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# Child maintenance: Calculations, variations and income (UK)

## Summary

- 1 Child maintenance: An introduction
  - 2 Separated families and maintenance arrangements: Statistics
  - 3 The five rates: Summary
  - 4 Defining income in the 2012 scheme
  - 5 Reporting changes in income
  - 6 Variations
  - 7 FAQs on calculating income
  - 8 “Additional income” under the different schemes
  - 9 Poverty, welfare and child maintenance
  - 10 Northern Ireland
  - 11 Key contacts and resources
- Annex 1: The rates in detail

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# Contents

<b>Summary</b>	<b>7</b>
Coronavirus	7
Calculating child maintenance	7
<b>1 Child maintenance: An introduction</b>	<b>9</b>
<b>2 Separated families and maintenance arrangements: Statistics</b>	<b>11</b>
Separated Families in Great Britain	11
<b>3 The five rates: Summary</b>	<b>16</b>
<b>4 Defining income in the 2012 scheme</b>	<b>18</b>
<b>4.1 Gross weekly income</b>	<b>19</b>
<b>4.2 The use of gross, rather than net income in the 2012 scheme</b>	<b>19</b>
<b>4.3 Establishing income</b>	<b>20</b>
Historic income data	20
Income data from the non-resident parent	21
<b>4.4 Overseas income</b>	<b>22</b>
<b>4.5 If there is no ‘historic’ income data</b>	<b>22</b>
<b>4.6 Annual reviews of income</b>	<b>23</b>
Purpose	23
Process	24
Existing income supplied by non-resident parent (“current income”)	25
<b>4.7 Periodic income check</b>	<b>26</b>
<b>4.8 If the CMS receives no income figure</b>	<b>27</b>
<b>5 Reporting changes in income</b>	<b>28</b>
<b>6 Variations</b>	<b>30</b>
<b>6.1 Purpose</b>	<b>30</b>

<b>6.2</b>	<b>Process</b>	<b>30</b>
<b>6.3</b>	<b>Grounds for variation: non-resident parent</b>	<b>31</b>
<b>6.4</b>	<b>Grounds for variation: person with care</b>	<b>31</b>
<b>6.5</b>	<b>The role of the Financial Investigations Unit</b>	<b>33</b>
<b>7</b>	<b>FAQs on calculating income</b>	<b>34</b>
<b>7.1</b>	<b>Why only the non-resident parent’s income is considered</b>	<b>34</b>
<b>7.2</b>	<b>Why is the threshold to trigger a recalculation 25%?</b>	<b>36</b>
<b>7.3</b>	<b>Are some pension contributions a diversion of income?</b>	<b>38</b>
<b>7.4</b>	<b>Why is income from “special occupations” no longer disregarded?</b>	<b>40</b>
<b>7.5</b>	<b>Will the calculation formula be updated?</b>	<b>41</b>
<b>8</b>	<b>“Additional income” under the different schemes</b>	<b>43</b>
<b>8.1</b>	<b>The 2003 Scheme</b>	<b>43</b>
<b>8.2</b>	<b>The 2012 scheme</b>	<b>43</b>
<b>8.3</b>	<b>The onus on the person with care to tell the CMS of the non-resident parent’s unearned income</b>	<b>44</b>
<b>8.4</b>	<b>Work and Pensions Committee report</b>	<b>45</b>
<b>8.5</b>	<b>Private Member’s Bills</b>	<b>47</b>
<b>8.6</b>	<b>The introduction of the notional income variation</b>	<b>47</b>
<b>9</b>	<b>Poverty, welfare and child maintenance</b>	<b>49</b>
<b>9.1</b>	<b>How does the 2012 scheme interact with Universal Credit?</b>	<b>49</b>
<b>9.2</b>	<b>Do child maintenance payments reduce poverty?</b>	<b>50</b>
	DWP aims and analysis, 1999-present	50
	Family Resources Survey estimates, 2020	52
	Academic research & reports	52
<b>9.3</b>	<b>Why were charges introduced, and what impact have they had?</b>	<b>54</b>
<b>10</b>	<b>Northern Ireland</b>	<b>57</b>
<b>10.1</b>	<b>Separated families and maintenance arrangements</b>	<b>57</b>

<b>10.2 Process</b>	<b>59</b>
Income adjustments/variations	60
Rates	61
Child maintenance and benefits	61
Support for other children	61
<b>11 Key contacts and resources</b>	<b>63</b>
<b>Annex 1: The rates in detail</b>	<b>64</b>
1 Nil rate	64
2 Flat rate	65
3 Reduced rate	66
4 Basic rate & Basic rate plus	69
5 Issues related to the basic plus rate	70



## Summary

In the most recent statistics, which cover the 2019/20 financial year, the Department for Work and Pensions (DWP) [estimated](#) that there were around 2.4 million separated families in the UK, and 3.6 million children living in such families. Around 44% of these families were estimated to have no child maintenance arrangement. The Child Maintenance Service (CMS), which provides a statutory maintenance scheme, was [estimated](#) to be the sole organiser of maintenance for around 15% of separated families.

This briefing describes how the CMS calculates child maintenance under the 2012 Child Maintenance Scheme in Great Britain. Section 10 describes the similar, but separate, scheme in Northern Ireland.

Sections 7-9 set out policy debates on the 2012 child maintenance system and changes compared to the 1993 and 2003 schemes. This includes the decision to remove the “lifestyle inconsistent with income” ground for variation, the requirement of the person with care to estimate the unearned income of the non-resident parent, and analysis on the impact of child maintenance on poverty.

Information on the collection and enforcement of maintenance is available in the Library Briefing [Child Maintenance: Fees, enforcement and arrears](#).

## Coronavirus

The Child Maintenance Service has [said](#) that it is moving towards “a full service” and [stated](#) that they “will take action if child maintenance is not paid”. They have [advised](#) the parent with care to “keep a record of any payments you receive and any missed payments. If any payments are missed or not made in full, we may begin collection activity to recover any unpaid child maintenance”.

In January 2021, the DWP [said](#) the CMS is “reviewing all non-paying cases to make sure that each one is up to date, with outstanding changes, actions and arrears and balances being corrected”. As of 23 March 2021, the [CMS Direct page](#) says “if any payments are missed, we will review your case and may begin collection activity to recover any unpaid child maintenance”. The [CMS in Northern Ireland](#) may not be able pursue arrears during the Coronavirus period and calculations of liability may be delayed.

## Calculating child maintenance

There are [five rates](#) of maintenance that a non-resident parent can be required to pay, depending on their financial circumstances and, in some

cases, those of their new partner (see Section 3 and Annex 1 for more information).

The CMS uses gross weekly income to calculate maintenance due. Gross weekly income is defined as income before any deductions for income tax and national insurance but after any contributions to approved personal or occupational pension schemes. Income information is either supplied to the CMS from Her Majesty's Revenue and Customs (HMRC) or from the non-resident parent.

If the non-resident parent's gross weekly income is above £3,000, the person with care can apply to the court for additional maintenance.

For certain rates, the CMS calculation also takes account of the number of children the non-resident parent must pay child maintenance for and the average number of nights of shared care a week (where the child stays overnight with the non-resident parent).

