EXPLANATORY MEMORANDUM TO

The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2012

2012 No. 163

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Child Support (Miscellaneous Amendment) Regulations (Northern Ireland) 2012 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. The Regulations make minor and technical amendments to simplify and enhance regulations for the old and new child support schemes by:-

- clarifying the appropriate effective date of a change of circumstances in the old scheme where any child who lives as a member of the non-resident parent's family, but is not the biological or adoptive child of the non-resident parent (usually the child of a partner) ceases to be one;
- providing the Department with a power to estimate parents' income where it is not possible to collect appropriate evidence of their net weekly earnings. If the parent's employment and location are known, the income will be estimated by reference to statistical data and assuming that they earn the average wage for a given job and area;
- providing that transmission of payments of child support maintenance made by the Department to the parent with care will be by direct credit transfer to a bank account or post office card account nominated by the parent with care. The Department will use its discretion in providing payments by other means where the parent with care does not have a bank account into which child maintenance payments can be transferred;
- amending regulations to allow foreign earnings of an employed or self-employed non-resident parent who is habitually resident in the United Kingdom, but works overseas, to be taken into account within the maintenance calculation where that person's income is taxable in the United Kingdom; and
- amending existing secondary legislation to provide that where the Department is considering taking collection/enforcement action against the non-resident parent, it will issue upon request an arrears notice which will contain full details of payments due and made,

and the cumulative balance of child maintenance arrears that is due as a result.

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.

4. The Regulations

Regulation 2

4.1. Child of the family of the absent parent

Old scheme rules make a provision for any child who lives as a member of the absent parent's family, but is not also the biological or adoptive child of the absent parent (in most cases this will be the child of a partner). These children are taken into account when assessing the parent's protected income within the old scheme formula. At the moment, when such a child ceases to fulfil the prescribed criteria to be considered a child for Child Support purposes, the Department can only adjust the maintenance assessment in relation to the date when this is notified (even if that is some time after the change occurred).

Regulation 2 will amend the legislation so that the effective date of these changes of circumstance take effect from the first day of the maintenance period when they occurred. This change will ensure that assessments are accurate and that absent parents' protected income levels will not be higher than they should be because of a failure to inform the Department that such a change occurred and is in line with other similar changes of circumstance. This regulation will align the treatment of step-children across the two child maintenance schemes.

Regulation 3

4.2. Estimation of Income

The Annual Survey of Hours and Earnings (ASHE), a national database, provides information about the levels, distribution and make-up of earnings and hours paid for employees within industries, occupations and regions. Departmental caseworkers currently have access to this information, which can be used as a tool to estimate a parent's earnings if their occupation and location are known in cases where they are unable or unwilling to provide evidence of their income. The use of ASHE has been a key factor in improving the Department's performance over recent years.

The old scheme legislation is amended to explicitly provide for the estimation of income for either an employee or a self-employed person by reference to statistical data in cases where no income information is available. The amendment will clarify any ambiguity and confirm that where no evidence is available (or the evidence available is unreliable) the Department may assume that a person's income is the average for their occupation in the area in which they live. (Regulation 5(3)(c) makes similar provision to the new scheme)

Regulation 4

4.3. Transmission of payments

The Department has a proportion of parents with care that are still receiving their child maintenance payments via giro cheque (i.e. cheque which can be cashed either at a bank or at the post office) and other non-direct payment methods as allowed by existing Regulations. This is an expensive method of payment which is vulnerable to fraud. The use of giro cheques as a method of payment has largely been phased out across-government.

At present though, the Department has no legal power to insist that parents with care have their child maintenance paid directly into a secure bank or building society account. This means that the Department is still administering payment of child maintenance by giro cheque which is inefficient and costly especially when considering the fact that the majority of parents with care also receive child benefit which is paid electronically into their bank account.

The amendment will make direct credit transfer to the parent with care's bank/building society account the preferred method of payment. Provision will still remain to make alternative method of payment where this is not possible. This is similar to the payment options available for child benefit.

Regulation 5

4.4. Foreign Earnings

In new scheme cases where the non-resident parent is habitually resident in the United Kingdom but works for an employer based overseas, the Department has jurisdiction, i.e. legal authority, to make a maintenance calculation for the qualifying child, but it cannot take the earnings of the non-resident parent into account. This is because he/she does not meet the definition in secondary legislation of an 'employed earner' (in particular the requirement that they be 'gainfully employed' in Great Britain or Northern Ireland). Additionally, new scheme legislation does not allow the Department to use income not subject to United Kingdom tax in order to put a calculation in place. The maintenance liability of the non-resident parent in this case would therefore be calculated as nil.

Similarly it is not possible for the earnings of self-employed non-resident parents that are habitually resident in the United Kingdom but undertake work abroad to be taken into account in the child maintenance calculation because they would not meet the current legislative definition of a "self-employed earner" for their income to be taken into account for child support maintenance purposes under the current scheme regulations (again, there is a requirement to be 'gainfully employed' in either Great Britain or Northern Ireland, which is not fulfilled).

This situation prevents any money flowing from the non-resident parent to the parent with care, leaving the qualifying child disadvantaged. This anomaly only relates to the new scheme legislation. The requirement that non-resident parents be 'gainfully employed' in Great Britain or Northern Ireland means that they fall outside the statutory system if they earn money outside of these areas.

The new scheme legislation is being amended to allow the Department to take into account the United Kingdom taxable earnings of all non-resident parents that are habitually resident in the United Kingdom, even if they are paid abroad. This will reduce the number of cases where the Department makes a nil assessment and ensure that money is flowing from the non-resident parent that works and earns overseas to the qualifying child.

Regulation 6

4.5. Arrears Notices

The Department has a legal requirement to issue an "arrears notice" where it is considering taking action against a non-resident parent who has missed one or more payments of child support maintenance.

System limitations do not allow for an electronic arrears notice to include a full list of individual payments missed but does provide details of the amount of all outstanding arrears of child support maintenance due and not paid. The amendment will allow for continued use of this type of notification. The Department upon request can also issue an arrears notice which contain full details of payments due and made, and the cumulative balance of child maintenance arrears that is due as a result.

5. Consultation

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

6. Equality Impact

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.

7. Regulatory Impact

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.

8. Financial Implications

Not Applicable

9. Section 24 of the Northern Ireland Act 1998

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.

10. EU Implications

Not applicable

11. Parity or Replicatory Measure

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.

12. Additional Information

Not applicable