

## Deduction from Earnings Orders and Requests: Decision Making Guidance

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### Arrears Notices: Decision Making Guidance

#### Arrears Notices

[2009/3151](#) Regulation 3 of the Child Support (Management of Payment and Arrears) Regulations 2009

Before taking any action to enforce the collection of child maintenance arrears you must check that an arrears notice has been issued. Action to enforce the collection of arrears includes imposing a DEO.

#### **Arrears notice requirements**

An arrears notice must be made in writing and inform the non-resident parent that:

- payments have become due and not been paid
- the CMG can in certain circumstances retain any arrears collected
- immediate payment is required

## Arrears notice has not been issued

You must issue an arrears notice and allow the non-resident parent 7 days to respond before imposing a DEO (or taking any other enforcement action). If the non-resident parent contacts you within this period and pays their arrears you would not proceed with the DEO. If the non-resident parent does not respond or pay their arrears within this period you should decide whether to impose a DEO.

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### [Non-resident parent refuses to agree a preferred method of payment: Decision Making Guidance](#)

[1991/48](#) Section 31 and 32 of the Child Support Act 1991

[1992/1989](#) Part 3 of the Child Support (Collection and Enforcement) Regulations 1992

You can impose a DEO to collect child maintenance payments if:

- the non-resident parent has actively refused to pay by any MOPF (wilful non-compliance); and
- the non-resident parent is employed; and
- we have contact details for the non-resident parent's employer.

If the non-resident parent is not employed or we do not have their employer's contact details you would need to consider an alternative method of collection.

If you are considering imposing a DEO to collect regular maintenance because the non-resident parent will not agree a preferred method of payment, you must tell them that you are considering this action and will do so unless they can provide a "good reason" why this would be inappropriate. You must then take into account any reasons not to impose the DEO that the non-resident parent wants to be considered.

**REMEMBER:** If the non-resident parent will not agree a preferred method of collection a default standing order should be imposed as a temporary measure. This will ensure payments can be scheduled. If the non-resident parent fails to make payments when they are due the case will be in arrears and a Deduction from Earnings Order can be imposed without considering whether there are good reasons not to do so.

**Note:** a DEO cannot be applied where the following are in payment:

- Statutory paternity pay
- Statutory redundancy pay

**Note: War Disablement Pension (including any pension payable in respect of disablement or disability)**

1992/1989 Regulation 8 (4) (d) of the Child Support (Collection and Enforcement) Regulations 1992

Child Support legislation defines War Disablement Pensions and Armed Forces Compensations Scheme payments as prescribed benefits, and they do not fall under the definition of earnings for the purposes of a DEO.

An Armed Forces Pension is the same as any other occupational pension, and can be subject to a DEO. However, as with all occupational pensions, if the reason it is being paid is due to disablement/disability then a DEO would not be possible.

Is there a “good reason” not to impose a DEO?

You must consider any reasons not to impose a DEO that the non-resident parent has put forward. Legislation prescribes:

- a range of factors that must be taken into account when we are deciding if there is good reason not to impose a DEO
- certain scenarios that would be a good reason for not doing so
- factors that do not need to be taken into account

NOTE: These considerations are only relevant if the reason for imposing a DEO is refusal to agree a preferred method of payment. You do not need to take them into account if you are imposing a DEO to collect arrears.

**Factors that must be taken into account**

1992/1989 Regulation 3(4) of the Child Support (Collection and Enforcement) Regulations 1992

- is making the DEO likely to result in the disclosure of the parentage of the child?
- if so would that disclosure have an adverse impact on the non-resident parent’s employment / relationship with a third party?

This means if a non-resident parent states imposing the DEO means someone who does not know they are a parent of the child may find out and this will have a negative effect on their employment / relationship with someone else we must take this into account when deciding whether to impose a DEO. In these circumstances the non-resident parent should be reminded that if they agree to pay by direct debit we will not impose a DEO.

