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# Child Support scheme for timing and related matters in relation to ending liability in existing cases (“the ending liability scheme”)

(in accordance with regulations 3 and 4 of the Child Support (Ending Liability in Existing Cases and Transition to New Calculation Rules) Regulations 2014<sup>1</sup>)

## Introduction

1. The new child maintenance rules have now been introduced for all new applications since November 2013<sup>2</sup>. All child maintenance cases are to be governed by the new rules. This will be achieved by ending liability for cases on the 1993 and 2003 schemes and inviting interested parties<sup>3</sup> to consider making their own family-based arrangements or to apply to the new child maintenance scheme. The ending liability scheme sets out how and in which order cases will be selected to bring an existing case to an end and provides information for those who wish to apply to the new child maintenance scheme.

## Who the ending liability scheme applies to

2. The scheme will apply to existing child maintenance cases<sup>4</sup> on the 1993 or 2003 child maintenance scheme during the transition period (see paragraphs 6 and 7 below). After the end of the transition period all these cases, which remain on the statutory child maintenance scheme, will be subject to the new rules.
3. Two categories of cases will not be subject to the selection order detailed at paragraphs 16-29 (order for ending liability and pathfinder approach) in this scheme<sup>5</sup>.
4. The first category is where a new application is made for a maintenance calculation which is related to an existing case. In these cases the new application will trigger the process for bringing liability to an end in the

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<sup>1</sup> For ease of reference these are referred to as the “2014 Regulations” [insert SI number when available].

<sup>2</sup> The new calculation rules are set out in the Child Support Maintenance Calculation Regulations 2012 (S.I. 2012/2677).

<sup>3</sup> See regulation 2 of the 2014 Regulations. Interested parties means those paying or in receipt of child maintenance.

<sup>4</sup> See paragraph 1 to Schedule 5 of the Child Maintenance and Other Payments Act 2008 which makes provision for the meaning of “existing case” for the purpose of this scheme.

<sup>5</sup> Regulation 4(2) and (3) of the 2014 Regulations.

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existing case so that all calculations will be made under the new child maintenance rules.

5. The second category is where the youngest, or only qualifying child, will have reached the age of 20 before the end of the transition period. Liability will not end on these cases under this scheme unless it is linked to a new application (see paragraph above). This is because these cases will come to a natural end before the end of the transition period.

### Transition period

6. The transition period is the period of time within which the Secretary of State shall end liability in existing cases.
7. The transition period shall start on [the date the 2014 Regulations come into force] and end on 31 December 2017.
8. Due to the large volumes of cases involved and the changing characteristics of a case during the transition period, it is not possible to predict with any degree of accuracy when a particular case will be selected. The volumes of cases selected will be adjusted according to resources and the transition period end date may be extended.

### Notifying interested parties

9. The Secretary of State shall notify interested parties by issuing a notice explaining that liability for child maintenance under the 1993 or 2003 scheme will end<sup>6</sup> and inviting interested parties to consider making a family-based arrangement for maintenance or applying to the child maintenance scheme under the new calculation rules.

### Liability end date

10. The notice will provide a date on which liability will end on an existing case. This is known as the 'liability end date'<sup>7</sup>.
11. For cases related to a new application (paragraph 4, above) this will be 30 days from the date the notice is given. This is to ensure that the new application is not unreasonably delayed as related cases must all be dealt with under the same rules.
12. In all other cases (not related to a new application), the liability end date will be between 180-272 days (6-9 months) from the date the notice is given to an interested party. The intention is that it will usually be 180 days from the date that notice is given. In some cases the liability end date will be later, but it cannot be later than 272 days after the date that notice has been given. The liability end date may be 272 days after the notice is given where the Secretary of State has invited a non-resident parent, who falls within segment 5 below, to demonstrate their ability to pay voluntarily

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<sup>6</sup> Regulation 5 of the 2014 Regulations.

<sup>7</sup> Regulation 6 of the 2014 Regulations.

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in order to be allowed the opportunity to pay the parent with care directly under the new rules, and therefore avoid collection charges<sup>8</sup>.

13. If a case becomes related to a new application *after* a notice has been issued, then the Secretary of State may revise the liability end date by giving the interested parties 30 days' notice. All related applications need to be determined by the same rules and the new application should not be unreasonably delayed if the existing case has a significant period left to run under the original notice. The intention is that the liability end date will only be revised where there is more than 30 days left to run under the original notice.

