

EXPLANATORY MEMORANDUM TO

THE CHILD SUPPORT (DEDUCTION ORDERS AND FEES) (AMENDMENT AND MODIFICATION) REGULATIONS 2016

2016 No. 439

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument allows the Secretary of State to waive collection and enforcement fees on the 2012 child maintenance scheme for a specific group of cases for a limited period in order to determine the most appropriate maintenance payment option.
- 2.2 This instrument also amends the circumstances under which Regular Deduction Orders (RDOs) are varied; and Regular Deduction Orders and Lump Sum Deductions (LSDOs) are lapsed or discharged to enable the recovery of outstanding collection fees and enforcement charges alongside any maintenance due. It also allows an RDO made on the 2012 child maintenance scheme (‘the 2012 scheme’) to be varied for the purpose of collecting arrears of child maintenance which have accrued under one of the older child maintenance schemes.

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

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.
- 4.2 Where a legacy scheme case is closed with arrears outstanding, work will be done to ensure the arrears balance is stable. Once this work is completed details of the balance owed to the parent with care (PWC) will be transferred to the 2012 scheme.
- 4.3 Collection and enforcement fees are chargeable in the 2012 scheme, which is not the case for the legacy schemes. This instrument is being made for the purpose of making RDOs and LSDOs on the legacy schemes workable in the context of charging fees; enabling arrears from earlier schemes to be collected under RDOs on the 2012 scheme; and providing clients who were only paying following enforcement action on

their legacy scheme case the opportunity to show that they can pay voluntarily on the 2012 scheme. The provisions are explained in more detail below.

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 The Minister of State for Pensions, the Baroness Altmann, has made the following statement regarding Human Rights:

“In my view the provisions of the Child Support (Deduction Orders and Fees) (Amendment and Modification) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

The segment 5 compliance opportunity

- 7.1 In June 2014 the Department began its programme of ending non-resident parent (NRP) liabilities on all existing cases on the legacy schemes following the introduction of the new 2012 scheme, administered by the Child Maintenance Service ('CMS'). When a liability is ended no further maintenance accrues on a case. Cases on the legacy schemes are having their liabilities ended in phases or 'segments'. To ensure payment disruption in cases is minimised, cases where an enforced method of payment was in place, or wider enforcement action was being undertaken, will have their liabilities ended as the final of five segments. As of April 2015 there were 119,000 cases in this segment, 78% (92,000) of which are expected to apply to the 2012 scheme¹.
- 7.2 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 asking the Secretary of State to collect and enforce payment of maintenance. Where the Secretary of State collects and enforces payment ('Collect and Pay'), fees are payable by both parties
- 7.3 A compliance opportunity will be introduced which will allow the NRP to demonstrate compliant behaviour by making voluntary payments towards their child maintenance liability. The 'compliance opportunity' will be offered where the following criteria are satisfied:
 - An application is made before the date on which liability on their legacy case ends. This is estimated to be approximately 58,000² cases (63% of those who apply to the 2012 scheme)

¹ This is based on data collected by the Department in 2011 which looked at what clients intended to do once their legacy scheme case was closed.

² Based on caseload analysis made in April 2015

- The parties cannot agree on a service type at the point of application
- 7.4 The compliance opportunity will take place over the first 6 months of the 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 either Deduction from Earnings Order (DEO) or Deduction From Earnings Request (DER) as a means of payment safeguard. In order to do this all cases will be administered on the 2012 scheme ‘Collect and Pay’ service type. We do not currently have the power to split a liability across two methods of payment in the manner described. Achieving this will require further changes to be made to existing legislation. This will be done via new regulations consequential upon this instrument.
- 7.5 In the 2012 scheme both administering a case on ‘Collect and Pay’ and collecting payments via DEO and DER would attract charges. Regulation 3 amends the existing Child Support Fees Regulations 2014³ to allow for a fee waiver for clients undergoing the compliance opportunity. This ensures that clients will not need to pay these charges until they have demonstrated that they cannot make payments voluntarily. The waiver only applies for the duration of the compliance opportunity.
- 7.6 Where the NRP makes all agreed payments on time and in full this will be recorded as a ‘pass’. Where the NRP fails to make all the required payments, and no good reason is offered, this will be recorded as a fail. The outcome of the compliance opportunity will then be used to inform a decision as to whether the case should be administered on the Collect and Pay or Direct Pay service types.
- 7.7 The policy objectives of the parent Act are to ensure that NRPs fulfil their obligations to provide financial support to their children. By providing evidence to inform a decision as to which service type a case should be administered on the compliance opportunity ensures that cases are managed appropriately, minimising 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.
- 7.8 Amending Regular Deduction Orders and Lump Sum Deduction Orders
- 7.9 The 2012 statutory child maintenance scheme applies additional charges where it becomes necessary for the Secretary of State to take an appropriate enforcement action⁴ to secure payment and encourage future compliance. These powers are already in force⁵ and amendments in this instrument contain technical amendments to ensure Collection and Enforcement Regulations 1992⁶ align with policy intent underpinning enforcement fees in the 2012 scheme.
- 7.10 Regulation 2 furthers the policy objectives of the parent Act by introducing technical amendments to existing powers which will increase operational efficiency by allowing for the collection of fees in certain circumstances not already covered by existing regulations and facilitating the collection of arrears accruing from earlier child maintenance schemes. These provisions are likely to attract minimal public interest.

