

*These notes refer to the Child Maintenance Act (Northern Ireland) 2008 (c.10) which received Royal Assent on 2 July 2008*

# Child Maintenance Act (Northern Ireland) 2008

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Additional functions of the Department**

##### *Section 1: Promotion of child maintenance*

This section places a duty on the Department to take such steps as it considers appropriate to raise awareness among parents of the importance of taking responsibility for the maintenance of their children and if they live apart, making appropriate maintenance arrangements.

##### *Section 2: Provision of information and guidance*

Section 2 places a duty on the Department to provide relevant information and guidance to help establish effective and appropriate maintenance arrangements for children who live apart from one or both of their parents. The section also enables the Department to provide information for other purposes in the course of providing such information and guidance which might include, for example, information on other matters relating to parental separation such as housing or employment.

##### *Section 3: Fees*

Section 3 gives regulation-making powers to the Department to enable it to charge fees in connection with the exercise of its functions relating to child support.

*Subsection (2)* of the section gives a non-exhaustive list of provisions that may be included in regulations. This includes:

- when a fee may be charged;
- the amount of fee to be charged;
- the information required to determine the amount to be charged;
- who is liable to pay any fee charged;
- when a fee is payable;

- recovery of fees charged; and
- when a fee may be waived, reduced or repaid.

*Subsection (3)* provides that the regulations may permit the Department to charge fees which are not related to the cost to it of carrying out its functions.

*Subsection (4)* allows the Department to provide by regulations that the collection and enforcement measures in the Child Support (Northern Ireland) Order 1991 also apply to fees payable.

*Subsection (5)* provides that the Department may by regulations make provision for a person affected by a decision under regulations under *subsection (1)* to have a right of appeal against the decision to an appeal tribunal.

*Subsection (6)* provides that paragraphs (3) to (5), (7) and (8) of Article 22 of the Child Support (Northern Ireland) Order 1991 (appeals to appeal tribunals) will also apply to appeals against a decision of the Department concerning fees.

#### ***Section 4: Agency arrangements and provision of services***

This section enables the Department to make arrangements with another Government Department or prescribed body (defined as a “relevant authority” in *subsection (4)*), for the functions of one of them to be exercised on their behalf by the other, or for one to provide administrative, professional or technical services to the other.

*Subsection (2)* makes clear that this does not include functions in relation to making, confirming or approving secondary legislation.

*Subsection (3)* enables the Department to agree the terms and conditions that it considers appropriate for any arrangements under this section.

*Subsection (5)* clarifies that the functions of the Department which are referred to in the section, are those specifically relating to child support.

#### ***Section 5: Contracting out***

This section enables the Department to contract out any of its functions to another person or organisation. In doing so, the Department can authorise the extent to which the function is carried out, and the period of time the contract should last. Contracting out a function does not prevent the Department from exercising it.

Where a contractor is carrying out a function on behalf of the Department, *subsection (4)* ensures that its acts or omissions will be treated as acts or omissions of the Department and the Department will be responsible.

*Subsection (5)* sets out two exceptions to this:

- A contractor’s act or omission will not be treated as being an act of the Department if it is relating to the contract between the Department and the contractor itself. This ensures that, for example, if a contractor breaches the

contract by failing to do something, or doing something they should not, the contractor remains responsible and the Department will be able to sue for breach of contract.

- The contractor will remain liable if it commits a criminal act.

*Subsection (6)* ensures that a person who is authorised to carry out a function on behalf of the Department has a right to claim damages or compensation for repudiation of the contract if the Department withdraws its authorisation, thereby making it impossible for the contractor to perform.

### ***Section 6: Supplementary provisions***

Section 6 sets out the definition of “child” for the purposes of Part 1 (the same as for the Order) and makes provision for the Department to make regulations about when children are to be regarded as living apart from a parent or not, to ensure, for example, that children are not regarded as living apart from a parent simply because they are at boarding school. It also defines the Department’s “functions relating to child support”.

## **Part 2 – Child Support etc.**

### **Removal of compulsion for benefit claimants**

#### ***Section 7: Repeal of Articles 9 and 43***

*Section 7* repeals Articles 9 and 43 of the Child Support (Northern Ireland) Order 1991.

Article 9 of the Child Support (Northern Ireland) Order 1991 provides that parents with care who make a claim for, or are in receipt of, prescribed benefits, may be treated as making an application for child support maintenance. *Paragraph (a)* of *section 7* removes this power.

Article 43 of the Child Support (Northern Ireland) Order 1991 gives power to the Department to reduce the amount of benefit parents with care receive where they are treated as having applied for a maintenance calculation under Article 9 of the Child Support (Northern Ireland) Order 1991, and they choose to opt out of the scheme without good cause for doing so. *Paragraph (b)* of *section 7* removes this power, which will become redundant when Article 9 is repealed.

### **Maintenance calculations**

#### ***Section 8: Changes to the calculation of maintenance***

This section introduces *Schedule 1* which amends legislation regarding how maintenance calculations are performed. Changes to how maintenance is calculated include:

- A move from using net to using gross weekly income to determine maintenance liability. Information required to calculate maintenance will be taken directly from Revenue and Customs instead of the non-resident parent.
- Changes to the percentages used to calculate basic rate maintenance.
- Treating certain existing child maintenance obligations which fall outside of the statutory scheme, as though they were within the scheme, for the purposes of calculating liability.
- An increase in flat rate maintenance from £5 to £7 per week.

### ***Section 9: Power to regulate supersession***

This section replaces Articles 19(2) and 19(3) of the Child Support (Northern Ireland) Order 1991. Article 19 allows a maintenance decision to be superseded by a new decision, where, for example, there has been a change of circumstances.

These changes provide a regulation-making power to the Department in relation to the supersession of decisions.

*Newparagraph (3)* sets out that regulations may include:

- Provision about the cases and circumstances in which a decision may be superseded, which may include a restriction on superseding a decision as a result of certain changes of circumstance. This change enables the introduction of fixed term annual awards, where a change in circumstance will only be actioned during the year if there has been a large change in income, or where the change is fundamental to the maintenance calculation. This will also enable regulations to contain provisions which set out the circumstances in which earlier changes of circumstances (which had not led to a supersession) can be taken into account.
- Procedural aspects of supersessions.

### ***Section 10: Determination of applications for a variation***

This section introduces two new paragraphs, (2A) and (2B), to Article 28D of the Child Support (Northern Ireland) Order 1991. Presently, either the parent with care or the non-resident parent may apply to the Department for a variation of maintenance. However, the Department may not necessarily proceed to make further enquiries to examine the circumstances surrounding the application. The new paragraphs will place a duty on the Department to carry out investigations where, on an application by the parent with care, it is clear that further enquiries would help the Department to decide if a variation should be given.

### ***Section 11: Transfer of cases to new rules***

This section introduces *Schedule 2* which makes provision for the movement of existing cases onto the new calculation rules. The Department may require the parties in existing cases to choose whether to remain in the statutory scheme

under the new calculation rules or to leave the scheme as far as future liability is concerned.

## **Collection and enforcement**

### ***Section 12: Use of deduction from earnings orders as basic method of payment***

*Section 12* concerns Article 29 of the Child Support (Northern Ireland) Order 1991, which sets out provisions for the collection of child support maintenance. Paragraph (3)(b) of Article 29 provides the Department with the power to make regulations as to the method by which payments of child support maintenance should be made.

This section inserts new *paragraphs (4) and (5)* into Article 29 of the Order to make it clear that such regulations can include deduction from earnings orders as an initial method of collection. The intention is to pilot the use of deduction from earnings orders as a primary method of collection for employed non-resident parents.

New *paragraph (4)* requires that any regulations which allow deduction from earnings orders to be used as an initial method of collection also include provision that this method should not be used where there is good reason not to use it. The regulations must also include a right of appeal to a court of summary jurisdiction against a decision that there is no good reason not to use a deduction from earnings order to collect maintenance.

New *paragraph (5)* prevents a court of summary jurisdiction, on an appeal made under regulations under *paragraph (4)*, from questioning the maintenance calculation by reference to which the deduction from earnings order was made.

New *paragraph (6)* provides that regulations may include provision with respect to the period within which an appeal must be made and the powers of the court of summary jurisdiction in relation to such an appeal.

New *paragraph (7)* enables regulations to set out what matters should be considered (or not considered) in determining whether there is a good reason not to use a deduction from earnings order as an initial method to collect maintenance. For example, the regulations could provide that there would be a good reason not to use a deduction from earnings order if doing so could compromise the employment status of a non-resident parent, or raise privacy issues. It also enables regulations to prescribe circumstances in which a good reason not to use a deduction from earnings order does, or does not, exist.

### ***Section 13: Deduction from earnings orders: the liable person's earnings***

This section replaces *paragraph (8)* of Article 31 of the Order, and inserts a new *paragraph (9)*. The intent of the change is to define what will be considered as 'earnings' for the purpose of deduction from earnings orders.

