Chapter 56 - Deduction Orders

Introduction

56001 Deduction orders allow the Child Maintenance Service (CMS) to instruct a bank or building society to deduct payments from a non-resident parent's (NRP's) bank account[1].

[1] CS (NI) Order 1991 Arts 32A – 32K; CS (C&E) Regs (NI) 1992, Part IIIA

This guidance explains

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Types of deduction orders

56002 Deduction orders are an administrative method of collecting child maintenance arrears, which means they can be imposed without court authorisation. There is no requirement for a liability order to be in place before a deduction order is imposed.

56003 There are two types of deduction order – Regular Deduction Order (RDO) and Lump Sum Deduction Order (LSDO).

56004 The bank can make an administrative charge against the NRP for an RDO and LSDO. See paragraphs **56070-56071** for more information about charges and minimum amounts.

Types of accounts to apply a deduction order against

56005 Deduction orders can be applied to most bank or building society accounts in the United Kingdom (UK). The only exclusions are[1]

1. accounts where the NRP does not have a beneficial interest in the funds (for example, where the NRP is holding the money in the account on trust for someone else), **and**

2. accounts which are used wholly or in part for business purposes, unless the NRP is a sole trader or a partner (according to the Partnership Act 1890).

[1] CS (C&E) Regs (NI) 1992, reg 25X

Note: deduction orders cannot be applied to offshore account that are held with UK banks.

Example
NRP Stephen holds an account in Jersey with Halifax. Although this is a UK based bank, we are unable to apply a deduction order because Jersey is not part of the UK and therefore the account is offshore.

56006 Deduction orders can be used as a method of collecting from joint accounts, unlimited partnership bank accounts and sole trader accounts.

56007 The CMS is unable to make deductions from Limited Liability (Ltd) accounts, only partnership business accounts (where the NRP is a partner according to the Partnership Act 1890) without Limited Liability.

56008 Partnership business accounts can be difficult to proactively identify through existing trace tools used to identify banks and building society with which the NRP has a financial relationship.

56009 Decision makers (DMs) should use the full range of tools and sources of information available to identify any potential accounts so that a referral can be considered. This includes, but is not limited to

1. Credit Reference Agencies (CRA)
2. Public Sector Gateway (PSG)
3. Parent with care (PWC) information
4. Companies House
5. Third Party Information Datamart

Note: Where a self-employed NRP has become non-compliant, DMs can access information about payments made by Her Majesty's Revenue and Customs (HMRC) under the self-employment income support scheme (SEISS). DMs should use this information if it is available to inform discussions with the NRP with a view to taking deduction order (DO) action. For more information on the SEISS, see **Chapter 38 - Information Gathering**.

Referral Criteria

56010 Cases should only be referred to the Deduction Order Team (DOT) if the following criteria is satisfied

1. the CMS has a confident address for the NRP
2. the NRP has missed a payment of child maintenance
3. the DM is aware that the NRP has an account with a specific bank or building society
4. the NRP has refused to make or comply with a payment agreement that meets the debt steer, see chapter 53 for further information on the debt steer.
5. A deduction from earnings order (DEO) at a rate allowing an acceptable amount to be collected towards the arrears is
    - 5.1 not available, **or**
    - 5.2 not able to be implemented
6. there are no outstanding mandatory reconsiderations (MRs) or appeals
7. there are no issues concerning welfare of any children involved
8. an arrears warning notice has been issued and the NRP has not since been compliant for a continuous period of 12 weeks

9. the PWC has been contacted to ensure they want the debt collected

10. there are no outstanding changes of circumstance on the case

11. the case has not been referred in the last 12 months **and**
    11.1 rejected or deselected unless new information has become available

    or

    11.2 a reasonable period of time has elapsed and there is reason to believe a new referral may be successful.

Parallel action

56011 As long as the above criteria in paragraph **56010** has been met, an RDO may be considered for recovery of the arrears at the same time as a DEO is in force for deduction of ongoing maintenance and arrears.