**Scenarios that are a good reason for not imposing a DEO**

[1992/1989 Regulation 3\(5\) of the Child Support \(Collection and Enforcement\) Regulations 1992](#)

Legislation specifies a range of situations in which we should not impose a DEO because the non-resident parent has refused to agree a preferred method of payment. These are:

- a member of the non-resident parent or parent with care's family is employed by the same employer as the non-resident parent, and
- that family member has a job involving knowledge of the employer's functions in administering a DEO (e.g. they work in a payroll department), and
- as a consequence of the above the non-resident parent's employment status or family relationships could be adversely affected if a DEO is imposed

**Factors that should not be considered**

[1992/1989 Regulation 3\(6\) of the Child Support \(Collection and Enforcement\) Regulations 1992](#)

When you are deciding whether there is a good reason not to impose a DEO you do not need to take into account:

- the fact the non-resident would prefer a different non method of payment;
- the fact the non-resident parent does not want their employer to know they are liable to pay child maintenance (although note, this may be relevant if their employer is a family member – see above);
- that a third party would be made aware of the non-resident parent's liability to pay maintenance

When you have considered the non-resident parent's reasons you must decide whether to impose the DEO. If you decide to do so, the non-resident parent must be notified of this decision.

No "good reason": Appeal Rights

Non-resident parent's can appeal against the decision that there is no "good reason" not to impose a DEO. You therefore must not impose a DEO in this situation until the appeal period has lapsed. The appeal period is 30 days from the date the decision is notified. If the non-resident parent appeals within this period the DEO cannot be imposed until the appeal has been dealt with.

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## [Non-resident parent demonstrates wilful non-compliance and refuses to pay by any method of payment](#)

### [1991/48](#) Section 31 and 32 of the Child Support Act 1991

Where, following discussion with a non-resident parent it is clear that they are wilfully refusing to pay child maintenance by any MOPF, a DEO can be imposed as an enforcement method without regard to the “good reason” requirement where the decision maker is satisfied that this is necessary to secure payments. This is likely to be where there is sufficient evidence that other MOPFs are likely to fail. We call this wilful non-compliance.

In addition to situations where the non-resident parent actively states that they will not pay, wilful non-compliance can be assumed where a written warning has been given to the non-resident parent that they need to contact us to set up a method of payment, and they have not responded within the required time limit (14 days).

If we assume wilful non-compliance, and the non-resident parent contacts us after the 14 day period has elapsed, provides a reasonable explanation for why they were not able to contact us within the required period, and offers to pay by a preferred MOPF, then the DEO should be removed, and an alternative MOPF set up.

Also, some non-resident parents may refuse to provide details to set up a MOPF until they have final confirmation of their calculation amount. In this case wilful non-compliance cannot be assumed, as they are not refusing to pay altogether. In this scenario a DSO should be set up, and the case revisited as soon as the calculation notice is issued so that a preferred MOPF can be set up. If the NRP then refuses to set up a MOPF, then this can be considered as wilful non-compliance.

Where there are outstanding arrears, the normal requirements for consideration of an arrears notice still apply, refer to ['Arrears Notices'](#)

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## [Normal Deduction Rate: Decision Making Guidance](#)

### [1992/1989](#) Regulation 10 of the Child Support (Collection and Enforcement) Regulations 1992

What is the Normal Deduction Rate? (NDR)

The NDR is the amount we ask an employer to deduct from the non-resident parent's wages and the date upon which the deductions are to take effect.

Setting the NDR: Key Principles

It is important when you are setting an NDR that you do so at an appropriate rate taking all the circumstances into account, including the welfare of any children. You should ensure you record the reasons for setting the NDR at the rate that you decide. Refer to the [Discretionary Decision Making Guidance](#) for further advice about making / recording discretionary decisions.

NOTE: If the non-resident parent has multiple employers, more than one Deduction from Earnings Order can be implemented if this is necessary to collect:

- the full amount of ongoing maintenance; and
- a reasonable amount towards any arrears.

If you are setting up multiple DEOs the following principles should be applied when you are deciding the appropriate NDR for each order. You may need to contact the non-resident parent or their employer(s) to clarify how much income they receive from each employment. Refer to the drop down on 'How we identify 40% of the non-resident parent's net income' ( below) for further guidance.