Article 31 of the Order concerns deduction from earnings orders, and the existing paragraph (8) provides that ‘earnings’ has such meaning as may be prescribed.

The definition in the new *paragraph (8)* will include the following as earnings:

- wages or salary;
- payments by way of pensions including any annuity payable for the purpose of providing a pension;
- periodical payments which are compensation for loss of employment or reduced remuneration; and
- statutory sick pay.

The impact of this change is that all pension payments, whether as a result of a private or occupational pension scheme, will be included as earnings for the purposes of deduction from earnings orders.

The new *paragraph (9)* sets out that for the purposes of Articles 31 and 32 of the Child Support (Northern Ireland) Order 1991, any person paying a sum covered by new *paragraph (8)* to a liable person should be treated as their ‘employer’.

#### ***Section 14: Orders for regular deductions from accounts***

This section inserts new *Articles 32A, 32B, 32C and 32D* which relate to orders for regular deductions from accounts, into the Child Support (Northern Ireland) Order 1991.

*Article 32A* enables the Department to make an order to collect regular deductions of maintenance from an account held by a non-resident parent with a deposit-taker, where the non-resident parent has failed to pay child support maintenance.

*Paragraph (2)* of *Article 32A* sets out that both arrears and maintenance payments which will become due under the calculation in place can be collected through deduction orders.

*Paragraph (3)* allows a deduction order to be made on an account even where there is an ongoing appeal against the maintenance calculation. This can only happen, however, in cases where the Department concludes that the outcome of the outstanding appeal will not affect the amount of the liability covered by the order or, if the outcome of the appeal would have such an effect, the Department still considers making the order to be fair in all of the circumstances.

*Paragraph (4)* prevents a deduction order being made against certain accounts, such as joint accounts. However, if it becomes clear that non-resident parents are moving monies into joint accounts to avoid their responsibilities, the Department may close this loop-hole by making regulations to include such accounts as accounts upon which deduction orders can be made.

*Paragraphs (5), (6) and (7)* set out that the order will specify which account it is made against and the date it has effect. The order will operate as an instruction to the deposit-taker to make deductions from the specified account and pay them to the Department. Copies of the order shall be served on the deposit-taker, the non-resident parent against whom it is made, and, if the order is in respect of a joint account, the other account holders.

*Paragraph (8)* provides that the deposit-taker is under a duty to comply with the order for regular deductions from accounts. However, it also protects the deposit-taker from any liability if they do not comply with the order during the seven day period beginning with the day the order is served on them.

*Paragraph (9)* provides, for the avoidance of doubt, that where regulations have been made under Article 29(3)(a) of the Order, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through, the person specified in, or by virtue of, the regulations.

*Article 32B* provides that in the case of a deduction order against a joint account, the Department shall offer each account holder the opportunity to make representations about the proposal to make the order, and the amounts to be deducted under the order. The Department shall take account of such representations, and the amounts being contributed to the account by each account holder, before deciding what amount would be a fair deduction in the circumstances.

*Article 32C* provides regulation-making powers to the Department with regard to the practicalities and procedure relating to account deduction orders. The following subsections give examples of provision that may be made by the regulations.

*Paragraphs (2)(a) to (2)(c) of Article 32C* – the regulations may require that the order specifies the amount in respect of which it is made, the amounts to be deducted in order to meet liabilities, and the dates deductions are to be made.

*Paragraph (2)(d)* – the regulations may limit the rate of deduction under a deduction order. It is envisaged that an order will be limited to an amount which is a percentage of the non-resident parent's income. If the circumstances of a non-resident parent change it will be their responsibility to inform the Department so that the amount in the order might be changed and the deposit-taker notified. Only amounts in credit will be deducted from an account.

*Paragraph (2)(e)* – the regulations may allow for certain circumstances when amounts of money held in an account should be disregarded in respect of the deduction order. This could be if the money is being held on behalf of another person, for instance.

*Paragraph (2)(f)* – the regulations may include provision concerning the payment of money deducted by a deposit-taker to the Department.

*Paragraph (2)(g)* – the regulations may allow the deposit-taker to deduct an amount from the non-resident parent’s account towards its administrative costs.

*Paragraph (2)(h)* – the regulations may provide for notifications to be given to a non-resident parent against whom the deduction order is made regarding amounts deducted and paid under the order.

*Paragraph (2)(i)* – the regulations may require the deposit-taker to notify the Department, within a specified period of time, if the account specified in the order does not exist, or if the non-resident parent who is the subject of the order has any other accounts.

*Paragraph (2)(j)* – the regulations may require the deposit-taker to notify the Department, within a specified period of time, if a non-resident parent subject to a deduction order closes the account specified in the order, or opens a new account.

*Paragraph (2)(k)* – the regulations may allow the deposit-taker, the person against whom the order is made and (in the case of an order made in respect of a joint account) the other account holders, to apply to the Department for a deduction order to be reviewed, in certain circumstances, and may provide for how the Department is to carry out such a review.

*Paragraph (2)(l)* – the regulations may allow the Department to vary an order. Regulations will prescribe the circumstances when this might occur, for example, as a result of a review, or if some of the arrears have been settled.

*Paragraph (2)(m)* – the regulations may provide powers similar to those in Article 32A(8) in relation to the variation of an order, whereby although the deposit-taker has a duty to comply with the order as varied, they will not be liable for non-compliance during the first seven days from being given notice of the variation.

*Paragraph (2)(n)* – the regulations may provide that an order will lapse in prescribed circumstances. This might include, for example, provisions that an order will lapse if the non-resident parent no longer holds an account with the deposit-taker to whom the order was directed.

*Paragraph (2)(o)* – the regulations may provide for an order to be revived in certain circumstances. This could be where it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.

*Paragraph (2)(p)* – the regulations may make provision allowing or requiring an order to be discharged.

*Paragraph (2)(q)* – the regulations may require the Department to give notice to the deposit-taker in the case of an order lapsing or ceasing to have effect.

*Paragraph (3)* provides regulation-making powers to the Department with regard to the priority of an account deduction order and:



- any other order in place; and
- any other type of order which makes deductions from the same account.

*Paragraphs (4), (5) and (6)* allow the Department to provide by regulations that any person affected should have a right of appeal to a court against a deduction order, or against any decision made by the Department following an application for a review of the order. On such an appeal, the court is prevented from questioning the maintenance calculation by reference to which the deduction order was made. Regulations may include provision with respect to the period within which an appeal must be made and the powers of the court in relation to any such appeal.

*Article 32D* sets out that it will be an offence for a person not to comply with the requirements of an account deduction order or any designated regulation under *Article 32C*. A person found guilty of such an offence may be liable for a fine. However there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.

### ***Section 15: Lump sum deduction orders***

This section inserts seven new *Articles 32E, 32F, 32G, 32H, 32I, 32J and 32K* into the Child Support (Northern Ireland) Order 1991. These Articles relate to lump sum deduction orders, which enable the Department to collect payments from the accounts of non-resident parents. Lump sum deduction orders, however, may be used only to collect arrears and not regular maintenance.

*Article 32E* enables the Department to make an interim lump sum deduction order if it appears to it that a non-resident parent has failed to pay an amount of child support maintenance and an amount of money to which *paragraph (2)* applies, is due or accruing to the non-resident parent from a third party.

*Paragraph (2)(a)* limits the type of account where against which a lump sum deduction order can be made. For example, business and joint accounts will be excluded. However, *paragraph (2)(b)* does provide for a deduction order against a joint account if, and only if, the Department makes regulations which will allow such a deduction to be made.

*Paragraph (3)* allows the Department to make regulations which will set out the conditions to be disregarded in deciding whether a lump sum of money which is to become due to the non-resident parent (for example, the proceeds from the sale of a house) can be subject to a lump sum deduction order.

*Paragraph (4)* sets out that an interim lump sum order will be directed at the third party in question and will specify the amount of arrears in respect of which the Department intends to make a final lump sum order. While in force, the order will operate as an instruction to the third party not to do anything that would reduce the amount to which *paragraph (1)* applies, so that it becomes less than the amount of arrears stated in the order. If it is already less, it instructs the third party to do nothing which would reduce it further.

*Paragraph (5)* allows an interim lump sum deduction order to be made even where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Department concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order, or if it will have such an effect, it still considers making the order to be fair in all the circumstances.

*Paragraph (6)* requires the Department to serve a copy of the order on the third party at whom the order is directed, the non-resident parent responsible for the arrears and, if the order is in respect of a joint account, the other account holders.

*Paragraph (7)* provides that the order will come into force at the time it is served on the third party at which it is directed.

*Paragraph (8)* stipulates when an interim order will cease to be in force. It will be the earliest of the following:

- when the prescribed period ends;
- when the order lapses or is discharged, which may be where, for example, the non-resident parent has paid their arrears, or they have made representations to the Department which then chooses to discharge the order; or
- when a final lump sum deduction order is served.

*Paragraph (9)* provides, for the avoidance of doubt, that where regulations have been made under Article 29(3)(a) of the Child Support (Northern Ireland) Order 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to or through the person specified in, or by virtue of, the regulations.

