EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (NORTHERN IRELAND RECIPROCAL ARRANGEMENTS) AMENDMENT REGULATIONS 2014

2014 No. 1423

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1. The purpose of this instrument is to amend the basis for determining the territory in which a case is administered in cases where the parents live in different jurisdictions. The amendments made by this instrument will mean that an application must be made in the applicant's jurisdiction and, once further application requirements are satisfied, will be transferred to the non-resident parent's jurisdiction where the case will be administered.

2.2. Northern Ireland will not be charging their residents an application fee; this amendment ensures applicants are correctly charged or not charged the application fee depending on the jurisdiction in which they reside.

2.3. The amendments made by these Regulations come into force on 30 June 2014 and will impact only on those applying to the 2012 Child Maintenance Scheme ("the 2012 scheme").

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1. This instrument makes amendments to the Child Support (Northern Ireland Reciprocal Arrangements) Regulations 1993 ("the Reciprocal Arrangements Regulations") (S.I. 1993/584). The Reciprocal Arrangements Regulations give legal effect to the provisions of a Memorandum of Arrangements between Great Britain and Northern Ireland. The Arrangements enable the separate statutory child maintenance schemes of Great Britain and Northern Ireland to operate for administrative purposes as a single system.

4.2. The Child Support Act 1991 ("the 1991 Act") and the Child Support (Northern Ireland) Order 1991 make provision for the calculation, collection and enforcement of child maintenance, which is an amount of money that the parent who does not normally live with the children concerned (the "non-resident parent") pays as a contribution to the upkeep of their children (the "qualifying children").

4.3. The child support scheme under the 1991 Act was substantially amended by the Child Support, Pensions and Social Security Act 2000, which introduced a second scheme of child support maintenance. The 1991 Act was further amended by the Child Maintenance and Other Payments Act 2008, effectively introducing a third scheme

(which began operation at the end of 2012, hence it is known as the 2012 scheme) and it is only to that scheme that these amendments will apply.

4.4. The Child Support Fees Regulations 2014 (S.I. 2014/612) make provision for the charging of fees by the Secretary of State, including an application fee payable when an applicant makes an application to the statutory child maintenance scheme. Residents of Northern Ireland will not be charged an application fee. The Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014 (S.I. 2014/614) make provision for the ending of liability in cases in the 1993 and 2003 child maintenance schemes ("case closure"). This instrument is being made so that Northern Ireland applicants will not be charged an application fee and to make provision for when cases affected by case closure will transfer from one jurisdiction to the other.

4.5. On the previous occasions when the Reciprocal Arrangements Regulations were amended, (see S.I. 1995/3261, S.I. 2002/771 and S.I. 2012/2380), the amending instruments included letters sent by the Secretary of State for Work and Pensions (in 1995, the Department for Social Security) and the Minister for the Department for Social Development (in 1995, the Department of Health and Social Services in Northern Ireland). Those letters contained their agreement to make changes to the Memorandum of Arrangements included in the Reciprocal Arrangements Regulations. This instrument continues that practice by including the letters between the two Ministers in a new Schedule to the Reciprocal Arrangements Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, a statement is not required.

7. Policy Background

- ***What is being done and why***

7.1. The current Memorandum of Arrangements provides that, in a 2012 scheme case where the primary carer of a qualifying child (the "person with care") and the non-resident parent live in different jurisdictions, the case must be administered in the jurisdiction in which the non-resident parent resides.

7.2. This instrument alters this arrangement so that, in a 2012 scheme case, an application must be made in the jurisdiction of the applicant and, once other requirements are satisfied, will be transferred (if necessary) to the jurisdiction of the non-resident parent to be administered.

7.3. This amendment will ensure that residents of Northern Ireland will not be charged an application fee when applying to the 2012 scheme. This is intended to make it convenient for parents to apply within their jurisdiction, but for case activity (particularly matters concerning payment of child support) to be owned by the non-

resident parent's jurisdiction. This is because case activity will involve contact with, and action by, the non–resident parent.

7.4. Where an application is made, and where a case is administratively owned, has no impact on the amount of child maintenance payable, since both territories have the same calculation rules.

7.5. The amendment also makes provision for applications made in response to the parties in an existing child maintenance case, being administered on one of the older child maintenance schemes (the 1993 scheme or the 2003 scheme) and in the process of being closed under schedule 5 to the Child Maintenance and Other Payments Act 2008, being required to choose whether to stay in the statutory scheme or make their own family-based arrangements for supporting their children financially. In addition, it provides for the handling of new applications linked to such cases. Cases are treated as 'linked', in most instances, when they involve the same non-resident parent and therefore the calculation of the maintenance which should be paid in such cases can only be done correctly by including all children across all the cases for which the a non-resident parent is responsible in one calculation.

7.6. In such cases, it is intended there should be similarity of treatment between cases in which all parents are in one jurisdiction and cases where the parents reside in different jurisdictions. These regulations are designed to assist with the administration of this in respect of, first, the time parents get to consider their child maintenance options before being required to decide whether to remain within the statutory scheme, and also the time new applicants with 'linked' cases have to wait before being admitted to the 2012 child maintenance scheme while parents with 'linked' cases in the 1993 and 2003 schemes consider their options. Provision is made so that transfer from the jurisdiction of the applicant to the jurisdiction of the non-resident parent will not take place until the end liability date in the existing (1993 or 2003) case has passed. The end liability date is the date beyond which no further liability accrues in relation to the existing case in accordance with the regulations made in the relevant territory.,

7.7. Although the introduction of fees is politically significant and remains a controversial issue for stakeholder groups, service users and the wider public, the level of public interest in this amendment is expected to be low as it is purely administrative.

- ***Consolidation***

7.8. The law relating to child support is available on the internet and is generally updated twice-yearly. This can be accessed via the following link: www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-child-support/

8. Consultation outcome

8.1. There has been no consultation on this amendment which is effectively an administrative change. Both jurisdictions have identical 2012 scheme calculation rules, so where the case is dealt has no bearing on the amount of child support payable.

9. Guidance

9.1. Guidance is not required. Procedure manuals have been updated to ensure that applications will only be accepted in the applicant's jurisdiction. After an application is made in the applicant's jurisdiction and the other requirements satisfied, the case will automatically be routed to the non-resident parent's jurisdiction by the computer system.

10. Impact

10.1. There is no impact on business, charities or voluntary bodies.

10.2. The impact on the public sector is low and is limited to the Child Maintenance Service and the Department for Social Development.

10.3. An Impact Assessment has not been published for this instrument.

11. Regulating Small Business

11.1. The legislation does not apply to small businesses.

12. Monitoring & Review

12.1. The impact of this amendment will be assessed as part of the general ongoing review of the 2012 scheme.

13. Contact

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