



## BRIEFING PAPER

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# Child maintenance: cases when someone lives overseas (England & Wales)

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## 1. Summary

This House of Commons Library briefing paper considers child maintenance cases where a non-resident parent or person with care lives overseas.

The statutory child maintenance schemes administered by the Child Support Agency (CSA) and the Child Maintenance Service (CMS) can only accept an application, make a maintenance calculation and request payment from the non-resident parent if the parties to it are all “habitually resident” in the United Kingdom (unless an exception applies, see section 4.2).

Where a non-resident parent lives abroad, it can be possible to seek the payment of child maintenance through a reciprocal enforcement of maintenance order (REMO). A REMO can also be used in respect of the overseas income of a non-resident parent who is habitually resident in the UK. This note sets out the application process for a REMO; the UK has REMO arrangements with over a 100 countries although if no REMO arrangement is in place it may still be possible to enforce a decision in the country in which the non-resident parent lives.

The REMO process, however, does not allow for the recovery of arrears owed to a person with care, although the CSA/CMS can take collection action and use its enforcement powers (such as deducting money from a bank account) in respect of any assets retained in the UK.

A list of other Commons Library briefing papers on child maintenance can be found on the final page of this note.

This note relates to England and Wales only.

## 2. The different statutory child maintenance schemes

There are currently three statutory child support schemes operating in Great Britain under the *Child Support Act 1991*. The 1993 and 2003 schemes are both legacy schemes closed to new applicants and administered by the CSA. The 2012 scheme is administered by the CMS and is open to new applicants while those with an existing CSA case are being asked if they wish to transfer to it.

The Department for Work and Pensions (DWP) is the responsible Government department.

### 3. Quick introduction to child maintenance terminology used in this note

- “Non-resident parent” – also referred to as the “paying parent” in CMS literature, is a parent of the child. A non-resident parent does not live with the child for the majority of the time, if at all;
- “person with care” – also referred to as the “receiving parent” in CMS literature, is the person who “actually and usually” provides day-to-day care of the child. The person with care does not have to be a parent of the child or someone with legal “parental responsibility” for the child. It could, for example, be an older sibling or a friend of the child that the child is living with. It cannot be a local authority or someone with whom a local authority has placed a child (e.g. a local authority foster carer);
- the “qualifying child” – the child for whom child maintenance is payable. For child maintenance purposes the child has to be either aged:
  - under 16 years, or
  - 16 to 19 years inclusive and either Child Benefit is payable in respect of them, or they are receiving full-time, non-advanced education (e.g. A-levels).

A young person does not count as being a qualifying child if they are or have been married or in a civil partnership.<sup>1</sup>

### 4. Residence requirement for the CMS/CSA to be involved (“habitual residence”)

#### 4.1 Requirement to be habitually resident

An application for child maintenance under the statutory child maintenance scheme can only be accepted, a maintenance calculation made, and payment requested by the CMS/CSA from the non-resident parent if the non-resident parent, person with care and the qualifying child are all “habitually resident” in the UK, unless an exception applies (see section 4.2).<sup>2</sup>

The UK is defined as England, Scotland, Wales and Northern Ireland, but does not include the Crown Dependencies of the Isle of Man, Jersey or Guernsey.<sup>3</sup>

The definition of “habitual residence” is not set out in legislation, but instead has been determined through case law i.e. by the courts. As the *Child Support Handbook 2017/18*, published by the Child Poverty Action Group, notes: “a person is habitually resident if s/he is ordinarily resident in the UK and has been so for an appreciable period of time”, where “‘ordinary residence’ means ‘residence for a settled purpose’”.<sup>4</sup> The *Handbook* adds that:

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<sup>1</sup> Child Poverty Action Group, *Child Support Handbook 2016/17*, 2016, pp9–21

<sup>2</sup> Section 44 of the *Child Support Act 1991* as amended and associated regulations.

<sup>3</sup> *Interpretation Act 1978*, Schedule 1

<sup>4</sup> Child Poverty Action Group, *Child Support Handbook 2017/18*, 2017, p34

Each case is different and a decision on habitual residence must take into account all the person's circumstances and intentions. Some of the most important factors that are considered include:

- the person's usual centre of interest or connections to a particular place;
- the length, continuity and purpose of residence in the UK;
- the length and purpose of any absence from the UK; and
- the nature of the person's work.<sup>5</sup>

The Government noted in 2011 that, in regard to child maintenance, "a person can habitually reside in more than one country or in none. Habitual residence can continue during an absence from UK".<sup>6</sup>

## 4.2 Non-resident parent not habitually resident but deemed to be so because of their occupation

Even if a non-resident parent is not habitually resident in the UK, for child support purposes they are deemed to be if they are:

