



**Child Support (Collection and Enforcement)
(Amendment) Regulations 2012**

Consultation on draft regulations

Contents

Part One:	Consultation arrangements	Page 3
Part Two:	Policy background and proposed changes to regulations	Page 8
Part Three:	Consultation proposals	Page 16
Annex A	Impact on non-resident parents	
Annex B	Impact on employers	
Annex C	Draft Regulations	

Part One – Consultation arrangements

Who is this consultation aimed at?

1.1 The consultation is primarily aimed at parents who live apart, representative organisations for parents who live apart or their children, employers, representatives of the legal professions, employers and payroll bodies and members of the general public with an interest in child maintenance issues.

Subject of consultation

1.2 This consultation concerns the draft Child Support (Collection and Enforcement) (Amendment) Regulations 2012 (“the Regulations”). The Regulations amend Part 3 of the Child Support (Collection and Enforcement) Regulations 1992, which governs the making of Deduction from Earnings Orders (DEO) by the Child Support Agency (“the Agency”), on behalf of the Child Maintenance and Enforcement Commission (“the Commission”). A DEO is an administrative order requiring employers to make deductions from an employee’s earnings and pay them to the Commission in respect of the employee’s liability to pay child maintenance. The amendments make changes to the way the amount to be deducted by employers is set out and how provision for “protected earnings” is made.

1.3 The Commission currently operates two separate statutory child maintenance schemes; “the 1993 scheme” for cases assessed prior to 3 March 2003, and the “2003 scheme” for cases assessed after that date. The Child Maintenance and Other Payments Act 2008 provided for a new child maintenance scheme. The main focus of the new scheme is to produce a faster, more accurate and transparent process for assessing child maintenance payments. Detailed rules about the new scheme will be contained in regulations that were subject to public consultation between 1 December 2011 and 23 February 2012, the Child Support (Maintenance Calculation) Regulations 2012. It is anticipated that the new scheme will be introduced in late 2012.

1.4 Taken together, the Child Support (Maintenance Calculation) Regulations 2012 and the Child Support (Collection and Enforcement) (Amendment) Regulations 2012 provide a benefit to business. Without the introduction of the Child Support (Collection and Enforcement) (Amendment) Regulations 2012, there would be a cost to business when the new scheme is launched and DEOs are made.

1.5 The Regulations will:

- (i) Amend the manner in which the Normal Deduction Rate (NDR), for the purpose of a DEO relating to a new scheme case, is communicated to employers. The NDR will be notified to employers as a monthly rate and also expressed in weekly, two weekly and four weekly terms. The

employer will then choose which rate to apply, depending on the employee's actual pay frequency; and

(ii) Amend the way in which a non-resident parent's protected earnings, are determined and communicated to employers, for DEOs relating to a new scheme case. The Protected Earnings Proportion (PEP) will be specified as 60% of the employee's actual net earnings; and

(iii) The amendments will also apply to certain cases on the existing 1993 and 2003 child maintenance schemes. A number of cases administered under these schemes that have been closed for the purposes of on-going maintenance, but have arrears of maintenance outstanding will be subject to the amended DEO provisions. These will generally be cases where either the clients are not eligible to open a new scheme case or have chosen not to do so. The new provisions will apply to such cases following notice being given to the non-resident parent. This will happen as a result of the case being moved onto the new computer system.

1.6 It is proposed that the Regulations will come into effect at the time the new child maintenance scheme goes live, which is intended to be from late 2012. The Regulations will impact new scheme cases, and a number of cases under the existing statutory schemes (as described above).

1.7 The Commission is formally inviting you to review the proposals in this document and provide your comments on them. Your views are important to us and wherever possible, we will use them to inform our recommendations on the content of the regulations and the processes we use to apply them.

1.8 Whilst developing these amendments the Commission has worked with key stakeholders, including the Federation of Small Businesses and the Chartered Institute of Payroll Professionals. We will continue to work with these stakeholders both after this consultation and in the run up to the launch of the new scheme to support them, and their members, through these proposed changes.

Scope of Consultation

1.9 This consultation applies to Great Britain.

Duration of the Consultation

1.10 The consultation period runs for 6 weeks, beginning on 23 April 2012 and ending on 4 June 2012.

1.11 A reduced consultation period has been agreed by ministers and is being applied to these regulations. Employers and representative organisations have been consulted during the development of the regulations and the associated process.

