

Your guide to child maintenance

Overview

Child maintenance is financial support payable towards a child's everyday living expenses. It can also cover one-off expenses and housing costs. Child maintenance is a regular (usually monthly) payment made by the parent with whom the child does not live - commonly referred to as the non-resident parent (NRP) - to the person or parent with care (PWC).

Child maintenance can be agreed between you and your former partner, calculated by the Child Maintenance Service (CMS) or ordered by the court in certain circumstances or where the CMS does not have the power to make a child support assessment.

This guide will explain your child maintenance options and the formula the CMS use to calculate the level of maintenance. For a detailed overview of other financial orders the court can make for a child please refer to our guide to Schedule 1 of the Children Act 1989.

What are the options?

Private Arrangement

If you can agree the level and frequency of child maintenance, you can record your agreement in a written document called a child maintenance arrangement. This will not be legally binding and therefore if circumstances change it will be easy for you to review your agreement.

Arrangements you may wish to include within your agreement can include:

- Who will pay for the child's clothes, shoes and school uniform;
- Who will pay for any sports equipment and kit;
- Who will pay for school trips;
- Who will give the child pocket money;
- Who will pay for one-off items such as computers, bicycles or musical instruments;
- How often will the maintenance be paid; and
- When, or in what circumstances, will the arrangement be reviewed.

More information on entering into a child maintenance arrangement and a downloadable form to record you agreement can be found on the government website [Child Maintenance Service](#).

Assessment by the Child Maintenance Service

The CMS has the power to assess child support when the following apply:

There is a qualifying child who is either under the age of 16 or has attained the age of 16 but not the age of 20 and meets the following criteria:

- Child benefit is paid in respect of them;
- They are receiving full time, non-advanced education at a school or college (to end of A-levels or equivalent, not university) which is not provided by their employment or any office held by them;
- They are being provided with full-time education in England, which is not a course in preparation for a degree, a diploma of higher education, a higher national certificate, a higher national diploma, a teaching qualification, any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel, a general certificate of education (advanced level), or Scottish national qualifications at higher or advanced higher level provided by virtue of their employment or any office held by them;
- There is a PWC, usually a parent, who provides day-to-day care of the child;

- There is a NRP;
- The PWC, NRP and child are all habitually resident in the UK.

If the NRP is not habitually resident in the UK, the CMS will still have the power to make a maintenance calculation if the NRP is:

- An employee of the civil service (including the diplomatic service and the overseas civil service);
- A member of the armed forces;
- Employed by a company (registered under the Companies Act 2006) that employs personnel to work outside the UK but makes calculations and payment arrangements in relation to earnings in the UK.
- Employed by one of the following prescribed bodies:
 - NHS
 - Primary care trusts
 - Health authorities
 - Local authorities
 - Health and social service trusts and boards
 - Central services agency, or
 - Other health boards

How do you work out the level of maintenance to pay?

The current method of calculating child support liability is referred to as the gross income scheme. An online calculator is available on the government website [Calculate your child maintenance](#). To use the calculator, you will need to work out gross income after deduction of pension contributions and work out the number of overnight stays.

What is assessable income?

Maintenance calculations will be based on gross income figures without any deductions for tax or national insurance. Income will include employment income, pension income (but not UK social security pension), social security income and trading income (after any carry forward trade loss relief). Gross income is then adjusted to take account of any pension contributions made during the year. Account can also be taken of charges when converting foreign currency into pounds sterling if the NRP receives income in a currency other than pounds sterling.

Gross income will be determined using figures provided by HMRC in a self-assessment tax return or under pay as you earn (PAYE) regulations. If there is no historic income figure available or the amount of the historic income is nil or the NRP's current income differs from their historic income by a figure that is at least 25% of the historic income the CMS may use the NRP's current income. Current income is defined as the sum of the NRPs income as a employee or officeholder, from self-employment or from a pension. While historic income figures have to be provided by HMRC current income figures can come from any source that the decision maker considers to be reliable.