Maintenance is reviewed each year, but parents should [inform the CMS of changes in circumstances](#). The CMS booklet, [How we work out child maintenance](#), provides a step-by-step guide to the calculation process. In large part, Sections 3 to 6 and Annex 1 of this briefing summarises the guidance. It should not, however, be considered a substitute for it when looking for detailed advice on specific cases. The CMS has also published a series of [factsheets on applying for, managing, calculating and enforcing maintenance arrangements](#).

In cases where "special expenses" are incurred by the non-resident parent (such as fuel costs when travelling to a child's home) or the non-resident parent gains "additional income" which is not captured by the HMRC (for example, "unearned" income from rents or savings), a request for variation can be made. These are described in Section 6.



# 1 Child maintenance: An introduction

There are currently three statutory child support schemes operating in Great Britain under the [Child Support Act 1991](#):

- **2012 scheme** (also known as **CS3**): the current scheme and open to new applicants. It is administered by the Child Maintenance Service (CMS);
- **1993 and 2003 schemes**: these schemes are closed to new applicants; all cases with ongoing maintenance liabilities have been transferred to the 2012 scheme. Only “arrears-only” cases continue to operate on the legacy schemes although the Department for Work and Pensions (DWP) is implementing a large-scale write-off of arrears that accrued under these schemes. These legacy schemes are administered by the Child Support Agency (CSA).

This briefing describes how the CMS calculates child maintenance under the 2012 Child Maintenance Scheme in Great Britain. Section 10 describes the similar, but separate, scheme in Northern Ireland. The CMS booklet, [How we work out child maintenance](#), provides a step-by-step guide to the calculation process in Great Britain. In large part, Sections 3 to 6 and Annex 1 of this briefing summarise the guidance. It should not, however, be considered a substitute for it, when looking for detailed advice on specific cases. The CMS has also published a series of [factsheets on applying for, managing, calculating and enforcing maintenance arrangements](#).

Sections 7-9 set out policy debates on the 2012 child maintenance system. This includes the decision to remove the “lifestyle inconsistent with income” ground for variation, the requirement of the person with care to estimate the unearned income of the non-resident parent, and analysis on the impact of child maintenance on poverty.

The Library briefing [Child Maintenance: Fees, enforcement and arrears](#), provides information on the collection and enforcement of arrears. [Child maintenance: The write-off of arrears on Child Support Agency \(CSA\) cases](#), provides information on the arrears from the 1993 and 2003 schemes.

## Box 1: Child maintenance terminology

Below is a list of common terminology on child maintenance employed under the [Child Support Act 1991 \(the 1991 Act\)](#) and in [CMS literature](#):

**Non-resident parent (“Paying Parent”) (NRP):** a parent who does not live with the child in question.

**Person with care (“Receiving Parent”) (PWC):** the person with whom the child has their home and who usually provides day-to-day care of the child. The person with care does not have to be a parent of the child or have parental responsibility for them.<sup>1</sup>

**Qualifying child (QC):** the child for whom child maintenance is payable.

**Relevant child (or “relevant other child”) (ROC):** a child other than a Qualifying Child for whom Child Benefit is payable to the non-resident parent (or their partner).

**Child in Scotland (CiS)/Child Applicant:** in Scotland, a child aged 12-19 may apply for maintenance if they are in full-time, non-advanced education or approved training;

**Duty to Maintain:** Section 1 of the [1991 Act](#) states that “each parent of the Qualifying Child is responsible for maintaining [them]” and “where a maintenance assessment made under this Act requires the making of periodical payments, it shall be the duty of the absent parent with respect to whom the assessment was made to make those payments”.

**Gross weekly income:** the non-resident parent’s income calculated as a weekly amount before any deductions for tax but after any contributions to approved personal or occupational pension schemes have been made.

**Direct Pay:** where the CMS calculates the rate of maintenance, but payments are made directly between parents.

**“Collect and Pay”:** where the CMS calculates, collects and passes on payments between parents.

**Child Maintenance Group (CMG):** the post-2012 successor to the Child Maintenance and Enforcement Commission.

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<sup>1</sup> [Child Support \(Maintenance Calculation Procedure\) Regulations 2001](#), Regulation 21(1)

## 2

# Separated families and maintenance arrangements: Statistics

## Separated Families in Great Britain

The DWP publishes annual estimates of the separated families population and their child maintenance arrangements. These figures use an [experimental methodology](#), drawing on a combination of survey and administrative data.

A separated family is defined as having one resident parent, one non-resident parent and any biological or adopted children either under 16, or under 20 and in full-time, non-tertiary education.<sup>2</sup>

In the most recent [statistics for the 2019/20](#) financial year, the DWP estimated that there were 2.4 million separated families in Great Britain, and 3.6 million children living in separated families.<sup>3</sup>

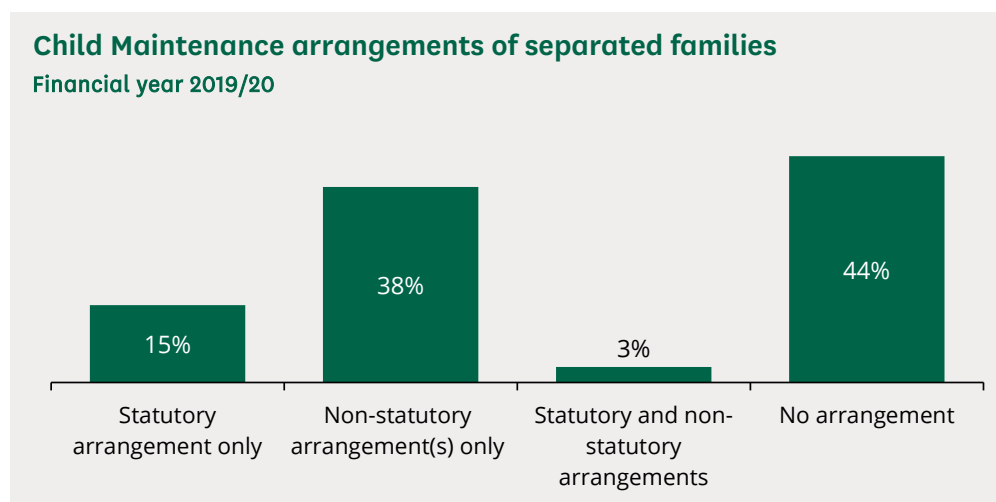
**Around 44% were estimated to have no maintenance arrangement.** The CMS was the sole organiser of maintenance for around 15% of separated families.

Informal, non-statutory arrangements include voluntary financial arrangements, payments in kind, shared care arrangements, and court orders requiring payments. Around 15% of families were solely on a statutory arrangement (arranged either through the CMS or CSA). 3% had a mixture of statutory and non-statutory arrangements.