How you can respond to this Consultation

1.12 To facilitate the consultation process we ask some questions throughout this document. These are listed in **Part 3** along with a page reference for where they appear.

1.13 Please send your consultation responses to:

Via the internet: www.childmaintenance.org
(click on 'contact us')

By post: **Collection, Enforcement and Debt Policy Team
Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT**

Email: consultation.responses@childmaintenance.gsi.gov.uk

Please ensure your response reaches us by 4 June 2012

1.14 When responding, please tell us whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

1.15 An assessment of the impact has been made and is published together with this consultation. A copy of the Impact Assessment can be found at <http://www.childmaintenance.org/en/publications/consultations.html>

Queries about the content of this document

1.16 Any queries about the subject matter of this consultation should be made to:

Name: Philip Geeves

Address: **Collection, Enforcement and Debt Policy Team
Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT**

Email: philip.geeves1@childmaintenance.gsi.gov.uk

Gathering additional views in this consultation

1.17 We want to ensure that we get views from as broad a range of people as possible. We have sent this consultation document to a number of people

and organisations who have an interest in child maintenance, employer organisations and payroll software providers. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

Freedom of Information

1.18 The information you send us may need to be passed to colleagues within the Commission and published in a summary of responses received.

1.19 All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

1.20 If you want to find out more about the general principles of freedom of information and how it is applied within the Commission, please contact:

**Freedom of Information Focal Point
Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT**

Email: foi.focalpoint@csa.gsi.gov.uk

1.21 Please note the Freedom of Information Focal Point can only advise on the freedom of information issues, and not the content of this consultation document.

1.22 More information about the Freedom of Information Act can be found on the website of the Ministry of Justice www.justice.gov.uk

Feedback on this consultation

1.23 We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Co-ordinator:

Name: Robin Van den Hende – Stakeholder Groups Manager

Address Child Maintenance and Enforcement Commission
PO Box 61791
London
SW1P 9NT

Email: Robin.Van-den-Hende@childmaintenance.gsi.gov.uk

1.24 In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria in the Government Code of Practice on Consultation or if you wish to make any suggestions as to how the process of consultation could be improved.

1.25 If you have any requirements that we need to meet to enable you to comment, please let us know.

1.26 The responses to the consultation will be published during Summer 2012, in a report that will summarise the responses we have received and any action we may take as a result of them. We will also give reasons why it has not been possible to take some comments into account, if that is the case, in the consultation response summary.

Part Two – Policy background and legislative context

Policy background – what is being done and why

2.1 The Coalition Government published a Green Paper, 'Strengthening families, promoting parental responsibility: the future of child maintenance' on 13 January 2011. The paper outlined the problems with the 2003 child maintenance scheme, as well as the fact that fewer than half of children in separated families currently benefit from effective child maintenance arrangements.

2.2 The Green Paper set out the Government's vision for a radical re-shaping of the child maintenance system, to provide more integrated support for families going through separation, recognising the range and complexity of the issues that parents face during this difficult time, and to enable them to make their own collaborative family-based arrangements which are in the best interest of the children.

2.3 The Green Paper also stated that the Government would continue to provide an accessible statutory service for those who need it, with specific provisions for the most vulnerable. It restated its commitment to launching the new scheme in 2012, which over time, would replace the existing schemes operated by the Child Support Agency.

2.4 A consultation on the Green Paper ran until 7 April 2011 and the Government published its response on 12 July 2011. In its response, the Government reaffirmed its commitment to working with experts in the voluntary sector to improve the support provided to separated and separating parents. It again stated its commitment to providing a new, subsidised statutory service.

2.5 The Government is committed to improving the child maintenance system to benefit families and children, while delivering value for money for the taxpayer. These Regulations are part of several strands of legislation being taken forward to underpin those changes.

2.6 The proposed amendments to DEOs support the implementation of the new statutory child maintenance scheme, which is a key part of the Government's overall child maintenance strategy.

2.7 The Commission is responsible for the delivery of a statutory child maintenance service. Its operational arm which delivers this is the Child Support Agency. Under the Child Support Act 1991 and the Child Maintenance and Other Payments Act 2008 the Commission is required to ensure that parents meet their obligations to maintain their children, even when they do not live together, by:

- promoting the financial responsibility that parents have for their children;
- providing information and support on the different child maintenance options available; and

- providing an efficient statutory child maintenance system.

