

2009 No. 1815

FAMILY LAW

CHILD SUPPORT

**The Child Support Collection and Enforcement
(Deduction Orders) Amendment
Regulations 2009**

Made - - - - -

7th July 2009

Coming into force -

3rd August 2009

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 32A(4)(a), 32C(1) to (4), 32D(1)(b), 32E(2)(a) and (8)(a), 32F(1)(b), 32H(6), 32I(1) to (4), 32J(1) to (5), 32K(1)(b), 51(1) and (2)(h) and (i), 52(4) and 54 of the Child Support Act 1991(a).

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 52(2)(a) of that Act.

Commencement, citation and interpretation

1.—(1) These Regulations may be cited as the Child Support Collection and Enforcement (Deduction Orders) Amendment Regulations 2009 and shall come into force on 3rd August 2009.

(2) In these Regulations “the Collection and Enforcement Regulations” means the Child Support (Collection and Enforcement) Regulations 1992(b).

[Regulation 2 inserts Part 3A, chapters 1 - 4 into S.I.1992/1989.]

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

7th July 2009

Helen Goodman
Parliamentary Under-Secretary of State,
Department for Work and Pensions

(a) 1991 c. 48. Sections 32A to 32K were inserted into the Child Support Act 1991 by sections 22 and 23 of the Child Maintenance and Other Payments Act 2008 (c. 6); the power in section 32H(6) is contained in paragraph (c) of the definition of “relevant time”. Section 54 is cited for the meaning given to the word “prescribed”.

(b) S.I. 1992/1989.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Child Support (Collection and Enforcement) Regulations 1992 (S.I. 1992/1989) (“the Collection and Enforcement Regulations”) inserting a new Part 3A into those Regulations. Part 3A provides for regular deduction orders under section 32A of the Child Support Act 1991 (c. 48) (“the Act”) and lump sum deduction orders under sections 32E and 32F of that Act which were inserted into that Act by sections 22 and 23 of the Child Maintenance and Other Payments Act 2008 (c. 6) (“the 2008 Act”).

These Regulations have effect in cases to which the Act applies prior to the amendments made to that Act by the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”), some of which amendments are not fully in force, and relate to the child support scheme which was in force prior to 3rd March 2003 and which remains in force for the purposes of certain cases (a “1993 scheme case”). The regulations also have effect in cases to which the Act as amended by the 2000 Act, which relate to the child support scheme provided for by those amendments, which came into force for the purposes of specified categories of cases on 3rd March 2003 (*see* the Child Support, Pensions and Social Security Act 2000 (Commencement No. 12) Order 2003) (a “2003 scheme case”).

These Regulations are made in respect of functions of the Child Maintenance and Enforcement Commission (“the Commission”). Section 13 of the 2008 Act transfers functions from the Secretary of State to the Commission and that section was brought into force by the Child Maintenance and Other Payments Act 2008 (Commencement No. 4 and Transitional Provision) Order 2008 on 1st November 2008.

These Regulations make provision for regular deduction orders and lump sum deduction orders, by inserting regulations 25A to 25AD into the Collection and Enforcement Regulations.

Regulation 25A sets out definitions and makes provision for: the service of orders and the sending of notifications, evidence and the application of these Regulations to a 1993 scheme case and a 2003 scheme case.

Regulation 25B provides the additional matters which must be specified in a regular deduction order.

Regulation 25C provides the maximum deduction rate under a regular deduction order.

Regulation 25D specifies the minimum amount which may be deducted under a regular deduction order.

Regulation 25E makes provision for the matters which have to be notified by a deposit-taker to the Commission giving the time limits within which the deposit-taker is required to comply. The information which is required to be notified includes whether the account specified in the order does not exist, whether the account contains less than the minimum amount and where requested information relating to other accounts held by the liable person with the deposit-taker.

Regulation 25F provides that the Commission must notify the deposit-taker where a regular deduction order is varied, lapsed, revived or ceases to have effect.

Regulation 25G makes provision for the circumstances in which a regular deduction order may be reviewed and where it is reviewed the decision which may result from that review.

Regulation 25H makes provision for the priority of orders. This regulation makes separate provision for Scotland.

