



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Child Maintenance Scheme: DSD Briefing

20 September 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Michael Copeland
Mr Mark Durkan
Mr Alex Easton
Mr Fra McCann
Mr David McClarty
Mr Alastair Ross

Witnesses:

Mr Maurice Byrne	Department for Social Development
Ms Jane Corderoy	Department for Social Development

The Chairperson: This morning, we have Jane Corderoy and Maurice Byrne from the Department for Social Development (DSD). You are both very welcome. I remind members that we will be considering five items of proposed subordinate legislation today. Jane and Maurice, I will leave it to you as to who wants to kick off, and we will then go through each item.

Ms Jane Corderoy (Department for Social Development): Mr Chairman, thank you very much for the opportunity to brief the Committee today on the package of regulations that we are required to implement for the new child maintenance scheme, as provided for by the Child Maintenance Act (Northern Ireland) 2008. Anne McCleary sends her apologies for not being able to make it today. I am relatively new to DSD. My colleague Maurice Byrne and I are happy to take your comments or questions.

The Chairperson: Is Maurice not so relatively new?

Ms Corderoy: No, he is not.

Mr Durkan: You make him sound relatively old.

Ms Corderoy: If the Chair is content, I will provide a short summary of the policy background to the new child maintenance scheme, give a bit of information on the timescale and then detail the regulations. We will then take any questions.

The Chairperson: Thank you.

Ms Corderoy: Child maintenance legislation is based on the general principle that all parents should take financial responsibility for all their children. The main objective is to maximise a number of effective maintenance arrangements for children who live apart from one or both of their parents. As the Committee will be aware, the statutory child maintenance scheme has been in operation since 1993 and was established by the Child Support (Northern Ireland) Order 1991. A further scheme was introduced for applications received after March 2003, and it operates alongside the original one. So, at present, two separate child maintenance schemes are in operation. The current scheme introduced a simpler method of calculating maintenance, and it was intended that the old scheme cases would be converted to the new scheme. However, that did not happen because of major IT problems.

In 2006, Sir David Henshaw reviewed the entire system of child maintenance. His report proposed significant changes to the administration of child support and recommended a clean break to create a new system for child maintenance arrangements. A subsequent White Paper in 2006 endorsed the promotion of parental responsibility by encouraging and empowering parents to make their own child maintenance arrangements wherever possible, along with firm action to enforce non-payment of maintenance for those within the statutory system. Those proposals led to the 2008 Act, which provided for a completely new system of child maintenance to replace the two existing schemes. It also broadened the Department's remit to include the promotion of financial responsibility among parents and the provision of information and support to help parents to put in place effective maintenance arrangements.

The 2010 Green Paper from the coalition Government built on that and proposed a set of reforms to rebalance child maintenance. I know that the Committee is scheduled to hear from our colleagues in the child maintenance enforcement division in November, but I do not think that I will pre-empt that session if I cover the key policy aims behind the reforms. The current child maintenance systems need to change, as they are not fit for purpose. We place too much emphasis on the state determining financial support and not enough emphasis on supporting separated and separating families to reach their own arrangements. The reforms aim to rebalance child maintenance policy to support parents to work collaboratively. Family based arrangements will always be the best option for children, and research shows that children who receive support from both parents throughout their childhood enjoy better outcomes in later life. The reform programme seeks collaboration between parents in the interests of their children first, with the aim of encouraging co-operation between parents through support and the maximising of maintenance flowing to children.

It is planned to introduce the new scheme on a gradual phased basis from 29 October 2012. It will start with applicants with four or more children, then applicants with two or more children, and from 29 April 2013, the new scheme will apply to all new applications. The phased implementation of the new scheme will be provided for by a series of commencement orders, which will bring provisions of the 2008 Act into operation, in so far as they apply to particular cases.

The 2008 Act also provided for the charging of fees by the Department. However, the introduction of the new scheme does not now include the imposition of charges. Consultation on a GB command paper on proposals for charging is ongoing and will not end until 26 October. I think that we will come back to talk to the Committee about what is in the command paper before then. The extent to which charging will be introduced in Northern Ireland is still under consideration. Therefore, I do not intend to discuss that today. Subject to any decision by the Minister, any proposals will be subject to a separate statutory rule and the confirmatory procedure in the Assembly, so they would come back to the Committee at that point.

The Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 are the main regulations, and they set out the rules and procedures for the new scheme, including how child maintenance will be calculated. Under the new scheme, the majority of maintenance calculations will be based, where possible, on the non-resident parent's latest tax year gross income, as provided by Her Majesty's Revenue and Customs (HMRC). Assessments will, therefore, be based on actual income rather than on the information that parents choose to disclose about their income. It should ensure a faster and fairer child maintenance system.

Maintenance calculations will be reviewed annually using the most recent income information provided by HMRC. This means that calculations will be more cost-effective, with fewer manual in-year changes being required. It will also ensure that they remain fair and accurate. Using income information provided by HMRC, via an automated system request, will ensure that maintenance payments are reviewed and kept up to date, instead of being set and possibly sitting untouched for

many years. The intention is that this will make it easier for parents to budget, giving them greater financial security and promoting financial responsibility. Currently, cases are reviewed only when a parent contacts the Department to report a change in circumstances, which means that some cases have not been reviewed for many years.

In-year income changes to the calculation will not be made unless the non-resident parent's gross income changes by at least 25%. That is to reduce the disruption to maintenance liabilities that can arise when frequent and small changes of income have to be considered.

It is envisaged that, apart from major changes, such as the addition of another child or the loss or gaining of employment, the maintenance liability will remain largely stable throughout the year, giving parents certainty about what they should expect to pay or receive. Students with a gross weekly income will no longer be exempt from paying child maintenance. However, I assure the Committee that a student who does not work or has no taxable income will still have a nil assessment. An assumption of shared care equivalent to one night a week will be made if parents agree in principle that there is shared care but cannot agree on the number of nights. That will remove a difficult area of decision-making, which has often resulted in cases remaining undecided indefinitely while awaiting agreement between parents. Parents who share the care of their children to exactly the same extent, a 50:50 split, will no longer be required to pay maintenance through the statutory scheme. We think that this will result in parents being treated fairly.

The regulations also provide for changes to the types of variations that parents with care can claim. Income information will be obtained from HMRC, so parents with care will no longer be required to provide evidence to support an application for a variation of a maintenance calculation. The intention is that the grounds available to parents with care will focus on capturing a non-resident parent's actual unearned income, such as income from property, savings and investment declared to customs, rather than using any form of notional income, which is what it is at the moment.

To encourage parents to make their own maintenance arrangements, children supported outside the statutory scheme through a family based arrangement, court order or under child maintenance schemes abroad will be acknowledged in the same way as qualifying children within the maintenance calculation. In such cases, non-resident parents will be required to provide evidence of the formal or informal agreement.

To make the scheme simpler to administer and easier for claimants to understand how maintenance liability is calculated, these regulations will simplify the effective dates of liability. The Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations (Northern Ireland) 2012 change the way in which the basic rate of child maintenance is calculated by reducing the percentage by which the non-resident parent's gross income is reduced to take account of relevant other children, that is, children usually living in the non-resident parent's household. We set the minimum amount of liability where the non-resident parent is party to another maintenance agreement. First, regulations reduce the percentage levels for children in the current household of non-resident parents from the current levels, which are 12% for one child, 16% for two and 19% for three or more children, to 11%, 14% and 16% respectively. The intention is to make a more equal allowance for children in first and second families.

Secondly, the regulations will maintain a £5 weekly flat rate of child maintenance payable by a non-resident parent whose gross weekly income is more than £5 but less than £100 a week or who is in receipt of certain benefits.

The Child Support (Management of Payments and Arrears) (Write Off and Part Payment in Full and Final Satisfaction) (Amendment) Regulations (Northern Ireland) 2012 do not represent a significant change in policy but are being proposed to aid in the resolution of a minority of cases in which it is unlikely that the full amount of arrears will ever be collected.

The regulations provide for the writing off of arrears for certain limited circumstances. They provide a realistic approach to the collection of arrears and help to prevent historical debt from moving to the new statutory scheme. This will help to alleviate some of the problems that occurred with the introduction of the 2003 child maintenance scheme. We believe that these regulations will not undermine the determination of the child maintenance and enforcement division (CMED) to pursue parents who refuse to live up to their responsibilities. Rather, they will mark the start of a realistic approach to the collection of arrears.

The Child Support (Great Britain Reciprocal Arrangements) (Amendment) Regulations (Northern Ireland) 2012 give effect to technical amendments to the child support reciprocal arrangements between GB and us. Currently, if one parent of a qualifying child lives in Great Britain and the other lives in Northern Ireland, the case will be administered by the jurisdiction in which the parent with care lives. These regulations will amend the reciprocal arrangements so that the case will be administered by the jurisdiction in which the non-resident parent resides. This will enable improved administration and client service, and it will reflect the fact that, after initial application, most case activity focuses on the non-resident parent and his or her circumstances.