Following the making of an interim deduction order, the Department can decide whether to impose a final deduction order. *Article 32F* provides powers to enable the Department to do this.

*Paragraph (1)* of *Article 32F* stipulates that a final deduction order can only be made if an interim one is in force, the prescribed period for the making of representations has passed, and the Department has considered any representations made to it, for example, by the non-resident parent.

*Paragraph (2)* sets out that the order will be directed at the third party at which the interim order was directed and will specify both the details of the account to which the order applies and the amount of arrears.

*Paragraph (3)* provides that the amount of arrears specified in the final deduction order must not exceed the amount specified in the interim order less any of those arrears which have subsequently been paid by the non-resident parent. If the account is a joint account, the amount is not to exceed an amount determined by the Department to be fair in all the circumstances of the case.

*Paragraph (4)* stipulates that, where the account is a joint account, the Department shall consider the amounts contributed to the account by each of the account holders, and any other matters which may be prescribed.

*Paragraph (5)* allows a final order to be made where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Department concludes that the outcome of the outstanding appeal will not affect liability for the amount covered by the order or, if it will have such an effect, the Department still considers making the order to be fair in all the circumstances.

*Paragraph (6)* requires the Department to serve a copy of the order on the third party at which it is directed, the person liable for the arrears to which it relates and, if the account is a joint account, the other account holders.

*Article 32G paragraphs (1) and (2)* provide for the order to operate, during the relevant period, as an instruction to the third party not to do anything that would reduce the amount to which *Article 32E(1)* applies, so that it becomes less than the amount of arrears stated in the order, or if it is already less, it instructs the third party to do nothing which would reduce it further.

*Paragraph (3)* allows exceptions to *paragraphs (1) and (2)* to be prescribed.

*Paragraphs (4) (5) and (6)* define the ‘relevant period’ as being from the date the final order is served to the end of the period of time during which an appeal can be brought by the non-resident parent. If an appeal is brought, the relevant period ends when it has been concluded and any further period to appeal has passed.

*Paragraph (7)* stipulates that references to an amount due to the non-resident parent in *Articles 32H and 32J* include monies held in accounts and monies which may become due, such as proceeds from the sale of a house.

*Article 32H* provides for a lump sum deduction order to continue to have effect, where the deduction made does not satisfy the outstanding liability, for example, if the amount deducted is less than the amount of arrears specified in the order.

*Paragraph (2) of Article 32H* states that the lump sum deduction order will remain in operation until the relevant time, and operate as an instruction to the third party to pay the Department any amounts to which *Article 32E(1)* applies (up to the amount specified in the order that is still outstanding) and not to do anything else that would reduce the amount held. For example, any further money deposited into an account held with a deposit-taker will be subject to the order and should be paid to the Department.

*Paragraph (3)* provides that other final lump sum deduction orders shall continue to apply if an amount remains in the account which is sufficient to pay a liability which is still outstanding.

If the amount still outstanding cannot be met by the amounts remaining in the account, *paragraph (4)* stipulates that the order will remain in operation so that the third party will have to pay the Department any monies which subsequently

become due to the non-resident parent. It also provides that the third party shall do nothing to reduce any amount held by the non-resident parent so that monies held will fall below the specified amount.

*Paragraph (5)* allows the instruction not to do anything to reduce the amount held to be subject to prescribed exceptions. Provisions may be made to make an exception where, for example, the non-resident parent requires a payment to be made to prevent unnecessary hardship.

*Paragraph (6)* defines ‘the relevant time’ for the purposes of this section as meaning until one of the following occur: the remaining amount is paid; the order lapses or is discharged; or a prescribed event occurs or prescribed circumstances arise. It also defines “the remaining amount” as the amount of arrears which remains unpaid at any particular time.

*Article 32I* gives the Department power to make regulations which may allow third parties to reduce the amounts held in accounts which would bring the account below the specified amount. The regulations will stipulate the circumstances when this may be allowed. For example, in cases of financial hardship the non-resident parent may be permitted to withdraw money to alleviate that hardship.

*Paragraph (2)* stipulates that the Department’s consent may be required before such monies could be released, and *paragraph (3)* sets out the parties who may apply to the Department for that consent to be granted. Such parties would include the deposit-taker or third party, the liable person or, in the case of joint account, any of the other account holders.

*Paragraph (4)* allows regulations to be made to allow a person who has applied for consent to appeal the Department’s decision, should that decision be to withhold consent.

*Paragraph (5)* allows the Department to make regulations which would set out the period of time within which an appeal should be made, and the powers of the court to which the appeal lies.

*Article 32J* provides regulation-making powers to the Department with regard to the practicalities and process relating to lump sum deduction interim and final orders. The following paragraphs give examples of provision that may be made by the regulations.

*Paragraph (2)(a)* – the regulations may make provision for conditions that are to be disregarded when determining whether amounts to which *Articles 32E, 32G and 32H* apply are amounts due or accruing to the non-resident parent.

*Paragraph (2)(b)* – the regulations may make provision for the payment to the Department of sums deducted under a lump sum final order.

*Paragraph (2)(c)* – the regulations may allow the third party who deducts and pays an amount under a lump sum deduction order to deduct an amount towards administration costs.

*Paragraph (2)(d)* – the regulations may provide for notifications to be given to the non-resident parent who is subject to a lump sum deduction order regarding the amounts deducted and paid under the order. Such notification must also be sent to other account holders in the case of an order made against a joint account.

*Paragraph (2)(e)* – the regulations may require the third party at which the order is directed to supply prescribed information to the Department or to notify them if a prescribed circumstance occurs.

*Paragraph (2)(f)* – the regulations may allow the Department to vary an order. They could include, for example, provision that the Department may vary an order if some of the arrears have been settled.

*Paragraph (2)(g)* – the regulations may provide that an order will lapse in prescribed circumstances.

*Paragraph (2)(h)* – the regulations may allow an order which has lapsed to be revived in certain circumstances. The regulations may provide that an order may be revived if it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.

*Paragraph (2)(i)* – the regulations may allow or require an order to be discharged, for example, where the arrears have been paid in full.

*Paragraph (3) of Article 32J* prevents an order being varied to result in an increase in the amount of arrears stated in the order.

*Paragraph (4)* provides regulation-making powers to the Department, with regard to the priority of a lump sum deduction order and:

- any other lump sum deduction orders in place; and
- any other type of order which provides for payments to be made by the same third party from amounts due or accruing to the person liable for the arrears.

*Paragraph (5)* provides regulation-making powers to the Department to provide a right of appeal against the making of a lump sum final order, to a court.

*Paragraph (6)* prevents the court hearing an appeal against the order being made, from questioning the maintenance calculation from which it is derived.

*Paragraph (7)* provides that regulations regarding the appeals against the order being made may include provisions regarding:

- the length of time a non-resident parent has to make an appeal; and
- the powers of the court with respect to an appeal.

*Article 32K* provides that it will be an offence for a person not to comply with a lump sum deduction order or a designated regulation. A person found guilty of such an offence will be liable for a fine of up to level 2 on the standard scale (£500). However, there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.

### **Section 16: Orders preventing avoidance**

This section inserts *Article 32L* into the Child Support (Northern Ireland) Order 1991. The Article will provide the Department with power to apply for a freezing order where it appears that a non-resident parent is about to dispose of assets with the intention of avoiding child maintenance payments.

*Paragraph (1)* provides that the Department may apply to the courts for a restraining order where a person has failed to pay an amount of child support maintenance and is about to make a disposition or transfer out of the jurisdiction.

*Paragraph (2)* provides that the Department may apply for the reversal of an asset disposition where that has already occurred and where the disposition was done specifically for the purpose of avoiding a child maintenance payment.

*Paragraph (3)* provides the court with the power to make an order under *paragraphs (1) or (2)* if it is satisfied that the purpose of the disposition is to avoid payment of child maintenance.

*Paragraph (4)* allows the court to deal with any consequential matters it thinks fit to give effect to the order, such as ordering payments or disposal of the asset.

*Paragraph (5)* provides that the disposal of an asset is reviewable, except where the asset has been acquired by someone who acted in good faith, and who was unaware that the asset was being disposed of for the purpose of avoiding a child maintenance payment.

*Paragraphs (6) and (7)* allow the court to presume that, where it is satisfied an asset has been disposed of, or is about to be disposed of, for the specific purpose of making ineffective a step which has been taken to recover an amount outstanding, the person did so with the intention of making the recovery ineffective. The court can make this presumption unless the contrary has been demonstrated.

*Paragraph (8)* excepts any disposition made in a will or a codicil to a will.

*Paragraph (9)* stipulates that *Article 32L* will not apply to any disposition made before the Child Maintenance Act (Northern Ireland) 2008 comes into operation.

*Paragraph (10)* stipulates that the relevant court for dealing with orders preventing avoidance shall be the High Court.

