to it of carrying out its functions.

Subsection (4) allows the Department to provide by regulations that the collection and enforcement measures in the Child Support (Northern Ireland) Order 1991 also apply to fees payable.

Subsection (5) provides that the Department may by regulations make provision for a person affected by a decision under regulations under *subsection (1)* to have a right of appeal against the decision to an appeal tribunal.

Subsection (6) provides that paragraphs (3) to (5), (7) and (8) of Article 22 of the Child Support (Northern Ireland) Order 1991 (appeals to appeal tribunals) will also apply to appeals against a decision of the Department concerning fees.

Section 4: Agency arrangements and provision of services

This section enables the Department to make arrangements with another Government Department or prescribed body (defined as a “relevant authority” in *subsection (4)*), for the functions of one of them to be exercised on their behalf by the other, or for one to provide administrative, professional or technical services to the other.

Subsection (2) makes clear that this does not include functions in relation to making, confirming or approving secondary legislation.

Subsection (3) enables the Department to agree the terms and conditions that it considers appropriate for any arrangements under this section.

Subsection (5) clarifies that the functions of the Department which are referred to in the section, are those specifically relating to child support.

Section 5: Contracting out

This section enables the Department to contract out any of its functions to another person or organisation. In doing so, the Department can authorise the extent to which the function is carried out, and the period of time the contract should last. Contracting out a function does not prevent the Department from exercising it.

Where a contractor is carrying out a function on behalf of the Department, *subsection (4)* ensures that its acts or omissions will be treated as acts or omissions of the Department and the Department will be responsible.

Subsection (5) sets out two exceptions to this:

- A contractor’s act or omission will not be treated as being an act of the Department if it is relating to the contract between the Department and the contractor itself. This ensures that, for example, if a contractor breaches the

contract by failing to do something, or doing something they should not, the contractor remains responsible and the Department will be able to sue for breach of contract.

- The contractor will remain liable if it commits a criminal act.

Subsection (6) ensures that a person who is authorised to carry out a function on behalf of the Department has a right to claim damages or compensation for repudiation of the contract if the Department withdraws its authorisation, thereby making it impossible for the contractor to perform.

Section 6: Supplementary provisions

Section 6 sets out the definition of “child” for the purposes of Part 1 (the same as for the Order) and makes provision for the Department to make regulations about when children are to be regarded as living apart from a parent or not, to ensure, for example, that children are not regarded as living apart from a parent simply because they are at boarding school. It also defines the Department’s “functions relating to child support”.