EXPLANATORY MEMORANDUM TO

The Child Support (Management of Payments and Arrears) (Amendment) Regulations (Northern Ireland) 2023

S.R. 2023 No. 189

1. Introduction

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

1.2. These Regulations are made under Articles 38E, 47(1) and 48(2) of the Child Support (Northern Ireland) Order 1991 and are subject to the confirmatory resolution procedure.

2. Purpose

2.1. These Regulations amend the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 422) ("the 2009 Regulations") to make provision for further circumstances in which the Department may extinguish liability in respect of arrears of child support maintenance where it appears to the Department that it would be unfair or otherwise inappropriate to enforce liability in respect of those arrears.

3. Background

Legislative Context

3.1. The Child Support (Northern Ireland) Order 1991 ("the 1991 Order") as amended introduced statutory child maintenance to ensure that parents no longer living with their children continue to fulfil their obligations to make financial provision for those children.

3.2. Under Article 38E of the 1991 Order the Department has a discretion to write off arrears only if it considers that it would be unfair or inappropriate to enforce the liability and the circumstances of the case are specified in regulations. These circumstances are set out in the 2009 Regulations.

3.3. This instrument amends the 2009 Regulations to allow the Child Maintenance Service ("CMS") to extinguish low level debt less than £7.00 where specific criteria are met.

Policy Background

3.4. Child maintenance legislation is based on the general principle that all parents take financial responsibility for all of their children. The main objective of child maintenance legislation is to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents. The CMS continuously strive to modernise and improve

services to both parents and thus legislative amendments are being made to support this aspiration.

3.5. The CMS introduced a number of arrears management powers in December 2012 to allow efficient management of child maintenance arrears owed to parents. Under those powers, arrears can be extinguished if the CMS considers that it would be unfair or inappropriate to enforce the liability and the circumstances of the case fall under a list set out in the 2009 Regulations.

3.6. This instrument relates to arrears of child maintenance, accrued under an application for child maintenance made following the introduction of the CMS in 2012. They will permit the Department to write off arrears in such cases when a maintenance calculation ceases to have effect under specific provisions of the 1991 Order, the arrears are less than £7 and the paying parent has failed to make any payments in the three months preceding the date the Department makes the decision to write off arrears.

3.7. The circumstances under which such a maintenance calculation has ceased, include where the person who made the application for a calculation asks the Department to cease acting, on the death of a non-resident parent or person with care or when the qualifying child in the case is no longer considered to be a child.

3.8. Arrears of less than £7 typically exist when a maintenance calculation ceases either because the parent has paid slightly less than they were required to pay, or more frequently as a result of rounding in the calculation.

3.9. The purpose of the amendment is to allow this low-level debt to be extinguished. This will make savings to operational costs because the value of the debt in these cases is substantially less than the cost of collecting it.

3.10. The amendments in this instrument which specify circumstances in which the Department can write off arrears, also exempt the Department from the requirement to give notice of considering writing off those arrears and notification of a decision to write off. This is because providing a written notice would be disproportionate given the low amounts of debt being under £7.

3.11. The rationale for setting the maximum arrears balance of low-level debt at £6.99 is that it is £0.01 less than the £7 flat rate of child maintenance which is the minimum level of maintenance that a Parent with Care (PWC) should expect to receive to support a child. This will ensure CMS no longer pursue debt that meets specific criteria, where the value of the debt is substantially less than the cost of collecting it.

4. Consultation

4.1. The Department for Work and Pensions carried out a public consultation "Child Maintenance: modernising and improving our service", on GOV.UK between 18 June 2021 to 6 August 2021 (*see* https://www.gov.uk/government/consultations/child-maintenance-modernising-and-improving-our-service). This consultation invited specific questions on proposals for extinguishing low level debt.

4.2. Although there was general agreement with plans to extinguish low levels of debt in some cases, some reservations, possibly arising from a misunderstanding of the proposal, were that the CMS was looking at writing off any arrears, no matter how small.

4.3. There were several differing opinions around the maximum arrears level at which the decision to extinguish the debt should be made. Some thought the level too high and others too low.

4.4. Consideration was given to respondents' recommendations to increase the threshold levels. However, setting the maximum arrears balance for extinguishing low level debt at £6.99 (£0.01 less than the flat rate of child maintenance, the minimum level of maintenance that a receiving parent should expect to receive to support a child) assures the efficient deployment of arrears collection services with minimum loss to the receiving parent. The consultation response can be found online at: https://www.gov.uk/government/consultations/child-maintenance-modernising-and-improving-our-service/outcome/government-response-child-maintenance-modernising-and-improving-our-service

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 concluded that they do not have significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1. There is no impact on business, charities, voluntary bodies or on the public sector. The legislation does not apply to activities that are undertaken by small businesses.

7. Financial Implications

7.1. There will be some savings for the Department. The legislative changes will enable CMS to make savings to operational costs because the value of the debt in these arrears cases is substantially less than the cost of collecting it.

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 that these Regulations:

a) are not incompatible with any of the Convention rights;

b) are not incompatible with Article 2(1) of the Protocol on Ireland / Northern Ireland in the EU Withdrawal Agreement (rights of individuals);

c) do not discriminate against a person or class of person on the ground of religious belief or political opinion; and

d) 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 corresponding Great Britain provisions are found in the Child Support (Management of Payments and Arrears and Fees) (Amendment) Regulations 2023. This instrument does not replicate the Great Britain Regulations in their entirety.

10.2. In line with the long-standing policy of parity in social security, the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2023 comes into operation on 26 February 2024, the same date as the corresponding Great Britain Regulations. 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. It was, therefore, necessary to make those Regulations during the period of interregnum.

11. Additional Information

11.1. Not applicable.