Debt under £500

56012 Consideration should be given to the reasonableness and proportionality of recovering child maintenance arrears when making a referral for deduction order. It may not be reasonable to pursue a LSDO which attracts an enforcement fee of £200 if the outstanding arrears are low, unless there are compelling reasons to do so and the specific case circumstances warrant it.

Fast track referrals

56013 A fast track referral should be submitted if information is received indicating that the NRP has had a significant increase in their financial status or that they are preparing to leave the country.

Disclosure

56014 Disclosure is the process used by the Deduction Order Team to ask the NRP's bank or building society for information about any accounts that are held.

56015 Before issuing a disclosure request to an organisation it is important to be sure that they can be treated as a deposit taker. This is because deduction orders can only be made against organisations classified as deposit takers.

56016 Where it is identified that the NRP has a financial relationship with more than one bank or building society, disclosure requests should be sent to all. This will

ensure as much information is obtained as possible about the NRP's financial circumstances and the DM can properly identify the most appropriate action.

Note: if disclosure requests are issued to more than one organisation, the DM should normally wait for all responses to be returned before deciding what action is appropriate. However, this will not be necessary if the first response received identifies an account with sufficient funds for the full arrears to be collected.

Bank and building society obligations

56017 When the CMS asks a bank or building society for information they must provide any information which is necessary to support the enforcement of child maintenance. This can reasonably include:

1. full details of all accounts held where the NRP is an account holder, **and**

2. details of any accounts closed in the last 12 months.

Note: when the above information is in relation to an account solely in the NRP's name, this information should be provided within a reasonable timescale, usually within 21 days. However, before making a RDO or LSDO in respect of a joint account, the bank or building society must provide the required information within 14 days.

Disclosure response received

56018 When the disclosure response is received, the DM must check whether the NRP has made any payments or a payment agreement since the disclosure request was issued. The NRP may have

1. paid their arrears in full, **or**

2. made a payment agreement that complies with the debt steer.

56019 If either of the above outcomes have occurred, it will not be appropriate to continue with deduction order action. If neither of these outcomes has been reached the DM must review the information provided to decide whether deduction order action can be taken.

What information will the bank or building society provide?

56020 The type of information a bank or building society may include is

1. whether the NRP holds any accounts with them

2. confirmation if any accounts are trust accounts or charity accounts, as deduction order action cannot be taken against them.

56021 If the NRP is an account holder with the bank or building society, the deposit taker should also confirm

1. the NRP's most recent postal address (if this is different to the address included in the disclosure request)

2. any telephone numbers held for the NRP, **and**

3. any other names or pseudonyms that the NRP uses.

56022 For each sole account that the NRP holds, the deposit taker should also confirm

1. the name in which the account is held

2. the type of account

3. the account number and sort code

4. details of any withdrawal restrictions on the account

5. the account balance and confirmation of the date the balance check was taken

6. an account transaction history for the last three months (starting back from the date the disclosure request is actioned).

56023 For joint accounts, unlimited partnership accounts and sole trader accounts where the NRP is one of the account holders, the deposit taker should confirm:

1. the name of each account holder

2. the residential address or correspondence address for each account holder

3. the type of account

4. the account number and sort code

5. the account balance

6. details of any transactions on the account in the previous six months.

56024 Bank statements for the previous three months should help the DM to establish ownership of the funds although CMS may request statements for up to six months where necessary[1].

Note: Where it is not possible to establish how much of the funds within an account belong to the NRP, an assumption can be made that the NRP and other account holders have an equal share of the funds.

Note: Where the NRP is an account holder in an unlimited partnership or sole trader account, deductions cannot be made if the account balance is less than £2,000 before it is shared among the account holders.

[1] CS (C&E) Regs (NI) 1992, reg 25XC

Deciding on a suitable deduction order

56025 When all the information requested from the bank or building society has been received, the DM will need to decide

1. whether it is possible and appropriate to implement a deduction order

2. if so, what type of deduction order should be imposed and for what amount.

56026 When deciding what type of deduction order to impose the DM should consider the disclosure information and the arrears owed.

56027 A LSDO will always be the preferred method of collection if the NRP has a balance available that will allow a one off payment to be collected towards their arrears.

