

EXPLANATORY MEMORANDUM TO
THE CHILD SUPPORT (MISCELLANEOUS AMENDMENTS No. 2)
REGULATIONS (NORTHERN IRELAND) 2009

2009 No. 363

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Social Development (“the Department”) to accompany the Child Support (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2009 which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by the Child Support (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. This is a package of miscellaneous amendments to legislation within child support regulations.
- 2.2. The purpose of the regulations is to amend the definition of a ‘child’ in child support regulations to ensure alignment with the eligibility for child benefit. Entitlement to child benefit was amended by the Child Benefit (General) Regulations in April 2006.
- 2.3. The amendments in these regulations will ensure that parents with care of a child or children, in respect of whom child benefit is payable, are eligible to make an application for child maintenance until the child or children are nineteen years of age. Whilst there will be alignment between the regulations, eligibility in respect to child maintenance will continue to relate to children only until their nineteenth birthday.

3. Background

- 3.1. Child maintenance is an amount of money that parents who do not normally live with the children concerned (referred to as the “absent parent” in the old scheme and the “non-resident parent” in the new scheme) pay as a contribution to the upkeep of their children. These are called “qualifying children”.
- 3.2. The body responsible for the delivery of the child maintenance system in Northern Ireland is the Child Maintenance and Enforcement Division (“the Division”). The Division calculates, collects and enforces child maintenance liabilities. A body of child support regulations exists to facilitate the Division’s exercise of its responsibilities.
- 3.3. The Child Support (Northern Ireland) Order (“the 1991 Order”), makes provision for the calculation, collection and enforcement of child maintenance, which is an amount of money that parents who do not normally live with the children concerned pay as a contribution to the upkeep of their children. Child maintenance legislation is focused around

the general principle that all parents take financial responsibility for all of their children.

- 3.4. It has been a long standing policy that a parent with care for a child or children living with them until their nineteenth birthday and who are eligible for child benefit payments can make an application for child maintenance. This simple rule is understood by customers and can be administered effectively.
- 3.5. The qualifying criteria for child benefit were expanded in 2006 by the Child Benefit (General) Regulations 2006. Prior to this the Regulations relating to entitlement to child benefit and those relating to ‘qualifying child’ for child support purposes were broadly consistent.
- 3.6. Amendments were not made to the child support regulations following the expansion of the criteria in Child Benefit in 2006. As a result the established policy and operational practice of accepting eligibility of child benefit in respect of children less than nineteen years old as confirmation that an application for child support could be made can not be fully supported by the relevant legislation for the children to whom the expansion of the child benefit criteria applied.
- 3.7. The amendment to the definition of ‘child’ will restore the position that a person in respect of whom child benefit is payable is also a qualifying child for child maintenance purposes until reaching nineteen years of age as provided for by the 1991 Order.
- 3.8. The Child Maintenance Act (Northern Ireland) 2008 makes provision for a new system of child maintenance which is planned for introduction in 2011. It provides for the extension of child support to children up to twenty years of age. Regulations will, therefore, be further amended at that stage to increase the maximum age of a ‘child’ to the date of their twentieth birthday.
- 3.9. The child support scheme in the 1991 Order was substantially amended by the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (“the 2000 Act”). Some of the amendments are fully in operation, whilst others have so far been brought into operation for the purposes of specified cases only. Effectively, this means there are two schemes.
- 3.10. In this memorandum, the scheme in operation prior to the amendments to the 1991 Order made by the 2000 Act is referred to as “the old scheme”; and the scheme in operation following those amendments is referred to as “the new scheme”. These amendments will be made to regulations governing both the old and new schemes.
- 3.11. Amendments will be made to;

The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 referred to as Maintenance Assessment Procedure Regulations,

The Child Support (Maintenance Calculation Procedure) Regulations (Northern Ireland) 2001 referred to as the Maintenance Calculation Procedure Regulations,

The Child Support (Transitional Provisions) Regulations (Northern Ireland) 2001 referred to as Transitional Provision Regulations, and

The Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992 referred to as Maintenance Arrangements and Jurisdiction Regulations.

- 3.12. The Regulations are amended to provide for situations where a material change in circumstances causes an assessment to cease by virtue of paragraph 16 of Schedule 1 to the Child Support (Northern Ireland) Order 1991 (the Order). The Maintenance Assessment Procedure Regulations are also amended to detail, in specific circumstances that the date from which a decision is superseded is the first day of the maintenance period in which the material change of circumstances occurred.
- 3.13. The amendments to the Maintenance Arrangements and Jurisdiction Regulations are consequential following the amendments to the Maintenance Assessment Procedure.
- 3.14. Transitional provisions for certain maintenance assessments or calculations made on application under Article 7 of the Order, or a supersession decision under Article 19 of the Order that take effect on the date these Regulations come into operation in the specified circumstances.
- 3.15. The Transitional Provision Regulations are amended to ensure that the linking provisions provided for are updated following the amendments to ensure that cases affected by the discrepancies in child support and child benefit legislation do not inadvertently convert from 'old scheme' to 'the new scheme'.

4. Consultation

- 4.1. No consultation has taken place as the regulations re-instate original policy intentions. The need is for the current practice to be regularised quickly to minimise the period for which parents with care are unable to receive child maintenance due to the relevant child support and child benefit legislation being out of alignment.
- 4.2. There is no impact on the private or voluntary sectors and only negligible impact on the public sector.

5. Equality Impact

- 5.1. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and has concluded that the proposals do not have significant implications for equality of opportunity. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

- 6.1. These Regulations do not require a Regulatory Impact Assessment as they do not impose any additional costs or savings on business, charities or voluntary bodies.

7. Financial Implications

7.1. The impact on the public sector is low and is limited to the Department.

8. Section 24 of the Northern Ireland Act 1998

The Department has considered its obligations under section 24 of the Northern Ireland Act 1998. It is the Department's judgment that the Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 2009 are not incompatible with Convention Rights, **are not** incompatible with Community law, do not discriminate against any person or class of person on the ground of religious belief or political opinion and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable

10. Parity or Replicatory Measure

10.1. The Regulations mirror the Great Britain Regulations and are in keeping with the principle of parity between Northern Ireland and Great Britain in child support and social security matters. It is proposed that the Regulations come into operation on 10 November 2009.

11. Additional Information

11.1. Not applicable