### **Section 17: Administrative liability orders**

This section inserts *Articles 32M and 32N* into the Child Support (Northern Ireland) Order 1991. This introduces a new liability order which will be made administratively by the Department. The order will effectively certify the amount owed by the non-resident parent, and will be the first step to enforcement action through the Enforcement of Judgments Office. There will no longer be a need to apply to the courts for a liability order.

*Article 32M* enables the Department to make an administrative liability order against a non-resident parent if they have failed to pay an amount of child support maintenance due.

*Paragraph (2)* of *Article 32M* allows an administrative liability order to be made in respect of an amount of maintenance arrears where there is an ongoing appeal against the maintenance calculation. The administrative liability order can only be made in such circumstances if the Department concludes that the appeal outcome will not affect the amount of arrears stated in the order, or if it will, it still considers that making the order is fair in all the circumstances.

*Paragraph (3)* prevents the order from coming into force until the end of the period during which an appeal can be made, and if an appeal is made, until the appeal proceedings have been concluded and any period during which a further appeal may ordinarily be brought has ended.

*Paragraph (4)* provides for the avoidance of doubt, that where regulations have been made under *Article 29(3)(a)* of the Child Support (Northern Ireland) Order 1991, the person liable to pay child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through the person specified in, or by virtue of, the regulations for their case.

*Article 32N* provides regulation-making powers to the Department with respect to the practical process regarding administrative liability orders.

*Paragraph (2)(a)* of *Article 32N* – the regulations may make provision about the form and content of an administrative liability order.

*Paragraph (2)(b)* – the regulations may prevent the liability order coming into force if, before it does, the non-resident parent pays in full the arrears covered by the order.

*Paragraph (2)(c)* and *(d)* – the regulations may provide for the order to be discharged or revived. The regulations may provide, for example, that an order may be discharged if the non-resident parent pays off all of the arrears.

### ***Section 18: Disqualification for holding or obtaining a travel authorisation***

This section inserts five new *Articles*, *36B*, *36C*, *36D*, *36E* and *36F* into the Child Support (Northern Ireland) Order 1991 and provides the Department with a power to apply to a court for an order to disqualify a non-resident parent for holding or obtaining a travel authorisation.

New *Article 36B* enables the Department to apply to a court of summary jurisdiction to disqualify a non-resident parent, against whom a liability order has been made, for holding or obtaining a travel authorisation if:

- it has sought to recover the arrears through the use of the Enforcement of Judgments Office;
- the whole or any part of the arrears remains unpaid; and

- it is of the opinion that that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

*Paragraph (2)* determines that the non-resident parent against whom an order is made, will be subject to disqualification for holding or obtaining a travel authorisation for the period the order has effect.

*Paragraph (3) of Article 36B* requires the court to inquire about (in the presence of the person against whom the order is made), that person's means, whether he requires a travel authorisation to earn a living, and whether he has wilfully refused or culpably neglected to pay maintenance.

*Paragraph (4)* prevents the court from making an order under Article 36B unless it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

*Paragraph (5)* prevents the court from both disqualifying the non-resident parent for holding a travel authorisation and sending him to prison.

*Paragraph (6)* prevents the court from questioning the liability order on which the application for disqualification for holding a travel authorisation is made, or the original maintenance calculation which is the basis of the liability order.

*Paragraph (7)* sets out that the amount specified in the order will be an aggregate of the amount stated in the liability order as remains outstanding, and an amount to be recovered by the Department in respect of costs arising from making the application for the order.

*Paragraph (8)* stipulates that the court shall require the person against whom it makes an order under this Article to surrender to the court any travel authorisation he holds.

*Paragraph (9)* provides that the court shall forward any travel authorisation it obtains under paragraph (8) to a prescribed person.

*Paragraph (10)* requires the court to send notice of any order it makes under this Article, or of any appeal allowed against such an order, to the Department. The Department may determine the details which such a notice should contain.

*Paragraph (11)* sets out definitions for the purposes of the Article. In particular, travel authorisation means:

- a UK passport (within the meaning of the Immigration Act 1971);
- an ID card issued under the Identity Cards Act 2006 that records that the person to whom it has been issued is a British citizen.

*Paragraph (12)* defines a court, for the purposes of the Article, as a court of summary jurisdiction (with exception relating to appeals).

*Article 36C* concerns the duration of an order made under this Article.



*Paragraph (1) of Article 36C* sets out that the order will specify for how long it will have effect. This period cannot exceed two years.

*Paragraphs (2), (3) and (4)* enable the court to suspend an order in exceptional circumstances on such conditions as it thinks just. It may also suspend an order where the non-resident parent agrees to pay the amount specified in the liability order.

*Paragraph (5)* provides that the Department may make another application for an order disqualifying a person for holding or obtaining a travel authorisation if, when the effective period of the original order has ended, an amount specified in that order remains outstanding.

*Article 36D* provides a power for the court to order a search of a non-resident parent against whom it has made an order to disqualify for holding or obtaining a travel authorisation.

*Paragraph (2) of Article 36D* sets out that during a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount due on the affirmation or revision of the order, and the balance, if any, returned to the non-resident parent.

*Paragraph (3)* prevents the court from taking any money found on the non-resident parent if it was satisfied that it did not belong to the non-resident parent.

Where the non-resident parent makes part payment of the amount stated in the order, *Article 36E* enables the court to either revoke, or reduce the period of, that order.

*Paragraph (2)* states that the court must, on application by the Department or the non-resident parent, revoke the order where the amount specified in the order is paid in full to the person authorised to receive it.

*Paragraph (3)* provides the opportunity for the Department to make representations to the court as to the amounts it will accept before the court should revoke the order. The non-resident parent is also provided with the opportunity to reply to those representations.

*Paragraph (4)* allows the court to either revoke or reduce the period of the order where it has found money during a search of the non-resident parent, and that money is applied to the maintenance outstanding. No application by the Department or the non-resident parent is necessary.

*Paragraph (5)* requires the court to send notice of any order it makes under this Article to the Department. The Department may determine the details which such a notice should contain.

*Article 36F* provides regulation-making powers to the Department with regard to the practicalities and procedure relating to orders to disqualify a non-resident parent for holding or obtaining a travel authorisation. The regulations may also make provision for the implementation of Articles 36C to 36E where the non-

resident parent, against whom the order has been made, is resident outside the United Kingdom.

### ***Section 19: Curfew orders***

*Section 19* inserts nine new *Articles*, 36G, 36H, 36I, 36J, 36K, 36L, 36M, 36N and 36O into the Child Support (Northern Ireland) Order 1991 and provides the Department with a power to apply to a court for a curfew order to be made against a non-resident parent who fails to pay maintenance.

The new *Article 36G* enables the Department to apply to the court for a curfew order against a non-resident parent if:

- it has sought to recover the arrears through the use of the Enforcement of Judgments Office;
- the whole or any part of the arrears remains unpaid; and
- it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

*Paragraph (2)* requires the court to inquire about (in the presence of the non-resident parent against whom the liability order has been made) that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.

*Paragraph (3)* prevents a court, when considering an application for a curfew, from questioning the liability order on which an application for a curfew order has been made, or the original maintenance calculation which is the basis of the liability order.

*Paragraph (4)* prevents the court from making a curfew order, unless it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

*Paragraph (5)* prevents the court from making an order against a person who is under the age of eighteen.

*Paragraph (6)* provides that for the purposes of this Article and *Articles 36H to 36O* the 'court' means a court of summary jurisdiction.

*Article 36H* concerns the duration of a curfew order.

*Paragraph (1)* of *Article 36H* stipulates that a curfew order must be limited to between two and twelve hours in any one day, but may include different periods and different places for different days.

*Paragraphs (2)* and *(3)* require the period of the curfew to be specified in the order, that it not last for more than six months and that it begin on the day the order is made unless otherwise specified.

*Paragraph (4)* ensures that the curfew imposed does not conflict (so far as practicable) with the non-resident parent's religious beliefs or interfere with the times at which they normally work or attend any educational establishment.

*Paragraph (5)* prevents a court from specifying a curfew location outside Northern Ireland.

*Article 36I* provides that where a curfew order has been made, the court shall also make an order requiring the non-resident parent for whom the order has been made, to pay an amount in respect of the costs of the application and the monitoring of the curfew order.

*Paragraph (2) of Article 36I* provides that the powers available for the Department to collect and enforce child support maintenance also apply to the collection and enforcement of the costs incurred by making an order under this Article.

*Article 36J* sets out provisions about the relationship between the amount of maintenance outstanding and the curfew order imposed.

*Paragraph (1) of Article 36J* stipulates that a curfew order will be made in respect of an amount of money which totals both the amount sought to be recovered which remains outstanding, and the costs ordered by the court under *Article 36I* in relation to the application for a curfew order and monitoring compliance with that order.

Where part of the amount in respect of which a curfew order has been made is paid to the person authorised to receive it, *paragraph (2)* allows the court (on application by either the non-resident parent or the Department) discretion to:

- reduce the period the curfew order is in place;
- allow the curfew to start on a day later than the day the order would otherwise begin to run;
- suspend the curfew or extend any existing suspension; or
- revoke the curfew order.

