EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MODIFICATION, CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2014

2014 No. 193

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 18(1), 29(2) and (3), 32(1) and (2), 34(1), 40A and 47(1) and (2)(a) and (i) and 48(4) of , and paragraph 11 of Schedule 1 to, the Child Support (Northern Ireland) Order 1991 and section 36(1) and (2) of, and paragraphs 2 and 5 of Schedule 2 to the Child Maintenance Act (Northern Ireland) 2008 and is subject to the negative resolution procedure.

2. Purpose

2.1. These regulations make modifications consequential on the introduction of fees for the statutory child maintenance scheme introduced in 2012 ("the 2012 scheme") in relation to cases administered under the 2012 scheme and miscellaneous amendments to various child support regulations.

2.2. The miscellaneous amendments include, changing the notice requirements in 2012 scheme cases where the Department intends to make arrangements to collect or enforce payments of child support maintenance, amendments to when the Department is required to issue a notice to a non-resident parent when an application is made to the 2012 scheme, and amendments in relation to how the initial effective date (the date from which child maintenance is payable) for an application is determined.

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, opened to all new applications from 25 November 2013.

3.4 The 1993 and 2003 schemes will continue to run alongside the 2012 scheme until all liabilities in these schemes are ended and only the 2012 scheme remains.

3.5 The Child Support Fees Regulations (Northern Ireland) 2014 ("the Fees Regulations") make provision for the charging of fees by the Department for those using the 2012 scheme, including collection fees (payable when the Department makes arrangements for collection) and enforcement fees (payable where the Department takes enforcement action).

3.6 This Rule makes modifications to the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 ("the Collection and Enforcement Regulations") and the Child Support (Management of Payment and Arrears) Regulations (Northern Ireland) 2009 ("the 2009 Regulations") and makes miscellaneous amendments to the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 ("the Calculation Regulations") as a consequence of the Fees Regulations.

3.7 This Rule makes modifications to the Collection and Enforcement Regulations to specify a new situation in which the Department may discharge a deduction from earnings order (an order made to a non-resident parent's employer to make a deduction from the non-resident parent's earnings).

3.8 The 2009 Regulations are modified so that the Department may make arrangements for collection or enforcement where the non-resident parent has failed to make a payment of maintenance if the Department has given notice to the non-resident parent in the previous 12 months stating that such action may be taken.

3.9 This Rule amends the Calculation Regulations, in relation to when the Department is required to give the non-resident parent written notice that an application for child support maintenance has been made and in relation to how the initial effective date (the date a maintenance calculation shall take effect) is determined.

Consequential Modifications

3.10 Regulation 2 modifies the Collection and Enforcement Regulations, allowing the Department to specify the method of payment of collection fees and so that the Department may direct a non-resident parent to take reasonable steps to open an account from which payments of child maintenance and collection fees can be made.

3.11 The Department may make a deduction from earnings order against the non-resident parent, instructing their employer to deduct amounts from

their earnings and pay these to the Department. The Collection and Enforcement Regulations specify matters to be taken into account in determining whether there is a good reason not to use a deduction from earnings order as a method of payment. This Rule modifies those regulations to specify that the fact that a third party would find out about the liable person's obligation to pay a fee or the amount of that fee is not a relevant consideration when deciding to specify a deduction from earnings order as the method of payment, and that a liable person's preference for an employer not to be informed of the liable person's preference for an employer not to be informed of the liable person's obligation to pay a fee or the amount of that fee is also not a relevant consideration.

3.12 The Collection and Enforcement Regulations are further modified to allow the Department to schedule payments of collection fees in the same way that child maintenance is scheduled.

3.13 The Collection and Enforcement Regulations specify that the Department is required to issue a notice to a non-resident parent as soon as reasonably practicable following the making of a maintenance calculation or where there is a change in the requirements set out in a previous notice. The notice must include the amount of child support maintenance payable, to whom payments are to be made, the method of payment, the day and interval by reference to which payments are to be made and the amount of any overdue child maintenance. These requirements are modified, so the notification must also include the same information for collection fees (where payable).

