EXPLANATORY MEMORANDUM TO

The Child Support (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2019

S.R. 2019 No. 222

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 16(1), 38E, 40, 47(1) and 48(4) of, and paragraph 10 of Schedule 1 to, the Child Support (Northern Ireland) Order 1991; sections 5(1)(q) and 165(1) and (4) to (6) of the Social Security Administration (Northern Ireland) Act 1992; and section 3(1) and (2) of the Child Maintenance Act (Northern Ireland) 2008. These Regulations are subject to the confirmatory resolution procedure.

2. Purpose

2.1. These Regulations introduce a number of changes to child maintenance legislation:

- They will change the range of benefits from which arrears of Child Maintenance can be deducted;
- They expand the list of persons from whom relevant information can be requested by or on behalf of the Department;
- They provide for Child Maintenance debt that was subject to a protected trust deed that has expired without being converted to sequestration (bankruptcy); and
- They make minor and technical changes to the Child Maintenance calculation and fees regulations.

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. There are currently three statutory schemes in place; the 1993 and 2003 schemes (collectively known as the 'legacy schemes') administered by the Child Support Agency (CSA) and the 2012 scheme administered by the Child Maintenance Service (CMS). The process of ending liabilities in all existing legacy scheme cases began in June 2014 and is due to end in 2018.

3.3. These Regulations have been made using the following powers:

Deductions from benefits to recover arrears of Child Maintenance

3.4. Article 40 of the Child Support (Northern Ireland) Order 1991 and section 5(1)(q) of the Social Security Administration (Northern Ireland) Act 1992 give the Department the power to make provision for Child Maintenance deductions (or deductions to cover arrears of such maintenance) from a range of benefits.

3.5. These powers will be used to make amendments to the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 to increase the weekly amount which may be deducted from benefits towards arrears from £1.20 to £8.40. This aligns the amount that may be deducted towards arrears with the amount which may be deducted where there is ongoing maintenance. The amendments also permit deductions from benefits to be made from a non-resident parent in receipt of Universal Credit with earnings, who meets the criteria for the flat rate of Child Maintenance to apply (they may not actually have a flat rate calculation in place, if they no longer have an on-going maintenance liability and only owe arrears).

Power to write off arrears: Protected Trust Deeds

3.6. Article 38E of the Child Support (Northern Ireland) Order 1991 gives the Department the power to write-off Child Maintenance arrears in prescribed circumstances where it would be considered unfair or inappropriate to enforce them. The relevant circumstances are prescribed in the Child Support (Management of Payment and Arrears) Regulations (Northern Ireland) 2009. These regulations make amendments to enable debt, subject to a protected trust deed that has expired without being converted to sequestration, to be written off.

Information Regulations

3.7. Article 16(1) of the Child Support (Northern Ireland) Order 1991 allows the Department to make regulations to require the provision of information or evidence needed in connection with the calculation, collection or enforcement of Child Maintenance. This power is being used to add mortgage lenders and occupational pension providers to the list of persons/organisations in the Child Support Information Regulations (Northern Ireland) 2008 from whom the Child Maintenance Service (CMS) may request information.

Change to calculation of Child Maintenance

3.8. Article 13 of the Child Support (Northern Ireland) Order 1991 allows the Department to make a maintenance assessment where an application has been made under articles 7 or 19 of that Order. For the purposes of that assessment, the Department must calculate the "gross weekly income" of the non-resident parent. That calculation is to be made in accordance with the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 and may be made on the basis of "historic income". Regulation 35 of

the 2012 regulations sets out what information Her Majesty's Revenue and Customs (HMRC) must provide to the CMS when a Child Maintenance liability is calculated on a historic income basis. These regulations amend Regulation 35 of the 2012 Regulations so that employment income is no longer taken before allowable deductions are made.

Fees Regulations

3.9. Section 3 of the Child Maintenance Act (Northern Ireland) 2008 allows the Department to make provision in regulations for the charging of fees in connection with the exercise of the Department's functions. That provision is made in the Child Support Fees Regulations (Northern Ireland) 2014. Regulation 3 of those Regulations provides for a collection fee where there are arrangements for collection. Paragraph (6) of that regulation sets out when there are considered to be "arrangements for collection". These Regulations amend that paragraph to clarify the circumstances in which the relevant arrangements are to be considered to be in place.

Policy Background

3.10. Since the introduction of the revised Child Maintenance system in 2012, the Government has continuously reviewed customer experiences and listened to issues raised by stakeholders including the Work and Pensions Select Committee. As a result of this the Department for Work and Pensions proposed a new Child Maintenance compliance and arrears strategy ("the strategy"), on which we consulted in late 2017; and the measures in these regulations are part of that strategy. As part of the strategy, we aim to deliver changes which will increase compliance, minimising accrual of new arrears, and introduce more effective and efficient ways of collecting arrears

Deductions from Benefits

3.11. Amending our powers to deduct from benefits is a key component of the strategy, by extending our ability to deduct on-going maintenance, increasing the amount we can deduct towards arrears, while removing the inconsistency in the amounts deducted, making the policy fairer for non-resident parents. The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 and the Universal Credit, Personal Independence Payment, Jobseekers Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 are being amended to:

- Increase the amount we can deduct from benefits towards arrears to £8.40. This will align with the amount we already deduct for on-going maintenance. Deductions towards arrears have not increased from £1.20 since they were introduced in 2003. The amount for arrears deductions was originally intended to be deducted at the same time as deductions for on-going maintenance, hence the low amount. There are no current plans to further increase deductions above the current maximum of £8.40;

- Extend deductions for arrears to all of the benefits from which we can deduct ongoing maintenance;

