

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 – Child Support etc.

Collection and enforcement

Section 22: Orders for regular deductions from accounts

130. This section inserts new *sections 32A, 32B, 32C and 32D* into the Child Support Act 1991 which will enable the Commission to deduct child support maintenance from the non-resident parent's account.
131. *Section 32A* enables the Commission to make a regular deduction order against a non-resident parent who has failed to pay child support maintenance. The order allows the Commission to collect regular deductions of maintenance from an account held by a non-resident parent with a deposit taker.
132. *Subsection (2) of section 32A* sets out that both arrears and maintenance payments which will become due under the calculation in place can be collected through deduction orders.
133. *Subsection (3)* allows a regular deduction order to be made even where there is an ongoing appeal against the maintenance calculation. This can only happen however in cases where the Commission concludes that the outcome of the outstanding appeal will not affect the amount of the liability covered by the order or, if the outcome of the appeal would have such an effect, the Commission still considers making the order to be fair in all of the circumstances.
134. *Subsection (4)* sets out that regulations may prescribe when an order may not be made in respect of an account of a prescribed description, and can be made against a joint account which is not of a prescribed description.
135. *Subsections (5), (6) and (7)* set out that the order will specify which account it is made against and the date it has effect. The order will operate as an instruction to the deposit-taker to make deductions from the specified account and pay them to the Commission, and copies of the order shall be served on the deposit-taker, the non-resident parent against whom it is made, and if it is directed at a joint account, the other account-holders.
136. *Subsection (8)* provides that the deposit-taker is under a duty to comply with the regular deduction order. However, it also protects the deposit-taker from any liability if they do not comply with the order during the seven day period beginning with the day the order is served on them.
137. *Subsection (9)* provides, for the avoidance of doubt, that where regulations have been made under section 29(3)(a) of the Child Support Act 1991, the person liable to pay

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child support maintenance (the non-resident parent) is taken to have failed to pay if they have not paid it to, or through, the person specified in, or by virtue of, the regulations.

138. *Section 32B* requires the Commission, before a regular deduction order is applied to a joint account, to offer each of the account-holders an opportunity to make representations with regards to the making of the order and the amounts to be deducted.
139. *Subsections (2) and (3)* ensure that amounts to be deducted from a joint account do not exceed amounts that appear to the Commission to be fair in all circumstances, with particular regard to the representations made, the amount contributed to the account by each of the account-holders and such other matters as may be prescribed.
140. *Section 32C* provides regulation-making powers to the Secretary of State with regard to the practicalities and procedure relating to regular deduction orders. The following paragraphs give examples of provision that may be made by the regulations.
141. *Subsections (2)(a) to (2)(c) of section 32C* – the regulations may require that the order specifies the amount in respect of which it is made, the amounts to be deducted in order to meet liabilities, and the dates deductions are to be made.
142. *Subsection (2)(d)* – the regulations may limit the rate of deduction under a deduction order. It is envisaged that an order will be limited to an amount which is a percentage of the non-resident parent's income. If the circumstances of a non-resident parent change it will be their responsibility to inform the Commission so that the amount in the order might be changed and the deposit-taker notified. Only amounts in credit will be deducted from an account.
143. *Subsection (2)(e)* – the regulations may allow for certain circumstances when amounts of money held to the credit in an account should be disregarded in respect of the regular deduction order. This could be if the money is being held on behalf of another person, for instance.
144. *Subsection (2)(f)* – the regulations may include provision concerning the payment of money deducted by a deposit-taker to the Commission.
145. *Subsection (2)(g)* – the regulations may allow the deposit-taker to deduct an amount from the non-resident parent's account towards its administrative costs before making any deductions in line with the regular deduction order.
146. *Subsection (2)(h)* – the regulations may provide for notifications to be given to a non-resident parent who is subject to a deduction order, and if the order is directed at a joint account, the other account-holders, regarding amounts deducted and paid under the order.
147. *Subsection (2)(i)* – the regulations may require the deposit-taker to notify the Commission, within a specified period of time, if the account specified in the order does not exist, or if the non-resident parent who is the subject of the order has any other accounts.
148. *Subsection (2)(j)* – the regulations may require the deposit-taker to notify the Commission, within a specified period of time, if a non-resident parent subject to a deduction order closes their account or opens a new account.
149. *Subsection (2)(k)* – the regulations may allow the deposit-taker at which an order is directed, the non-resident parent against whom an order is made, or if the order is directed at a joint account, the other account-holders, to apply to the Commission for a deduction order to be reviewed, in certain circumstances, and may provide for how the Commission is to carry out such a review.
150. *Subsection (2)(l)* – the regulations may allow the Commission to vary an order. Regulations will prescribe the circumstances when this might occur, for example, as a result of a review, or if some of the arrears have been settled.

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151. *Subsection (2)(m)* – the regulations may provide powers similar to those in *section 32A(8)* in relation to the variation of an order, whereby although the deposit-taker has a duty to comply with the order as varied, they will not be liable for non-compliance during the first seven days from being given notice of the variation.
152. *Subsection (2)(n)* – the regulations may provide that an order will lapse in prescribed circumstances. This might include, for example, provisions that an order will lapse if the non-resident parent no longer holds a current account with the deposit-taker to whom the order was directed.
153. *Subsection (2)(o)* – the regulations may provide for an order to be revived in certain circumstances. This could be where it has lapsed because the non-resident parent has agreed to make payments but then defaults on those payments.
154. *Subsection (2)(p)* – the regulations may make provision allowing or requiring an order to be discharged.
155. *Subsection (2)(q)* – the regulations may require the Commission to give notice to the deposit-taker in the case of an order lapsing or ceasing to have effect.
156. *Subsection (3)* provides regulation-making powers to the Secretary of State, with regard to the priority of a regular deduction order and:
 - any other regular deduction orders in place;
 - any other type of order which makes deductions from the same account; and
 - any diligence (done in Scotland) against the same account.
157. *Subsections (4), (5) and (6)* require the Secretary of State by regulations to make provision for any person affected to have a right of appeal to a court against a regular deduction order, or against any decision made by the Commission following an application for a review of the order. On such an appeal, the court is prevented from questioning the maintenance calculation by reference to which the deduction order was made. Regulations may include provision with respect to the period within which an appeal must be made and the powers of the court in relation to any such appeal.
158. *Section 32D* sets out that it will be an offence for a person not to comply with the requirements of a regular deduction order or any designated requirements set out in regulations made under *section 32C*. A person found guilty of such an offence may be liable to a fine. However there is a defence if the person can show that all reasonable steps were taken to comply with the order or regulation.