EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2013

2013 No. 182

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 3(1)(b), 28G(3), 39, 47(1) and 48(4) of and paragraphs 10(1) and (2)(b) and 10C(2)(b) of Schedule 1 to, the Child Support (Northern Ireland) Order 1991 and sections 36(1) and 38(2) of the Child Maintenance Act (Northern Ireland) 2008 and is subject to the negative resolution procedure.

2. Purpose

2.1. This instrument introduces a number of measures to improve the efficiency and effectiveness of the new 2012 child maintenance scheme, which will come into operation when the new scheme comes into operation for all new child maintenance applications.

2.2. Firstly, this rule allows current income information to be sought from a non-resident parent if historic income information cannot be requested or obtained from HM Revenue and Customs ("HMRC") for the purposes of making a maintenance calculation.

2.3. Secondly, this rule allows a 'nil' historic income figure from HMRC to be used as the gross weekly income figure for a non-resident parent for the purposes of a maintenance calculation.

2.4. Thirdly, this rule allows previously agreed variations to child maintenance liability to be re-instated automatically in appropriate circumstances.

2.5. This rule also makes minor supplemental amendments which clarify that the Department will treat parents who elect to not receive Child Benefit payments the same as those who continue to receive the payments. The rule also makes minor consequential and technical amendments to other child maintenance legislation.

3. Background

3.1. A statutory child maintenance scheme has been in operation since 1993 and was established through the Child Support (Northern Ireland) Order 1991. A second statutory scheme was introduced by the Child Support,

Pensions and Social Security Act (Northern Ireland) 2000 for all applications received after March 2003 and currently operates alongside the 1991 scheme.

3.2 The Child Maintenance Act (Northern Ireland) 2008 ("the 2008 Act") introduced a new way of calculating child support maintenance, based on historic income, and introduced a number of other important changes to the statutory child maintenance scheme.

3.3 The 2012 child maintenance scheme ("the 2012 scheme"), which uses the new rules set out in the 2008 Act, was introduced on 10 December 2012 but is currently only open to cases that meet certain criteria (specifically, new applications made after that date which relate to at least 4 qualifying children with the same non-resident parent and parent with care and certain cases linked to those cases).

3.4 The 2012 scheme will open to a greater proportion of new applications for child maintenance on a gradual basis until all new applications are admitted to the new scheme. The 2012 scheme will then continue to run alongside the 1993 and 2003 schemes until all liabilities in the latter schemes are ended and only the 2012 scheme remains.

3.5 This rule makes amendments to the Child Support Maintenance Calculation Regulations 2012 ("the 2012 Regulations"), which sets out rules for the 2012 scheme. These amendments enable the use of current income information as the basis of a maintenance calculation when HMRC information is not available, allow previously agreed variations to child maintenance liability to be re-instated automatically in appropriate circumstances and enable a 'nil income' figure from HMRC to be used to calculate child maintenance liability. The rule also makes changes to all three child maintenance schemes, following changes to Child Benefit for higher income earners. Further, the rule makes minor consequential and technical amendments to child maintenance legislation as detailed below.

3.6 The 2012 Regulations set out the regulatory basis for the 2012 scheme. The Child Maintenance Act 2008 (Commencement No.10 and Transitional Provisions) Order 2012 ("the Commencement Order") brought the 2012 Regulations into force on 10 December 2012 for certain cases, namely for new applications made after that date which relate to at least 4 qualifying children with the same parents and certain cases linked to those cases.

3.7 This rule makes changes to the 2012 Regulations in order to simplify the system, improve service to customers, reduce costs to the taxpayer and increase the flow of child maintenance payments to children.

3.8 Under the 2012 scheme, HMRC provides the Department with a non-resident parent's historic income figure which is used as the non-resident parent's "gross weekly income", which forms the basis of the child maintenance calculation. Historic income is based on a self-assessment

return or an employer's Pay As You Earn return. Using HMRC income information supports our objectives of quicker and more transparent calculations.

3.9 The Commencement Order, which commenced the 2012 scheme for a small number of clients, includes transitional provision, which will end when the 2012 scheme is commenced for all purposes, i.e. when it is open to all new applicants. This provision allows a non-resident parent's gross weekly income to be calculated on the basis of current income if HMRC is unable to provide historic income information.

