EXPLANATORY MEMORANDUM TO

The Child Support and Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011

2011 No. 226

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Child Support and Social Security (Miscellaneous Amendment) Regulations (Northern Ireland) 2011 which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under powers conferred by the Child Support (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

2. Purpose

2.1. These Regulations make minor technical amendments to simplify and enhance regulations for the old and new child support schemes by:-

- clarifying in regulations the effective dates of change of circumstances decisions in relation to:
  - ‘relevant other children’ leaving a non-resident parent’s household, and
  - decisions made under paragraph 15 of Schedule 1 to the Order,
- amending regulations to allow the Department to take account of situations where non-resident parents had gone onto or off benefit from the date when the change occurred, and
- amending regulations concerning the revision of decisions where appeals are outstanding to ensure consistency on all cases.

3. Background

3.1. Child maintenance is an amount of money that parents who do not normally live with the children concerned pay as a contribution to the upkeep of their children.

3.2. The Child Support (Northern Ireland) Order 1991 (“the 1991 Order”), makes provision for the calculation, collection and enforcement of child maintenance. Child maintenance legislation is focused around the general principle that all parents take financial responsibility for all of their children.

3.3. The child support scheme in the 1991 Order was substantially amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (“the 2000 Act”). Some of the amendments are fully in operation,

whilst others have so far been brought into operation for the purposes of specified cases only. Effectively, this means there are two schemes.

3.4. In this memorandum, the scheme in operation prior to the amendments to the 1991 Order made by the 2000 Act is referred to as "the old scheme"; and the scheme in operation following those amendments is referred to as "the new scheme". These amendments will be made to regulations governing both the old and new schemes.

The Regulations

Regulation 2

3.5. Revisions to an old scheme where an appeal is outstanding

Currently there is a difference between the old and new scheme child maintenance cases where an appeal is outstanding. The Department is prevented from revising a decision where an appeal is outstanding under the old scheme, if the revision is less advantageous to the appellant than the original decision. New scheme provisions allow for such a revision which means the non-resident parent's liability is correct (and the correct amount of maintenance has been paid to the parent with care) if the appeal is unsuccessful and if it is successful then any money incorrectly paid can be refunded, if appropriate.

Regulation 2 will make amendments that will allow the Department to make such revisions on old scheme cases.

3.6. Decisions made under paragraph 15 of Schedule 1 to the Child Support Order (Northern Ireland 1991

Paragraph 15 of Schedule 1 to the 1991 Order makes provision for situations where there are a number of outstanding changes of circumstances that are required to be processed. The provision is intended to simplify the process of applying the normal revision and suppression rules to each separate calculation, and allows a number of separate calculations to be undertaken as part of a single process.

Regulation 2 will amend existing legislation to make clear that the threshold on both schemes does not apply to the subsequent decisions on both the old and the new schemes. The amendments will have the effect of clarifying and harmonising procedures across both schemes and allowing efficient processing of outstanding changes of circumstances.

Regulation 2 will also clarify, for new scheme cases, the effective dates of decisions made under paragraph 15 of Schedule 1 to the Order. Where the change is notified after the application for supersession, i.e. replacement of an earlier decision, but it occurred before that date the effective date will be the first day in the maintenance period in which the application was made. This is in line with all other effective date policy, which is intended

to prevent the amount of money to be paid from changing in the middle of a week.

3.7. Relevant child ceases to be a 'child' for child maintenance purposes

A relevant other child is a child for whom a non-resident parent or their partner receive child benefit. The presence of such a child in the household means the amount of child maintenance to be paid by the non-resident parent will be reduced. When that child reaches the age of 19, child benefit is no longer payable to the non-resident parent or their partner for that child, or that child has left the household the maintenance reduction should no longer apply. A recent case of the Upper Tribunal in Great Britain highlighted that there is currently no provision in legislation to backdate a change to the date it occurred if the Department is notified after the event. There would therefore be a delay in adjusting the amount of maintenance to be paid to the parent with care.

Regulation 2 will amend existing legislation to indicate that in changes of circumstances involving a relevant other child ceasing to be a child for child maintenance purposes the change should be backdated to the beginning of the maintenance period in which the change occurred.

3.8 Adjustment of child maintenance liability where non-resident parents begin or cease to receive benefits

Old scheme regulations currently prevent the Department from adjusting liability in the same way as in the new scheme when a parent goes onto benefit. Whilst there is an effective date in the regulations for when a benefit decision is revised or superseded there is none for a decision going onto benefit.

In order to ensure consistency and bring greater clarity to the process, regulation 2 will amend old scheme legislation so that the effective date of these changes in liability will be the first day in maintenance period in which the non-resident parent actually began or ceased to receive benefits. This will ensure that the liability on these cases will more accurately reflect the circumstances of the parents during the lifetime of the case. The reference to the day on which a person begins or ceases to receive a benefit is to the day on which entitlement to the benefit commences or ends, as the case may be.

Regulation 3

3.9. Relevant child ceases to be a 'child' for child maintenance purposes

Regulation 3 will introduce similar changes for relevant children (a child of a non-resident parent their partner who is a member of the same family as that parent) for old scheme cases as described in 3.7.

3.10. Adjustment of child maintenance liability where non-resident parents begin or cease to receive benefits

New scheme legislation allows for the adjustment of child maintenance liability from the first day in the maintenance period in which benefit information or evidence becomes available. This can be problematic and not efficient as it relies on notification being received that the change has occurred which does not always happen as efficiently it should.

To simplify the regulations and bring greater clarity to the process, regulation 3 will amend new scheme legislation and set the effective date for going on and off benefit in new scheme cases as the date when the parents actually began or ceased receiving benefits. The reference to the day on which a person begins or ceases to receive a benefit is to the day on which entitlement to the benefit commences or ends, as the case may be.

3.10 Decisions made under paragraph 15 of Schedule 1 to the Order

Regulation 3 will also introduce similar changes to mirror effective dates and threshold provisions as described in paragraph 3.6.

4. Consultation

4.1. A consultation exercise on these regulations was conducted in Great Britain. The consultation document was published on the Department for Work and Pensions website.

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 any additional costs or savings 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 its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgement that the Regulations are not incompatible with Convention Rights, are not incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do 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 Regulations mirror the Great Britain Regulations and are in keeping with the principle of parity between Northern Ireland and Great Britain in child support and social security matters.

11. Additional Information

11.1. Not applicable