EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (MODIFICATION, MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2015

2015 No. 116

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 28ZD(1), 34(1)(b), 38B(3), 45D(2)(c), 47(1) and (2)(i) and 48(4) of, and paragraph 5(1) and (2) of Schedule 1 to, the Child Support (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

2. Purpose

2.1. These regulations make miscellaneous and consequential amendments to various pieces of child maintenance legislation. They also modify the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.

2.2. The provisions allow for the Department to correct 'slip of pen' errors (an error made as a result of clerical error) without being required to provide the right of appeal after completing the revising action.

2.3. The regulations also makes provision, when calculating child maintenance liability, to disregard any payments made through Her Majesty's Revenue and Custom's (HMRC) Childcare Payments scheme, which is anticipated to be introduced in September 2015.

2.4. These regulations enable the Department to recover from the relevant person any payments made to a non-resident parent by way of reimbursement, as a result of an overpayment of maintenance by the non-resident parent. Re-imbursements cannot be deducted from certain protected benefits. This Rule adds Income Related Employment and Support Allowance to the list of protected benefits.

2.5. The regulations also make provision to correct the out of date wording in the prescribed Liability Order form contained at Schedule 1 to the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992, which is used when pursuing child maintenance arrears though the courts.

2.6. The Regulations make further provision to enable the sharing of information with Credit Reference Agencies about non compliant non-resident parents where a liability order has been imposed. This information will be used to affect a non-resident parent's credit rating.

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 (the Order). 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 1993 scheme. The Order was further amended by the Child Maintenance Act (Northern Ireland) 2008, effectively introducing a third scheme. The 2012 scheme was fully commenced for all new applicants in November 2013.

3.2 These Regulations make amendments to the Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 ("the Maintenance Assessment Procedure Regulations"), the Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992 ("the Maintenance Assessments and Special Cases Regulations"), the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 ("the Arrears Regulations"), the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 ("the Collection and Enforcement Regulations), the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 ("the Decisions and Appeals Regulations"), the Child Support Information Regulations (Northern Ireland) 2008 ("the Information Regulations") and the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 ("the Calculation Regulations").

3.3 These Regulations make amendments to enable the Department to correct accidental errors identified by a third party, without being required to provide an immediate right of appeal after completing the corrective action. If the third party is unhappy with the corrected decision they must apply for a revision of the decision before it can be appealed. Amendments are required to the Maintenance Assessment Procedure Regulations for cases in the 1993 scheme; the Calculation Regulations for cases in the 2012 scheme and modifications to the Decisions and Appeals for cases in the 2003.

3.4 Amendments are made to the Maintenance Assessments and Special Cases Regulations as a result of the Childcare Payments Act 2014. These changes will ensure that payments made under the Act will not be treated as income for the purposes of calculating Child Maintenance liability.

3.5 These Regulations amend the Arrears Regulations to add Income Based Employment and Support Allowance to the list of benefits which exempt recipients from action by the Department to recover overpaid Child Maintenance in certain circumstances.

3.6 These Regulations amend the Collection and Enforcement Regulations in order to update the wording of the form that the Department uses to apply for a Liability Order for unpaid Child Maintenance.

3.7 These Regulations amend the Information Regulations to prescribe types of information that the Department can share with Credit Reference Agencies. Article 45D of the Child Support (Northern Ireland) Order 1991 (the Order) makes provision for the Department to share information with credit reference agencies in two instances: if the non-resident parent requests that the information is shared, or if there is a liability order in force against the non-resident parent. The Order makes provision for information of a prescribed nature to be shared. These regulations prescribe the information that can be shared.

4. Consultation

4.1. A consultation exercise on correcting accidental errors was conducted in Great Britain. The consultation document was published on the Department for Work and Pensions website.

4.2. The power to disclose information to Credit Reference Agencies was consulted on in Great Britain as part of the 2006 White Paper "A New System of Child Maintenance".

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 and Consequential Amendments) Regulations 2015.

11. Additional Information

11.1. Not applicable