#### **DEO for current liability only**

If the DEO is being used to collect ongoing liability only:

- set the NDR at the same amount as the non-resident parent's liability; unless there is information / evidence available to indicate this will exceed the PEP. In these circumstances, you should follow the principles in the guidance on 'identifying 40% of the non-resident parent's net income', to identify the maximum rate that can be applied.

#### **DEO current liability and / or agreed arrears amount**

If the DEO is being used to collect ongoing liability and / or arrears and the non-resident parent has agreed to pay an amount towards their arrears that meets the Debt Steer:

- set the NDR at the agreed amount;
- plus ongoing liability if applicable; unless there is information to indicate that a deduction at this rate will exceed the PEP. In these circumstances you should use the principles in the guidance on 'identify 40% of the non-resident parent's net income' to identify the maximum deduction that can be made;
  - if the non-resident parent wishes to pay an additional amount above this rate they must do so using an alternative method of payment.

#### **DEO current liability and / or no agreed arrears amount**

If the DEO is being used to collect ongoing liability and / or arrears and the non-resident parent has NOT agreed to pay an amount towards their arrears that meets the Debt Steer:

- you need to determine a suitable NDR, taking into account all the circumstances of the case, and particularly:
  - [The Debt Steer](#) (Refer to the guidance on the Debt Steer for further advice); and
  - the protected earnings proportion

### **What is the protected earnings proportion?**

[1992/1989 Regulation 11 of the Child Support \(Collection and Enforcement\) Regulations 1992](#)

The CSA currently calculates protected earnings from the net earnings information that has been used to determine maintenance liability. Details of the protected amount are provided to employers and non-resident parents. Under the new scheme (2012), the employer will be required to protect a percentage amount of the employee's net earnings. The calculation will not be made by the Child Maintenance Service. There is no change to the definition of net earnings.

Legislation prescribes that a non-resident parent must be left with 60% of their net earnings after any deduction for child maintenance under a DEO.

Responsibility for ensuring that the protected earnings proportion is not breached rests with the non-resident parent's employer, as they will know if the non-resident parent's net income will be affected in this way.

Example:

The non-resident parent's net weekly income is normally £200. The CMG imposes a DEO for £60, this will normally leave the non-resident parent with more than 60% of their net weekly income. However, due to unpaid leave the non-resident parent's net income in one week reduces to £120. Making a deduction at the NDR would leave the non-resident parent with less than 60% of their net income. The employer would therefore make a lower deduction of £48 in this week.

### **Relevance of the protected earnings proportion when setting an NDR**

Although responsibility for ensuring that the protected earnings proportion is not breached rests with the non-resident parent's employer, it makes sense for the CMG to take into account the maximum amount that can be collected when setting an NDR.



The protected earnings proportion means the maximum amount that we can collect under a DEO is 40% of the non-resident parent's net income. Identifying what this maximum amount is likely to be, will provide you with a framework to determine an appropriate NDR.

NOTE that 40% of the non-resident parent's net weekly income should not be a default or standard rate of deduction under a DEO. However, identifying the maximum amount that can be deducted will help you decide an appropriate NDR.

### **How do we identify 40% of the non-resident parent's net income?**

The protected earnings proportion is based on the income a non-resident parent receives during the pay period the deduction is made. Because this may change it will not be possible for you to know what 40% of the non-resident parent's net income will be when you are setting the NDR. However, you can take the following sources of income information into account:

- any evidence of current net income that the non-resident parent has provided during arrears negotiations
- any evidence of Current Income that the non-resident parent provided when their liability was calculated
- any evidence of Historic Income that was obtained from HMRC when the non-resident parent's liability was calculated

Multiple DEO cases – If the non-resident parent has more than one employer and you are considering imposing multiple DEOs, you should contact the non-resident parent or their employer to try and establish their income from each employment if you don't already have this information. This will help you ensure the NDR for each order will not exceed 40% of the non-resident parent's income from each employment.

