

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 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gives the Department power to make regulations modifying the effect of Articles 9 and 43 of the Order before they are repealed.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

	<i>Old Scheme Child Support (Northern Ireland) Order 1991</i>	<i>New Scheme Child Support, Pensions and Social Security Act (Northern Ireland) 2000</i>	<i>New arrangements under the Department</i>
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	
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

	<i>Old Scheme Child Support (Northern Ireland) Order 1991</i>	<i>New Scheme Child Support, Pensions and Social Security Act (Northern Ireland) 2000</i>	<i>New arrangements under the Department</i>
			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

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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.