*Paragraph (3)* enables the start date for a curfew, or the ability to suspend it, to be subject to specified conditions.

Where a non-resident parent has paid some of the arrears, *paragraph (4)* allows the Department to make representations to the courts as to which of the powers conferred by *paragraph (2)* should be exercised. The non-resident parent may reply to such representations.

*Paragraph (5)* requires the court (on application by the non-resident parent or the Department) to revoke a curfew order if the whole amount specified in the curfew order has been paid by the non-resident parent to the person authorised to receive it.

*Paragraph (6)* enables the Department to make a further application to the court if by the end of the curfew period the amount specified in the order has not been paid in full.

*Article 36K* provides a power for the court to order the search of a non-resident parent in respect of whom a curfew order has been made.

*Paragraph (2)* of *Article 36K* sets out that during a search, any money found on a non-resident parent shall (unless the court otherwise directs) be taken by the court and put towards the amount specified in the curfew order (the balance, if any, would be returned to the non-resident parent).

*Paragraph (3)* prevents the court from taking any money if it is satisfied that it does not belong to the non-resident parent.

*Paragraph (4)* gives some flexibility to the court enabling it to exercise its powers to reduce, postpone, suspend or revoke the order (under *Article 36J*) without the need for a separate application, where money is found and put towards the amount owed by the non-resident parent.

*Article 36L* sets out the provisions relating to how a curfew will be monitored.

*Paragraph (1)* of *Article 36L* requires the non-resident parent's compliance with a curfew order to be monitored by a person or body specified in the order.

*Paragraph (2)* prevents the court from imposing a curfew order unless:

- it has been notified by the Department that suitable monitoring arrangements are available in the place specified in the order;
- it is satisfied with those arrangements; and
- it has the consent of any third party whose co-operation is necessary for monitoring the curfew order, for example, a landlord who must give permission for a monitoring system to be installed in the home of a non-resident parent.

Where a third party's consent cannot be obtained, *paragraph (3)* enables the court to treat the application for a curfew order as an application for committal to prison.

*Paragraph (4)* provides the Department with regulation-making powers to enable the responsible officer to allow the non-resident parent to be absent from the place specified in the curfew order during the curfew period in certain cases or circumstances, and also the power to set out the requirements which may be imposed in relation to such an absence.

*Article 36M* concerns breaches of curfew orders.

*Paragraph (1)* of *Article 36M* allows the person responsible for monitoring compliance with the curfew order, or the Department, to apply to the court should the non-resident parent not meet the requirements of the curfew order, or subsequent requirements imposed by virtue of *Article 36L(4)*.

*Paragraphs (2) and (3)* require the court to establish (in the presence of the non-resident parent) whether the curfew order has been breached without reasonable excuse, and if it is found to have been, the court can issue a warrant to commit the non-resident parent to prison or extend the period of the curfew order.

*Paragraph (4)* sets out that a warrant for committal to prison shall order that the non-resident parent be imprisoned for the period specified in the warrant but released (unless in custody for a different reason) should they pay the full amount due in respect of the curfew order made.

*Paragraph (5)* provides that a warrant may be directed to such person or persons as the court sees fit.

*Paragraph (6)* provides that where a curfew order is extended because it has been breached, that order cannot be extended for more than six months from the date the extension of the order is made.

*Paragraph (7)* enables the court to release a non-resident parent from prison or reduce their sentence if they pay part of the amount specified in the curfew order, following an application from the Department or the non-resident parent.

Where part of the amount specified in the order is paid, *paragraph (8)* enables the Department to make representations to the court about whether the period specified in the warrant should be either reduced or whether the person imprisoned should be released. It also enables the non-resident parent to respond to those representations.

*Article 36N* prevents a court from making a curfew order against a non-resident parent who is in prison for any reason.

*Paragraphs (2) and (3) of Article 36N* suspend a curfew order if the non-resident parent is committed to prison, and commences it once the suspension is lifted because the non-resident parent is released from prison.

*Article 36O* provides the Department with regulation-making powers regarding the practical procedures relating to curfew orders.

*Paragraph (2) of Article 36O* sets out that the regulations may in particular include provisions relating to the following:

- form and content of a curfew order;
- allowing an application for a curfew order to be renewed if no order is made;
- allowing an employer's written statement as evidence that wages have been paid to a non-resident parent;
- enabling a lay magistrate to issue a summons for a person to appear in court and, where they do not, to issue a warrant for their arrest, or to issue a warrant for arrest without issuing a summons first, to secure a person's presence before it;
- the execution of a warrant for arrest;

- enabling a curfew order to be amended or revoked on application to the courts by the Department or the non-resident parent;
- in relation to any amendment, provision similar to that in *Article 36I* – determining the amount of costs the court can recover from a non-resident parent, *Article 36K* – ordering a search of a non-resident parent, *Articles 36L(2)* and *(3)* – requirement for monitoring arrangements to be in place; and
- how a court of summary jurisdiction exercises its power following part payment under *Articles 36J(2)* and *(3)* and *Article 36M(7)*.

### ***Section 20: Commitment to prison***

Section 20 inserts three new *paragraphs (2A), (2B)* and *(2C)* into Article 37 of the Child Support (Northern Ireland) Order 1991. These provisions will enable the Department to make a separate application to a court of summary jurisdiction to commit a non-resident parent to prison for failure to pay child support maintenance.

The new *paragraph (2A)* enables the Department to apply to a court of summary jurisdiction for the issue of a warrant committing a non-resident parent to prison if:

- it has sought to recover an amount through the use of the Enforcement of Judgments Office;
- the whole or any part of the amount due remains unpaid; and
- it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

New *paragraph (2B)* requires the court to inquire about (in the presence of the non-resident parent against whom the liability order has been made) that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.

New *paragraph (2C)* prevents a court, when considering an application for committal to prison, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.

*Paragraph (2)* of *Section 20* replaces paragraph (10) of Article 37, and provides that the court may order the search of a non-resident parent in respect of whom a commitment to prison order has been made. During a search, any money found on a non-resident parent can be taken by the court and put towards the amount specified in the order (the balance, if any, would be returned to the non-resident parent). The court is prevented from taking money if it is satisfied that it does not belong to the non-resident parent.

### ***Section 21: Disqualification for driving***

*Section 21* amends Article 37A of the Child Support (Northern Ireland) Order 1991, to enable the Department to make a separate application to a court of summary jurisdiction to disqualify a non-resident parent for holding or obtaining a driving licence if they fail to pay child support maintenance.

*Paragraph (A1)* of the revised *Article 37A* enables the Department to apply to a court of summary jurisdiction for an order disqualifying a non-resident parent for holding or obtaining a driving licence if:

- it has sought to recover an amount through the use of the Enforcement of Judgments Office;
- the whole or any part of the amount due remains unpaid; and
- it is of the opinion that the non-resident parent has wilfully refused or culpably neglected to pay maintenance.

*Paragraph (A2)* provides that the court may specify the length of the disqualification order, but that it will not exceed two years.

*Paragraph (A3)* requires the court to inquire about (in the presence of the non-resident parent against whom the liability order has been made) whether that person requires a driving licence to earn a living, that person's means, and whether they have wilfully refused or culpably neglected to pay the child support maintenance for which they are liable.

*Paragraph (A4)* prevents a court, when considering an application made under this section, from questioning the liability order on which an application has been made, or the original maintenance calculation which is the basis of the liability order.

*Paragraph (1)* provides that only if the court finds that there has been wilful refusal or culpable neglect on the part of the non-resident parent, it may make a disqualification order against the non-resident parent, or make such an order but suspend it until such time and on such conditions as it thinks just.

*Paragraph (2)* replaces paragraph (10) of Article 37A, to enable the court to order a search of a non-resident parent in respect of whom a disqualification order has been made. During a search, any money found on a non-resident parent can be taken by the court and put towards the amount specified in the order (the balance, if any, would be returned to the non-resident parent). The court is prevented from taking any money if it is satisfied that it does not belong to the non-resident parent.

### **Debt management powers**

#### ***Section 22: Power to treat liability as satisfied***

This section inserts a new *Article 38C* into the Child Support (Northern Ireland) Order 1991 which provides the Department with regulation-making powers

enabling it to offset liabilities to pay child support maintenance (including arrears) in prescribed circumstances.

*Paragraph (1)(a) of Article 38C* enables the Department to offset liabilities to pay child support maintenance. It is envisaged that offsetting will occur mainly where a child moves from the care of one parent to the other, and therefore the non-resident parent becomes the parent with care and vice versa. If the non-resident parent who becomes the parent with care has built up arrears, some or all of the maintenance liability of the new non-resident parent may be offset against those arrears.

Offsetting may also apply where liability switches from one parent to the other for other reasons, for example, where each parent is caring for one or more children and there is a change in income. Where both parents have arrears these may also be offset against each other.

*Paragraph (1)(b)* enables the Department, in certain circumstances, to accept payments made by the non-resident parent to prescribed third parties as payments against ongoing liability or arrears.