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<sup>2</sup> Department for Work and Pensions (DWP), [Separated families population statistics: April 2014 to March 2020](#), March 2021, section 3

<sup>3</sup> Department for Work and Pensions (DWP), [Separated families population statistics: April 2014 to March 2020](#), March 2021, section 2



Source: DWP, [Separated families population statistics: April 2014 to March 2020](#), 2021, Table 2

Around £2.3 billion in child maintenance payments was received by resident parents in financial years ending 2018-2020, £0.7 billion of which was through statutory arrangements. This data should be treated with some caution because there is limited information recorded by the CMS for payments made via Direct Pay arrangements. Estimates of income from non-statutory arrangements are drawn from the Family Resources Survey.<sup>4</sup>

Resident parents on all arrangements were overwhelmingly female: 89% in financial years ending 2018 to 2020.<sup>5</sup>

## Child Maintenance Service in Great Britain

### Child Maintenance (CM) Options “Gateway”

Successive governments have sought to use the CMS to encourage and support parents to make family-based arrangements, when they are able to do so.<sup>6</sup>

It is not compulsory to have a formal maintenance arrangement, and some parents choose to make alternative arrangements, such as in-kind contributions or sharing care.<sup>7</sup>

Those who contact [CM options](#) are offered advice on how to set up a range of arrangements, including that offered by the CMS.<sup>8</sup> The below chart shows that the proportion of parents contacting CM Options and making a CMS

<sup>4</sup> DWP, [Background information: Estimates of the separated family population statistics](#), March 2021; DWP, [Separated families population statistics: April 2014 to March 2020](#), March 2021, Table 4.

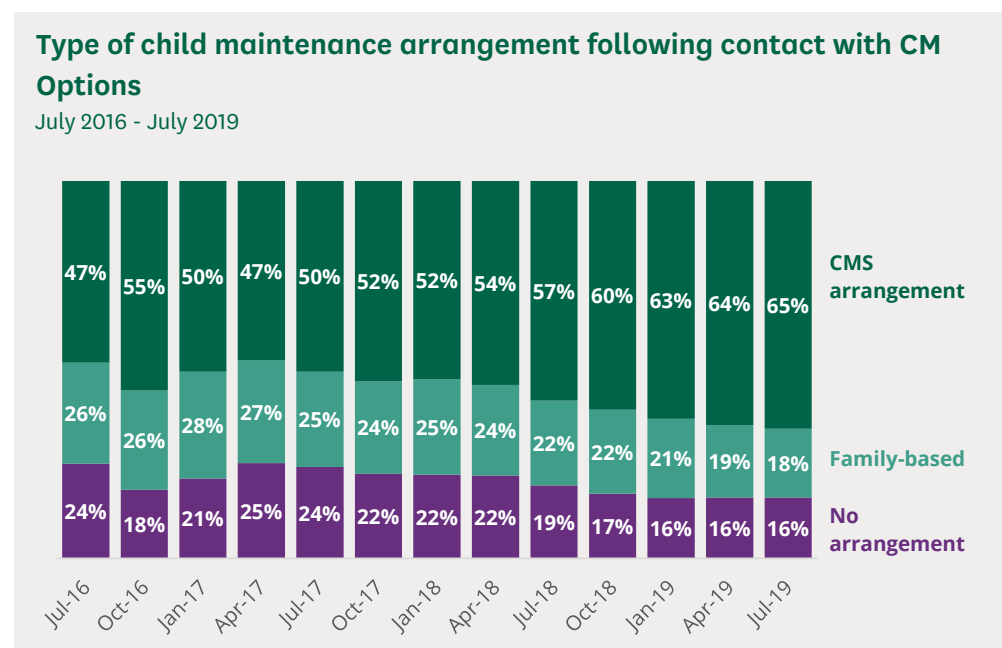
<sup>5</sup> DWP, [Separated families population statistics: April 2014 to March 2020](#), March 2021, section 2

<sup>6</sup> DWP, [A new system of child maintenance](#), December 2006, paras 15, 39-40; DWP, [Strengthening families, promoting parental responsibility: The future of child maintenance](#), CM 7990, January 2011, paras 5-15

<sup>7</sup> DWP, [Relationship separation and child support study](#), No. 503, 2008, ch4; DWP and Government Social Research, [Long-term separated parents: Developing support to encourage child maintenance arrangements](#), 2015, ch3

<sup>8</sup> PQ 62449 [[Children: Maintenance](#)], 31 January 2017

arrangement has risen whilst the proportion with no arrangement has fallen since July 2016.



Notes:

1. Figures in each quarter relate to unique customers who have contacted Options.
2. Percentages calculated on unrounded numbers and may not add up to one hundred.

Source: DWP, [Child maintenance arrangements after speaking to CM Options](#), May 2020

Of those who decided upon a family arrangement after talking to CM Options between May and July 2019, and who were surveyed in November 2019, 87% reported their arrangement was working “very well” or “fairly well” and 90% of parents whose family-based arrangements involved regular financial payments said they paid or received some or all of their child maintenance, and it was usually or always on time.<sup>9</sup>

## How quickly are applications processed by the CMS?

The CMS intends to process 80% of applications within 6 weeks.

Data [published](#) by the CMS suggests that 78% of applications were cleared within 6 weeks in the quarter ending September 2020 and 85% in the quarter ending December 2020. During the quarter ending in June 2020, data was affected by the coronavirus outbreak, and 44% were cleared within 6 weeks.<sup>10</sup> “Clearance” is defined as: the amount of maintenance has been calculated and the arrangement to pay between the parents has been made; the amount of maintenance has been calculated as zero; or the application has been closed.<sup>11</sup>

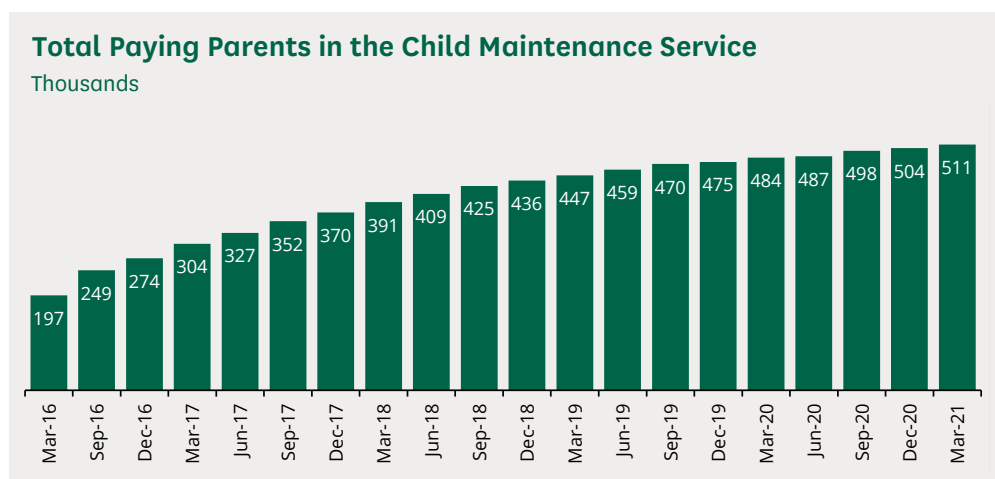
<sup>9</sup> DWP, [Child maintenance arrangements made after speaking to CM Options](#), 13 May 2020, p5

<sup>10</sup> DWP, [CMS statistics: Data to March 2021](#), June 2021, Table 1

<sup>11</sup> DWP, [National tables: CMS statistics: data to September 2020](#), Table 1

## Number of paying parents and children

There were around 511,000 Paying Parents for the quarter ending in March 2021 on CMS arrangements. This was around 2.6 times higher than in March 2016.