### **Order for ending liability on existing cases – an overview**

14. The order for ending liability will primarily be determined in relation to the segment order detailed below. However, in parallel, the Secretary of State will have a pathfinder approach for the purpose of testing systems and processes. The Secretary of State may revise the scheme in response to any information or results obtained during the course of ending liability in existing cases.
15. The overarching principle of this scheme is to minimise the risk of disruption to payment of child maintenance in existing cases, particularly where maintenance is flowing as a result of enforcement action. Therefore, cases which are subject to certain enforcement procedures will be left towards, or at, the end of the transition period. This enables processes to be more fully embedded before selecting these cases to reduce the risk of payment disruption. The pathfinder approach further supports this objective.

### **Order for ending liability**

16. Except where cases are selected in accordance with a pathfinder (see paragraph 29 and Annex A) or paragraphs 30-31 are relevant (special circumstances), the Secretary of State shall select existing cases with a view to ending liability in the order set out below.
17. The order for ending liability is set out in 'segments'. Each segment details the types of cases that will be selected. Due to the large volumes of cases (it is estimated that each segment will have approximately 100,000 to 200,000 cases in it), cases within any particular segment will be selected over a period of time. The characteristics of a case are not static and may change at any time during the transition period. The intention is that each day the system will select a limited number of cases which meet the criteria of the particular segment on that day, followed by

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<sup>8</sup> Under the new rules (also known as the 2012 scheme), an application fee, collection fee and enforcement fee [will be/has been] introduced under the Child Support Fees Regulations 2014 [insert SI no. when known].

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the application of a further subcategory (such as oldest case first) in order to restrict the number selected on any given day.

18. The system will prioritise cases according to the segment order. Where the characteristics of a case change so that it meets the criteria of an earlier segment, it will be selected at the earliest opportunity when the next tranche of cases are chosen. However, if a case meets the criteria of an earlier segment but its characteristics change to a later segment *after* it has been selected, then the notice that has been given to the interested parties will continue to have effect (unless paragraphs 32-35 (power to withdraw a notice) apply).
19. Where a case group (this is where cases are linked for some reason, for example, where the non-resident parent is subject to multiple applications) includes cases that fall into more than one segment, then the case group will default to the highest number segment for that case group.

### **Segment 1 – nil assessed cases**

20. These are all cases where liability is assessed as nil<sup>9</sup>.
21. Within segment 1 the order for selection will generally be determined by taking the following factors into account:
- Contribution to Maintenance<sup>10</sup> cases first
  - Older cases shall have priority over newer cases

### **Segment 2 – non compliant and non-charging cases**

22. These will be all cases where the non-resident parent is not complying with his/her obligation to pay child maintenance or is assessed and non-charging<sup>11</sup>. This segment excludes cases which are subject to a deduction from earnings order, a regular deduction order, where a deduction from earnings request has been granted and where enforcement action is ongoing.
- Within segment 2 the order for selection will generally be oldest case first.

### **Segment 3 – clerical cases**

23. Segment 3 will be all clerical cases (these are cases that are not managed on the main computer systems) that do not fall within Segment 1 or 2 or 5 (so excluding deduction from earnings order, deduction from earnings request and regular deduction order cases and cases where enforcement action is ongoing).

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<sup>9</sup> See regulation 4(4) of the 2014 Regulations.

<sup>10</sup> Contribution to maintenance only applies to 1993 scheme cases. On that scheme, non-resident parents that are assessed to pay nil, are still required in certain cases to make a contribution to maintenance if they are in receipt of certain benefits.

<sup>11</sup> “non-charging” cases are those where there is a liability to pay child maintenance but there is no payment schedule in place.

24. Within segment 3 the order for selection will generally be oldest cases first.

**Segment 4 – non-clerical cases**

25. Segment 4 will be all non-clerical cases that do not fall within Segment 1 or 2 or 5 (so excluding deduction from earnings order, deduction from earnings requests and regular deduction order cases and cases where enforcement action is ongoing).

26. Within segment 4 the order for selection will generally be oldest case first.

**Segment 5 – enforcement cases**

27. Segment 5 will be all cases where<sup>12</sup>:

- (a) the method of payment of child maintenance is by-
  - (i) deduction from earnings order;
  - (ii) deduction from earnings request; or
  - (iii) regular deduction order; and

- (b) all cases where an enforcement action is currently in progress including liability orders (and all subsequent action that flows from such orders); lump sum deduction orders; freezing orders; setting aside of disposition orders and their Scottish equivalents.