- employed in the civil service of the Crown, including Her Majesty's Diplomatic Service and Her Majesty's Overseas Civil Service;
- a member of the naval, military or air forces of the Crown, including any person employed by an association established for the purposes of Part XI of the *Reserve Forces Act 1996*;
- employed by a company of a prescribed description registered under the *Companies Act 2006*. This includes "companies which employ employees to work outside the United Kingdom but make calculations and payment arrangements in relation to the earnings of those employees in the United Kingdom so that a deduction from earnings order may be made";<sup>7</sup> or
- employed by a body of a prescribed description, namely those bodies listed in regulation 7A(2) of the *Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992* (SI 1992/2645) as amended (which are local authorities or the NHS).<sup>8</sup>

# 5. What can be done to collect child maintenance if the non-resident parent lives overseas?

## 5.1 Involvement of the courts

When any of the parties to a child maintenance calculation under the statutory scheme is deemed to no longer be habitually resident in the UK, then the CMS/CSA has to cancel the child maintenance calculation.<sup>9</sup>

The *Child Support Handbook 2017/18* notes that "if the CMS [or CSA] does not have jurisdiction (eg, because one parent or the qualifying child is not habitually resident in the

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<sup>5</sup> As above, p34

<sup>6</sup> [HC Deb 7 July 2011 c1318W](#)

<sup>7</sup> A deductions from earnings order allows the CMS/CSA to collect child maintenance payments directly from a non-resident parent's employer.

<sup>8</sup> *Child Support Act 1991*, section 44(2A)

<sup>9</sup> Child Poverty Action Group, *Child Support Handbook 2017/18*, 2017, p181

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UK), the courts may make, vary or revive a maintenance order". It adds that "if a child support calculation is cancelled because one of the parties moves abroad [and is deemed to no longer be habitually resident], an application for maintenance can be made to the court. If the application is made within six months, the order can begin from the date that child support ended".<sup>10</sup>

### 5.2 Ongoing maintenance

#### The "REMO" system

In order to seek child maintenance when the non-resident parent lives abroad, the person with care should apply for a reciprocal enforcement of maintenance order (REMO). As HM Courts and Tribunals Service (HMCTS) notes, under the REMO system it is also possible "for an adult or child to apply to get maintenance from a parent, or for a person to claim spousal maintenance from a former partner".<sup>11</sup>

As HMCTS explains:

Reciprocal enforcement of maintenance orders (REMO) is a system where:

- UK residents can apply to enforce or change an existing maintenance order or make a new maintenance order against a person resident in another country; or
- Residents of other countries can enforce or change an existing maintenance order or make a new maintenance order against a person resident in the UK.<sup>12</sup>

REMO arrangements are made under different treaties depending on the country, such as EU Regulation 4/2009, the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance ("the 2007 Hague Convention"), and the *Maintenance Orders (Facilities for Enforcement) Act 1920*.

A list of the countries (and, for Canada and Australia, provinces or territories as appropriate) with which the UK currently has REMO arrangements can be found at:

<https://www.gov.uk/government/publications/countries-where-you-can-enforce-child-maintenance-decisions>

For Australia, the UK Government's "Child Maintenance Options" website notes that "if the paying parent lives in Australia, the Australian CSA [Child Support Agency] may be able to help with child maintenance", and advises people to look at the [Australian CSA website](#).

#### Applying for a REMO and timescale

HMCTS has set out the REMO application process for a person with care:

- contact the appropriate HM Courts & Tribunals Service Maintenance Enforcement Business Centre (MEBC) – there are three offices covering London, England except London, and Wales;<sup>13</sup>
- they will send the correct form for the country where the non-resident parent lives;
- return the completed application form to the appropriate MEBC;

<sup>10</sup> Child Poverty Action Group, *Child Support Handbook 2017/18*, 2017, p40

<sup>11</sup> HM Courts and Tribunals Service, [A guide to Reciprocal Enforcement of Maintenance Orders](#), June 2015, p1

<sup>12</sup> As above, p1

<sup>13</sup> The contact details are set out on page 2 of the HM Courts and Tribunal Service guidance, [A guide to Reciprocal Enforcement of Maintenance Orders](#).

- “the MEBC will decide on the appropriate next steps, which may involve a hearing at a Family Court”;
- “the application will then be sent to the REMO unit”, part of the Ministry of Justice;
- the REMO unit will forward it to the authorities in the other country;
- “once the foreign authorities receive your application they will handle it according to the laws and regulations in their country”.<sup>14</sup>

In terms of timescales, for the UK part of the process HMCTS states that “the REMO unit will process your application within 30 days of receipt”.