2.8 A DEO is an administrative order requiring employers to make deductions in respect of child maintenance from an employee's earnings and pay them to the Commission. DEOs are used in over 10% of the Commission's caseload and nearly 20% of the total child maintenance collected under the statutory child maintenance schemes is collected through DEOs. A total of 140,125¹ DEOs were in place during the year ending March 2011, collecting £285m of child maintenance.

2.9 The Child Maintenance and Other Payments Act 2008 provides for the establishment of a new child maintenance scheme, which is intended to be introduced in late 2012. One of the key improvements introduced by the new child maintenance scheme is that the maintenance calculation will be based on gross income data provided directly by Her Majesty's Revenue and Customs (HMRC). This enables maintenance calculations to be made quickly and without the need to routinely request information from either the non-resident parent or their employer. It also allows for annual checks on non-resident parents' income to be made automatically which ensures maintenance liability remains at the correct level and is fair for both parties.

2.10 These changes necessitate amendments to the regulations which govern the manner in which DEOs are implemented for new scheme cases. This is because for new scheme cases the Commission will not hold details of a non-resident parent's net earnings or pay frequency, which are used when issuing a DEO under the current legislative provisions.

Normal Deduction Rate

What the Regulations do

2.11 Part 3 of the Child Support (Collection and Enforcement) Regulations 1992 requires the DEO notification, issued by the Commission to employers and non-resident parents, to specify a 'Normal Deduction Rate' (NDR). This is the amount that is to be deducted from the employee's net earnings each time they are paid, subject to the employee continuing to receive the amount specified as the protected earnings proportion. For the existing child maintenance schemes the Commission is aware of the non-resident parent's actual pay frequency (e.g. monthly, weekly etc.) and therefore this can be specified within the DEO, so the NDR states the amount to be deducted from the employee's net earnings (e.g. £X per week or £X per month).

Why amendments are needed

2.12 Details of the actual pay frequency of non-resident parents will generally not be available to the Commission for cases on the new child maintenance scheme. This is because child maintenance liability will be

¹ This includes a number of Deduction from Earnings Requests (DERs) that are issued to the Ministry of Defence and serve a similar function to DEOs for service personnel. DERs are, however, unaffected by these proposals.

based on details of a non-resident parent's annual gross income obtained from HMRC.

Proposed changes to Regulations

2.13 It is proposed that Part 3 of the Child Support (Collections and Enforcement) Regulations 1992 is amended, in so far as it relates to cases on the new child maintenance scheme and those existing scheme cases that have closed for the purpose of on-going maintenance, but for which arrears are outstanding, to remove the requirement for deductions under DEOs to be aligned to the non-resident parent's actual pay frequency. Instead the DEO notification will specify four different deduction amounts and the employer will be required to deduct the amount that aligns to their employee's pay frequency.

Notification

What amendments are needed

2.14 Currently, the Commission notifies non-resident parents and their employer in writing when a DEO is imposed and this will continue to be the case under the new proposals set out in this document.

2.15 However, we need to consider cases where non-resident parents are already paying maintenance through a DEO made under the current regulations and we require the new regulations to apply to their case. In these cases the Commission will notify non-resident parents that the Regulations as amended will apply in their case. Following that, when a new DEO is issued in their case, the existing DEO will be discharged.

Proposed changes to Regulations

2.16 The Amending Regulations will only come into force for existing cases, when notification is given to the non-resident parent that this is the case. The notice will be issued, in writing, to the non-resident parent's last known or notified address and will be deemed as given to him or her, two days after it was posted.

Question 1 Do you think that the proposals to notify the Normal Deduction Rate (NDR) in terms of monthly deductions and weekly, two weekly and four weekly equivalents take into account the pay frequencies at which the majority of employees are paid?

Question 2 Will employers require further information from the Commission (in addition to the amount to be deducted) where aligning the Normal Deduction Rate (NDR) to the pay frequency of their employees?

Protected Earnings Proportion

What the Regulations do

2.17 Part 3 of the Child Support (Collections and Enforcement) Regulations 1992 provides for a proportion of a non-resident parent's earnings to be 'protected' for the purposes of a DEO. The protected earnings represent the minimum amount an employee must receive each pay period after deductions have been made in respect of child maintenance. It is a requirement for the DEO notification issued by the Commission, both to employers and non-resident parents, to specify the employee's protected earnings.

2.18 There are separate provisions for a non-resident parent's protected earnings, dependant on whether their liability to pay maintenance is under the 1993 or 2003 statutory child maintenance schemes.