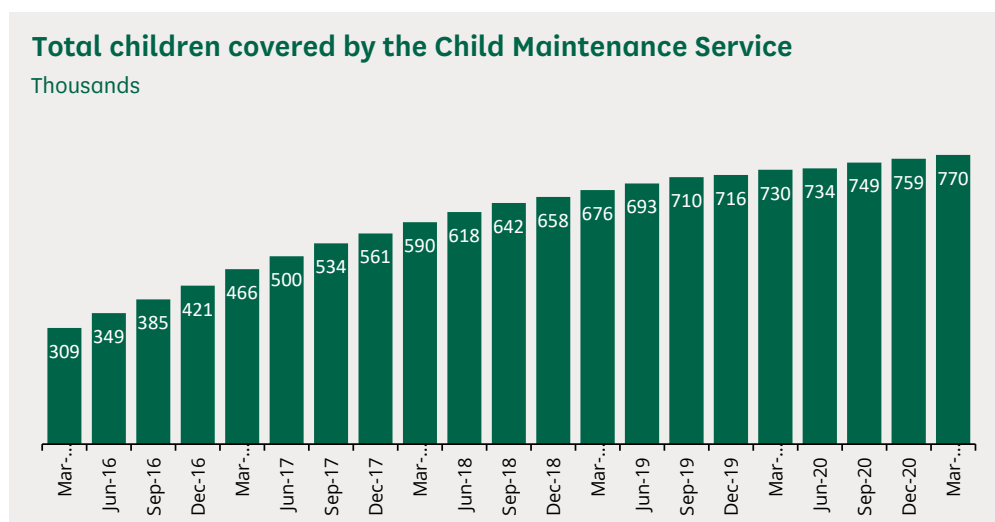


Notes:

1. Figures rounded to the nearest thousand.
2. Paying Parents can have multiple child maintenance arrangements. Parents who have no ongoing liability are still included in the caseload because of arrears are still due, as well as parents who meet specific requirements and do not need to pay child maintenance (being on the nil rate).
3. Data for December 2020 has been revised upwards slightly since the previous publication.

Source: DWP, [CMS statistics: Data to September 2020, GB](#), December 2020, Table 5 and [CMS statistics: Data to December 2019](#), March 2020, Table 4; DWP, [Stat-explore: Paying parents](#), June 2021, Table 1

Around 770,000 children at the end of March 2021 were covered by CMS arrangements. This is 2.5 times higher than March 2016.



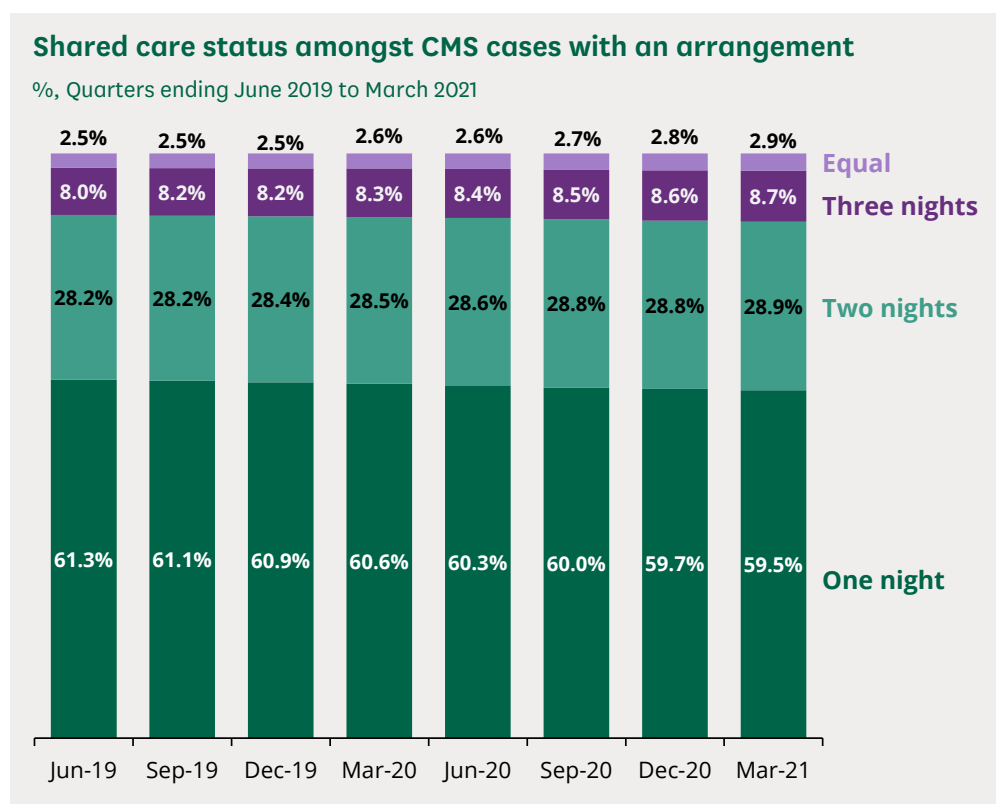
Notes: Figures are rounded to the nearest thousand. Includes some children associated with active arrangements for which no ongoing child maintenance was due in the quarter, i.e. arrears only cases

Data for December 2020 has been revised upwards slightly since the previous publication

Source: DWP, [Stat-explore: CMS Children](#), June 2021, Table 1

## Share care arrangements

In each quarter since June 2019, around 77% of statutory maintenance arrangements did not have a shared care arrangement.<sup>12</sup>



Notes: Figures for December 2020 has been revised upwards slightly since the last publication

Source: DWP Stat-Xplore, [Shared care status by quarter](#), June 2021, Table 3

In the 23% of cases with a shared care arrangement, around 59.5% of these saw a child spend one night a week with the Paying Parent in the quarter ending March 2021. For the same period around 2.9% of arrangements saw a child spend, on average, an equal number of nights with each parent. An equal number of nights is defined as 175 nights a year.<sup>13</sup>

<sup>12</sup> DWP Stat-Xplore, [Shared care status by quarter](#), June 2021

<sup>13</sup> Where an arrangement covers multiple children, the level of shared care is not necessarily equal for all the children. In these figures, the recorded status refers to the maximum amount of shared care used within the arrangement: DWP, [Shared care status by quarter](#), June 2021

## 3

## The five rates: Summary

Child Maintenance Rates		
Gross Weekly Income	Rate	Weekly Amount
Unknown or not provided	Default	£38 for 1 child £51 for 2 children £61 for 3 or more children
Below £7	Nil	£0
£7- £100, or if the Paying Parent receives benefits	Flat	£7
£100.01- £199.99	Reduced	Formula
£200- £3,000	Basic & Basic Plus	Formula

Source: GOV.UK, [How the Child Maintenance Service works out child maintenance](#)

There are five rates of child maintenance that a non-resident parent may be required to pay, depending on their financial circumstances and, in some cases, those of their partner. These are summarised at GOV.UK, [How child maintenance is worked out](#).