Regulations 25I to 25K provide for the circumstances in which a regular deduction order may be varied, is to lapse or may be revived. An order may be varied in circumstances which may lead to a change in the amount to be deducted under the order. The Commission may also vary the deduction period. An order is to lapse either where the Commission has agreed an alternative method of payment or where there is an insufficient amount standing to the credit of the account specified in the regular deduction order on a specified number of deduction dates. An order may be revived where the liable person has failed to comply with the alternative method of payment agreed by the Commission or it has reason to believe that there is a sufficient amount standing to the credit of the account specified in the order to make a regular deduction.

Regulation 25L makes provision setting out the circumstances in which the Commission must discharge a regular deduction order, which includes where the account specified in the order has been closed, the amount due under the maintenance calculation has been paid and no further payment is due and the amount to be deducted has been extinguished on review. It also includes provision for a lapsed order to be discharged after the expiry of specified periods of time.

Regulation 25M makes provision for representations to be made in respect of the proposal specified in the interim lump sum deduction order made under section 32E(1) of the Act within 14 days for the deposit-taker and the liable person from the date a copy of that order was served.

Regulation 25N provides the circumstances in which something that would otherwise be a breach of sections 32G(1) and 32H(2)(b) of the Act, with the consent of the Commission can be done. It sets out the matters which must be taken into account when the Commission is deciding whether to give consent. Further provision is made for the circumstances in which those sections are to be disapplied until the deposit-taker receives notification from the Commission.

Regulation 25O makes provision for the information which has to be provided by a deposit-taker to the Commission giving the time limits within which the deposit-taker is required to comply. The information which is required to be notified includes whether the account specified in the order does not exist, cannot be traced or has been closed and where requested, information relating to other accounts held by the liable person is required to be provided by the deposit-taker to the Commission in specified circumstances.

Regulation 25P makes provision for the priority of orders. This regulation makes separate provision for Scotland.

Regulation 25Q specifies the minimum amount which may be deducted under a lump sum deduction order.

Regulations 25R to 25T provide for the circumstances in which a lump sum deduction order may be varied, is to lapse or may be revived. An order may be varied in circumstances which lead to a reduction in the amount to be deducted under the order. An order is to lapse either where the amount in the account specified in the order is nil, the amount in the account specified in the order is reduced to nil where the Commission has consented to the disapplication of sections 32G(1) and 32H(2)(b) of the Act or the Commission has agreed an alternative method of payment. The circumstances in which an order may be revived include where an amount has been paid into the account specified in the order, or where the liable person has failed to comply with the alternative method of payment agreed by the Commission.

Regulation 25U makes provision setting out the circumstances in which the Commission must discharge a lump sum deduction order, including where the account specified in the order has been closed, the amount of arrears specified in the order has been paid in the required manner and the Commission has decided not to make an order under section 32F of the Act having considered representations.

Regulation 25V prescribes the time at which an order made under section 32E of the Act ceases to be in force.

Regulation 25W prescribes the circumstances which arise for the purposes of the meaning of “the relevant time” as defined in section 32H(6) of the Act (the time at which a lump sum deduction order will cease to operate).

Regulations 25X and 25Y prescribe accounts in respect of which a regular or lump sum deduction order may not be made and the circumstances in which amounts standing to the credit of an account are to be disregarded, respectively.

Regulation 25Z specifies the amount which a deposit-taker may deduct towards its administrative costs before making any payment to the Commission.

Regulation 25AA specifies the time at which and the method by which payment is to be made by the deposit-taker to the Commission.

Regulation 25AB makes provision for appeals against the making of a regular deduction order, any decision on the review of a regular deduction order, the withholding of consent to the disapplication of sections 32G(1) and 32H(2)(b) of the Act by the Commission and the making of an order under section 32F of the Act.

Regulation 25AC designates regulations 25E(1) to (5), 25I(4), 25O(1) to (5), 25R(3) and 25AA(1) for the purposes of sections 32D(1)(b) and 32K(1)(b) of the Act. Failure to comply with the requirements of those regulations is an offence in accordance with those sections of the Act.

Regulation 25AD provides that the Commission must set out the consequences of a failure to comply with a regular or lump sum deduction order or a requirement to provide information in accordance with regulation 25E or 25O including details of the offences provided for by sections 32D and 32K of the Act.

An assessment of the impact of these Regulations on the private and voluntary sectors has been made. Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 7F Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website:<http://www.dwp.gov.uk/resourcecentre/ria.asp>