IMPORTANT NOTE: Historic and Current Income figures are both based on the non-resident parent's Gross Income. The protected earnings proportion is based on Net Income.

When you are trying to calculate a maximum deduction rate using Historic or Current Income details you will need to convert the figure to reflect a percentage of net rather than gross income. You would do this using the Employed Earners Automated Tax / National Insurance Calculators (Employed Earners ATNIC).

Reviewing the NDR

[1992/1989](#) *Regulations 18 & 19 of the Child Support (Collection and Enforcement) Regulations 1992*

There are two situations where it may be appropriate to review the NDR:



- the amount you need to collect increases or decreases due to a change in circumstances;
- the non-resident parent reports a change in their income. REMEMBER: A maintenance calculation will only be altered if the non-resident parent's income changes by 25% or more. There may therefore be situations where the maintenance calculation has not been altered but you should still review the arrears proportion of the NDR because the non-resident parent's income has changed.

The above situations may be identified from a range of sources, including:

- information obtained during an Income Review;
- a change of circumstances reported by a client;
- we are repeatedly notified by the employer that the full amount cannot be collected.

In any of these situations you should consider reviewing the NDR taking into account all the new information provided and applying the principles set out above.

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### [Issuing a DEO / DEO Disputes: Decision Making Guidance](#)

The DEO must be issued to both the employer and the non-resident parent. When you are completing the DEO you must ensure it complies with prescribed legal requirements, if not the DEO may be defective and could be over turned.

What are the legal requirements?

[1992/1989 Regulations 9-11 of the Child Support \(Collection and Enforcement\) Regulations 1992](#)

The DEO must:

- specify the name and address of the non-resident parent
  - the name of the employer who the DEO is directed
  - if known the NRP's place of work and the nature of their work
  - where known their work or pay number
  - where known their National Insurance Number
- include a Normal Deduction Rate

- state that the employer must protect 60% of actual net earnings in each pay period
- specify when deductions should be made
- specify who deductions must be paid to, and the address to which the amounts are to be sent

Non-resident parent disputes DEO

[1992/1989](#) Regulation 22 of the Child Support (Collection and Enforcement) Regulations 1992

There are two reasons why a non-resident parent can dispute a DEO:

1. the DEO is defective; or
2. the money being deducted is not classed as 'earnings' for DEO purposes.

**What is a defective DEO?**

[1992/1989](#) Regulations 9 to 11 of the Child Support (Collection and Enforcement) Regulations 1992

A DEO will be defective if:

- it does not comply with the regulatory requirements; and
- this failure has made it impracticable for the employer to comply with their obligations.

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[Deduction from Earnings Orders and Charging](#)

Charging liabilities may be collected through the same means as child maintenance liabilities. This means that a DEO can be used for the collection of collection charges and enforcement charges. The figure for collection charges and/or enforcement charges is simply added to the amount otherwise being sought through the DEO.

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[Employer fails to comply with a DEO](#)

[1991/48](#) Section 32(8) of the Child Support Act 1991

If an employer fails to comply with the requirements of a DEO they are guilty of an offence and can be prosecuted or fined.

If a payment is not received from an employer when it is due, you should contact them to remind them:

1. of their duty under the law;
2. that prosecution can be considered.

If further payments are not received you should consider referring the case to Criminal Compliance.

NOTE: If an employer fails to pass on deductions the non-resident parent is still liable to pay the maintenance due. Whilst this may seem unfair, the CMG has no legal right to recover the deductions made from the non resident parent's employer. However, the non-resident parent normally will.

### **Example - employer goes into liquidation**

An employer goes into liquidation, having made deductions from the non-resident parent but not paid them out to the CMG. The case should be referred to Criminal Compliance for them to consider appropriate action against the employer.

The non-resident parent might have to be advised to place a claim with the liquidator for the amounts withheld from his wages. The non-resident parent will need to reach an agreement with the CMG as to how they are going to pay the shortfall in maintenance.

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### **[DEO inappropriate or fails before or shortly after implementation](#)**

In certain circumstances a DEO may not be possible as a method of payment from an NRP, for instance where:

- an employer cannot be traced for the NRP;
- the NRP is known to work cash in hand; or
- the NRP is a job hopper and a DEO has been attempted at least more than one occasion.