56028 The DM should consider an RDO if

1. there are insufficient funds for a LSDO to be attempted (on either a savings or a current account)

2. there are insufficient funds available to secure the full debt by LSDO but there are funds available in other accounts

3. the NRP is self-employed but the arrears are below the £500 de minimis for a LSDO to be considered

Note: DMs should remember that making a referral for RDO or LSDO is a discretionary decision and all decisions should be fully documented. For more

information on discretionary decisions see **Chapter 96 - Evidence and Decision Making**.

NRP has more than one account

56029 Where disclosures show that the NRP has access to more than one account the DM will need to decide which of those accounts is more appropriate to make deductions from. Available accounts should be considered in the following order

1. accounts held solely in the NRP's name

2. where there are insufficient funds available to satisfy the full debt balance within any solely held accounts, consider whether there are sufficient funds available in any jointly held private accounts

3. where there are insufficient funds available within solely held accounts and jointly held private accounts, consider any jointly held business accounts without Limited Liability if the NRP is a sole trader or partner (according to the Partnership Act 1890).

56030 Where funds are available in more than one account, the DM should consider whether a combination of deduction order types could be used to secure the outstanding child maintenance.

Example
NRP Ted has a sole personal account and a shared business account as a partner in that business (according to the Partnership Act 1890). The DM could consider a LSDO from the shared business account that would satisfy half of the outstanding liability and a RDO on the solely held account to secure the balance.

Lump sum deduction orders (LSDOs)

56031 An LSDO instructs the NRP's bank or building society to freeze and then deduct a lump sum from the NRP's account. If the full deduction cannot be deducted in one amount, the order can be left in place to collect the remainder if or when further money is credited to the account.

56032 A bank or building society cannot allow an NRP to become overdrawn as a result of a LSDO.

56033 Banks and building societies can charge the NRP up to £55 for every deduction made under a LSDO[1]. If the bank or building society is going to make a

deduction of this type, they will do so at the point the deduction is made from the account on the behalf of CMS, not at the point that the funds are frozen.

[1] CS (C&E) Regs (NI) 1992, Reg 25Z(b)

56034 A LSDO can only be made if the account has a credit balance above a prescribed minimum amount plus the bank's administrative charge on the date the deduction is due to be made. This means there must be a minimum balance of £110 (the prescribed minimum amount of £55 + the amount of the bank's administrative charge - also £55)[1].

[1] CS (C&E) Regs (NI) 1992, Reg 25Q(2)

Interim LSDO

56035 Before a LSDO can be made, an interim order must be issued first. This instructs the bank or building society to freeze funds in the specified account up to the value specified in the order[1]. The account holders are given an opportunity to make representations about the proposal to make a final order.

[1] CS (NI) Order 1991, Arts 32E – 32G

56036 The bank or building society must comply with an interim LSDO as soon as possible after it is served but will only freeze an amount that is in credit.

56037 Before issuing a LSDO, the DM must decide how much the order should be for:

1. if making a LSDO against a savings account, the DM should make the order for the full amount of the child maintenance arrears;

2. if making a LSDO against a current account, the DM must consider what will be an appropriate amount to avoid the NRP or any other account holders suffering hardship in meeting their ordinary living expenses.

56038 In deciding whether there is a risk of hardship, DMs should consider the account balance in the previous 3 months:

1. If, during that period, the NRP’s proportion of the balance in the account has never fallen below an amount equivalent to the CMS debt, then an LSDO can be considered for the full debt.

2. If the balance in the account is lower than the full debt, but has never fallen below an identifiable amount, then an LSDO can be considered for that identified amount.

Note: It is particularly important that up to date balance details are used when deciding an appropriate amount to pursue in current account cases. Up to date statements should be requested to ensure the amount pursued reflects the NRP's current financial position.

Example
NRP Mark has child maintenance arrears of £4,500 and the current balance of his bank account is £4,852.26. Throughout the previous 3 months there is evidence of money coming in and out of the account, but the balance has never fallen below £2,312.00. This suggests that Mark is meeting his ordinary living expenses without drawing on £2,312. In this case it would be reasonable for the DM to apply for a LSDO for £2,312.