If the application concerns an EU member state (special rules apply to Denmark) or a signatory country to the 2007 Hague Convention<sup>15</sup> then “the reciprocal agreements contain timetables with which the courts and authorities should comply”. In addition, a person with care should be able to get an update within two months from the date of receipt of acknowledgement from the Foreign Authority.

If an application involves a different country to those above, then HMCTS cautions that “it will be dealt with according to the laws and procedures of that country, which could take a number of months”. HMCTS advises to allow three months from the date of receipt of acknowledgement from the Foreign Authority before requesting the first update.

In terms of updates more generally, the relevant MEBC should be asked to contact the REMO unit to request a report from the other country about the progress of your case. The REMO unit will provide updates to the court as they are received from the foreign country.<sup>16</sup>

HMCTS adds that “the courts in England and Wales, and the REMO unit, do not have any power to compel foreign courts or authorities to enforce maintenance orders, or to set a timescale for enforcement of a maintenance order or establishment of a maintenance claim”.

In regard to the REMO process, HMCTS advises that:

- the “administrative process in enforcing maintenance orders overseas is usually free of charge”;
- an application for a REMO does not require the involvement of a solicitor, although legal representation abroad may be required;
- the REMO unit will arrange for the translation of any documents to be done at no cost to the person with care.<sup>17</sup>

### 5.3 Arrears

While the REMO process allows for ongoing maintenance to be collected, there are different rules for the collection and enforcement of any arrears.

The CMS/CSA is able to use its powers to collect any arrears that accrued while all the parties to a child maintenance calculation were habitually resident in the UK. The

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<sup>14</sup> HM Courts and Tribunal Service, [A guide to Reciprocal Enforcement of Maintenance Orders](#), June 2015, p2

<sup>15</sup> Namely Albania, Bosnia and Herzegovina, Brazil, Honduras (from 19 October 2018), Kazakhstan, Montenegro, Norway, Turkey, or the United States of America. See the status table of the 2007 Hague Convention at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=131> with particular regard to the column headed “EIF” (short for “Entry Into Force”).

<sup>16</sup> HM Courts and Tribunal Service, [A guide to Reciprocal Enforcement of Maintenance Orders](#), June 2015, p3

<sup>17</sup> As above, pp2 and 3

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CMS/CSA can use certain collection actions and enforcement powers in respect of any assets that the non-resident parent has retained in the UK, such as property or bank accounts. As the then Parliamentary Under-Secretary of State at the Department for Work and Pensions (DWP), Maria Miller, explained, the CMS/CSA can:

enforce child maintenance arrears directly if the non-resident parent holds assets within the UK, such as savings or property, which would fall within the jurisdiction of the UK courts. Since 3 August 2009, the [CMS/CSA] has had the power to make deductions from current or savings accounts held within the UK without the consent of the non-resident parent.

The [CMS/CSA] may take action to prevent the non-resident parent disposing of his assets, from which the [CMS/CSA] could recover the arrears. The [CMS/CSA] may apply to the High Court (England and Wales) or the Court of Session (Scotland) if a non-resident parent has arrears of child support; and have disposed of, or is about to dispose of, assets with the intention of avoiding child support.<sup>18</sup>

While EU Regulation 4/2009 allows the enforcement of certain arrears of child maintenance that accrued while both parents were resident in the UK where the non-resident parent now resides elsewhere within European Union (special rules apply to Denmark), this only concerns arrears payable to the Secretary of State for Work and Pensions (in effect the CMS/CSA).<sup>19</sup> Such arrears may have accrued when CSA payments were made in lieu of welfare benefits: if the non-resident parent did not meet their obligations, then the DWP paid the welfare benefits to the person with care instead, and then sought to reclaim the maintenance from the non-resident parent.

## 6. Non-resident parent is habitually resident in the UK but earns income overseas

As the *Child Support Handbook 2017/2018* notes in regard to the 2012 scheme, while “income from outside the UK is included in gross income if it falls into one of the categories of taxable income from employment, self-employment, or pensions”, the “detailed rules on what income is taxable are complex”.<sup>20</sup>

It should be noted that overseas income is included in the calculation of child maintenance even if no UK tax is paid on it because tax has been paid in an overseas country and the UK has a “double taxation” treaty with that country.<sup>21</sup>

Overseas income can also be taken into account under the 1993 scheme and, since April 2012, the 2003 scheme.<sup>22</sup>

In addition, when the non-resident parent is habitually resident in the UK but has assets and/or income overseas, if that country is one with which the UK has a REMO agreement

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<sup>18</sup> [HC Deb 7 July 2011 c1318W](#)

<sup>19</sup> Email from Department of Work and Pensions officials to the House of Commons Library, 14 March 2016

