

**EXPLANATORY MEMORANDUM TO**  
**THE CHILD SUPPORT (DEDUCTION FROM EARNINGS ORDERS)**  
**(AMENDMENT AND MODIFICATION) AND (MISCELLANEOUS**  
**AMENDMENTS) REGULATIONS 2016**

**2016 No. 982**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department of Work and Pension and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument introduces minor technical amendments to existing rules governing Deduction from Earnings Orders (DEOs) to support the on-going Child Support Agency (CSA) case closure program.
- 2.2 This instrument also amends the length of the notice period the Secretary of State is required to give to CSA clients when he is writing to notify them that their case will close.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 There are currently three child support maintenance schemes in place; the 1993 scheme and 2003 scheme (collectively known as the 'legacy schemes') and the 2012 scheme. The process of closing down all existing legacy scheme cases began in June 2014. The 'Ending Liability Scheme'<sup>1</sup> sets out the approach to the case closure process, including the order in which legacy scheme cases will be selected for closure and how much notice must be given to clients of the date on which liability will end on their case.
- 4.2 In all three child support maintenance schemes the Secretary of State can specify that a DEO<sup>2</sup> (an administrative order instructing employers to deduct money directly from a non-resident parent's (NRP's) earnings) will be put in place for the purpose of collecting on-going maintenance and arrears owed under section 31 of the Child Support Act 1991.<sup>3</sup>

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/399522/child-maintenance-ending-liability-scheme-17-dec-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399522/child-maintenance-ending-liability-scheme-17-dec-2014.pdf)

<sup>2</sup> The rules governing these orders are set out in the Child Maintenance (Collection and Enforcement) Regulations 1992

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted>

- 4.3 In the 2012 scheme DEOs are administered under a different set of rules to DEOs on the legacy schemes.<sup>4</sup> This is because on the 2012 scheme the amount of money owed for child maintenance is calculated using information about the NRPs gross income<sup>5</sup>, and not their net income.
- 4.4 This instrument amends and modifies the Child Maintenance (Collection and Enforcement) Regulations 1992 and amends the Child Support (Meaning of Child and New Calculation Rules)(Consequential and Miscellaneous Amendment) Regulations 2012<sup>6</sup> to ensure that the rules relating to DEOs operate as described in section 7 below for the purpose of case closure, including a process which will require non-resident parents with a poor history of compliance to demonstrate a change of behaviour. This is known as a ‘compliance opportunity’. The aim of the compliance opportunity is to minimise payment disruption by ensuring that if these clients apply to the new 2012 scheme their cases are managed appropriately.
- 4.5 This instrument relates to the Child Support (Fees and Deduction Orders) (Amendments and Modifications) Regulation 2016<sup>7</sup> as both make temporary amendments and modifications needed in order to implement the compliance opportunity.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 In June 2014 the Department began its programme of ending NRP liabilities on all existing cases in the legacy schemes following the introduction of the new 2012 scheme, administered by the Child Maintenance Service (‘CMS’). When a liability ends in a legacy scheme case no further maintenance accrues on the case.
- 7.2 The instrument allows the Secretary of State to discharge a DEO where liability has ceased to accrue because it has been closed as part of the case closure process. This is to ensure orders are not left in place when they are no longer required.
- 7.3 Liabilities in legacy schemes cases are being ended in five phases or ‘segments’ based on case characteristics. To ensure payment disruption is minimised, liabilities will be ended first in cases where no money is flowing while cases where an enforced method of payment is in place, or wider enforcement action is being undertaken, will be ended last. As of April 2015 there were 119,000 cases in this final segment, 50% (59,500) of

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<sup>4</sup> The Child Maintenance (Collection and Enforcement) Regulations 1992 as modified by the Child Support (Meaning of Child and New Calculation Rules) (Consequential and Miscellaneous Amendments) Regulations 2012 - <http://www.legislation.gov.uk/ukxi/1992/1989>

<sup>5</sup> in accordance with Part 1 of Schedule 1 to the Child Support Act 1991 as amended by paragraph 2 of Schedule 4 of the Child Maintenance and Other Payments Act 2008 -<http://www.legislation.gov.uk/ukpga/2008/6/schedule/4>

<sup>6</sup> <http://www.legislation.gov.uk/ukxi/2012/2785/contents>

<sup>7</sup> <http://www.legislation.gov.uk/ukxi/2016/439/contents/made>

which are expected to apply to the 2012 scheme.<sup>8</sup> These are known as ‘segment 5’ cases.