Exceptional lump sums paid in: balance exceeds exceptional amount

56039 LSDO action can also be taken on a current account where the balance is in credit and there is evidence to suggest an amount has been paid in which is not part of the NRP's usual income.

56040 In these circumstances, an LSDO can normally be made for either the amount paid into the account or the amount of the child maintenance arrears if this is lower. The balance on the account throughout the previous 3 months will not be relevant, unless the account was overdrawn before the money was paid in, as an LSDO can only be made for an amount up to the balance on the account.

56041 It is reasonable to assume that targeting an exceptional payment will not cause financial hardship, as it will not be intended for ordinary living expenses. NRPs have the opportunity to apply for funds to be released if the exceptional payment is intended to cover essential expenditure.

Note: this approach can be applied in cases where the balance in the account at the date of disclosure exceeds the amount of the exceptional payment.

Example
NRP Mark has child maintenance arrears of £7,000. His current account is overdrawn by £3,000. Mark inherits £5,000 which is paid into his current account and moves the balance into credit of £2,000. It would be reasonable for the DM to apply a LSDO for £2,000.

Exceptional payment in: balance below exceptional amount

56042 Where the balance is below the exceptional amount, the DM should consider making an order for an amount equivalent to the remaining balance of the exceptional payment, to reduce the risk of financial hardship.

56043 The DM should consider

1. any ‘usual income’ amounts paid in between the date of the exceptional payment and the date of disclosure to deduct these from the total balance into the account, ensuring the CMS will not be targeting any of the NRP's usual income

2. the NRP's usual monthly expenditure to ensure that deducting usual income payments in from the account balance will leave the NRP with a sufficient amount to cover their usual monthly expenditure.

Example
NRP Mark receives an exceptional payment of £10,000. Between the date of the exceptional payment being received and the date of the disclosure, his usual income of £1,500 was also paid into the account. Mark has usual monthly outgoings of £1,000. Between the date of the payment and the date of disclosure, these usual outgoings leave his account, but a further £3,000 in outgoings is also paid out. The balance at the date of disclosure is therefore £7,500.

Mark’s arrears are £8,000 at the date of disclosure. Following the principles outlined above, the DM applies for deduction of £7,000, leaving Mark with £500 of his usual monthly income after his usual expenses of £1,000 have been paid.

Serving an interim LSDO

56044 Where an interim LSDO has been made, a copy of the order must be served on the

1. deposit-taker (bank or building society)

2. the NRP, **and**

3. any other account holders[1].

[1] CS (NI) Order 1991, Art 32E(6)

56045 In the case of a joint account or an unlimited partnership account, the order must be accompanied by a notice containing the following information

1. the name of the liable person

2. that an interim order has been made and that a final order is proposed

3. that the interim order or final order shall act as an instruction to the deposit-taker not to do anything to reduce the credit of the account to below the amount specified in the order

4. that the order is to secure child maintenance payable by the liable person

5. the date proposed for paying the amount secured by the order

6. that the account holders may make representations about the proposal specified in the order

7. that a final order is likely to be made in the terms set out, if representations are not made

8. the period for making representations[1].

[1] CS (C&E) Regs (NI) 1992, reg 25MA

Response from the bank or building society

56046 Banks or building societies must comply with a LSDO as soon as practically possible. Within 7 days of the order being served, the bank or building society must inform the CMS[1]

1. whether the account specified in the order does not exist, cannot be traced or has closed

2. whether the amount standing to the credit of the account specified in the order is at least the same or less than the amount specified in the order, and where it is less, that amount

3. where the name of the liable person specified in the order is different to the name in which the account specified in the order is held, whether the account was previously held in that name and if so, the new name in which the account is held

4. whether the liable person holds another account and, if so, the details of that account, including the type of account, the account number and sort code,

and whether the credit in the account is the same or less than the amount specified in the order, and where it is less, the amount.

[1] CS (C&E) Regs (NI) 1992, Reg 25O

Interim LSDO not implemented

56047 If the bank or building society cannot set up the order they must inform the CMS

1. if the account specified in the order does not exist, cannot be traced or has been closed

2. if there are insufficient funds in the account (balance below the £110 minimum)

3. if there is a different name on the account to that specified in the order, and additional information, if appropriate.