3.10 This rule amends the 2012 Regulations to replace this transitional provision once the 2012 scheme is open to all new applicants. The amendment will allow the Department to base a non-resident parent's gross weekly income on current income information from the non-resident parent where HMRC historic income cannot be requested or obtained. If this amendment were not made, the Department could not request current income information in these circumstances. Therefore, a Default Maintenance Decision would need to be made in these circumstances, which is based only on the number of children being supported, rather than the income of the non-resident parent. This amendment will enable child maintenance to be calculated and continue to flow to the parent with care and the child when HMRC information is not available once the 2012 scheme is opened to all new applicants.

3.11 Secondly, the 2012 Regulations currently provide that when a 'nil income' figure is provided by HMRC (that is where HMRC data is available but that data shows £0 earnings), the non-resident parent's gross weekly income must be based on current income information. This rule amends the 2012 Regulations so that a 'nil income' figure will be accepted as the gross weekly income figure and form the basis of the maintenance calculation. Therefore, a 'nil income' figure will no longer mean that gross weekly income is to be based on current income.

3.12 This change will remove an anomaly whereby a return of £0 from HMRC would trigger a calculation based on current income whereas a return of 1p would not. It will remain open to either parent to challenge the historic income figure on the basis that the non-resident parent has current income. Where there is a nil historic income figure, *any* current income will mean that the maintenance calculation can be based on current income.

3.13 Thirdly, a variation may be made to a maintenance calculation where certain criteria are satisfied, for example where there is evidence that a non-resident parent has additional income. Where a non-resident parent experiences a change of circumstances, it is possible that a variation will cease to have effect; for example, where a non-resident parent or their partner receives certain benefits or when income reduces. Where a variation has ceased to have effect, it can be re-instated if the circumstances of a non-resident parent change in certain ways, for

example the non-resident parent stops receiving certain benefits and the Department has verified this to be the case.

3.14 This rule amends the 2012 Regulations to enable the Department to automatically re-instate the variation in these circumstances. The practical effect of this provision is that caseworkers will not have to contact the non-resident parent in question to verify if there has been a change in his/her circumstances before a variation can be re-instated. This fulfils the policy objective of providing a more efficient and simpler service, which places the onus on parents to report a change in their circumstances. Both parents can report any changes to circumstances that would affect the variation and the calculation can be revised, if appropriate.

3.15 A regular deduction order is an administrative tool which allows the Department to secure payment of child support maintenance via deductions from a non-resident parent's bank or building society account(s). This instrument makes minor and technical amendments to the Child Support (Collection and Enforcement) Regulations 1992 in relation to regular deduction orders in 2012 scheme cases. These changes are consequential on a change made by the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012.

3.16 These consequential amendments will facilitate the effective use of regular deduction orders in the 2012 scheme by aligning the relevant legislation with its application to the 1993 and 2003 schemes. The amendments clarify that the amount deducted under a regular deduction order in any period must not exceed 40% of a non-resident parent's gross weekly income as used in the most recent calculation of child maintenance liability.

3.17 In cases where there is no ongoing liability (i.e. the order is collecting child maintenance arrears only), an amendment will be made in relation to the review of the regular deduction order. This will mean that where the non-resident parent's current income has changed following the most recent calculation of child maintenance liability, the non-resident parent or the deposit taker may apply to the Department to review the regular deduction order.

3.18 A further technical amendment is made to rectify a minor drafting error which was identified within regulation 1(2) of the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendment) Regulations 2012. This amendment clarifies the meaning of "arrears of child support maintenance". A supplementary revocation is also made to these Regulations.

3.19 Finally, this rule clarifies the position in respect of parents who earn more than £50,000 a year and who elect for Child Benefit payments to not be made, making it clear that they will not be treated any differently to

parents who continue to choose to receive Child Benefit payments. This change will apply to the 1993, 2003 and 2012 schemes.

3.20 Commencement date: Regulation 8(1) to (3) and (6), which relate to the use of nil historic income, requesting current income information where the HMRC interface is unavailable and automatically re-instating variations will come into force when the amendments made by the 2008 Act (introducing the 2012 scheme) are commenced for all purposes. All other regulations will come into operation on 30 September 2013.

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 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 (Miscellaneous Amendments) Regulations 2013. 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

11. Additional Information

11.1. Not applicable