2.19 For the 2003 scheme the Regulations provide that the Protected Earnings Proportion (PEP) is an amount equal to 60% of the non-resident parent's normal net earnings. The DEO notification to employers is required to specify the amount of the PEP (i.e. a £ value) based on the employee's actual pay frequency (e.g. monthly, weekly, etc.)

2.20 For the 1993 scheme the Regulations provide that the Protected Earnings Rate (PER) is an amount equal to the non-resident parent's "Exempt Income" included within their maintenance assessment. Exempt Income represents the non-resident parent's minimum day-to-day living costs based on Income Support rates, travel to work costs, housing costs and allowance for children living with them, excluding step children. The DEO notification to employers is required to specify the amount of the PER (i.e. a £ value) based on the employee's actual pay frequency (e.g. monthly, weekly, etc.)

Why amendments are needed

2.21 For the existing statutory child maintenance schemes, the Commission holds details of the non-resident parent's net earnings and pay frequency as this information is used to determine a non-resident parent's child maintenance liability. This information is then also used to calculate the PEP. These details are generally obtained from either the non-resident parent or their employer. Under the new scheme this information will not generally be available to the Commission as details of the non-resident parent's annual gross income, supplied by HMRC, will be used to determine liability.

2.22 If amendments are not introduced for DEOs issued in relation to new scheme cases, in order to comply with the existing legislative requirements it would be necessary for the Commission to routinely contact employers to obtain details of the non-resident parent's net pay and pay frequency prior to imposing a DEO. This would hamper the efficiency of the service that could be provided and negatively impact the overall projected savings for the Commission and employers resulting from the introduction of the new statutory scheme and the use of HMRC data. This is because the

Commission and employers would incur significant costs from the requirement for routine contact to be made and information requested, prior to a DEO being implemented.

2.23 These amendments will also apply to some cases that will continue to be administered under the 1993 or 2003 scheme that are closed for the purposes of on-going maintenance, but where arrears of child maintenance remain outstanding. These will be cases where either the clients are not eligible to open a new scheme case or where they have elected not to do so. These cases will eventually be transferred to the new IT system in order to facilitate the closure of the existing IT systems.

Proposed changes to Regulations

2.24 It is proposed that Part 3 of the Child Support (Collection and Enforcement) Regulations 1992 is amended for DEOs issued on the new scheme. It is proposed that the amended Regulations protect 60% of a non-resident parent's net earnings in each pay period. This is specified as a percentage that employers must apply to calculate the protected amount each pay day, rather than a fixed £ value that is currently provided by the Commission where a DEO is imposed.

2.25 The provisions for DEOs for cases with an on-going liability under the 1993 and 2003 schemes will remain unchanged. However, existing scheme cases closed for on-going maintenance, with outstanding arrears will be subject to the amended DEO procedures where those arrears have been transferred onto the new IT system. The Commission will continue to issue a single DEO per non-resident parent / employee, although it will result in separate DEO provisions running in parallel across the schemes. Employers will however only be required to submit a single DEO schedule to the Commission and make a single payment to a single bank account, regardless of whether they have employees with DEOs issued under different child maintenance schemes.

2.26 The DEOs issued by the Commission will be one of two types. 'Type A' DEOs will be issued in relation to cases under the existing 1993 and 2003 schemes with an ongoing maintenance liability and 'Type B' DEOs for cases on the new scheme and the 'arrears only' cases on the existing statutory schemes, referred to above.

'Type A' – Specify the PEP as an amount based on 60% of the non-resident parent's normal net pay for the 2003 scheme or for the 1993 scheme specify the PER as an amount equal to the Exempt Income used in the maintenance assessment and aligns deductions to be made with the employee's actual pay frequency. Specifies the amount to be deducted as a set amount, based on the employees pay frequency.

'Type B' – Specify the PEP as 60% of actual net earnings and sets out differing amounts to be deducted based on differing pay frequencies (the Commission will provide a monthly figure to be deducted, subject to the PEP,

with the equivalent deductions on a weekly, two weekly and 4 weekly basis also specified).

2.27 There will continue to be a single process for DEOs, although there will be two extra steps within the processing of 'Type B' DEOs, as employers will be required to calculate the PEP in each pay period and identify the deduction to be made based on the employee's actual pay frequency from the four options provided.