Interim LSDO implemented

56048 Where the bank or building society is able to implement the LSDO they must tell the CMS whether the amount in the account is the same or less than the amount in the order.

56049 No action should then be taken for 14 days from the date that the order was served on sole accounts or 28 days on joint accounts, as the NRP can dispute the order within this period by making representations.

Note: If the NRP does not dispute the order within 14 or 28 days respectively, a final order should be served. Refer to paragraphs **56059-56066** on Final LSDO for further advice.

Interim LSDO: disputes

If a NRP or their bank or building society, or another account holder of a joint account, want to challenge an interim LSDO they can

1. make representations against the interim order, **or**

2. make an application for all or part of the funds that have been frozen to be released.

Representations

56050 NRPs and their bank or building society can make representations against an interim order if they do not think the action proposed is correct[1].

[1] CS (NI) Order 1991, Art 32F(1)

Note: there is no right of appeal against the decision DMs make on a representation. Any appeal would need to be made against the subsequent final order.

Representation: outcomes

56051 When DMs have considered the representations they will need to decide either

1. that the representations should be accepted. This would mean it is not appropriate to proceed with the LSDO. In this situation, the interim order should be discharged, **or**

2. that the representations should be accepted in part. This would mean that it is appropriate to proceed, but that the final order should be for a lower amount, **or**

3. that the representations should be rejected. This would mean the DM should proceed to make the final order for the same amount as was specified in the interim order.

Application to release funds

56052 NRPs and their bank or building society can apply to the CMS for all or part of the funds frozen under an interim order to be released[1]. This type of application is required where the NRP or their bank or building society does not dispute the CMS's right to collect the amount claimed by a deduction order, but states they need all or part of the funds to be released so they can be used for other purposes, for instance in cases of hardship.

[1] CS (C&E) Regs (NI) 1992, Reg 25N

56053 Applications for funds to be released can be made at any time from the date an interim order is served until the date the funds have been released and paid to the CMS.

56054 The permitted grounds for an application to release funds are[1]

1. that the NRP, their partner or any relevant other child (ROC) is suffering hardship in meeting ordinary living expenses

2. for joint and business accounts, another account holder, their partner or a ROC is suffering hardship in meeting ordinary living expenses

3. that the NRP or another account holder is under a written contractual obligation to make a payment, which was agreed before the interim order was served

4. the bank or building society is able to show that within the 30 days prior to the interim order being made, it intended to use funds in the account to settle outstanding debts

5. the bank or building society has a contractual obligation with the NRP or another account holder requiring a specified amount of credit to be available in the targeted account. For example: the bank gave the NRP a loan or mortgage on condition that they maintain a credit balance in their account as security

6. any other circumstances that the CMS considers appropriate.

[1] CS (C&E) Regs (NI) 1992, Reg 25N

Note: DMs can only consider releasing all or part of the funds secured under the interim order, if the NRP or their bank or building society provides sufficient information to confirm that one of the above grounds applies.

56055 If additional information is needed, the DM should allow reasonable time to provide it. What is reasonable will depend on the circumstances and the type of information or evidence required.

56056 If the NRP, other account holder, bank or building society fails to provide the required information within the time allowed, the DM can either allow additional time or make a decision using the evidence held.

56057 The DM must ensure that the reasons for their decision are recorded in full. See **Chapter 96 - Evidence and Decision Making**, for further information on discretionary decisions.

Note: NRPs and banks or building societies can appeal against any decision made on an application to release funds.

56058 The outcome of an interim LSDO application to release funds will be one of the following

1. application allowed in full - all funds can be released

2. application allowed in part - some funds can released

3. application rejected - no funds are released.

Final LSDO

56059 A final LSDO notifies the NRP and the bank or building society of the final figure being requested. The amount in the final LSDO will therefore reflect any adjustments that have been made since the interim order was issued.

It is essential that the DM does not issue a final LSDO until

1. 14 days (sole accounts) or 28 days (joint accounts) have elapsed since the interim order was served

2. any representations against the interim order have been dealt with and responded to.