*Paragraph (2)* confirms that offsetting maintenance payments and third party payments as described in paragraph (1) will result in the liability of a non-resident parent being met to the extent that it has been set off.

*Paragraph (3)* applies the offsetting rules only to those cases where the Department is authorised to make arrangements for the collection of the child support maintenance.

### ***Section 23: Power to accept part payment of arrears in full and final satisfaction***

This section inserts new *Article 38D* into the Child Support (Northern Ireland) Order 1991 which enables the Department to accept partial payments of maintenance arrears from a non-resident parent, as full and final settlement of the whole arrears.

*Paragraph (2)* provides regulation-making power to the Department with regard to it exercising its power to accept part payment in satisfaction of the liability.

*Paragraph (3)* provides that the Department may not accept partial payments without the consent of the parent with care unless certain conditions are satisfied.

*Paragraph (4)* sets out the conditions required under paragraph (3). These are that the Department would be entitled to recover the whole of the arrears due under Article 38(2) if it recovered them, and where the Department is not entitled to part of the arrears, that part of the arrears is equal to or less than the payment which it has accepted under paragraph (1).



### ***Section 24: Power to write off arrears***

This section inserts new *Article 38E* into the Child Support (Northern Ireland) Order 1991, enabling the Department to write off arrears in circumstances where it appears to the Department that:

- the circumstances of a case are as specified in regulations made by the Department; and
- it would be unfair or otherwise inappropriate to enforce liability for maintenance arrears (for example, if a parent with care does not wish the arrears to be pursued because of a reconciliation with the non-resident parent).

*Paragraph (2)* of *Article 38E* provides regulation-making powers to the Department with respect to its power to write off arrears.

### ***Section 25: Transfer of arrears***

*Section 25* inserts new *Article 45A* into the Child Support (Northern Ireland) Order 1991, which provides regulation-making powers to the Department, to enable it to enter into arrangements with other organisations under which liability in respect of arrears of child support maintenance becomes debt due to such an organisation.

*Paragraph (2)* of new *Article 45A* prevents the Department from using its enforcing powers in relation to collecting any debt that has been transferred to another organisation, and also ensures that only the transferee organisation will have title to the debt.

*Paragraph (3)* provides that regulations made by the Department under this power must provide that, unless certain conditions apply, the Department may not enter into transfer arrangements without the written consent of the parent with care.

*Paragraph (4)* sets out the conditions required under paragraph (3). These are that the Department would be entitled to retain the whole of the arrears due under *Article 38(2)* if it recovered them, and where the Department is not entitled to part of the arrears, that part of the arrears is equal to or less than the payment transferred under paragraph (1).

*Paragraph (5)* defines a “transfer payment”.

*Paragraph (6)* provides that regulations under paragraph (1) may:

- Specify when arrears would be considered for transfer. The regulations could specify, for example, that arrears could be transferred only if the consent of the person with care has been obtained.
- Specify the type of organisation to which arrears can be transferred. The regulations could, for example, include safeguards to ensure that the organisation is reputable and abides by a professional code of conduct.

- Specify the terms and conditions which the transfer arrangements must include. The regulations may require, for example, that the transfer agreement must provide that the debt cannot be sold on further; and
- Provide that a payment made under that transfer arrangements may be treated as if it were a payment of child support maintenance.

*Paragraph (7)* sets out further that the regulations may include:

- provision as to the means of recovery the organisation to which debt has been transferred is able to use;
- provision that the Department may, in certain circumstances, prevent an organisation to which debt has been transferred from taking steps to recover it. The circumstances could be, for example, that the steps being taken are inappropriate; and
- provision regarding the type of information which the Department may supply to an organisation to which debt has been transferred, for the purposes of recovering the debt.

## **Miscellaneous**

### ***Section 26: Meaning of “child”***

*Section 26* replaces Article 3 of the Child Support (Northern Ireland) Order 1991 to amend the definition of a child. Paragraph (1) of Article 3 increases the potential upper age limit of a child from up to the nineteenth birthday, to up to the twentieth birthday in prescribed circumstances. It is intended that this change will only apply to applications made under the new arrangements once they are introduced.

It is intended that the regulations will operate to re-align the definition of a child with that used in child benefit legislation following the Child Benefit Act 2005. Child Benefit can now be paid up to a person’s twentieth birthday (previously it stopped at the nineteenth birthday) and it is no longer confined to those in full-time non-advanced education, but is also payable for persons undertaking “approved training”.

### ***Section 27: Notification of Change of Address***

This section inserts a new *paragraph (3A)* into *Article 16A* into the Child Support (Northern Ireland) Order 1991, which deals with Information Offences.

*Paragraph (3A)* includes, as someone who is committing an offence, a person who is liable to make payments of child support maintenance who does not notify their change of address to the Department, where regulations require them to do so.

### ***Section 28: Additional special case***

This section inserts a new *sub-paragraph (g)* into Article 39(2) of the Child Support (Northern Ireland) Order 1991.

Article 39 enables the Department to prescribe cases as ‘special cases’ for the purposes of the Order, and subsequently to make regulations concerning those special cases.

New *sub-paragraph (g)* will include as a ‘special case’ the circumstances where two parents of the same children each have care for one or more of those children, and so each parent is both a parent with care and a non-resident parent.

Currently in these circumstances, each parent will be required to make a maintenance payment to the other. The new provision will allow for the offset of maintenance liabilities between the two parents, so that only the parent with the highest liability will actually make a payment.

### ***Section 29: Recovery of arrears from deceased’s estate***

*Section 29* inserts a new *Article 40A* into the Child Support (Northern Ireland) Order 1991, which gives the Department powers to make regulations to enable arrears of child support maintenance to be recovered from the estate of a deceased non-resident parent.

*Paragraph (2)* of new *Article 40A* sets out that regulations made under *paragraph (1)* may provide for:

- the arrears to be paid by the executor or administrator of a deceased non-resident parent out of the non-resident parent’s estate, to the Department;
- how the amount of the arrears to be paid out of the estate is determined; and
- the procedure by which claims for arrears against the deceased non-resident parent’s estate are made.

*Paragraph (3)* states that regulations may also provide for the executor or administrator to institute, continue or withdraw any proceedings. The regulations could, for example, enable the personal representative to exercise a right of appeal that the deceased might have had.

This change will enable the recovery of arrears of child support maintenance from the estate of a deceased non-resident parent where it is appropriate to do so. It is intended that arrears of child support maintenance will be treated in the same way as civil debt, and will be paid before the estate is distributed to the beneficiaries.

Personal representatives will be required to deduct the arrears from the assets of the deceased. They will also have rights to appeal and dispute the arrears demand. Regulations will also make provision for the procedure to be followed in determining the amount of any arrears and for resolving any dispute that arises in relation to a claim against a deceased non-resident parent’s estate.

### ***Section 30: Disclosure of information relating to family proceedings***

*Section 30* inserts new *Articles 45B* and *45C* into the Child Support (Northern Ireland) Order 1991. New *Article 45B* facilitates disclosure of information relating to certain family proceedings which is likely to be relevant to child maintenance functions, in particular the calculation, collection and enforcement of child maintenance by the Department. It enables such disclosure to the Department by the parties to those proceedings, without the risk of those parties being found in contempt of court.

*Paragraph (2)* defines a party to court proceedings, for the purposes of *Article 45B*, as a parent with care or a non-resident parent in relation to a child. Child maintenance must be payable, or an application for maintenance must have been made, and the party concerned must consider that the information which is proposed to be disclosed to the Department is relevant to its functions relating to child support.

*Paragraph (3)* includes a representative as a party to the proceedings, and *paragraph (4)* goes on to define a representative as either a barrister or solicitor instructed to act for the party, or such other person as may be prescribed by regulations.

*Paragraph (5)* allows the court to disapply the *Article* if it so directs. This provision allows the court a final say on whether matters may be disclosed to the Department, but it must have good reason to refuse to allow such disclosure.

*Article 45C* defines “family proceedings” for the purpose of *Article 45B*. Any of the following proceedings commenced after the coming into operation of the *Article* shall fall under the definition of family proceedings:

- proceedings for ancillary relief
- proceedings under section 17 of the Married Woman’s Property Act 1882
- proceedings under either *Article 29* or *37* of the Matrimonial Causes (Northern Ireland) Order 1978
- proceedings under the Domestic Proceedings (Northern Ireland) Order 1980
- proceedings under Part 4 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989
- proceedings under *Articles 11* to *19* of the Family Homes and Domestic Violence (Northern Ireland) Order 1998, and
- proceedings under certain provisions of the Civil Partnership Act 2004.

*Paragraph (2)* further develops the definition of “ancillary relief” as set out in *Article 45C(1)(a)*.

*Paragraphs (3)* and *(4)* allow the Department, with the permission of the Lord Chancellor, to make an amending order to update the definition of “family proceedings” at a future time. However, such an order cannot be made to include

proceedings which have commenced before the day on which Article 45B comes into operation.

*Paragraph (5)* provides certain definitions of provisions which are referred to in Article 45C.