Finally, the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2012 make technical amendments to a number of statutory rules — I will not list all the changes, which I think are detailed in the letter to the Committee Clerk. These regulations make amendments that are consequential on or connected with the substitution of the definition of child in the 1991 order and the changes to the rules for the calculation of child support maintenance provided for by the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012. Essentially, the change extends the upper age limit of the meaning of child to now include children up to and including 19-year-olds in specified circumstances. They also make saving and transitional provision to provide that the Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 continue to apply for the purposes of arrears-only cases, existing deduction from earnings orders and for the purpose of any appeal against an order made under those regulations. Essentially, it means that there can be continued recovery of payments from old schemes within the new scheme.

In conclusion, the new scheme is focused on simplifying the statutory child support scheme; improving service to clients; reducing costs to the taxpayer; and increasing the flow of child maintenance to children.

We are happy to take any questions or comments.

Mr Copeland: Thank you. If any area of the benefit system requires attention, it is certainly be child maintenance.

May I ask about two specific points that you may or may not be fit to answer today? If you are not, perhaps you would direct us to where we can get answers. As I understand, there have been, for service personnel, separate arrangements for the way in which that money is collected. I have a number of constituency cases in which mothers with children here had very great difficulty with the relationship between CMED and the military, navy or air force. The differences in the way in which that was done made those cases particularly difficult. I am curious about whether those difficulties have been addressed in any of the proposed changes.

Secondly, although I think that this may be covered, there were instances of people with incomes in excess of £40,000 paying themselves a minimum wage, and, in one case, getting tax credits while taking directors' drawings of £27,000. The directors' drawings were not considered as income for the purposes of child support. I am curious about whether that loophole, if that is what it is, has been attended to.

Mr Maurice Byrne (Department for Social Development): First, in answer to your question about members of the forces, under the reciprocal arrangements regulations, members of the forces are treated as resident. They are employed and paid in the UK, so they are treated as being resident in the UK for the purposes of child maintenance.

Mr Copeland: Is that the theory or the practice?

Mr M Byrne: That is what happens, as far as I know, so the parent in care should be able to pursue maintenance in the normal manner through the child maintenance and enforcement division.

Mr Copeland: Currently or post these changes?

Mr M Byrne: In both systems.

Ms Corderoy: In the new scheme, that loophole has been addressed. I cannot find the right words, but it is the same as the way in which the special circumstances for students have been lifted.

Mr Copeland: That would be welcomed, although maybe not by the servicemen.

Ms Corderoy: I think that the cases of directors claiming tax credits will go through HMRC, as the calculation is supposed to be based on actual income. Certainly, if people are not paying the right tax, HMRC will be very interested in that as well.

Mr Copeland: Directors' drawings involve a very peculiar mechanism that enables people, in certain cases, to draw funds.

Mr M Byrne: Is that regarded as taxable income?

Mr Copeland: No, it is not.

Mr M Byrne: Under the new scheme, as Jane said, the calculation will be largely based on information on taxable income provided by HMRC, which will have accepted that a person earns x pounds unless there is concrete evidence to suggest otherwise. I do not know whether the Department would be able to tell us more about that.

Ms Corderoy: Parents with care who know that what they are getting does not reflect what the non-resident parent earns have the opportunity to apply for a variation, at which point they can provide evidence and their cases can be looked at again.

Mr Copeland: They tried that under the current scheme, and it just could not be done because of the legislation. For some reason, the child maintenance and enforcement division seemed very willing to be confined by the current legislation. It was almost as if it was afraid to interpret it in any way, which is probably a good thing, but it gave rise to the notion that law was presiding over justice. I can give you the specific details of that case at some stage and maybe get your interpretation of it. It was very interesting, particularly the tax credits part.

Mr Brady: Thanks for the presentation. The big problem has been the IT system. Are you confident that it will be fit for purpose?

Ms Corderoy: They have put an awful lot of work into it.

Mr Brady: As they did the last time.

Ms Corderoy: Our Department and the Department for Work and Pensions have always said that the new scheme is intended to be introduced on 29 October through a phased pathfinder approach. The intention is that if there are any problems, we can iron them out before they start affecting everybody, and there is the opportunity to do that. We are also very clear that if the new system is not up and working, we will delay the implementation of other aspects of it.