2.28 These proposals aim to take into account the concerns of small businesses that have previously been raised, particularly in the context of being the type of employer most likely to use non-automated payroll systems. The main concern was that amendments to Regulations should ensure there remains one process for DEOs with payments being made to a single Commission bank account. These proposals aim to address these concerns, as far as is practicable to do so, given the significant expense that would be incurred if all (approximately 140,000) DEOs for the existing schemes were to be re-issued in a format consistent with that required by the use of gross income for the new scheme. A re-issue of all DEOs currently in place for the existing schemes would place a significant administrative burden on employers who would be required to implement the amended DEOs immediately on receipt of notification.

2.29 The Commission is liaising with payroll providers to ensure that the amendments required to payroll software to enable two 'types' of DEOs to be run in parallel are made prior to the implementation of the new scheme.

2.30 The amended legislation may provide a lower level of protected earnings for non-resident parents with a DEO under the amended provisions in some circumstances, in comparison to those paying via a DEO under the existing legislation. Calculating protected earnings as a percentage of actual earnings rather than a fixed amount, based on the earnings used at the maintenance calculation may mean that some non-resident parents pay more towards their maintenance and arrears, as a proportion of their earnings, when their earnings fluctuate. However, the amended provisions will result in DEOs falling more into line with other common methods of collection, such as direct debit or standing order, which provide non-resident parents with no protection against income fluctuation (**Annex A and B**).

Question 3 Do the proposals for the Protected Earnings Proportion for new scheme cases strike the right balance between the needs of non-resident parents and their obligation to pay child maintenance?

Question 4 Do you think the amendments to Deduction from Earnings Orders provisions are the correct approach to take into account the move from net to gross earnings (as the basis of maintenance liability) or can you suggest an alternative?

Timing of changes

2.31 Amendments to the existing DEO provisions will be introduced when the new scheme goes live (intended to be late 2012) to ensure that DEOs continue to be administered effectively. The amendments will mean that the Commission will not be required to routinely contact employers prior to issuing a DEO on the new scheme and for a number of cases on the existing schemes. This will reduce administrative costs for both business and the Commission and reduce delays in ensuring maintenance payments are collected for the benefit of children.

Support for employers

2.32 The Commission has engaged with employer groups throughout the development of these changes, informing them of the proposed amendments, through forums and publications, to ensure that their employers fully understand the changes being made and that their introduction has the minimal impact possible.

2.33 In the run up to the launch of the new scheme we will begin to roll out further support networks for employers. It is planned that all employers will have access to our dedicated employer support team who will be available for employers to contact directly by phone and will provide any support required and will be on hand to answer any questions posed. Employers with 50 or more DEOs will be offered the opportunity to have a dedicated account manager and employers with 250 or fewer DEOs will also have access to an online self-service facility.

2.34 When an employer receives their first new scheme DEO they will receive a call from the employer support team who will advise them how the new DEO will work and the support available and answer any questions they may have. Shortly after this, they will also receive an employer welcome pack which will include a booklet detailing all the information they will need to support them in administering DEOs for their employees.

Question 5 Do you think that the proposals for the Commission to notify employers of the Protected Earnings Proportion, in terms of a percentage rather than a monetary figure, produces a cost or a benefit to business? Please state your estimated cost or benefit of the proposed change.

Question 6 Do you think the estimated additional cost associated to the upgrading of software to support these amendments, detailed in paragraph 70 and 77 of the accompanying Impact Assessment, (<http://www.childmaintenance.org/en/publications/consultations.html>) is accurate? If not, please state how much you estimate the additional cost would be.

Legislative context

2.35 The proposed amendments are subject to the negative Parliamentary procedure – this means they are not as a matter of course subject to Parliamentary debate.

2.36 Section 31(2) of the Child Support Act 1991 provides for the making of Deduction from Earnings Orders. The Regulations that govern Deduction from Earnings Orders are contained in Part 3 of the Child Support (Collection and Enforcement) Regulations 1992.

2.37 Regulation 10 of the 1992 Regulations provides for the notification of the NDR and regulation 11 provides for the PEP.