### ***Section 31: Disclosure of information to credit reference agencies***

*Section 31* inserts new *Article 45D* into the Child Support (Northern Ireland) Order 1991 which relates to the disclosure of information to credit reference agencies.

*Article 45D* allows the Department to disclose certain information relating to non-resident parents to credit reference agencies. It will only allow the Department to disclose information relating to a non-resident parent where that person has given their consent to the disclosure or is subject to a liability order. Credit reference agencies will be able to use the information only for the purpose of providing information relevant to the financial standing of individuals.

*Paragraph (2)* of *Article 45D* specifies that the information the Department is able to disclose should meet all of the following criteria:

- the information is held by the Department for any purpose under the Child Support (Northern Ireland) Order 1991;
- it relates to a non-resident parent who is liable to pay child support maintenance; and
- it is of a description specified in regulations.

*Paragraph (4)* provides that regulations made under Article 16(3) of the Child Support (Northern Ireland) Order 1991 may not make provision authorising the supply of information to credit reference agencies. Article 16 concerns the requiring and disclosing of information by the Department. This provision means that if the Department wishes to disclose information to credit reference agencies, it must rely on the provisions in this new paragraph. It cannot circumvent the safeguards provided by using other regulation-making provisions.

*Paragraph (5)* provides that for the purposes of this Article, ‘credit reference agency’ has the same meaning as in the Consumer Credit Act 1974, which is ‘a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals, being information collected by the agency for that purpose’.

### ***Section 32: Pilot schemes***

This section inserts a new *Article 47A* into the Child Support (Northern Ireland) Order 1991, enabling the power to pilot any regulation-making power made under that Order.

*Paragraph (1)* prevents a pilot scheme from lasting more than twenty four months.

*Paragraph (2)* provides that for the purposes of this section, regulations being piloted will be referred to as a ‘pilot scheme’.

*Paragraph (3)* enables a pilot scheme to apply in relation to specific areas, classes of person or persons who meet prescribed criteria, or are selected by sampling.

*Paragraph (4)* enables transitional arrangements to be made where necessary for cases involved in any pilot schemes, when the pilot period ends.

*Paragraph (5)* enables a further pilot to operate under the same or similar circumstances once the initial, or any further, pilot ends.

### ***Section 33: Extinction of liability in respect of interest and fees***

This section provides for the write off of outstanding liability in respect of interest and fees. Regulations under the Child Support (Northern Ireland) Order 1991 made in 1992 introduced changes which meant that interest could be charged on arrears of maintenance, and that fees could be charged to parents using the Department collection service. These regulations were repealed in 2001, and debt which built up as a result of parents not paying interest or fees will be extinguished.

*Paragraph (a)* provides that debt which accrued from interest charged under the Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 will be extinguished.

*Paragraph (b)* provides that debt which resulted from unpaid fees charged to parents under the Child Support Fees Regulations (Northern Ireland) 1993 will be extinguished.

### ***Section 34: Use of information***

This section introduces *Schedule 3* which sets out information sharing gateways. The gateways enable information to be supplied to the Department by the Department for Employment and Learning and Revenue and Customs for the purpose of functions relating to child support. They also enable information held by the Department, for the purposes of functions relating to child support, to be supplied to the Department for Employment and Learning and Revenue and Customs for the purpose of specified functions for each of these Departments.

### ***Section 35: Liable relative provisions: exclusion of parental duty to maintain***

This section replaces subsection (3) and amends subsection (4) of section 100 of the Social Security Administration (Northern Ireland) Act 1992 (“the Administration Act”).

Section 100 provides that it is a criminal offence for a person to persistently refuse or neglect to maintain themselves or a person whom they are liable to maintain, if the result of that refusal or neglect is that income support is payable to or in respect of any of those persons. Section 74(6) of the Administration Act provides that a person is liable to maintain their spouse or civil partner, their children and sponsored immigrants. Section 101 enables the Department to apply to a court of summary jurisdiction to secure the recovery of benefit from a liable person who fails to maintain.

When income-based jobseeker's allowance was introduced in 1996, the extent to which section 101 applied for that benefit was limited to failure to maintain spouses (and later, civil partners) only.

Under Article 9 of the Child Support (Northern Ireland) Order 1991, parents with care in receipt of income support or income-based jobseeker's allowance were treated as having applied for child support maintenance. As a result, action to pursue maintenance for children under section 101, in order to offset income support expenditure, fell into disuse, although it is still available to pursue spousal maintenance.

Since the Act provides for the repeal of Article 9 of the Child Support (Northern Ireland) Order 1991, parents with care claiming income support or income-based jobseeker's allowance will no longer be treated as applying for child support maintenance and will have the freedom to make arrangements outside of the statutory scheme.

Section 100, as it currently stands, would allow the Department to pursue non-resident parents for child support maintenance where the person with care is in receipt of income support. The amendment to section 101 ensures that the legislation is consistent in its approach and allows parents to have a choice.

These amendments will result in a consistent approach to child support maintenance for both income support and income-based jobseeker's allowance.

### **Part 3 - General**

#### ***Section 36: Regulations***

*Section 36* has effect in relation to regulations under this Act.

*Subsection (1)* provides that such regulations may include power to make incidental, consequential, transitional or savings provisions.

*Subsection (3)* provides that regulations made under this Act shall be subject to the negative resolution procedure, with the exception of regulations falling under the subsequent provisions.

*Subsection (4)* provides that any regulations made under section 3(1) or (4) of, or the first regulations under specified paragraphs of Schedule 2 to, this Act shall be laid before the Assembly, and take effect on a date specified in the regulations, but will cease to have effect upon expiration of six months from that date unless

the regulations are approved by resolution of the Assembly before the six month period has elapsed.

*Subsections (5) and (6)* provide that any statutory rule which is subject to the negative resolution procedure, but which contains a regulation which is subject to the confirmatory procedure, shall be subject in its entirety to the confirmatory procedure.

*Subsection (7)* provides that the “confirmatory procedure” is that as set out in subsection (4).

### ***Section 37: General interpretation***

This section sets out definitions for the purposes of the Act. *Subsection (2)* sets out that for the purposes of amendments or repeals, where the Child Support (Northern Ireland) Order 1991 has been amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, for limited purposes only, the amendment will apply to both versions of the Order unless otherwise stated.

### ***Section 38: Minor and consequential amendments***

*Section 38* gives effect to *Schedule 4*, which contains minor and consequential amendments, as a consequence of the measures in the Act.

*Subsection (2)* provides regulation-making powers to the Department to make consequential provisions on this Act in subordinate legislation.

### ***Section 39: Repeals***

This section gives effect to the repeals set out in *Schedule 5*.

### ***Section 40: Transition***

*Subsection (1)* gives the Department power to make regulations modifying the effect of Articles 9 and 43 of the Order before they are repealed. This is to enable changes to be made in preparation for the removal of compulsion for benefit claimants.

*Subsections (2) and (3)* ensure that some of the new provisions which the Act inserts into the Order will apply in relation to cases under the Department ‘old scheme’.

*Subsection (2)* provides that new *Articles 22(5A), 32A, 32E, 32F, 32J, 32L, 32M, 38C to 38E, 40A, 45A, 45B and 45D* of the Order will have effect as if references to child support maintenance included maintenance due under an old scheme assessment.

*Subsection (3)* provides that new *Articles 22(7A), 32A, 32C, 32E, 32F, 32J, 32L, 32M, 36B, 36G, 37, 37A and 45B* of the Order will have effect as if references to maintenance calculations included assessments made under the old scheme.



*Subsection (4)* provides that Articles 35, 36B, 36G, 36J, 37, 37A and 45D of the Order will have effect as if orders made under Article 33 of that Order had been made under Article 32M of that Order. This ensures that any references to the new administrative liability order include an order made by the court before Article 32M comes into operation.

*Subsection (6)* is a general power enabling the Department to make transitional provision or savings in relation to the coming into operation of any provision under this Act.

***Section 41: Commencement***

This Act (except sections 36, 37(1), 40(5), this section and section 42) will come into operation on such day or days as the Department may by order appoint.

*Subsection (2)* provides that an order under subsection (1) may include any transitional or savings provisions necessary to bring any provision of the Act into operation.

*Subsection (3)* provides that an order appointing the day on which section 30 comes into operation may only be made with the permission of the Lord Chancellor.

***Section 42: Short title***

The Act may be cited as the Child Maintenance Act (Northern Ireland) 2008.

***Schedule 1: Changes to the calculation of maintenance***

This schedule amends Part 1 of Schedule 1 to the Child Support (Northern Ireland) Order 1991, and concerns changes to the calculation of maintenance.

