

## **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 the general principles in relation to 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 16-30 (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<sup>6</sup>. In these cases the new

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<sup>1</sup> For ease of reference these are referred to as the “2014 Regulations” [S.I 2014/614].

<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.

<sup>6</sup> An existing case will be linked to a new application where:

the non-resident parent in the new application is also a non-resident parent for a different case on the 1993 or 2003 scheme, and the person with care in the new application is not also the person with care in the existing case; or

where the non-resident parent in the new application is the partner of a non-resident parent for a different case on the 1993 or 2003 scheme, and either or both of them are in receipt of a prescribed benefit.

application will trigger the process for bringing liability to an end in the 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>7</sup> on a specified date and inviting interested parties to contact Child Maintenance Options to discuss their next steps, including 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>8</sup>.
11. For cases related to a new application (paragraph 4, above) this will be the date specified in the notice, which must be no less than 30 days from the date the notice is given. This is to ensure that the new application is not unreasonably delayed as all related cases must be dealt with under the same rules.
12. In all other cases (not related to a new application), the liability end date will be the date specified in the notice which must be between 180-272 days (6-9 months) from the date the notice is given to an interested party. The intention

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<sup>7</sup> Regulation 5 of the 2014 Regulations.

<sup>8</sup> Regulation 6 of the 2014 Regulations.

is that it will be no less than 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 up to 272 days after the notice is given in cases where the Secretary of State has invited a non-resident parent, who falls within segment 5 below, to demonstrate their ability to pay voluntarily for a period of time on their existing case in order to demonstrate that they will pay maintenance regularly, and so be allowed the opportunity to pay the parent with care directly under the new rules, and therefore avoid collection charges<sup>9</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 at least 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 30 and Annex A) or paragraphs 31-32 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

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<sup>9</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 [S.I 2014/612].

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.

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 33-36 (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>10</sup>.
21. Within segment 1 the order will generally be determined by taking a proportionate number of cases on a daily basis from each of the 1993 and 2003 scheme caseloads using an oldest first principal.

#### *Segment 2 – non compliant and non-charging cases<sup>11</sup>*

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. 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.
23. Within segment 2 the order for selection will generally be oldest case first drawn simultaneously from both scheme caseloads.

#### *Segment 3 – clerical cases*

24. 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).
25. Within segment 3 the order for selection will generally be oldest cases first drawn simultaneously from both scheme caseloads.

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<sup>10</sup> See regulation 4(4) of the 2014 Regulations.

<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

#### *Segment 4 – non-clerical cases*

26. 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).
27. Within segment 4 the order for selection will generally be oldest case first drawn simultaneously from both scheme caseloads.

#### *Segment 5 – enforcement cases*

28. 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.
29. 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.

#### Pathfinder approach

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

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<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.

### Special circumstances

31. 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.
32. 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*

33. 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.
34. 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 35.
35. 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;
  - c) any detriment that would be caused in withdrawing the notice or continuing with the ending liability procedure.
36. 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

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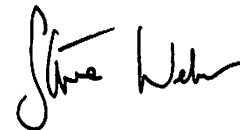
<sup>13</sup> See regulation 5(7) of the 2014 Regulations.

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

37. 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 reference number from Child Maintenance Options.

Signed & dated etc

A handwritten signature in black ink, appearing to read "Steve Webb". The signature is written in a cursive style with a large initial 'S'.

*[This version dated 28 May 2014]*

## ANNEX A – Pathfinder approach

The intention behind running a pathfinder is to further test systems and processes and monitor client reactions before larger numbers of cases are selected in accordance with the ending liability scheme.

An initial pathfinder (which is estimated to cover a period of weeks) will use a sample of cases solely from segment 1.

The Secretary of State will conduct additional pathfinders for subsequent segments where it is found to be appropriate.