3.14 The Fees Regulations specify an enforcement fee is payable to the Department by a non-resident parent when the Department takes a specified method of enforcement. These are £300 for a Liability Order (where legal liability for a debt is established in court); £200 for a Lump Sum Deduction Order (where a lump sum is deducted from a person's bank account); £50 for a Deduction from Earnings Order (where money is regularly deducted by the employer from a person's pay); and £50 for a Regular Deduction Order (where money is regularly deducted from a person's bank account).

3.15 These Regulations make provision so that when an enforcement fee is applied the Department must send notice to the non-resident parent as soon as reasonably practicable stating the amount of the enforcement fee payable and the method of the enforcement action for which the fee has been applied.

3.16 These Regulations modify the Collection and Enforcement Regulations to specify that the Department must review a deduction from earnings order when any arrears of child support maintenance, arrears of collection fees or an enforcement fee is paid off.

3.17 These Regulations insert a new circumstance in which a deduction from earnings order may be discharged in the 2012 scheme. A deduction from

earnings order may be discharged when the Department has agreed with the non-resident parent an alternative method of payment of child maintenance and any fees and considers it is reasonable to discharge the order in the circumstances of the case. This is to allow the Department to discharge a deduction from earnings order as part of the process of providing for a non-resident parent to move to Direct Pay which will be offered to non-resident parents when charging is introduced.

3.18 The 2009 Regulations include provision which enables the Department to recover arrears of child maintenance from a deceased person's estate. Regulation 3 makes modifications to enable the Department to also recover collection fees from a deceased person's estate.

3.19 The 2009 Regulations are modified by regulation 3, for 2012 scheme cases, to enable the Department to take swift and effective collection or enforcement action against those non-resident parents who fail to pay child maintenance. The 2009 Regulations oblige the Department to give written notice to a non-resident before taking enforcement action in cases where collection arrangements are in place. This rule modifies these regulations so that if there are arrangements for direct pay or collection (but not enforcement), and the non-resident parent fails to make a payment of child maintenance, the Department may make arrangements for collection or enforcement if a general notice advising the non-resident action that such action will be taken has been issued to the non-resident parent during the previous 12 months.

3.20 The Calculation Regulations provide that the Department must give written notice to the non-resident parent as soon as reasonably practicable after an application for a maintenance calculation is made to the 2012 scheme. Regulation 4 makes amendments so the obligations to send notice does not arise until the application has been made and the non-resident parent's address is ascertained and verified. The notice must then be sent as soon as is reasonably practicable, unless the case is one affected by the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations (Northern Ireland) 2014.

3.21 This Rule makes amendments to the Calculation Regulations in relation to how the initial effective date (the date from a maintenance calculation takes effect) is set. The amendments require that the non-resident parent must be notified of the initial effective date either by letter at least two days prior to the initial effective date or by telephone on or before the initial effective date. The initial effective date is the date provided in that letter or provided by phone. These amendments ensure the non-resident parent is notified of the initial effective date on or before that date.

3.22 This Rule inserts provision into the Calculation Regulations so that a decision may be revised by the Department in certain circumstances. A decision (e.g. Decision B) may be revised by the Department where having made one decision that is under appeal, and following the decision

of the tribunal in respect of that decision, the Department determines they would have made decision B differently. Provision for this scenario was not originally included in the regulations.

4. Consultation

4.1. The modifications consequential on the Child Support Fees Regulations (Northern Ireland) 2014 have not been consulted on, however the fees regulations themselves were consulted on in the Command Paper 'Supporting separated families; securing children's futures' (Cm8399), published in July 2012 and the subsequent Government response (Cm8742).

4.2. No consultation has taken place with regard to the miscellaneous amendments as theses are mostly consequential or remedy minor system issues; thereby not requiring liaison with external stakeholders.

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 (Consequential and Miscellaneous Amendments) Regulations 2014 and the Child Support (Consequential and Miscellaneous Amendments) (No. 2) Regulations 2014. 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