Mr Brady: Good luck.

Ms Corderoy: Thank you.

The Chairperson: Do members have any other questions or queries?

Mr Durkan: Thank you for your presentation, Jane, which you gave like a seasoned veteran.

I welcome the move to tie in with HMRC. It is commonsensical, and I do not know why it did not happen earlier. I welcome the fact that it will lead to more regular reviews and help to monitor changes in people's circumstances. I would say that the rationale behind that is that they expect people's circumstances to change upwardly. However, I welcome the fact that, should someone have irregular hours or shifts that change from month to month, meaning that their income drops as a result, that will be flagged up so that he or she will not be charged the original rate. I hope that, at the same time as this will improve the Department's capacity to collect arrears from a non-resident parent, it will improve the Department's ability to make amends or give reparation to a non-resident parent who has overpaid child support.

Mr M Byrne: If the income of the non-resident parent changes by more than 25%, the new scheme provides for that to be implemented there and then. The other thing is that there will be annual reviews so that the assessment can be based on the most up-to-date information. It will be looked at regularly, rather than, as the case is now, only on request of either parent. Some cases have gone for years without being changed in either parent's favour.

Mr Durkan: Once they have gone on that long —

Mr M Byrne: Once they have gone on that long, it is harder to catch up. The new scheme provides that if there has been no change within a year, there will be a review when the year is up, and the assessment will, should the circumstances allow, be changed.

Ms Corderoy: The 25% tolerance that we talked about is intended to address the issue that you raised, Mr Durkan, so that CMED does not spending all its time on recalculations because someone's pay changes week by week. If someone loses their job, has their hours cut significantly, or has another child, it will reflect that significant change.

Ms P Bradley: My first question is pretty much the same as Mark's final one. I was one of those parents with care and was involved with the Child Support Agency for between six and eight years. It took about four years before I got any money. I was married to a person in the forces, and that was a major problem. My money did not change from the first order until the very last one. It was the same amount, even though I knew that my husband had been promoted about five times during that period. Will that be looked at periodically?

Mr M Byrne: That is the intention.

Ms P Bradley: As a parent, I did not want to have anything to do with it. I could not be bothered because of the hoops that I had to jump through, and I did not see why, as the parent with care, I should have been the one jumping through the hoops. That system failed parents with care. It did not help in any great shape or form. The fact that I received that meagre amount every month knocked me out of everything else, so it was hardly worth my while, never mind the questions that I was asked and what I had to go through. I am so glad that we have finally taken that on board and will introduce changes to make a difference, because there is no doubt that it was a failed service.

Mr M Byrne: The failures of the past prompted the change.

The Chairperson: I have two points. I presume that it is good that there will be a routine annual review. In the past, parents with care were accused of "going to maintenance" by non-resident parents, which caused problems. An automatic annual review will, I assume, prevent that.

I want to ask about tax. When you get the information from the tax office, will that be a real-time assessment? I am interested in the 25% variation. You are saying that the determination of CMED will not change if the variation is within 25%. What happens if a person's income drops by 25%? That may be a considerable amount to somebody on a low income. Will that person still be required to pay the higher amount?

Mr M Byrne: If there is a change of 25% either up or down, the assessment will be looked at mid-year.

Ms Corderoy: It is in real time-specific. It will look at the previous year's tax.

The Chairperson: I am trying to work out the 25% variation.

Mr F McCann: For talk's sake, the change could be 23% or 24% through the year and, over that year, somebody might not have paid enough or may have paid too much. Will they have to pay the difference?

Mr M Byrne: To make decision-making more straightforward, the review will take place annually. Any change in the assessment will take place from that date, rather than trying to work back. It could work in both parents' favour to make the decision-making simpler and quicker, and the intention is that the new assessment will take place from the date on which the change is reported or the review conducted.

The Chairperson: I am sorry, but I am not getting this: what happens if there is a variation of 25% up or down?

Mr M Byrne: If there is a variation of 25%, the review of the assessment will take place when that change is brought to the attention of CMED.

The Chairperson: Does that not happen if the variation is below 25%?

Mr M Byrne: No.

The Chairperson: That is my point. If someone's income goes down by 25%, he or she still has to pay the same amount as before.

Mr M Byrne: If income goes down by less than 25%, people will probably still have to pay according to the assessment that was made. The review will take place in-year only if there is a change of 25% or more in income.

The Chairperson: Is that not a difficult threshold that could force someone into arrears?