Part Three – Consultation proposals

3.1 The following proposals have been raised in this consultation document:

Question 1 Do you think that the proposals to notify the Normal Deduction Rate (NDR) in terms of monthly deductions and weekly, two weekly and four weekly equivalents take into account the pay frequencies at which the majority of employees are paid? (Page 10)

Question 2 Will employers require further information from the Commission (in addition to the amount to be deducted) where aligning the Normal Deduction Rate (NDR) to the pay frequency of their employees? (Page 10)

Question 3 Do the proposals for the Protected Earnings Proportion for new scheme cases strike the right balance between the needs of non-resident parents and their obligation to pay child maintenance? (Page 13)

Question 4 Do you think the amendments to Deduction from Earnings Orders provisions are the correct approach to take into account the move from net to gross earnings (as the basis of maintenance liability) or can you suggest an alternative? (Page 13)

Question 5 Do you think that the proposals for the Commission to notify employers of the Protected Earnings Proportion, in terms of a percentage rather than a monetary figure, produces a cost or a benefit to business? Please state your estimated cost or benefit of the proposed change. (Page 14)

Question 6 Do you think the estimated additional cost associated to the upgrading of software to support these amendments, detailed in paragraph 70 and 77 of the accompanying Impact Assessment, (<http://www.childmaintenance.org/en/publications/consultations.html>) is accurate? If not, please state how much you estimate the additional cost would be. (Page 14)

Example of impact of proposed Regulations on non-resident parents

Situation

A non-resident parent who is liable to pay child maintenance under the new scheme has gross weekly earnings of £400. Earnings are based on a forty hour working week. This equates to net weekly earnings of £300.

The non-resident parent's weekly maintenance liability is £48 (12% of gross weekly earnings for one qualifying child under the new scheme). They are also required to pay arrears of child maintenance at the rate of £20 per week.

For the majority of cases on the existing schemes the Normal Deduction Rate (NDR) for the DEO would be stated as £68 per week and aligned to the non-resident parent's pay frequency.

For new scheme cases and those existing scheme cases to which these amendments apply, it is proposed that the DEO would state the NDR as £294 per month, £68 per week, £136 per two weeks or £272 per four weeks. This is because the non-resident parent's actual pay frequency will not be known to the Commission. The employer will apply the deduction rate applicable to the pay period of the non-resident parent. So, where the person is paid on a monthly basis, the employer would deduct £294 from the person's earnings on each pay day. If the person was paid weekly, the employer would deduct £68 on each pay day.

During a particular week the non-resident parent works only twenty hours rather than their usual forty hours. They receive net earnings of £150 for that week.

Current DEO provisions for 1993 scheme

A 'Type A' DEO is issued. The DEO specifies a NDR of £68 per week and the Protected Earnings Rate (PER) is specified as £160 (this is the amount of the non-resident parent's Exempt Income that has been included in the maintenance assessment). The PER is therefore a fixed amount. As the employee has only earned £150, which is less than the PER during the period the employer must not take any deduction under the DEO otherwise the PER would be breached. The whole of the employee's earnings during this period are therefore protected and no child maintenance is paid. This would result in the non-resident parent's arrears increasing by £48 and the parent with care and child receiving no money for this period at this time.

Current DEO provisions for 2003 scheme

A 'Type A' DEO is issued. The DEO specifies a NDR of £68 per week and the Protected Earnings Proportion (PEP) is specified as £180 (60% of the net weekly earnings of £300) for the weekly DEO. The PEP is a fixed amount based on 60% of the non-resident parent's normal net earnings as used in the maintenance calculation. As the employee has earned £150, which is less than the PEP during the period the employer must not make any deduction under the DEO. The whole of the employee's earnings during this period are therefore protected and no child maintenance is paid. This would result in the non-resident parent's arrears increasing by £48 and the parent with care and child receiving no money for this period at this time.

Proposed DEO Provisions for the new scheme

A 'Type B' DEO is issued. The DEO specifies a NDR of £68 per week, £294 per month, £136 per two weeks or £272 per four weeks. For the purposes of this example the person is paid weekly, so the weekly NDR applies. The PEP for this particular week is calculated by the employer as £90 (60% of the actual net weekly earnings of £150). The PEP is a flexible amount calculated as 60% of the non-resident parent's actual net earnings each time a deduction is made.

As the PEP is a proportion of earnings, a deduction will always be made under the DEO. Although the NDR is £68 per week, it is not possible for a deduction of more than £60 to be made without the PEP (£90 in the example) being breached. As the deduction made is £60 rather than the full £68, the full amount of on-going regular maintenance would be paid however £8 of the arrears will continue to remain outstanding. The person with care and the child would receive £60 for this week at this time.

