

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Child Support etc.

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.