It will therefore not always be possible to implement a DEO and a clear explanation must be recorded explaining why the DEO is not possible.

Where it is possible to impose a DEO then this should be attempted. If for example a NRP has a history of leaving employment in order to prevent a DEO collecting child maintenance and a new employer is traced then the DEO should still be attempted.

The DEO may fail for a variety of reasons such as:

- the NRP is a job hopper;
- the NRP is a company director;
- the NRP has insufficient protected income to implement the DEO.

Should the DEO fail for instance because the PP has left the employment and a new employer cannot be traced then consideration must be given to the next appropriate action to secure payment of the maintenance and any arrears due.

If the NRP is known to be a job hopper and a DEO has been attempted on at least more than one occasion in a short period of time (for example 6 months) it may be appropriate to move to the next appropriate action but you must ensure that if the NRP challenges this decision we can demonstrate that we had attempted a DEO on a number of occasions previously but because the NRP is a job hopper these actions failed.

The action to be taken will depend upon the circumstances of the case.

If it is known that the PP has a suitable bank account then a regular deduction order can be considered. If no bank account details are held then liability order action can be considered.

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[Referring cases to enforcement](#)

The £500 de-minimus for referring cases to enforcement no longer exists. Cases will now be referred to enforcement when the arrears team cannot take any further action. So for example when a DEO has already been attempted and is not appropriate and disclosure action has been done and confirmed an RDO is not appropriate. Before referring cases to enforcement caseworkers should check all required action has been completed that is included on the enforcement checklist.

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[Enforcement team action on cases with debt of less than £500](#)

When cases land in enforcement with less than £500 debt the caseworker should consider what action is appropriate on each individual case. The normal de-minimus

limit of £500 will still apply for applications for Liability Orders. An application for a LO where the debt is under £500 should not be pursued unless there is a compelling reason to do so. For example when debt is below £500 and the MC is very low, or the debt is arrears only. If you decide to pursue an application the welfare of the child must be considered and the decision documented

If it is not appropriate to pursue a LO and no other action is possible cases with less than £500 debt should go into surveillance until the debt reaches the £500 de-minimus or circumstances on the case change that may allow other action to start, for example if a DEO becomes appropriate because the NRP has gained employment.

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### [DER Setting the Deduction Rate: Decision Making Guidance](#)

The amount we can collect under a DEO is limited by the Protected Earnings Proportion.

This does not apply in relation to DERs, as any decision on whether / how much to deduct under a DER is made by HM Paymaster, and the CMG has no right to challenge this decision.

However, the DER should indicate how much the CMG wants to collect.

In determining an appropriate rate you should have regard to the Debt Steer principles of:

- aiming to collect all arrears within two years; and
- not exceeding 40% of the non-resident parent's net income.

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### [Issuing a DER: Decision Making Guidance](#)

The CMG has different policies for enforcing arrears from non-resident parents in the Armed Forces. Before implementing a DER you should contact the Armed Forces Liaison Officer to check whether the non-resident parent is on active service.

Issuing a DER

#### **Non-resident parent on active service NOT in a war zone**

- issue the DER

### **Non-resident parent on active service IN a war zone**

- the policy is to suspend the collection of debt
- do not issue a DER
- review the case every 3 months to ensure the non-resident parent's circumstances have not changed.

#### Increasing a DER

You will need to contact the Armed Forces Liaison Officer to check whether the non-resident parent is on active service.

### **Non-resident parent on active service NOT in a war zone**

- increase the DER

### **Non-resident parent on active service IN a war zone**

- where a DER is already operating and collecting monies, this should remain in place
- where an increase is required to an existing DER the non-resident parent's Commanding Officer may defer an increase until the Operational Tour of Duty is complete

**When you have decided to issue / increase a DER send it to the centralised MoD address:**

JPAC Process Team MP335

SPVA

Kentigern House

65 Brown Street

Glasgow

G2 8EX

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