Serving the LSDO

56060 As the funds in the NRP's account are already frozen, the final order should be served on the bank or building society and the NRP at the same time.

56061 Once the final order is served no further action should be taken for a period of 21 days as the NRP can appeal against the final order in this period.

56062 If the NRP does not make an appeal within this period the DM should request the funds from the bank or building society.

Note: NRPs or their bank or building society can appeal against the making of a final LSDO. They can also appeal against any decision made on an application to release funds, and still apply for funds to be released after the final order has been served- until the funds have been paid to the CMS.

Appeals against a final LSDO

56063 Appeals must be lodged within 21 days of the order being served with a court of summary jurisdiction.

Note: Appeals should be made directly to the court and not CMS.

[1] CS (C&E) Regs (NI) 1992, reg 25AB

Appeal made

56064 When the CMS receives confirmation that an appeal has been made against the making of a final LSDO (either from the NRP, bank, building society or directly from the court) the DM should not take any further action on the case until the appeal has been dealt with. Funds cannot be requested from the bank or building society until the outcome of the appeal is known.

56065 If the party making the appeal fails to inform the CMS that they have done so, and CMS receives confirmation of the appeal from another source, the DM must inform the court of this and advise them

1. how CMS heard about the appeal
2. the date that CMS heard about the appeal
3. that CMS are responding to the notification of appeal.

Note: a copy of the notification CMS received about the appeal should also be included to confirm how CMS received this information.

56066 Whenever CMS receives notification of an appeal, it is essential that the details of the case and the order are checked to ensure that everything is accurate and that there are no grounds on which the DM should vary, lapse or discharge the order. If the DM is in any doubt at this stage they should consult policy colleagues.

Note: if it is appropriate for the order to be changed in any way, the court must be informed of this immediately.

Regular deduction orders (RDOs)

56067 An RDO instructs the NRP's bank or building society to make periodic deductions from their account and pay them to the CMS[1]. Deductions can be made weekly, fortnightly, four weekly or monthly.

[1] CS (NI) Order 1991, Art 32A

56068 RDOs are not intended to be an on-going method of collection. Where possible, they should be used as a negotiation tool to help arrange a preferred method of collection with the NRP.

56069 The amount requested under an RDO should not exceed 40% of the NRP's gross weekly income[1]. Where maintenance is paid monthly, the 40% limit should be calculated using the equivalent monthly amount based on the NRP's gross weekly income.

[1] CS (C&E) Regs (NI) 1992, Reg 25C

Bank charges and minimum balances

56070 For RDOs, the bank can make a £10 charge for every deduction made[1].

[1] CS (C&E) Regs (NI) 1992, reg 25Z

56071 A deduction must not be made where the credit of the account is below the minimum amount on the date the deduction is due to me made. The prescribed minimum amount[1] (plus the amount of any administrative costs) is

1. £40 where the deduction period is monthly
2. £10 where the deduction period is weekly
3. £10 for each whole week in the period and £1 for each additional day.

[1] CS (C&E) Regs (NI) 1992, reg 25D

Maximum deduction rate

56072 If a decision is made to impose a RDO, an appropriate deduction rate muse be decided. The amount deducted by a RDO must not exceed

1. 40% of the NRP's gross weekly income **or**
2. £80 per week if a default maintenance decision is in place[1].

[1] CS (C&E) Regs (NI) 1992, Reg 25C

Deduction frequency

56073 RDOs should normally be based on a monthly frequency. An alternative frequency should only be applied if the disclosure information indicates this is more appropriate. If, for example, there is evidence that the NRP is paid weekly.

Selecting the first deduction date

56074 When an RDO is issued, the DM must indicate the date that they want the first deduction to be made on. This date must be at least 7 days after the date that the order will be treated as served (to ensure the bank or building society has

sufficient time to implement the order before the first payment is due) but no more than 12 days after the order is treated as served (to reduce the risk of the NRP moving their funds).

56075 When the DM is deciding the most appropriate date for the first deduction, they should use the disclosure information to identify a date that will provide the highest chance of a full deduction.