The CMS uses gross weekly income to calculate which rate should be paid. Gross weekly income is defined as income before any deductions for tax but after any contributions to approved personal or occupational pension schemes. Gross income is either established using the previous year's income, as reported to Her Majesty's Revenue and Customs (HMRC), or current income, provided to the CMS by the non-resident parent, their accountant, or their employer.

[Annex 1](#) sets out the eligibility criteria for each of these rates, the amount of maintenance due from a Paying Parent on each rate, and any impact of shared care. The CMS document, [How we work out child maintenance](#), provides fuller detail. **Section 4.1** explains gross income in more detail and **section 6** describes variations.

The CMS follows 6 stages to determine which rate is applicable:

1. Establish the non-resident parent's gross income and if they are in receipt of any benefits



2. Check for factors which affect gross income, such as pension payments, expenses, or other children who the non-resident parent supports (“relevant children”)
3. Apply one of the above rates
4. If applicable, take into account the number of children who the non-resident parent must pay child maintenance for (“qualifying children”) and any family-based arrangements
5. Decide the weekly child maintenance amount
6. Make deductions to the weekly amount for shared care. Shared care is taken account of if the child stays with the non-resident parent for at least 52 nights a year. This is not applicable for the nil rate, or if the non-resident parent is on the flat rate because their gross weekly income is less than £100.

This decision then lasts until the date of the annual review, though parents must inform the CMS of any relevant changes. Even though child maintenance may be paid monthly, fortnightly, or weekly, the CMS is required under statute to calculate the weekly gross income figure.<sup>14</sup>

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<sup>14</sup> [Child Support Act 1991](#), Schedule 1, Part 1, as amended.

# 4

## Defining income in the 2012 scheme

### 2 Child Maintenance Service consultation

The Department for Work and Pensions ran a consultation on the Child Maintenance Service (CMS) from the 18<sup>th</sup> June to 6<sup>th</sup> August 2021. The DWP said the proposals would ‘seek to strengthen’ the service and would enable:

- unearned income held by HMRC to be included in CMS calculations alongside paying parents’ earned income
- evidential requirements for self-employed parents to be eased where a change that has breached the income tolerance has been reported
- small volumes of low value debt to be extinguished where the value of the debt is substantially less than the cost of collecting it
- arrears to be extinguished where:
  - child maintenance has been deducted from a parent’s earnings where their employer has gone into administration and
  - we are unable to recover the outstanding arrears from the trustee handling the companies’ insolvency
- all CMS notifications to be sent, received and accessed digitally
- the following organisations to provide information when requested to do so in a timely manner: private pension providers, academy proprietors, the Motor Insurers’ Bureau and all types of companies that offer, promote or sell investment management services or facilitate share trading<sup>15</sup>

The feedback is currently being analysed and has not yet been published.

<sup>15</sup> DWP, [Child Maintenance: modernising and improving our service](#) [closed consultation], 18 June 2021

## 4.1 Gross weekly income

In the 2012 Scheme, child maintenance is calculated based on a non-resident parent's weekly gross income. Gross income is calculated:

- before deducting income tax and national insurance
- after occupational or personal pension schemes have been deducted.<sup>16</sup>

This means that a non-resident parent may, for example, seek to reduce their gross weekly income by increasing their pension contributions (see section 7.3).

The rules on the type of income that is taken into account are complex and based on how income is treated for income tax purposes. It is not the total income on which tax is due that counts, but the total income on which the parent is 'charged to tax'.

In some cases, income that is not counted as gross income for the calculation can be included by a variation. This may happen, for example, in cases where a non-resident parent has interest from savings ("unearned taxable income") or pays income to their partner, neither of which are automatically included in the calculation of gross income (see sections 6 and 8.3 on variations).

In 2018, the CMS said automatically including unearned income would require a change to primary legislation and changes to its IT system, "which are unlikely to be possible in the near future". In 2019 it added that unearned income can be included if a request is made to vary the calculation.<sup>17</sup>

## 4.2 The use of gross, rather than net income in the 2012 scheme

In the 1993 and 2003 child maintenance schemes, net weekly income was used to calculate the amount of child maintenance due.

This was changed to enable the CMS and HMRC databases to "talk" to one another, allowing the CMS to more easily gain information on the non-resident parent's earnings. As the DWP explained in response to the consultation on the 2012 scheme:

Under existing arrangements, changes in the amount of earnings are not routinely reported to the Child Support Agency and cases are not regularly reviewed. As such, the future child maintenance scheme

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<sup>16</sup> CMS, [The Annual Review - How it works](#), November 2013, p6

<sup>17</sup> DWP, [The child maintenance: Compliance and arrears strategy: Government response to the consultation](#), July 2018, para 72; [PQ 246497 \[Children: Maintenance\], 29 April 2019](#)

[i.e. the 2012 scheme], based on historic tax-year data, with a system of annual reassessment, is likely to calculate a liability on a more up-to-date income basis than is currently the case ... Given the existing information flows between HM Revenue & Customs and the Department for Work and Pensions, the use of gross income is necessary if we are to use tax-year data. Since this ensures a swifter assessment of income, we have therefore decided to proceed with this proposal.<sup>18</sup>

This approach means that in many cases the CMS uses the latest full tax year data from HMRC without needing to request it from the non-resident parent. However, by using such data, the non-resident parent's historic income, rather than their current income, is used in the calculation of child maintenance.

In order to ensure that the change from using net weekly income to gross did not affect how much maintenance was paid (in cash terms), the rates applied to a non-resident parent's income were adjusted downwards to take account of the prevailing income tax rates (see Annex 1: Issues related to basic rate plus).

## 4.3 Establishing income

When calculating child maintenance for the first time, the CMS requests income data for the latest available complete tax year, from either:

- HMRC under PAYE regulations or in a self-assessment return; or
- the non-resident parent, their employer or a third party (such as an accountant).<sup>19</sup>

Where the CMS cannot obtain income data for a non-resident parent, then it assumes a level of income, see below).

### Historic income data

The CMS explains that “in most cases” it uses HMRC data on the non-resident parent's gross annual income to work out their gross weekly income. It adds that “we always use the latest available information and make sure it is for a complete tax year. A tax year is any 12-month period for which the government works out an amount of income tax that must be paid”.<sup>20</sup>

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<sup>18</sup> DWP, [A new system of child maintenance – Summary of responses to the consultation](#), Cm 7061, May 2007, paras 4.8 and 4.14

<sup>19</sup> CMS, [How we work out child maintenance](#), February 2017, pp27-8; [The Child Support Maintenance Regulations 2012](#), Regulation 35

<sup>20</sup> Child Maintenance Service, [How we work out child maintenance](#), February 2017, p7

If the latest tax year is not available, then the CMS uses income data from the most recent year going back to a maximum of six years. The CMS says that it “will always tell the Paying Parent and the Receiving Parent which tax year has been used to get the gross annual income information”.<sup>21</sup> Before finalising the child maintenance calculation, the CMS will:

- Send a letter to the non-resident parent detailing the provisional weekly child maintenance calculation and how it has been calculated;
- Provide the non-resident parent with the HMRC income figure that has been used for the calculation;
- Request the non-resident parent call the CMS within the next 14 days to discuss any issues;
- Ask the non-resident parent to provide details of their current income if this is more than 25% different to the figure supplied by HMRC;
- Inform the person with care of the income figure used in the initial calculation letter (although they are not sent the provisional calculation figure);
- Offer the person with care an opportunity for “Mandatory Reconsideration” to challenge the assessment if they think the CMS have used the wrong information; and
- Allow the person with care to apply for a variation if they believe the non-resident parent has not disclosed their true income (for example, because they are diverting it to a new partner) or if they have significant unearned taxable income (such as from savings or rents).<sup>22</sup>

## Income data from the non-resident parent

Where the CMS is unable to obtain historic income data from HMRC, or the non-resident parent tells the CMS that their current income is at least 25% different (higher or lower) than the HMRC data suggests, then the non-resident parent’s current income will be used in the child maintenance calculation instead.