<sup>20</sup> Child Poverty Action Group, *Child Support Handbook 2017/18*, 2017, p99

<sup>21</sup> Double taxation treaties are intended to prevent a person paying tax on the same earning in an overseas country and in the UK. For a list of countries that have a double taxation treaty with the UK and the treaties, see: <https://www.gov.uk/government/collections/tax-treaties>

<sup>22</sup> Originally under the 2003 scheme, a non-resident parent had to be “gainfully employed” in either Great Britain or Northern Ireland for their income to be taken into account in the calculation of child maintenance, but this “anomaly”, as the Government described it, was corrected in 2012 to allow the CSA to “take into account the UK taxable earnings of all non-resident parents that are habitually resident in the UK, even if they are paid abroad [i.e. under double taxation arrangements]” [*Child Support (Miscellaneous Amendments) Regulations 2012*, [explanatory memorandum](#), p5, paras 7.14–7.17].

(see section 5) then the REMO process can be used to enforce a CMS/CSA child maintenance calculation (or court order) in that country.<sup>23</sup>

## 7. What if a person with care lives overseas, and the non-resident parent lives in the UK?

The REMO process outlined in section 5 works in both directions; therefore, if a person with care is habitually resident outside of the UK in a country with which the UK has a REMO agreement and the non-resident parent is habitually resident in the UK, then the person with care can seek ongoing maintenance from the non-resident parent – the person with care would need to contact the central authority in the country they are residing in.

If there is no REMO agreement, then the person with care might seek to claim child maintenance through other processes; they should discuss this with a legal specialist.

## 8. Alternatives to the REMO process

As the Government's Child Maintenance Options service notes:

You can make a family-based arrangement with your child's other parent, even if you live in different countries.

Many parents find that this is the quickest and easiest way to arrange child maintenance, as it doesn't involve anyone else and it can be adapted to your individual circumstances.<sup>24</sup>

If a non-resident parent does not live in a REMO country, then, as HMCTS notes, "you may still be able to enforce a decision in the country where they live. You should seek legal advice from a solicitor in the country where your ex-partner lives", and they advise that "a list of lawyers is available on GOV.UK, [www.gov.uk/government/collections/list-of-lawyers](http://www.gov.uk/government/collections/list-of-lawyers)".<sup>25</sup>

## 9. Key contacts

For more help on a particular case, it is possible to contact either the relevant MEBC, or the REMO Unit at the Ministry of Justice; their contact details are:

- HM Courts & Tribunals Service Maintenance Enforcement Business Centres:
  - London: 020 7421 8657, or [MEBC.London@hmcts.gsi.gov.uk](mailto:MEBC.London@hmcts.gsi.gov.uk) ;
  - England excluding London: 0300 123 3034, or [MEBC.BSE@hmcts.gsi.gov.uk](mailto:MEBC.BSE@hmcts.gsi.gov.uk) ;
  - Wales: 01656 673833, or [Wales\\_MEBC@hmcts.gsi.gov.uk](mailto:Wales_MEBC@hmcts.gsi.gov.uk) ;
- REMO Unit: 020 3681 2757, or [remo@offsol.gsi.gov.uk](mailto:remo@offsol.gsi.gov.uk) .

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<sup>23</sup> Email from DWP officials to the House of Commons Library, 17 March 2016

<sup>24</sup> Child Maintenance Options, [Child maintenance if a parent lives abroad](#), webpage accessed on 16 January 2018

<sup>25</sup> HM Courts and Tribunal Service, [A guide to Reciprocal Enforcement of Maintenance Orders](#), June 2015, p1

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Additionally, it might be helpful to discuss the circumstances of a particular case with an organisation such as [Gingerbread](#), which is a single parent charity; their helpline is: 0808 802 0925.

# 10. Scotland and Northern Ireland

While this note covers England and Wales, the REMO process also applies to Scotland and Northern Ireland.

For Scotland, further information is available at the Scottish Government's website at:

<http://www.gov.scot/Topics/Justice/law/17867/fm-children-root/maintenance>

The Northern Ireland Executive's webpage on collecting child maintenance from overseas can be found at:

<https://www.nidirect.gov.uk/articles/reciprocal-enforcement-maintenance-orders-remos>



## Other Library briefings on child maintenance

- [Child maintenance: how it is calculated under the 2012 CMS scheme \(UK excluding NI\)](#)
- [Child maintenance: inclusion of earnings from "special occupations" in the 2012 CMS scheme](#)
- [Child maintenance: variations, including "unearned income" rules \(UK excluding NI\)](#)
- [Child maintenance: enforcing payment of arrears \(UK excluding NI\)](#)
- [Child maintenance: fees \(UK excluding NI\)](#)

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