28. Within segment 5, cases will be selected by applying the following principles:

- (a) cases that are non compliant; followed by,
- (b) cases that are partially compliant; followed by,
- (c) cases that are fully compliant.

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(a) <sup>12</sup> The Secretary of State has a number of powers in relation to enforcement of payment of child support maintenance under the Child Support Act 1991 (“the 1991 Act”). The relevant legal provisions in relation to enforcement cases referred to under segment 5 are—

- (i) section 31 (deduction from earnings order) of the 1991 Act;
- (ii) section 32A (orders for regular deductions from accounts) of the 1991 Act;
- (iii) section 32E (lump sum deductions: interim orders) of the 1991 Act;
- (iv) section 32F (lump sum deductions: final orders) of the 1991 Act;
- (v) section 32L (orders preventing avoidance) of the 1991 Act;
- (vi) section 33 (liability order) of the 1991 Act.

A “deduction from earnings request” is similar to a deduction from earnings order but applies to a member of the armed forces.

## Pathfinder approach

29. The current intention in relation to a pathfinder approach is found at Annex A.

## Special circumstances

30. Cases will generally be selected in accordance with the segmentation order detailed above (see paragraphs 16-28) or a pathfinder, however due to the volume of cases, the individual facts of the case and the way information is captured on the IT systems or clerical systems it is possible that a case will not be selected in the order set out above.
31. Where a case is not selected in the correct segmentation order and has already missed an earlier segment, it will be selected as and when it is identified. In cases which have been selected earlier than the intended order the ending liability process will continue unless the Secretary of State withdraws the notice sent to the interested parties notifying them that liability on the existing case will end. Although the Secretary of State has a power to withdraw a notice the general intention is that such power will be exercised in exceptional circumstances (see below).

## Power to withdraw a notice

32. The power to withdraw a notice only arises where<sup>13</sup>-

- a) in the opinion of the Secretary of State the case was selected in error; and
- b) there are over 30 days left to run before the liability end date specified in the original notice.

33. Every effort will be made to ensure that a case is selected in the order detailed in this scheme but there will be occasions when a case is selected in error. For example, there may be inaccurate information held on the IT systems which is only identified after a notice has been given. In cases where there has been an error, the intention is to withdraw a notice in exceptional circumstances, taking into account the factors referred to in paragraph 34.

34. The power to withdraw a notice (with the effect of de-selecting a case) will be exercised by taking into account the particular circumstances of a case. This shall include consideration of a number of factors, including but not limited to-
- a) whether there is any enforcement action on a case and a real risk that payments will be disrupted if the ending liability procedure continues;
  - b) the wishes of the parties;

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<sup>13</sup> See regulation 5(7) of the 2014 Regulations.

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c) any detriment that would be caused in withdrawing the notice or continuing with the ending liability procedure.

35. The Secretary of State will notify the interested parties when a notice is withdrawn. Once a notice is withdrawn the liability end date specified in the original notice will not have effect and the case remains an existing case that is subject to selection at a future date (unless the case is one which falls within paragraph 5 (youngest child turns 20 before the end of the transition period) or comes to an end for some other reason).

### **Applying to the new child maintenance scheme**

36. The notice referred to in paragraph 9 will provide the interested parties with information and action required to apply to the new scheme. Applications made in response to the notice ending liability will be treated for all purposes as any other application to the new scheme and the process will remain the same. As with all new applications this will include a requirement to contact Child Maintenance Options. This is an essential requirement prior to accessing the statutory scheme. In order to apply to the new scheme the applicant will need to obtain a gateway reference number from the Child Maintenance Options.

Signed & dated etc

*[This version dated 21 November 2013]*

## ANNEX A – Pathfinder approach

The intention is to run 3 pathfinders as detailed below in order to further test systems and processes before larger numbers of cases are selected in accordance with the ending liability scheme.

**Part 1:** An initial pathfinder (which is estimated to cover a period of weeks) will use a small volume of cases solely from segment 1. The purpose is to test systems and processes and monitor client reactions.

**Part 2:** This pathfinder will then select a small volume of segment 2 cases and will run the ending liability procedure for these cases alongside the segment 1 cases. The purpose is to monitor client reactions and compare them between the segments.

**Part 3:** This third pathfinder will select cases from segments 3 and 4 and will run the ending liability procedure for these cases alongside the segment 2 cases. Again, the purpose is to monitor client reactions and compare them between the segments.

To produce a valid outcome around 500 cases will be selected for each of the segments in the pathfinder (segments 1-4 only). These volumes will be kept under review and may be varied if necessary.