On situations where a non-resident parent’s income is 25% different from the figure suggested by HMRC data the CMS says that:

A Paying Parent, their employer or their accountant can send proof of gross annual income direct to us if they want.

But we will only use this amount to work out child maintenance if it is at least 25 percent more or less than the income figure given to HMRC by the Paying Parent, their employer or their accountant.

The proof we need to confirm a change to income of at least 25 percent is a single taxable gross income figure. You can get this from

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<sup>21</sup> [Ibid](#), p7

<sup>22</sup> Email from DWP official to the House of Commons Library, 2 November 2018

your employer or from a recent self-assessment tax return. The figure you give us should allow us to work out a weekly amount of income. The change to your income should be one that is likely to be a permanent or long-term change.<sup>23</sup>

The CMS additionally notes that it is a criminal offence if a person does not give the information when they ask for it or give information that they know is untrue. If convicted, individuals can be fined up to £1,000.<sup>24</sup>

## 4.4 Overseas income

The detailed rules on what overseas income is taxable in the UK are complex. As explained by the Child Poverty Action Group's (CPAG) Child Support Handbook, "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".<sup>25</sup> Overseas income is included in the calculation of child maintenance even if no UK tax is paid on it if tax has been paid in an overseas country and the UK has a "double taxation" treaty with that country.<sup>26</sup>

The Library briefing, [Overseas Income: Cases where someone lives overseas \(UK\)](#) provides further information, including on enforcement of maintenance arrangements and overseas income disregarded from CMS calculations.

## 4.5 If there is no 'historic' income data

Where the CMS is unable to obtain either historic or current information about the non-resident parent's income, then it can either make:

- **A best evidence assessment:** This is when the CMS uses previous information about a non-resident parent's gross weekly income, or uses official statistics, such as the Government's Annual Survey of Hours and Earnings (ASHE), to work out an amount of child maintenance to be paid.
- **A default maintenance decision:** This is when the CMS applies a default rate based on the number of children the non-resident parent must pay child maintenance for. These weekly rates are:
  - £39 for one child;
  - £51 for two children;

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<sup>23</sup> CMS, [How we work out child maintenance](#), February 2017, p8

<sup>24</sup> [Ibid](#), p11

<sup>25</sup> Child Poverty Action Group (CPAG), Child support handbook 2019/20, 2019

<sup>26</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 countries, see: HMRC, [Tax treaties](#)

– £64 for three or more children.

- This method makes no adjustment if the non-resident parent is responsible for children in a new relationship (“relevant other children”).<sup>27</sup>

These methods mean that the non-resident parent may:

- Pay a higher amount of child maintenance than they need to, until they give the CMS the information it needs to work out the correct amount. When this happens, there is no scope for the difference to be repaid to the non-resident parent.
- Pay less than they need to. When this happens, the non-resident parent will be required to pay extra child maintenance to make up for the amounts they should have paid before the CMS worked out the correct amount.<sup>28</sup>

## 4.6

### Annual reviews of income

Each year, on the anniversary of the date when a non-resident parent was told about a child maintenance application, the CMS carries out an [annual review](#). The annual review period lasts 20 days, and the decision lasts until the next annual review 12 months later, unless changes happen that affect payments before then.<sup>29</sup>

In some circumstances, a periodic income check will also take place during the year.

#### Purpose

The annual review checks to see if the non-resident parent’s income has changed – for example, by comparing the income for the latest (newly available) tax year to that currently used in the CMS’s calculation.

The CMS also takes the opportunity to review other factors included in the calculation – which can be submitted by the non-resident parent or person with care during the 20-day consultation period – including:

- To see if the current payment arrangement is appropriate e.g. if Direct Pay would be more appropriate for an existing Collect and Pay case;
- Changes to shared overnight care arrangements;

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<sup>27</sup> Child Poverty Action Group (CPAG), *Child support handbook 2019/20*, 2019, p125

<sup>28</sup> CMS, [How we work out child maintenance](#), February 2017, pp10-11

<sup>29</sup> CMS, [The annual review - How it works](#), November 2013, p5

- If the non-resident parent is supporting other children (“relevant other children”);
- Changes to the non-resident parent’s pension payments.<sup>30</sup>

## Process

### Existing income supplied by HMRC (“historic income”)

The annual review process is as follows:

- 30 days before the Annual Review date, the CMS obtains the latest income data for the non-resident parent from HMRC, usually the latest available tax year.
- The CMS then calculates the new child maintenance figure using the latest gross income figure – it always uses the new figure from HMRC irrespective of the 25% change in income threshold used elsewhere in this regard.
- The CMS informs both the non-resident parent and the person with care of the following:
  - The gross weekly income figure (and other information) used in the new calculation;
  - The weekly amount of child maintenance that will be paid from the Annual Review date; and
  - How this amount has been calculated.
- The non-resident parent and the person with care have 20 days to submit any changes to the income figure used or other factors in the calculation.
- It should be noted that if the non-resident parent’s current income is different to the latest income data figure from HMRC that the CMS is proposing to use, then the difference has to be 25% or greater (higher or lower) for the CMS to use the current income figure.<sup>31</sup>
- On the Annual Review date, the CMS makes its child maintenance decision which lasts for another 12 months, unless it is informed of a change of circumstances. The non-resident parent is sent a “Payment Plan” and the person with care receives an “Expected Payments Plan”, and both receive a statement showing all the payments paid or received during the past 12 months.<sup>32</sup> Parents on Direct Pay are also sent a Payment Plan or Expected Payment Plan. The CMS will assume payments

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<sup>30</sup> [Ibid](#), p6

<sup>31</sup> If the CMS is informed of a change in the non-resident parent’s income and it accepts this change, then it may also change the amount of child maintenance being paid up to the date of the Annual Review.