³ <http://www.legislation.gov.uk/ukxi/2014/612/contents/made>

⁴ The current range of enforcement charges can be found in Regulation 10 of the Child Support Fees Regulations 2014 – <http://www.legislation.gov.uk/ukxi/2014/612/contents/made>

⁵ See the Regulation 13 Child Support Fees Regulations 2014 -

<http://www.legislation.gov.uk/ukxi/2014/612/contents/made>

⁶ <http://www.legislation.gov.uk/ukxi/1992/1989>

Consolidation

- 7.11 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://www.legislation.gov.uk). An explanation as to which instruments are maintained on each site is available from <http://www.dwp.gov.uk/docs/lawvolnews.pdf>.

8. Consultation outcome

The segment 5 compliance opportunity

- 8.1 Informal consultation activity was undertaken in the form of stakeholder workshops. A broad range of stakeholders were invited representing the interests of 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.

Clients on benefits

- 8.3 Under the initial proposal where a NRP moved on to benefit part way through the compliance opportunity they would remain on collect and pay for the full six month period, paying by a deduction from benefit (DfB). Similarly if an NRP was on benefit at the point of application and eligible for a compliance opportunity they would be administered on collect and pay for the full six months and pay by a DfB. Both the NRP and PWC would have to pay fees. This is because, unlike other clients, the fees are automatically applied at the point the deduction from benefit is made.
- 8.4 Stakeholders felt that not waiving the fee for this group of vulnerable clients was unacceptable considering other clients undergoing the compliance opportunity would have their fees waived for the duration of the compliance opportunity.
- 8.5 In light of these concerns we amended our approach to handling these cases. Where a NRP is on benefit either at the point of application, or moves onto benefit part way through a compliance opportunity, they will not be required to continue with the compliance opportunity. Instead we will make an unlikely to pay decision based on information already available. Following these considerations, where the NRP passes the unlikely to pay test this means clients will not feel the burden of fees. Where the NRP does not pass the unlikely to pay test, the case will be placed in collect and pay and fees will be payable. Special guidance will be developed to assist caseworkers in making unlikely to pay decisions in these specific circumstances.

Handling exceptional circumstances

- 8.6 A range of potential circumstances were raised by stakeholders that, while not common, could potentially arise during the compliance opportunity; for example where a paying parent appeals the calculation, or a payment is missed and the paying parent is unable to contact us for a valid reason.

- 8.7 We propose to handle these cases by exception; caseworkers will be able to discuss with Policy advisors and a decision will be made based on the individual circumstances of the case. As a general principle we will be flexible in our approach to decision making to ensure fairness.
- 8.8 Amending Regular Deduction Orders and Lump Sum Deduction Orders
- 8.9 As these are not new powers, no consultation was taken with regard to the circumstances under which the Regular Deduction Orders or Lump Sum Deduction Orders are varied, lapsed and/or discharged.

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 made by regulation 3 will be included in employer outreach work which is scheduled to take place before November 2016.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The public sector impacts are the Department will collect fewer fees than initially anticipated. The exact amount will depend on how many clients take up the compliance opportunity.
- 10.3 For these reasons an Impact Assessment has not been prepared for this instrument.
- 10.4 A maximum of 58,000 cases are expected to meet the criteria for the compliance opportunity. The impact for these clients will be having fees waived for a prescribed period. Depending on the outcome of the compliance opportunity a proportion of these clients could go on to pay fees. At this stage we cannot quantify this impact as we do not know how clients will behave but we plan to monitor this.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 Following implementation, routine and on-going monitoring of the effect of these regulations will be carried out internally. Success will be measured by increasing the number of cases placed into a successful voluntary arrangement, and implementing collection arrangements in full as quickly as possible where default in payment occurs. The benefits are establishing increased co-operation between separated parents and maintaining a steady flow of maintenance payments throughout the process.

13. Contact

- 13.1 Paul Steere at the Department for Work and Pensions (Telephone:0113 8230485 or email: paul.steere@dwp.gsi.gov.uk) can answer any queries regarding the instrument.