What this means

Due to the changes in the calculation of the PEP for the new child maintenance scheme, as can be seen in this example, rather than a set amount of the non-resident parent's actual earnings being protected (as would be the case under the 1993 and 2003 schemes) the amount of protected earnings would only be a proportion of what was actually earned

Whilst non-resident parents may be afforded less protection in some circumstances under the amended provisions than those currently paying by DEO under the existing schemes, the amendments bring the DEO provisions closer to other common methods of payment. In the above example if the non-resident parent had been paying child maintenance by direct debit or standing order rather than by DEO, none of their earnings would be protected and the full amount of child maintenance (£68) would be payable during the week they received reduced earnings.

Example of impact of proposed Regulations on employers

Situation

An employer receives notification from the Commission that a Deduction from Earnings Order (DEO) has been imposed on one of their employees (the employee in the example above in Annex A who is paying maintenance via DEO in relation to their new scheme case).

Current provisions

A 'Type A' DEO is issued to the employer. The notification of the DEO sent to the employer by the Commission advised the employer that either the non-resident parent's Protected Earning Proportion (PEP) (for a case on the 2003 scheme) is £180, or that their Protected Earnings Rate (PER) is £160 (for a case on the 1993 scheme). The employer is made aware that no deductions from their employee's earnings can be made if they were to result in a breach of the PEP or PER.

The notification also specifies the Normal Deduction Rate (NDR) is the amount of maintenance that should be deducted on a weekly basis and therefore aligned to their employee's pay frequency.

Proposed provisions for DEOs issued for new scheme cases and for the a number of cases on the 1993 or 2003 scheme to which these amendments apply

A 'Type B' DEO is issued to the employer. The notification of the DEO sent to the employer by the Commission advises that the non-resident parent's PEP is 60% of their net earnings each time they are paid. The employer is therefore required to calculate 60% of their employee's net earnings each time they are paid and ensure that this is the minimum amount paid to the employee after the deduction for child maintenance payments has been made.

The notification of the DEO will state the amount that should be deducted from the employee's earnings. This will be provided in the format of a schedule indicating amounts which the employer must choose from depending on whether their employee is paid monthly, weekly, two weekly or four weekly.

What this means

Rather than being provided with an amount by the Commission to use as the PEP for administering a DEO employers are required to calculate this. As the PEP is not a fixed amount but 60% of actual net earnings the PEP must be

calculated each pay period to ensure that the employee receives at least their protected earnings each time a deduction for child maintenance is paid. The employer is also required to cross reference the schedule and identify the pay frequency of their employee to determine the NDR amount that should be applied.

Draft Regulations

2012 No. 00

FAMILY LAW

CHILD SUPPORT

**The Child Support (Collection and Enforcement) (Amendment)
Regulations 2012**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - *** 2012

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 32(1) and (2)(b), (bb), (c) and (n), 51(1), 52(4) and 54 of the Child Support Act 1991(a), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Collection and Enforcement) (Amendment) Regulations 2012 and, subject to paragraph (2), shall come into force on *** 2012.

(2) These Regulations shall come into force in relation to an existing case, on the day on which notification is given to the non-resident parent.

(3) In these Regulations—

“existing case” has the meaning given by paragraph 1(2) of Schedule 5 to the Child Maintenance and Other Payments Act 2008(b);

“notification” means notice given by the Commission to the non-resident parent informing the non-resident parent that the provisions of the Regulations as amended by these Regulations apply in their case; and

“the Regulations” means the Child Support (Collection and Enforcement) Regulations 1992(c).

(4) Any notification given by the Commission under paragraph (2) must be sent by post to the non-resident parent’s last known or notified address and it will be treated as having been given on the second day following the day on which it is posted.

Amendment of the Collection and Enforcement Regulations

2.—(1) The Regulations are amended as follows.

(a) 1991 c.48. Section 32(2)(bb) was inserted by paragraph 11(16) of Schedule 3 to the Child Support, Pensions and Social Security Act 2000 (c.19) and section 54 is cited for the meaning given to “prescribed”.
(b) 2008 c. 19.
(c) S.I. 1992/1989; relevant amending instruments are S.I.1995/1045 and 2001/162.

(2) In regulation 8(1) (interpretation of Part 3), in the definition of “normal deduction rate” for “week, month or other period” substitute “month and the equivalent of that sum for a 1, 2 and 4 week period”.

(3) For regulation 10 (normal deduction rate), substitute—

“**10.**—(1) The period by reference to which the normal deduction rate is set must be the period by reference to which the liable person is normally paid where that period is a 1, 2 or 4 weekly or monthly period.

