EXPLANATORY MEMORANDUM

THE CHILD SUPPORT (MANAGEMENT OF PAYMENTS AND ARREARS)(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2012

2012 No. 439

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Articles 16(3), 38D(2) and (3), 38E, 47(1) and 48(4) of the Child Support (Northern Ireland) Order 1991 and is subject to the confirmatory resolution procedure.

2. Background

2.1. Child maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. The main objectives of the legislation are to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents, to encourage parents to make and keep effective voluntary maintenance arrangements and to support parents in making applications for statutory child maintenance.

2.2. A statutory child maintenance scheme was established under the Child Support (Northern Ireland) Order 1991 and has been in operation since 1993. That scheme was amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 and introduced a second scheme for all applications received after March 2003 and currently operates alongside the 1993 scheme.

3. Purpose

3.1. These regulations make provision concerning the use of powers enabling the Department to accept part payment of arrears in full and final satisfaction of a child maintenance debt and to write off arrears of child maintenance in certain limited circumstances

3.2. Regulation 2 provides the power to accept part payment of arrears in full and final satisfaction and the power to write off arrears.

3.3. Where a non-resident parent has accrued significant child maintenance arrears over a period of time it can be difficult for the Department to recover these in full. This is often either because the non-resident parent's financial circumstances do not support them making a regular or lump sum payment to clear their arrears or because the Department has been unable to collect the arrears using the collection and enforcement powers afforded to the Department.

3.4. The power to accept part payment in full and final satisfaction will enable the Department to negotiate with both the non-resident parent and the parent with care in order to agree upon a lump sum payment that is less than the total child maintenance arrears owed, as full satisfaction of the debt, in cases where the Department is unable to collect the full amount owed.

3.5. The intention of the power is to enable money to flow to children, even where the non-resident parent is unable or unwilling to pay the full amount of arrears outstanding. It is anticipated that the Department's flexibility in brokering part payments will incentivise non-resident parents, who may not previously have been inclined to pay their arrears, to enter into sensible discussions with the Department in order to reach a mutually agreeable settlement.

3.6. It is intended that the power will be used where no suitable enforcement route is available or to enable a quick resolution in cases where the parent with care is willing to accept a lesser payment from the non-resident parent in lieu of the full amount. The Regulations enable the Department to use the power both as a debt negotiation tool when talking to non-resident parents about their arrears and to consider an offer of part payment made voluntarily by non-resident parents who wish to settle their arrears balances.

3.7. Under these Regulations, where the arrears are owed to the parent with care, the Department must obtain their consent, before accepting any offer of part payment.

3.8. The power to write off arrears are limited in nature as they can only be used in certain circumstances which are, the parent with care, makes clear that they no longer require the arrears to be collected and the arrears are owed to the parent with care rather than the Department, the parent with care has died, the non-resident parent has died and the arrears cannot be recovered from the estate, arrears accrued from an Interim Maintenance Assessment which was calculated between 5th April 1993 and 18th April 1995 (and a legislative "gap" prevents recovery of those arrears), or the non-resident parent has been informed by the Department that no further action would ever be taken to recover those arrears, this may be, for example, because a case officer felt that there had been maladministration on the case and assumed they had authorisation to act in this manner.

3.9. The Regulations provide that where the Department is considering writing off arrears in any of the above circumstances, it will give notice to both parties advising them of this and provide them with a 30day period to make representations, before any decision to write them off is made.

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3.11. Regulation 3 amends the Child Support Information Regulations (Northern Ireland) 2008 to permit the Department to disclose information relating to one party to a maintenance calculation held for the purposes of the Order to another party to that calculation where, in the opinion of the Department, such information is essential to inform the party to whom it would be given as to why it was decided not to exercise power under either Article 38D(1) or 38E(1) of the Order.

4. Consultation

4.1. There is no requirement to consult on these Regulations however a consultation exercise was conducted by the Department for Work and Pensions in Great Britain and the Department issued the consultation paper to interested organisations in Northern Ireland. The consultation document was published on the Department's 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 proposals for these Regulations and has concluded that the proposals do not have additional 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 (Management of Payments and Arrears) (Amendment) Regulations 2012 Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.