<sup>32</sup> CMS, [The Annual Review - How it works](#), November 2013, pp14-17



on Direct Pay have been made unless the person with care informs them otherwise.<sup>33</sup>

## Existing income supplied by non-resident parent (“current income”)

The annual review process is as follows:

- 30 days before the Annual Review date, the CMS obtains the latest income data for the non-resident parent from HMRC, usually for the latest available tax year;
- The CMS compares this amount to the current income amount it has been using:
  - The CMS uses the HMRC data if the difference between the two figures is less than 25%;
  - The CMS continues to use the current income amount (meaning the child maintenance calculation is unchanged, assuming nothing else changes) if the difference is more than 25%;
- The CMS informs both the non-resident parent and the person with care of the following:
  - The gross weekly income figure (and other information) used;
  - The weekly amount of child maintenance that will be paid from the Annual Review date; and
  - How this amount has been worked out.
- The non-resident parent and the person with care have 20 days to submit any changes to the income figure used (including for the non-resident parent their latest current income) or other factors in the calculation
- It should be noted that if the non-resident parent’s current income is different to the income figure that the CMS is proposing to use, then the difference has to be 25% or greater for the CMS to use the non-resident parent’s latest current income figure;<sup>34</sup>
- On the Annual Review date, the CMS makes its child maintenance decision which lasts for another 12 months, unless it is informed of a change of circumstances. The non-resident parent is sent a “Payment Plan” and the person with care receives an “Expected Payments Plan”,

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<sup>33</sup> CMS, [Managing your payments with Direct Pay](#), October 2013, p1

<sup>34</sup> See note 17

and both receive a statement showing all the payments paid or received during the past 12 months.<sup>35</sup>

## 4.7 Periodic income check

Whenever the CMS uses a gross income figure provided by the non-resident parent, their employer or a third party, it checks that the income figure used is still correct 12 months later. This is called the periodic current income check. This is separate from the annual review.

The CMS says that if the income figure has been in place and unchanged for 11 months, then it will ask for proof to check whether the non-resident parent's income has changed.<sup>36</sup>

The process of the periodic income check is as follows:

- If the reported income figure has not changed for 11 months, the CMS will contact the non-resident parent for new proof of their gross income
- The CMS compares this figure to the latest available income amount given to HMRC to see if there is a 25% difference between the two
- If there is less than a 25% difference between the two figures, the CMS will use the HMRC figures to assess income
- If there is a 25% difference or more, the CMS uses the latest income figure provided by the non-resident parent, their employer, or a third party (such as their accountant) to work out child maintenance
- If no information is provided by the non-resident parent, the CMS uses the most recent figure given to HMRC to make a new child maintenance decision
- Unlike the annual review process, there is no 20-day review period.<sup>37</sup>

The periodic income check is separate from the annual review process and is not normally done at the same time. For an example of how the two interact, see the CMS guidance, [Changes you need to tell us about](#) (2013), page 12. If a periodic income check is due to take place around the same time as the annual review, the annual review is done first.<sup>38</sup>

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<sup>35</sup> CMS, [The Annual Review - How it works](#), November 2013, pp10-12

<sup>36</sup> CPAG, [Child support handbook 2019/20](#), 2019, p74; CMS, [The annual review - How it works](#), November 2013, p17

<sup>37</sup> CMS, [The Annual Review - How it works](#), November 2013, pp17-18

<sup>38</sup> CPAG, [Child support handbook 2019/20](#), 2019, p74.

## 4.8 If the CMS receives no income figure

As set out above, 30 days before the Annual Review date, the CMS seeks an updated income figure for the non-resident parent.

The course of action that the CMS will take if it does not receive or cannot obtain an up-to-date income figure at the annual review depends on how the last income figure was submitted:

- If the non-resident parent's **historic income** – obtained from HMRC – was being used in the child maintenance calculation, then for the Annual Review the CMS seeks income data from HMRC and the non-resident parent (see section 4.3 for more detail).
- If the CMS has not received the information it needs to make a child maintenance decision by the Annual Review date, then it can make either a best evidence assessment, or a default maintenance decision (for more information, see Section 4.5). The CMS states that if it takes either course of action, it writes to both the non-resident parent and the person with care to inform them of this, and it will also “ask the paying parent [non-resident parent] for information about their income at regular intervals after the Annual Review date”.
- If the child maintenance calculation is based on the non-resident parent's **current income**, then the CMS will then continue to use that figure until the periodic income check takes place. If the CMS do not get up-to-date proof of income from the non-resident parent at the periodic income check, then it will “use the most recent figure given to HMRC to make a new child maintenance decision”.

The non-resident parent is sent a “Payment Plan” and the person with care receives an “Expected Payments Plan”, and both receive a statement showing all the payments paid or received during the past 12 months.<sup>39</sup>

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<sup>39</sup> [Ibid.](#), pp18, 20–22

## 5

# Reporting changes in income

In addition to the annual review and the periodic income check, a non-resident parent or a person with care can inform the CMS of a change of income at any point – to do so is to request a “supersession”. In some cases, a non-resident parent is required to inform the CMS of a change in income.

If a child maintenance calculation is based on historic data from HMRC, a non-resident parent’s current income must be at least 25% different from the HMRC historic figure for the maintenance calculation to be altered. The non-resident parent does not need to inform the CMS of this change.

Gov.UK’s [Manage your CMS case: Changes you need to report](#) sets out the changes parents should tell the CMS about, and whether to contact the service by phone or online.

A non-exhaustive list [includes](#):

### **Either parent**

- Report to the Child Maintenance Service online if [...]
- there’s a change to the number of nights a child regularly stays overnight with the paying parent

### **Paying Parent**

- Call the Child Maintenance Service if you:
- stop working for an employer
- stop being self-employed
- have lost your job or you’re temporarily receiving Statutory Sick Pay
- want to restart your payments
- have received notification of a court or tribunal date
- have received notification of a deduction order from a bank

[...]

- Report to the Child Maintenance Service online if:

- you start working for an employer
- you start being self-employed
- you move house (give your new address within 7 days of moving)
- you change your phone number (including mobile number)
- your income has changed by 25% or more

### **Receiving parent**

- Call the Child Maintenance Service if:
  - there's a change to the number of children living with you that you get child maintenance for
  - there's a change to the number of children that you or your partner have registered for Child Benefit
  - a child you get child maintenance for leaves full-time education (up to and including A Level) or reaches the age of 20
  - you or any of the children you get child maintenance for no longer live in the UK
- Report to the Child Maintenance Service online if:
  - you find out that the paying parent is coming off benefits
  - you're moving house or know that the other parent is
  - your phone number (including mobile number) changes
  - the paying parent's income has changed by 25% or more (unless they've lost their income - they should report it themselves by phone).

## 6 Variations

### 6.1 Purpose

The standard methodology for calculating child maintenance takes account of a limited range of factors:

- Gross weekly income (usually that reported to HMRC in the previous full tax year);
- The number of children the non-resident parent supports through child maintenance;
- The number of other children the non-resident parent may be financially responsible for; and
- Shared care arrangements.

In more complex cases, a “variation” from this formula may be applied for. Both the non-resident parent and person with care have grounds to request variations, to either reduce or increase the child maintenance due.