- 7.4 Where a case is closed on one of the legacy schemes, the parties have a choice as to whether to make their own maintenance arrangements free of state intervention or enter into a statutory arrangement. If a statutory arrangement is made the parties must choose between two ‘service types’: a ‘Direct Pay’ arrangement (whereby the CMS prepares a calculation of maintenance due and leaves the parties to arrange payment between themselves); or an arrangement whereby the Secretary of State collects and enforces payment of maintenance. Where the Secretary of State collects and enforces payment (‘Collect and Pay’), collection fees are payable by both parties.
- 7.5 A compliance opportunity will be offered to those segment 5 clients who choose to apply to the 2012 scheme, do so before liability ends on their old case and cannot agree on a service type at the point of application. The compliance opportunity will allow the NRP to demonstrate compliant behaviour by making voluntary payments towards their child maintenance liability. The outcome will inform a decision over which of the two service types the case will be administered on should the parties not agree between themselves.
- 7.6 The policy objectives of the parent Act are to ensure that NRPs fulfil their obligations to provide financial support to their children. Providing evidence to inform a decision about which service type to apply to a case ensures that cases are managed appropriately. This minimises the risk of payment disruption and maximising the collection of child maintenance while ensuring that clients need only pay fees when it is absolutely necessary.
- 7.7 The compliance opportunity will take place over the first 6 months of the new 2012 scheme case. Over this period the NRP will be expected to make regular voluntary payments on time and in full to an agreed schedule. For the majority of cases these payments will amount to 50% of the total regular liability, with the remaining 50% being collected by a DEO as a means of payment safeguard.
- 7.8 This instrument also introduces changes to enable a DEO to be put in place as a payment safeguard during the compliance opportunity. These changes mean that where the Secretary of State specifies that a portion of child maintenance payable will be collected by a voluntary method of payment the rest can be collected by a DEO during this period. Payments collected by a DEO need not be made by equal instalments and the Secretary of State may discharge the order at the end of the compliance opportunity if all the payments due have been made and discharging the order would be reasonable in the circumstances of the case.
- 7.9 A further related amendment removes the requirement for the Secretary of State to consider the ‘good reasons’ not to impose a DEO as a method of payment and the requirement to make regulations to this effect as specified in s29(4)-(7) of the Child Support Act 1991<sup>9</sup> as well as the associated right of appeal. This only applies to segment 5 cases and is intended to ensure that the compliance opportunity can be set up promptly.
- 7.10 Where liability stops accruing on a legacy case there may be arrears in place. These continue to be owed and will be checked to ensure that the arrears balance is stable. Once this is completed the arrears amount will be transferred to the 2012 scheme

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<sup>8</sup> This is based on internal planning assumptions.

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/1991/48/contents/enacted>

computer system. This is known as ‘financial transition’ and this instrument requires that the notice sent to the non-resident parent when arrangements for collection are made should include the amount of any legacy scheme arrears that have been moved to the 2012 scheme as part of financial transition.

- 7.11 If a DEO in a legacy case was in place at the point that liability stopped accruing it will continue to collect any arrears that are owed until the point of financial transition, at which point the order will be discharged. Powers introduced under this instrument will ensure that these DEOs will continue to operate under legacy scheme rules during this period.
- 7.12 Where the Secretary of State wishes to end the liability on a legacy scheme case for the purpose of case closure he must give the parties notice of this in writing. The Ending Liability Scheme, made under ‘the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014’,<sup>10</sup> requires that this notice must be given no less than 180 days and no more than 272 days before the liability end date. This instrument amends this so notice is given no less than 180 days but no more than 200 days before the liability end date. Under a previous proposal the intention was that a compliance opportunity would be offered to all segment 5 clients as part of their case closure journey, regardless of whether they intended to apply to the 2012 scheme or not. This would have required a 9 month (272 day) case closure journey for these clients, rather than the 6 month (200 day) journey all other clients received. Under our new proposal segment 5 clients will not need an extended case closure journey so we are reducing the notice period to reflect this.
- 7.13 The powers described in paragraphs 7.2, 7.8 and 7.9 are only required to support the case closure process and the compliance opportunity, both of which are events which take place over a fixed period of time. As such the powers under these regulations will lapse on the 19 June 2021.

#### *Consolidation*

- 7.14 Informal consolidated text of instruments is available to the public free of charge via [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **8. Consultation outcome**

- 8.1 The proposal to deliver the compliance opportunity on the 2012 scheme was subject to consultation via two stakeholder workshops. A broad range of stakeholders were invited representing the interests of those directly affected by the proposal - namely PWCs, NRPs and children. Consulting via workshops allowed for a meaningful discussion with groups that understand the complexity of the child maintenance system and are better equipped to understand in full the impact of any change, and to argue persuasively in the interests of their clients.
- 8.2 Stakeholders were broadly supportive of the proposal, understanding both why we were offering the compliance opportunity and agreeing with the intent. The key issues discussed were the approach to clients on benefits and how to handle exceptional circumstances. The Department modified its approach to handling clients on benefits in light of the concerns raised. Further information is set out in the

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<sup>10</sup> <http://www.legislation.gov.uk/uksi/2014/614/contents/made>

## **9. Guidance**

- 9.1 The Department is continuing to work to ensure that its clients, employees and stakeholders are fully informed of the changes arising from the introduction of these powers. Information specific to changes that support the compliance opportunity will be included in employer outreach work which is scheduled to take place in late 2016, in advance of when the first compliance opportunities will begin.

## **10. Impact**

- 10.1 An impact assessment setting out the impacts on business has been produced and estimates the cost arising from administering DEOs during the compliance opportunity will be around £0.02m over a three year period. No impact is foreseen on civil society and voluntary organisations.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment is submitted with this memorandum which covers the compliance opportunity policy and will be published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 Small businesses (employing up to 50 people) are not exempt from the requirement to administer DEOs during the compliance opportunity. A total or partial exemption would mean that those clients working for small employers would not have access to a compliance opportunity. This would increase the risk of payment disruption in these cases which runs contrary to the policy intent and also introduces differential treatment between clients.
- 11.3 The costs imposed under the compliance opportunity proposal are both short term and ‘one-off’ as the compliance opportunity will only occur once in the life of the case. It would therefore, be disproportionate to exclude small businesses.

## **12. Monitoring & review**

- 12.1 Changes to DEOs to support the compliance opportunity directly affect business. As these powers are subject to a sunset clause and will lapse on 22 May 2021 and the estimated costs are both short term and ‘one-off’ a review provision has not been prepared for this instrument. However, following implementation routine and on-going monitoring of the effect of these regulations will be carried out internally.

## **13. Contact**

- 13.1 Paul Steere at the Department for Work and Pensions (email: [paul.steere@dwp.gsi.gov.uk](mailto:paul.steere@dwp.gsi.gov.uk)) can answer any queries regarding the instrument.

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<sup>11</sup> <http://www.legislation.gov.uk/ukSI/2016/439/contents/made>