Where a current income figure has to be used because historic income was nil or is not available, and the evidence available in relation to current income is insufficient or unreliable, the CMS may estimate current income, including making assumptions of fact.

Maximum assessable income

Under the gross income scheme the maximum amount of gross income from all sources which can be taken into account is £3,000 a week, £156,000 per annum. Any income above this level will be ignored.

Review and updating assessable income

Under the gross income scheme the CMS must review each maintenance calculation every 12 months. On the review date each year the CMS will, if available, obtain updated information from HMRC in relation to the

NRP's earned income.

How often does the child stay overnight?

The number of overnight stays a NRP has is taken into account in the child support calculation. To complete the assessment, you will need to work out how many overnight stays there are in a year from the following categories:

- Less than 1 night a week (less than 52 nights a year)
- 1 to 2 nights a week (52 to 103 nights a year)
- 2 to 3 nights a week (104 to 155 nights a year)
- 3 nights a week (156 to 174 nights a year)
- More than 3 nights a week (175 or more nights a year)

Where a child's day to day care is shared equally, no CMS liability arises. If parents cannot agree the number of nights of overnight contact the CMS will look to see what pattern of contact there has been for the previous 12 months.

Child Maintenance Orders (also known as periodical payments)

The family court can make child maintenance orders if:

- The CMS does not have jurisdiction;
- Parents agree a child maintenance order;
- It is an order providing for a child's educational expenses or for costs attributable to a child's disability;
- It is a top up order (see explanation later in this guide);
- It is an order against a person with care of the child; or
- There is a court order already in existence about child maintenance made prior to March 2003.

If none of the above apply, a PWC has no right to apply to the court for a child maintenance order and, failing agreement to enter into a child maintenance arrangement, will have to apply for a child support assessment by the CMS.

If you and your former partner agree the child maintenance arrangements, the court can make an order (called a consent order) reflecting the terms of your agreement. Any order for child maintenance (excluding a school fees order and an order attributable to a child's disability) will prevent an application to the CMS for a child support assessment for a period of one year (also known as the 12-month rule). Once the child maintenance order has been in force for more than a year, you or your former partner may apply to the CMS for an assessment. Once a child support calculation has been made it will automatically end the court order for child maintenance, except for orders made to meet educational expenses or expenses attributable to a child's disability.

A child maintenance order must not extend beyond a child's 17th birthday, unless the court thinks it is right in the circumstances for the order to be made for a longer period. If so, the order cannot extend beyond a child's 18th birthday unless the child is, or will be, in training or education, or there are special circumstances (for example, the child has a disability).

If the parent making the payments and the parent receiving the payments live together for more than six months, the order will cease. An order also ceases on the death of the person making the payments.

Top Up Order

Where a calculation has been made by the CMS based on the maximum level of assessable income (£156,000 per annum), the court recovers the power to make an order for 'top-up' maintenance. An order for 'top-up' maintenance is an order requiring an NRP to make child maintenance payments over and above the CMS child support calculation. It does not extinguish or replace the CMS calculation, rather a top-up order is

payable in addition to a CMS child support calculation.

Varying a CMS assessment

The grounds for variation fall into two categories:

- Special expenses and
- Additional income

Special expenses

The regulations specify five categories of special expense:

- Contact costs
- Expenses attributable to long-term illness or disability of a relevant other child
- Prior debts
- Boarding school fees
- Payments of mortgages, loans, or insurance policies

Additional income

A variation can be considered on the basis that the NRP:

- Has unearned income
- Has income from assets exceeding an aggregate prescribed value of £31,250
- Is on a flat or nil rate but has gross weekly income equal to or more than £100
- Has diverted income

Varying a court order

The court will have power to vary an existing child maintenance order where:

- It was made before March 2003 and the operation of section 4(10) of the CSA 1991 prevents an application for maintenance assessment; or
- It was made after March 2003 and no maintenance calculations has been made.

If you are making an application for the variation of a post-March 2003 order which has been in force for more than a year, remember that your application could be made ineffective at any time by an application to the CMS for a calculation which, once made, would result in the automatic termination of the court order, whether varied or not.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.