(2) The employer must select the normal deduction rate which applies depending on the period by reference to which the liable person’s earnings are normally paid.

(3) Where the liable person is paid by reference to a period other than at a 1, 2 or 4 weekly or monthly period, the Commission must discharge the deduction from earnings order in accordance with regulation 20.”.

(4) For regulation 11 (protected earnings proportion and protected earnings rate) and its heading, substitute—

“Protected earnings proportion

11.—(1) The period by reference to which the protected earnings proportion is set must be the same as the period by reference to which the normal deduction rate is set in accordance with regulation 10(1).

(2) The protected earnings proportion in respect of any period shall be 60% of the liable person’s net earnings in respect of that period as calculated at the pay-day of the liable person by the employer.”.

(5) In regulation 20(a)—

- (a) omit “or” at the end of paragraph (1)(e);
- (b) at the end of paragraph (1)(f) insert—
“or
- (g) the circumstances in regulation 10(3) apply.”.

Savings and transitional provision

3.—(1) Where, in an existing case, a deduction from earnings order was made before the date on which these Regulations come into force in relation to that case, this regulation shall apply in respect of that order.

(2) Where in a case referred to in paragraph (1), the deduction from earnings order still has effect immediately before these Regulations come into force in relation that case—

- (a) the order continues to take effect for the purposes of any deductions which are required to be made under the order until it is discharged or lapses;
- (b) the Regulations, as they were in force before the amendments made by these Regulations came into force, continue to apply in relation to the order until it is discharged or lapses; and
- (c) the order is to be treated as discharged, if it has not otherwise lapsed or been discharged, on the date that the first deduction from earnings order made under the Regulations as amended by these Regulations takes effect.

(3) This paragraph applies where immediately before the coming into force of these Regulations any appeal under regulation 22 of the Regulations was made but not decided, or any time limit for making an appeal had not expired.

(4) Where paragraph (3) applies, the Regulations, as they were in force before the amendments made by these Regulations came into force, continue to apply for the purposes of any appeal outstanding or made before the time limit expires.

Signed by authority of the Secretary of State for Work and Pensions

Date _____ Name _____
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Collection and Enforcement) Regulations 1992 (“the Collection and Enforcement Regulations”). Except in relation to existing cases, these Regulations come into force on ***. An existing case is a maintenance assessment, an application for a maintenance assessment, a maintenance calculation made under existing rules and an application for a maintenance calculation that which will fall to be made under existing rules. In relation to an existing case, these Regulations come into force on the day on which notice that these Regulations apply is given to the non-resident parent.

Regulation 2(2) amends regulation 8 of the Collection and Enforcement Regulations changing the definition of “normal deduction rate”. This definition provides for the normal deduction rate to set out the amount to be deducted per month and the amount for a 1, 2 and 4 week equivalent of that amount.

Regulation 2(3) substitutes regulation 10 of the Collection and Enforcement Regulations to provide that the normal deduction rate is set by reference to the period by which the liable person is paid where that payment period is monthly or 1, 2 or 4 weekly. It provides that the employer must select the normal deduction rate which applies depending on the period by reference to which the liable person is paid. Where the liable person is not paid by reference to a monthly, 1, 2 or 4 weekly period the deduction from earnings order must be discharged in accordance with regulation 20. Regulation 2(5) amends regulation 20 to allow for deduction from earnings orders to be discharged in these circumstances.

Regulation 2(4) substitutes regulation 11 of the Collection and Enforcement Regulations to provide that the protected earnings proportion must be 60% of net earnings at the liable person’s pay day for each deduction made under the order.

Regulation 3 makes savings and transitional provision. Where a deduction from earnings order made under the Collection and Enforcement Regulations, prior to these amendments coming into force, has effect immediately before these Regulations come into force in the case, the existing deduction from earnings order will continue to take effect until it lapses or is discharged. The existing order will be discharged, if it is still in effect, on the date on which the first order made under the Collection and Enforcement Regulations as amended by these Regulations takes effect. Also, the Collection and Enforcement Regulations as in force prior to the amendments made by these Regulations will continue to apply for the purpose of any appeal against an order made under those Regulations.

These Regulations reduce costs on the private sector and civil society organisations. An assessment of the impact has been made; a copy of the impact assessment is available in the libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies of the impact assessment may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.