Serving a RDO

56076 When the DM has decided an appropriate deduction rate, frequency and date of first deduction, the RDO can be served. The order should be sent to the NRP and their bank or building society at the same time.

56077 If the chosen account is a joint account, before the RDO can be made, a pre-representation letter must be sent to the NRP and any other account holder. The letter advises that the RDO will be made unless an agreement is reached.

56078 If no agreement is reached or there is no response to the pre-representation letter, the DM must serve notice providing the following information

1. that the CMS is proposing to make an order in respect of the account
2. the name of the liable person
3. the account number and sort code
4. that the order is to secure payment of child maintenance payable by the liable person
5. the proposed dates on which the deductions will be made
6. that each account holder may make representations to the CMS against the proposed order
7. that they may make representations against the proposed amounts
8. the period for making representations **and**
9. that if representations are not made, it is likely that the order to make deductions will be made at the proposed amounts[1].

[1] CS (C&E) Regs (NI) 1992, reg 25A1

Representations

56079 Representations must be made to the CMS within 14 days and do not need to be made in writing.

56080 Where representations are made and accepted, the RDO may need to be varied or lapsed and alternative actions will need to be considered. See **Chapter 71 - Legal Enforcement**, for more information on alternative enforcement options.

56081 Where representations are not made or are made and rejected, the RDO can be set up.

RDO not implemented

56082 If the bank or building society are not able to set up the RDO they must inform the CMS of this and confirm if the account specified in the order does not exist, cannot be traced or has been closed.

56083 If there is a different name on the account to that specified in the order, the bank or building society must inform the CMS if the account was previously held in the name on the order. If so, they must also confirm the name in which the account is now held.

RDO implemented

56084 The NRP's bank or building society must comply with the RDO immediately. The first deduction should be made on the date specified in the order.

56085 The bank or building society should ensure this payment is received by the CMS 10 calendar days from the date the deduction is due.

56086 Once the first payment resulting from a RDO on a joint or business account is received, the payment will be held for 14 days before being released to the PWC. This means that if there is a dispute the payment can be returned to the account holders without the PWC being overpaid.

RDO disputes

56087 If a NRP or their bank or building society wants to challenge a RDO they can

1. apply to the CMS for the order to be reviewed, **or**

2. make an appeal to a court of summary jurisdiction.

[1] CS (C&E) Regs (NI) 1992, Reg 25G and 25AB

56088 Appeals to a court of summary jurisdiction can either be

1. against the RDO being made **or**

2. against the CMS's decision on an application for review.

Review of a RDO

56089 A request to review[1] a RDO can be made on the grounds that

1. the NRP does not have a beneficial interest in some or all of the amount held in the specified account

2. there has been a change in the maintenance calculation

3. any amounts payable under the order have already been paid

4. a maximum deduction rate has been calculated but there has been a change to the NRP's current income

5. an incorrect amount has been specified in the order

6. the order does not specify the amount and, or date of the regular deduction

7. the order does not specify the account in respect of which it is made, **and, or**

    7.1. does not address the deposit-taker with whom the account is held **and, or**

    7.2. does not specify a date upon which it shall have effect, **or**

8. the maximum deduction rate requirements have not been correctly applied.

[1] CS (C&E) Regs (NI) 1992, Reg 25G

56090 All joint and business account holders have the right to apply for a review of the order on the additional grounds that

1. the amount being contributed to the account by the liable person has decreased

2. the amount being contributed to the account by the liable person is expected to decrease within the next three months

3. representations against the proposed order were not made and the DM is satisfied that the account holder had a sound reason for not doing so.

56091 Evidence may be required in support of the grounds upon which the request to review the order is made.

Variation of a RDO

56092 Where a request has been made to review the order, or following a successful appeal against the maintenance calculation or the RDO, the DM may decide to vary the amount or dates of the order[1].

56093 Before making the variation, the account holders (including the liable person) must be notified of the proposal to vary the order, explaining the reason why and allowing further representation to be made within 14 days.