The table below summarises the changes

	<b><i>Old Scheme Child Support (Northern Ireland) Order 1991</i></b>	<b><i>New Scheme Child Support, Pensions and Social Security Act (Northern Ireland) 2000</i></b>	<b><i>New arrangements under the Department</i></b>
Income to calculate maintenance	Net income	Net weekly income	Gross weekly income
Obtained from the child's parents or their employer	Obtained from the non-resident parent or their employer	Obtained from information supplied by Revenue and Customs	
Current income	Current income	Income from past periods	

*These notes refer to the Child Maintenance Act (Northern Ireland) 2008 (c.10) which received Royal Assent on 2 July 2008*

	<b><i>Old Scheme Child Support (Northern Ireland) Order 1991</i></b>	<b><i>New Scheme Child Support, Pensions and Social Security Act (Northern Ireland) 2000</i></b>	<b><i>New arrangements under the Department</i></b>
Existing private arrangements	Not taken into account for private arrangements, but taken into account where Department is not empowered to act	Not taken into account for private arrangements, but taken into account where Department is not empowered to act	Certain types of private arrangements will be taken into account for calculating maintenance liability
Basic rate levels	Not part of formula	15 % 1 child 20% 2 children 25% 3 or more children	NRPs earning between £200 and £800 per week (and the first £800 per week for NRPs earning over that amount) 12% 1 child 16% 2 children 19 % 3 or more children
			NRPs earning over £800 per week (rate applies in relation to any amounts over £800 per week) 9% 1 child 12% 2 children 15% 3 or more children
Flat rate maintenance	Not part of formula	£5 per week	£7 per week

*Paragraph 2* replaces reference to ‘net’ weekly income with ‘gross’ wherever it occurs in Part 1 of Schedule 1 to the Child Support (Northern Ireland) Order 1991. This change means that where a calculation of liability is currently based on the net weekly income of a non-resident parent, in the future it will be based on their gross weekly income.

*Paragraph 3* replaces paragraph 2 of Schedule 1, to amend the basic rate of maintenance. Basic rate is a percentage of the non-resident parent's income and the changes will be:

- for one qualifying child – from 15% to 12%;
- for two qualifying children – from 20% to 16%; and
- for three or more qualifying children – from 25% to 19%.

*Sub-paragraph (2)* of paragraph 2 makes provision for a new rate for non-resident parents whose weekly income exceeds £800. The basic rate in these circumstances will be an aggregate of an amount resulting from the percentages above for the first £800, and an amount resulting from the percentages below for earnings over £800:

- for one qualifying child – 9%;
- for two qualifying children – 12%; and
- for three or more qualifying children – 15%.

*Sub-paragraph (3)* amends the percentage rate for non-resident parents who have one or more relevant other children. In these circumstances before the percentages above are applied, gross weekly income shall be reduced by a certain amount. Changes to these amounts will be:

- for one relevant other child – 15% to 12 %;
- for two relevant other children – 20% to 16%; and
- for three or more relevant other children – 25% to 19%.

*Paragraph 4* amends sub-paragraphs 3(3), 4(1) and 7(7) of Schedule 1. The effect of these provisions is to increase the amount of flat rate maintenance paid by non-resident parents in receipt of benefit, or earnings lower than £100 per week, from £5 to £7 per week and apply the same increase to the minimum amount of liability due under the basic or reduced rates.

*Paragraph 5* inserts a new *paragraph 5A* into Schedule 1 to the Child Support (Northern Ireland) Order 1991. It also amends paragraph 1(1) of that schedule, so that paragraph 1(1) is subject the new *paragraph 5A*.

The new *paragraph 5A* will make provision for circumstances where a non-resident parent, in addition to their obligations under the statutory scheme, pays maintenance for a child or children under an existing private arrangement of a prescribed description or court order.

Currently, all children would normally need to be brought into the statutory scheme for them to be accounted for in a maintenance calculation. This change will mean that the Department will consider any children who are subject to certain types of private maintenance arrangements, when calculating a basic or reduced rate maintenance liability under the new arrangements.

*Sub-paragraph (2)* of new *paragraph 5A* sets the weekly rate of child maintenance for cases that fall within *paragraph 5A* at the greater of £7 per week and the amount calculated in accordance with *sub-paragraphs (3) to (5)*.

*Sub-paragraphs (3) to (5)* make provision for the calculation of child support maintenance where the non-resident parent is party to a qualifying private child maintenance arrangement. Liability is calculated as though all the children supported by the non-resident parent, by virtue of a qualifying maintenance arrangement, were subject to the statutory scheme.

*Sub-paragraph (6)* makes provision for the types of arrangement that will be ‘qualifying maintenance arrangements’ for the purposes of *paragraph 5A*.

*Paragraphs 6 to 8* amend paragraphs 7(2), 8(2) and 9 of Schedule 1 to the Order, which allows for a reduction to basic or reduced rate where a shared care arrangement is in place. These changes will allow regulations to provide for a reduction on the basis of an agreement between the parents as to shared care. Regulations can also allow the Department to work on the basis of an assumed pattern of shared care with a corresponding reduction on an interim basis. The intention is to use this where there is an agreement to share care, but no agreement as to the pattern or amount of shared care.

*Paragraph 9* amends paragraph 10 of Schedule 1 to the Child Support (Northern Ireland) Order 1991 to provide that, regulations about the manner in which gross weekly income is determined may provide that gross weekly income may be income from a past period.

This change will mean that where currently weekly income is based on information currently obtained from the non-resident parent, in the future it can be taken directly from information supplied by Revenue and Customs and based on previous income tax years.

*Paragraph 10* increases the maximum amount of weekly income that will be taken into account for calculating maintenance, from £2,000 to £3,000 per week.

### ***Schedule 2: Maintenance calculations: transfer of cases to new rules***

This schedule provides for arrangements to be made with regard to existing cases moving onto the new calculation rules. The Department may require the parties to choose whether to remain in the statutory scheme under the new calculations rules. If they do not, then liability stops accruing under the scheme.

*Paragraph 1* sets out that the Department may require clients on both existing schemes, to choose whether to remain in the statutory scheme.

*Paragraph 2* enables the Department, by regulations, to make provision about the power referred to in *paragraph 1*. The regulations may include, for example, provision about timing, stages and in which order cases will be transferred.

*Paragraph 3* provides regulation-making powers to the Department in relation to how the parties exercise their right to choose whether or not to stay in the statutory scheme, and how they apply to stay within the statutory scheme.

*Paragraph 4* stipulates that where either of the two parents chooses to remain in the statutory scheme, the case will remain in the statutory scheme, even if the other parent wishes to opt out.

*Paragraph 5* sets out the effect of the Department requiring the parties to exercise a choice under *paragraph 1*. If a calculation (or assessment under the old scheme) is in force, then maintenance will stop accruing from a date specified in regulations. If there is an outstanding application for maintenance calculation or assessment, it may be made only in respect of the period up to that date.

*Paragraph 6* provides regulation-making powers to the Department in relation to a person's decision not to leave the statutory scheme. These regulations may include provision about how an application to stay in the statutory scheme is determined, how the Child Support (Northern Ireland) Order 1991 in relation to a maintenance calculation is to apply to such an application, and whether any adjustment is required to the resulting calculation. They may also include provision for treating an existing application as withdrawn where no maintenance calculation or assessment has been made.

*Paragraph 7* sets out definitions for the purposes of moving of cases to the new calculation rules.

### ***Schedule 3: Use of information***

#### **Powers in relation to use of information**

This schedule sets out the gateways for disclosure of information that will be available.

*Paragraph 1* allows information relating to income tax, contributions, tax credits, child benefit or guardian's allowance, held by the Revenue and Customs or a person providing services to Revenue and Customs, to be disclosed to the Department or the Department for Employment and Learning, or to a person providing services to either of those Departments, for purposes relating to child support functions.

*Paragraph 2* allows information relating to child support held by the Department or the Department for Employment and Learning, or by persons supplying services to either of those Departments, to be disclosed to the Revenue and Customs or a person providing services to Revenue and Customs, for the purposes of any of their functions.

### ***Schedule 4: Minor and consequential amendments***

This schedule contains amendments which are minor or consequential on the measures in the Act. In particular the Schedule provides for amendment

to the Child Support (Northern Ireland) Order 1991 and the Social Security Administration (Northern Ireland) Act 1992.

Article 22 of the Child Support (Northern Ireland) Order 1991 is amended to provide for an appeal to the appeal tribunal against the making of a liability order by the Department under the new *Article 32M*. An appeal will lie on limited grounds, that is, that the person has not failed to pay an amount of child support maintenance or that the amount of the liability order exceeds the amount owing. In deciding any appeal against the making of a liability order, the appeal tribunal will not be able to question the maintenance calculation in relation to which the order is made.

Article 46 of the Child Support (Northern Ireland) Order 1991 is amended so that the offence of unauthorised disclosure of information covers members and staff of the Department, employees of those providing services to the Department and those employed in employment of a kind prescribed in regulations. The latter could include, for example, employment with a credit reference agency.

Section 103 of the Social Security Administration (Northern Ireland) Act 1992 is amended to include the definition of a maintenance order. The equivalent definition is currently contained in section 102 of that Act, but the repeal of this section is provided for in *Schedule 4* of the Act.

#### ***Schedule 5: Repeals***

This schedule provides for repeals consequential on the provisions of the Act.