

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 2 – Child Support etc.

Debt management powers

Section 22: Power to treat liability as satisfied

This section inserts a new *Article 38C* into the Child Support (Northern Ireland) Order 1991 which provides the Department with regulation-making powers enabling it to offset liabilities to pay child support maintenance (including arrears) in prescribed circumstances.

Paragraph (1)(a) of *Article 38C* enables the Department to offset liabilities to pay child support maintenance. It is envisaged that offsetting will occur mainly where a child moves from the care of one parent to the other, and therefore the non-resident parent becomes the parent with care and vice versa. If the non-resident parent who becomes the parent with care has built up arrears, some or all of the maintenance liability of the new non-resident parent may be offset against those arrears.

Offsetting may also apply where liability switches from one parent to the other for other reasons, for example, where each parent is caring for one or more children and there is a change in income. Where both parents have arrears these may also be offset against each other.

Paragraph (1)(b) enables the Department, in certain circumstances, to accept payments made by the non-resident parent to prescribed third parties as payments against ongoing liability or arrears.

Paragraph (2) confirms that offsetting maintenance payments and third party payments as described in paragraph (1) will result in the liability of a non-resident parent being met to the extent that it has been set off.

Paragraph (3) applies the offsetting rules only to those cases where the Department is authorised to make arrangements for the collection of the child support maintenance.

Section 23: Power to accept part payment of arrears in full and final satisfaction

This section inserts new *Article 38D* into the Child Support (Northern Ireland) Order 1991 which enables the Department to accept partial payments of maintenance arrears from a non-resident parent, as full and final settlement of the whole arrears.

Paragraph (2) provides regulation-making power to the Department with regard to it exercising its power to accept part payment in satisfaction of the liability.

Paragraph (3) provides that the Department may not accept partial payments without the consent of the parent with care unless certain conditions are satisfied.

Paragraph (4) sets out the conditions required under paragraph (3). These are that the Department would be entitled to recover the whole of the arrears due under Article 38(2) if it recovered them, and where the Department is not entitled to part of the arrears, that part of the arrears is equal to or less than the payment which it has accepted under paragraph (1).

Section 24: Power to write off arrears

This section inserts new *Article 38E* into the Child Support (Northern Ireland) Order 1991, enabling the Department to write off arrears in circumstances where it appears to the Department that:

- the circumstances of a case are as specified in regulations made by the Department; and
- it would be unfair or otherwise inappropriate to enforce liability for maintenance arrears (for example, if a parent with care does not wish the arrears to be pursued because of a reconciliation with the non-resident parent).

Paragraph (2) of *Article 38E* provides regulation-making powers to the Department with respect to its power to write off arrears.

Section 25: Transfer of arrears

Section 25 inserts new *Article 45A* into the Child Support (Northern Ireland) Order 1991, which provides regulation-making powers to the Department, to enable it to enter into arrangements with other organisations under which liability in respect of arrears of child support maintenance becomes debt due to such an organisation.

Paragraph (2) of new *Article 45A* prevents the Department from using its enforcing powers in relation to collecting any debt that has been transferred to another organisation, and also ensures that only the transferee organisation will have title to the debt.

Paragraph (3) provides that regulations made by the Department under this power must provide that, unless certain conditions apply, the Department may

not enter into transfer arrangements without the written consent of the parent with care.

Paragraph (4) sets out the conditions required under paragraph (3). These are that the Department would be entitled to retain the whole of the arrears due under Article 38(2) if it recovered them, and where the Department is not entitled to part of the arrears, that part of the arrears is equal to or less than the payment transferred under paragraph (1).

Paragraph (5) defines a “transfer payment”.

Paragraph (6) provides that regulations under paragraph (1) may:

- Specify when arrears would be considered for transfer. The regulations could specify, for example, that arrears could be transferred only if the consent of the person with care has been obtained.
- Specify the type of organisation to which arrears can be transferred. The regulations could, for example, include safeguards to ensure that the organisation is reputable and abides by a professional code of conduct.
- Specify the terms and conditions which the transfer arrangements must include. The regulations may require, for example, that the transfer agreement must provide that the debt cannot be sold on further; and
- Provide that a payment made under that transfer arrangements may be treated as if it were a payment of child support maintenance.

Paragraph (7) sets out further that the regulations may include:

- provision as to the means of recovery the organisation to which debt has been transferred is able to use;
- provision that the Department may, in certain circumstances, prevent an organisation to which debt has been transferred from taking steps to recover it. The circumstances could be, for example, that the steps being taken are inappropriate; and
- provision regarding the type of information which the Department may supply to an organisation to which debt has been transferred, for the purposes of recovering the debt.