Mr M Byrne: No matter where you draw the line, there will be winners and losers.

The Chairperson: That 25% could, on the face of it, be quite a bit of money. If somebody's wages go down 25%, they may still be expected to pay what they were assessed at. In other words, you might earn £100 a week and be assessed as having to pay x pounds. However, if you drop down to £75 a week, do you still have to pay the amount at which you were assessed when earning £100?

Ms Corderoy: No, if your income increases or drops by 25% or more, the amount will be changed. The concern is when somebody's income varies by 5% or 10%, because that is not within the 25% and so the assessment will change. This is designed to reflect a significant change. We think of it in this way: if someone who has been working five days a week has their hours cut so that they are working a four-day week, that is a significant change in their income. That would be reflected in their child maintenance liability agreement. However, if someone is working on a shift pattern and their income drops by only 10%, 5% or 1%, that change will not be caught.

The Chairperson: Do you not think that 25% will be seen, by most people, as a significant amount?

Ms Corderoy: We understand that, yes.

The Chairperson: So I suggest that it would be better to make the cut-off 15% or 10%. I throw that out only because 25% seems quite a variation.

Mr Durkan: It is very significant.

Ms P Bradley: However, I suppose that whatever is done on one side must be done on the other. People will, for example, receive incremental pay rises. If the cut-off point was lower than 25%, CMED could be constantly recalculating.

Mr M Byrne: I suppose that you have to draw a line somewhere. No matter where that line is drawn, there will be some winners and others who fall just outside it. If the cut-off point was set at 15%, those who suffer a 14% drop in their income would lose out. The 25% figure tries to strike a fair balance so that numerous assessments will not have to be made throughout the year.

Ms Corderoy: At the moment, a variation of even 1% leads to a reassessment and recalculation. A huge amount of time and resources are, therefore, spent doing that. A 25% cut-off point means that, for both the parent with care and the non-resident parent, there is some predictability about how much they will have to pay, as the amount will not change regularly throughout the year.

Mr Copeland: It is difficult for me to put this question in a way that you will understand it, never mind allow you to give me an answer. People on benefits may have a liability of, say, £5. There is

something called "permitted work" within the employment and support allowance (ESA), whereby someone in the support group can work, until the end of time, for £99 and some odd pence, as long as they do not work for 16 hours or more. Will a contingently increased liability be placed on them? The amount of £5 is on the basis of someone being on benefits, but they may also be in paid employment. Does the fact that their paid employment is below the tax threshold mean that the parent without care would derive the benefit from doing that work, which is what it is designed to do? Do you follow me?

Mr M Byrne: I see what you are getting at.

Mr Copeland: ESA permits two types of employment: those in the support group are allowed to earn £99 and fifty-something pence a week for ever; in the non-support group, people are allowed to work for no more than 16 hours a week and earn up to about £99 a week for 52 weeks. So above the benefit income on which that amount of £5 is based there could be income designed to get people back to work.

Mr M Byrne: The flat rate maintenance, in addition to applying to people on certain benefits, applies to people on low incomes, so they would probably still fall into the low-income category.

Ms Corderoy: It applies if they earn less than £100 per week.

Mr Copeland: So it is earned, as opposed to income?

Ms Corderoy: No, it is income. I think that the intention is that if someone who is on benefits and paying the £5 a week minimum is offered a job, it does not discourage them from taking up employment because they think that the maintenance that they will have to pay will increase.

Mr Copeland: Will it increase?

Ms Corderoy: It should not. That is why the level is set at £5: it is supposed to narrow the margin between getting that flat rate maintenance when on benefits and having the opportunity to work.

Mr Copeland: Is the £100 a week made up of combined benefit income and/or permitted work?

Mr M Byrne: I think that the flat rate maintenance applies beyond £100 for people who are earning.

Mr Copeland: You think that it does?

Mr Brady: May I come in on that?

Mr Copeland: Can you help me?

Mr Brady: If you are on contributory ESA, your permitted earnings do not affect your contributory benefit. If you are on income-based ESA, anything that you earn over a fiver, or whatever, will be taken off you anyway. Under welfare reform, contributory ESA will last for only a year, regardless of how much someone has paid in contributions. It will affect fewer and fewer people, so I do not see that as a huge difficulty.

Mr Copeland: Again, that was a specific case, in case you were wondering.

The Chairperson: As members have no further points, thank you, Maurice and Jane, for your presentation and for answering our questions.