- Prevent arrears being deducted at the same time as deductions towards ongoing maintenance. The maximum amount that will be deducted at any one time is £8.40 – the amount of the flat rate maintenance calculation plus the collection fee, so all non-resident parents with deductions from their benefit will pay the same amount, whether it is for on-going maintenance or arrears. An amount of £8.40 towards ongoing maintenance will be deducted until there is no longer a liability, only then will a deduction of £8.40 for arrears owed commence;

- Enable deductions for ongoing maintenance and arrears from Universal Credit where the non-resident parent has earnings and has income meeting the criteria for the flat rate maintenance calculation, as well as allowing for deductions for arrears if the non-resident parent is in receipt of Universal Credit (without earnings). We can already deduct for ongoing maintenance from Universal Credit where the non-resident parent has no earnings and meets the criteria for the flat rate maintenance calculation, so this will ensure that clients with the same financial circumstances are treated equally; and

- Revoke powers that enable the Department to retain payments, and also revoke powers that relate to the contribution of maintenance and arrears deductions on the 1993 Child Support Agency scheme as all ongoing maintenance cases have now ended on this scheme.

3.12. These changes will make deductions from much simpler and fairer for all parties involved and support the main objective to reduce outstanding arrears.

3.13. Child Maintenance is classed as a "social obligation" deduction for Universal Credit purposes. It is deducted from Universal Credit after "last resort" deductions where a parent is at risk of being made homeless or having their fuel supply disconnected. When ongoing flat rate deductions are satisfied and arrears exist, these will share the same position on the priority order.

3.14. Where a parent is in receipt of Income Support, Jobseeker's Allowance (Income Based), Employment Support Allowance (Income Related) or Pension Credit, Child Maintenance deductions are not subject to the list of Third Party Deductions that can be taken from these benefits. They will always be the first deduction to be taken following deductions for mortgage interest.

Protected Trust Deed

3.15. A protected trust deed is a formal agreement which can be made in Scotland between a debtor and their creditors. It is possible that a non-resident parent with arrears of Child Maintenance will make such a deed.

3.16. Where a protected trust deed subsists, the relevant creditors will receive some payments towards outstanding debts. This will include payments towards any arrears of Child Maintenance. Once the protected trust deed expires, the Department is no longer able to legally collect any arrears of Child Maintenance accrued up to and including the day on which the protected trust deed is granted, unless the protected trust deed is converted into a sequestration.

3.17. This instrument amends the Child Support (Management of Payments and Arrears) Regulations (Northern Ireland) 2009 to enable the Child Maintenance Service to write off all Child Maintenance debt which becomes legally uncollectable as a result of the protected trust deed process.

Information Regulations

3.18. The Child Support Information Regulations (Northern Ireland) 2008 place a duty upon listed individuals and organisations to provide information, as is required by the Department, to enable the amount of Child Maintenance payable by the non-resident parent to be calculated, or the amount to be recovered from the non-resident parent.

3.19. This instrument adds mortgage lenders and occupational pension providers to that list. Including these organisations makes the process for them to supply requested information to the Child Maintenance Service far simpler. Previously, an inspector would have had to visit their premises. Now they will be able to respond to information requests by secure electronic means. This is far more convenient and less intrusive for these organisations.

Calculation Change

3.20. Child Maintenance liabilities are usually calculated based on records held by HMRC for the Paying Parent's income for the most recent complete tax year. This is known as calculating based on 'historic income'. Regulation 35 of the Child Support Maintenance Calculations Regulations (Northern Ireland) 2012 sets out the information to be provided by HMRC in these historic income cases.

3.21. This instrument also amends the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 to ensure allowable expenses under Part 5 of the Income Tax (Earnings and Provisions) Act 2003 are not treated as income when calculating Child Maintenance liabilities. This reflects the judgement of the Upper Tier Tribunal in the case of *SH v Secretary of State for Work and Pensions, CH and Her Majesty's Revenue and Customs (CSM) [2018] UKUT 157 (AAC)*.

Fees Regulations

3.22. We are also changing the wording of regulation 3(6) of the Child Support Fees Regulations (Northern Ireland) 2014 to clarify the circumstances in which arrangements are considered to be in place for the purposes of determining whether a collection fee is payable.

4. Consultation

4.1. The Department for Work and Pensions (DWP) issued a public consultation on the Power of Entry and Information changes between 14 January 2019 and 11 February 2019 (only measures relating to Information applied to Northern Ireland). There was a minimal response to the consultation, although overall, respondents were in favour of the measures. DWP received a total of 22 responses, 2 of which were from stakeholder organisations – Parenting Northern Ireland and the Scottish Courts and Tribunals Service; the remainder were from private individuals

4.2. Overall, respondents were in favour of the changes.

4.3. Some respondents did not agree with the proposal to require mortgage lenders and occupational pension providers to provide information, because they thought the information provided by HMRC was already sufficient. The Department, however, requires information from these organisations in specific circumstances, for example when identifying a variation to the calculation of income. This is a necessary change that will benefit these organisations by simplifying the process for them, and reducing the need for our inspectors to visit them.

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. Any additional costs of implementation to businesses, ie deposit takers, are estimated to be minimal as this is an extension of an existing process. This is easily offset by the additional money generated for children.

7. Financial Implications

7.1. None.

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 Community law;

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 Regulations are the Child Support (Miscellaneous Amendments) Regulations 2019 (S.I. 2019/1084) which come into force on 04th July 2019, with the exception of Regulation 5 which comes into force on 24th July 2019.

10.2. 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 the Regulations during the period of interregnum.

11. Additional Information

11.1. Not applicable.