

Deduction Orders against Joint Accounts

Public consultation

June 2016

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Introduction

This consultation sets out our plans to implement existing powers to make deduction orders to recover child maintenance arrears from joint bank accounts held by a non-resident parent.

About this consultation

Who this consultation is aimed at

This consultation is seeking views from anyone who could be affected by the implementation of the power to make deduction orders against joint bank accounts. This consultation is open to comment from voluntary and community sector organisations and clients of the statutory child maintenance schemes, as well as to members of the general public.

Purpose of the consultation

We plan to make regulations implementing our existing primary powers enabling the deduction of child maintenance from joint accounts held by a non-resident parent.

This consultation seeks comments on a proposed process for enabling deduction orders to be made against such joint accounts.

Scope of consultation

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The consultation period begins on **30/06/16** and runs **until 25/08/16**.

How to respond to this consultation

Please email your consultation responses to:

CHILDMAINTENANCE.POLICY@DWP.GSI.GOV.UK

Please ensure your response reaches us by **25/08/16**.

When responding, please state 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. We will acknowledge your response.

Government response

We will aim to publish the government response to the consultation on the [GOV.UK](#) website. The [consultation principles](#) encourage departments to publish a response within 12 weeks or provide an explanation why this isn't possible. If a consultation is linked to a statutory instrument, responses should be published before or at the same time as the instrument is laid.

The report will summarise the responses.

How we consult

Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

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 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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:
Email: freedom-of-information-request@dpw.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

Overview

This paper sets out our plans to implement existing powers to make deduction orders against joint bank accounts to collect child maintenance. We would welcome views regarding these plans and in relation to the specific questions set out at the end of this document.

Child Maintenance Schemes

The statutory child maintenance system operates three schemes under legislation that determines how cases are managed.

- 1993 and 2003 schemes operated by Child Support Agency (CSA). No new applications can be made to the CSA and all existing CSA cases are expected to close by the end of 2017.
- 2012 Scheme operated by Child Maintenance Service (CMS) opened to all new applicants from Nov'13.

Child Maintenance Service

Applications to the Child Maintenance Service are via **the CM Options service** which is the 'gateway' to the statutory service:

- CM Options provides free, impartial info/support to help parents make informed choices and come to family-based arrangement.
- if parents are unable to come to a collaborative arrangement then they can apply to the CMS.

The options in the Child Maintenance Service

Collect & Pay

- Calculation and collection is made by the Child Maintenance Service.
- Maintenance calculation is based, in most cases, on recent annual gross income taken from HM Revenue and Customs.
- There is a fee for using the Collect and Pay service.
- Non-resident parent incurs a 20% surcharge on top of maintenance assessed.
- Parent with Care incurs a 4% deduction from maintenance amounts received.

Direct Pay

How it works:

- Either party able to request direct pay.
- Calculation made by the Child Maintenance Service, but maintenance payment arranged privately between both parents.
- No fee for using Direct Pay.
- If Direct Pay fails, the case is moved to Collect & Pay.

The safeguard:

- Secretary of State may impose Collect and Pay arrangements if they are satisfied that maintenance is unlikely to be paid without Collect and Pay arrangements. A request for Direct Pay by the parent with care will always be honoured regardless of the non-resident parent's preferred collection method.

Legislative context

The Secretary of State for the Department of Work and Pensions has various powers in relation to the collection and enforcement of child maintenance under the above statutory schemes set out in the Child Support Act 1991(CSA 1991). These powers enable the Secretary of State to make a Regular Deduction Order, taking a sum every week/month or a Lump Sum Deduction Order, taking a lump sum in a single deduction to enforce child maintenance owed by a non-resident parent¹ where arrears have arisen. These are administrative orders and enable the Secretary of State to oblige banks to remove and pay over money from a non-resident parent's bank account without their consent, and without applying to a court. However, deduction orders are used as a last resort and where NRPs repeatedly fail to pay child maintenance due. NRPs have the right to make representations and/or appeal against the making of these deduction orders.

The relevant legislation is in sections 32A – 32K of CSA 1991, and regulations 25A – 25AD of the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989) (the Collection and Enforcement Regulations).

Policy rationale

As part of our wider strategy to maximise collection of child maintenance, we intend to make regulations allowing deduction orders to be made against joint accounts, where one of the account holders is a non-resident parent. This will require amendments to the Collection and Enforcement Regulations. A similar civil enforcement power is already in use in Scotland (bank arrestment, which is administered by the Sheriff Officers) in relation to joint accounts.

Although the CSA 1991 (as amended by the Child Maintenance and other Payments Act 2008) allows deduction orders to be made against joint accounts, these

¹ parent who pays child maintenance

provisions have not yet been implemented, as we wanted to thoroughly test our deduction order powers on sole accounts first. We now feel confident in our effective use of deduction orders against sole accounts, but currently non-resident parents are able to prevent the CMS or CSA from accessing their funds which could be used to pay maintenance for children simply by placing these funds into a joint account. We want to prevent this type of avoidance whilst ensuring safeguards are in place to protect the rights of all parties to a joint account. There is also an argument that the non-resident parent should not fall outside the scope of the legislation because they have chosen to arrange their finances jointly, normally with a new partner, whether or not there was an intention to evade a deduction order.