[1] CS (C&E) Regs (NI) 1992, Reg 25I; 25IA

Lapsing of a RDO

56094 An order to make regular deductions from an account may lapse under certain circumstances[1]. This means that although deductions may cease, the order itself remains in force. A RDO may lapse if the DM is satisfied that it is reasonable in all the circumstances, and

1. the NRP has agreed to pay the child maintenance due by an alternative method, **or**

2. there are insufficient funds in the account for a deduction to be made, on two consecutive deduction dates, unless the DM has decided that the order is to continue for a greater number of deduction dates.

[1] CS (C&E) Regs (NI) 1992, Reg 25J

56095 Where an order to make deductions from a joint account has been made, the order may lapse if

1. there is evidence that the NRP has ceased making contributions to the account, **or**

2. the NRP is expected to cease making contributions to the account, within the next deduction period.

Revival of a RDO

56096 Where an order to make regular deductions has lapsed because the DM is satisfied that one of the relevant criteria has been met, although deductions will have ceased, the underlying order will remain in force and can be revived, including in respect of a joint account[1].

[1] CS (C&E) Regs (NI) 1992, Reg 25K, 25KA

56097 A lapsed RDO may be revived if the DM is satisfied that

1. a payment agreement which led to the order being lapsed, has broken down
2. there are now sufficient funds in the account for deductions to be made
3. where the NRP had previously ceased making contributions to a joint account, they have started making contributions again.

56098 The account holders must be notified of the proposal to revive the order, explaining the reason why and allowing further representation to be made within 14 days[1].

[1] CS (C&E) Regs (NI) 1992, reg 25KA

Appeals against a RDO or refusal to review

56099 Appeals must be lodged (within 21 days of the order being served) at court of summary jurisdiction [1].

[1] CS (C&E) Regs (NI) 1992, reg 25AB

56100 Form 55 which is available from the court or on the internet at **www.justice-ni.gov.uk**. Guidance on completing the appeal form is also available from either of these sources.

Appeal made

56101 When an appeal is made against a RDO or refusal to review, it is not necessary for deductions to be suspended under the order unless the court orders a stay of proceedings or directs that regular deductions must cease pending the court hearing outcome being decided. If this happens, any action on the case must be suspended until further notice from the court.

56102 There are no prescribed grounds for an appeal against the making of a RDO. CMS Solicitors will guide the Deduction Order Team as to the court procedure and action required.

56103 The party making the appeal is supposed to inform the CMS at the same time as the appeal is lodged with the court. Where this happens, an appeal pack must be completed and submitted to the court within 14 days of the date that form 55 is received.

56104 If the party making the appeal fails to inform the CMS that they have done this and the DM receives confirmation of the appeal from another source, they must inform the court of this and advise them

1. how CMS heard about the appeal

2. the date that CMS heard about the appeal

3. that the DM is responding to the notification of appeal.

Note: A copy of the notification CMS received about the appeal should also be included, to confirm how this information was received.

56105 Whenever CMS receives notification of an appeal, it is essential that the details of the case and the order are checked to ensure that everything is accurate and that there are no grounds on which the DM should vary, lapse or discharge the order. If the DM is in any doubt at this stage, they can consult policy colleagues.

Note: If it is appropriate for the order to be changed in any way, the court must be informed of this immediately. The party that made the appeal should also be informed of the action CMS have taken and asked if they now wish to withdraw their appeal. If the appeal is not withdrawn the DM should await notification of the hearing date.

Appeal outcomes

56106 For both LSDO and RDOs the court will decide the outcome of the appeal, which could be any of the following

1. affirm the order or decision, meaning the appeal is not allowed as the court considers the original order or decision correct

2. set aside the order or decision, meaning the appeal is allowed and the order or decision appealed against no longer exists

3. send the order or decision back to the CMS to reconsider with directions, for example that the order should be varied or that funds should be released

4. refer any application or issue back to the CMS for determination, for example where we have previously refused to review a decision, the court can ask us to look at the decision again

5. costs order (where the court orders CMS or the appellant to pay the other party's costs).

56107 Depending on the court's decision, the DM will need to either:

1. review the original review decision (as directed by the court)

2. vary, lapse or discharge the order, **or**

3. leave the order as it stands.