The process

In circumstances where a non-resident parent has more than one bank account, we will target their solely held accounts first and only resort to jointly held accounts if necessary, for instance if there are insufficient funds in the solely held account.

All necessary steps will be taken, both in legislation and guidance and we aim to ensure that the process for making deduction orders against joint accounts operates fairly and has adequate safeguards to protect the rights of all parties to a joint account.

All joint account holders will have the opportunity to make representations in relation to the orders either prior to the order being made, where it is a regular deduction order or at the stage that the funds are frozen in the case of a lump sum deduction order.

These representations may include information about the amount contributed to the account by the various account holders. For example, if evidence is provided to show that 70% of funds in a joint account do not belong to the non-resident parent (NRP), that portion of the funds will not be targeted. The aim is to resolve any issues regarding the making of orders before any funds are removed. Further detail is set out below under the relevant headings.

Where it is not possible to establish what funds in the account belong to the NRP, regulations will provide for the ability to assume that a proportionate share of the funds in the account belong to the NRP. The share would be based on the number of joint account holders. Therefore if there are two joint account holders then each will be considered to own an equal share of the funds held. Accordingly only the NRP's 50% of the funds would be subject to the deduction order.

All parties to a joint account will also have the right of appeal against the making of a regular or lump sum deduction order. There is a right of appeal against: the making of a regular deduction order; a decision made by the Secretary of State on an application for a review of a regular deduction order and the making of a final lump sum deduction order. This right of appeal is to the Family Court in England and Wales and in Scotland to the Sheriff Court.

Disapplication

There is also a right of appeal against the refusal of the Secretary of State to consent to the release of frozen funds in the circumstances specified in regulation 25N of the Collection and Enforcement Regulations. This right of appeal will extend to joint account holders. These circumstances include:

- where the joint account holders, their partner or relevant other child may suffer hardship meeting ordinary living expenses.
- where there are pre-existing written contractual obligations.

This right of appeal is also to the Family Court in England and Wales and in Scotland to the Sheriff Court.

Regular Deduction Orders

When considering the imposition of a regular deduction order (RDO) it will be necessary to establish what proportion of the balance held within the joint bank account is likely to be owned by the non-resident parent. This will be done initially by requesting and considering bank statements. Each of the account holders will then be issued with notice detailing proposals to impose an RDO and invited to make any representations that they may have in relation to the RDO. The representations must be fully considered by the Secretary of State before any RDO is made.

Any representations received will be fully considered and taken into account where appropriate prior to the RDO being imposed. The joint account holders will all have the ability to seek a review or variation of the RDO as well as appeal rights against the imposition of the RDO.

An RDO may lapse where an alternative method of payment has been agreed for payment of the child maintenance due under the maintenance calculation or where there are insufficient funds standing to the credit of the account on consecutive deduction dates. Where a deduction order lapses it largely ceases to have effect, although it may be revived in certain circumstances.

Lump sum Deduction Orders

The lump sum deduction order (LSDO) process is a four stage process. Firstly, we will request and consider bank statements to determine what proportion of the balance in the account is owned by the non-resident parent. The next stage is the making of an interim order which is served upon the deposit taker with whom the account is held. This freezes the full or partial sum of the arrears for which the LSDO has been made. A notice will then be served upon the joint account holders advising of the LSDO action taken and seeking representations. Unlike RDOs representations are sought after the funds have been frozen in order to prevent the possibility of funds being withdrawn before they can be secured. Once the

representations have been considered and impacted upon the sum sought, the final LSDO will then be served on the deposit taker.

As described above, where particular circumstances exist, the account holder or deposit taker may apply for consent to disapply the effect of the LSDO by reducing the amount frozen. Both the account holders and the deposit takers have an opportunity to appeal against the making of the final LSDO. Only once the relevant period for appeal has passed will a request for payment be made to the deposit taker. Where an appeal has been lodged the request for payment will be made where appropriate once the appeal had been decided.

Where a joint account is subject to a deduction order great care will be taken to ensure that only the non-resident parent's funds are subject to the effects of the deduction orders.

Timing

The amendments will be made by affirmative instrument, which we are aiming to lay in February 2017, coming into force in June 2017.

Questions

We want to ensure that we are able to collect more maintenance for children by being able to target non-resident parents' funds held in joint accounts, but we also want to ensure that the provisions operate fairly for non-resident parents and other joint account holders. We would welcome views and observations particularly in relation to the following:

1. We propose seeking bank statements prior to making RDOs and LSDOs. The purpose of doing this to reduce the risk of targeting funds contributed to the account by an account holder other than the non-resident parent.
2. In relation to LSDOs, we freeze a proportion of the account for a short period of time to allow representations to be made. We want to ensure that this is as short a period as possible, whilst giving enough time to make representations. We are considering a 28 day period.
3. In addition to the grounds for applying for a review of an RDO which already exist, we are considering 2 additional grounds for joint account holders – where the amount contributed to the account by the non-resident parent has decreased, and where the joint account holder did not make representations in relation to the making of the order.
4. We will allow joint account holders the opportunity to make representations about a proposal to vary or **lapse** an RDO. We are considering allowing 28 days for this.