### 6.2 Process

The CMS [Guide to variations](#) states either relevant parent/person with care may make an application for a variation “at any time”. Applications may be made by phone or in writing. The CMS states that it is:

Very important that the application contains as much information as possible. The person applying must say why they are applying for a variation, or give us enough information for us to be able to see why they are applying. <sup>40</sup>

The CMS states that information will be shared between parents and it will use other sources of information to establish income and expenses. It will also consider whether the variation is “just and equitable” for everyone involved in the child maintenance case. <sup>41</sup>

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<sup>40</sup> CMS, [Variations explained: a guide for Receiving Parents](#), October 2013, p2

<sup>41</sup> CMS, [How we work out child maintenance](#), November 2013, pp38-9

## 6.3 Grounds for variation: non-resident parent

There are several grounds on which a non-resident parent can ask for other payments (called “special expenses”) to be considered, and so reduce the amount of child maintenance they pay:<sup>42</sup>

- **Costs of at least £10 a week of keeping regular contact** with the child or children that qualify for child maintenance (e.g. the cost of fuel or accommodation).
- Costs connected with supporting a child with a disability or a long-term illness (an illness expected to last at least 12 months or be terminal).<sup>43</sup>
- Repaying debts from a former relationship of at least £10 a week that were incurred during the relationship.<sup>44</sup>
- **Boarding school fees** for a child or children that qualify for child maintenance of at least £10 a week.<sup>45</sup>
- Making payments on a mortgage, loan or insurance policy for the home that the non-resident parent and parent with care used to share.<sup>46</sup>

If the CMS accepts a variation for special expenses, then the gross weekly income of the non-resident parent is reduced by the amount of the special expense(s). This, in turn, reduces the amount of child maintenance that the non-resident parent must pay.

A non-resident parent cannot ask the CMS to take special expenses into account when reassessing their gross income if their gross income was already less than £7 a week or they are getting benefits.<sup>47</sup>

## 6.4 Grounds for variation: person with care

The onus is on the person with care to provide the information to the CMS. This requires them to have knowledge of the non-resident parent’s financial situation which might not always be the case if the parents have been separated for some time, or if all contact between them has stopped (for example, because of previous domestic violence).

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<sup>42</sup> Under [The Child Support Maintenance Calculation Regulations 2012](#), Chapter 2

<sup>43</sup> Disability and long term illness are defined in [The Child Support Maintenance Calculation Regulations 2012](#), Chapter 2(63)

<sup>44</sup> Exclusions are listed in [The Child Support Maintenance Calculation Regulations 2012](#), Chapter 2(65)

<sup>45</sup> CMS, [Variations explained: a guide for Receiving Parents](#), October 2013, p1

<sup>46</sup> [The Child Support Maintenance Calculation Regulations 2012](#), Chapter 2(67)

<sup>47</sup> CMS, [Variations explained: a guide for Receiving Parents](#), October 2013, p1

The non-resident parent with care may ask the CMS to apply for a variation on the below grounds:<sup>48</sup>

- **‘Unearned’ income, such as rental income, dividends and interest from savings and investments.**<sup>49</sup> This type of income must be at least £2,500 a year. If a variation is made on these grounds, the annual unearned income amount is divided by 52 to make it a weekly amount and is then added to the Non-Resident’s Parent gross weekly income. Child maintenance is then calculated based on this adjusted figure of gross weekly income.
- **Gross ‘earned’ income in excess of £100 a week for a non-resident parent on the nil or flat rate in certain circumstances** (e.g they receive one of the qualifying benefits for the flat rate, listed in Annex 1).<sup>50</sup> When a variation is made on this ground, the non-resident parent is treated as having the whole amount of income for the purpose of calculating child maintenance. This additional child maintenance liability is then calculated at the appropriate rate and liability added to the nil or flat rate.
- If a variation is agreed on this ground, information about the additional income is sought and treated in the same way as for gross weekly income used in the support calculation (see section 4.3 above).<sup>51</sup>
- **‘Diversion’ of income** (e.g to a family member, business or pension scheme). The CMS will consider a variation if it believes the non-resident parent is controlling, directly or indirectly, the amount of income they get by diverting it to another person or another purpose, which means it is not being included in the figure the CMS uses to work out child maintenance.
- If the CMS accepts this variation, then the non-resident parent’s gross weekly income is adjusted to include the full weekly equivalent amount of any diverted income, and the adjusted figure is used to calculate the child maintenance liability.<sup>52</sup>
- **Notional income.** From December 2018, regulations were made to allow the CMS to assume that assets of a non-resident parent that are not generating a return have an assumed notional income of 8% per annum

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<sup>48</sup> [The Child Support Maintenance Calculation Regulations 2012](#), Chapter 3

<sup>49</sup> Definitions of property income, savings and investment income and miscellaneous income are defined in Parts 3-5 of the [Income Tax \(Trading and Other Income\) Act 2005](#)

<sup>50</sup> If they are a child; a prisoner; receiving an allowance for work-based training for young people; or resident in a care home or independent hospital, receiving one of the qualifying benefits for the flat rate or has the whole or part of the cost of her/his accommodation met by a local authority ([Child Support Maintenance Calculation Regulations 2012](#), Chapter 3; CMS, [How we work out child maintenance](#) (November 2013), pp23-4).

<sup>51</sup> CPAG, [Child support handbook 2019/20](#), 2019, pp100-1

<sup>52</sup> *Ibid*, pp103-4



(if the value of the asset is greater than £31,250). This is then divided by 52 to calculate its weekly value.<sup>53</sup>

- Assets include money, land (but not if the land is the primary residence of the non-resident parent) and some stocks and shares. In the case of an asset that is subject to a mortgage or charge, the value of the asset is its value after a deduction is made for any amount owing. Part 2 of the [2018 Regulations](#) provides a full list of the asset types that can, and cannot, be included for these purposes.<sup>54</sup>

## 6.5 The role of the Financial Investigations Unit

Where a non-resident parent is suspected of concealing their true income then the Financial Investigations Unit (FIU) can be tasked with looking into the matter.

The Financial Investigations Unit (FIU) is a body within the DWP that considers more complex cases. It works with HMRC records and other information to assess and uncover additional income from non-resident parents. Where relevant, it also passes on information to HMRC.

Additional income and evidence collected by the FIU may be used by the CMS to calculate child maintenance assessments.

For more on the work of the FIU, see the Library Briefing [Child Maintenance: Fees, enforcement and arrears](#), Section 4.5.

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<sup>53</sup> [The Child Support \(Miscellaneous Amendments\) Regulations 2018](#), Regulation 2

<sup>54</sup> [Ibid.](#)

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## 7

# FAQs on calculating income

### 7.1

## Why only the non-resident parent's income is considered

A question sometimes raised with the Library is why only the non-resident parent's income is taken into account when calculating child maintenance, especially if their new partner has a high-paying job. Some non-resident parents also ask their MP why neither the person with care's income, nor that of a new partner, is considered.

### The 1993 Scheme

Under the 1993 scheme, the income of both the non-resident parent and their partner (if applicable) were taken account of in calculations. Although the non-resident parent's partner was not expected to contribute towards child maintenance, their income could affect the amount that the non-resident parent had to pay.<sup>55</sup>

The income of the person with care was also considered under the 1993 child maintenance scheme. The CSA explained in its [Your child maintenance assessment](#) that it “work[s] out the person with care's assessable income because sometimes they will have enough income to contribute more towards the everyday living costs of their child or children...so we may reduce the amount of child maintenance the non-resident parent has to pay to reflect this”.

The CSA continued:

In general, we don't take account of the income of the person with care's partner, if they have one, when working out how much child maintenance must be paid. The exception is when the person with care has a child or children with a new partner, and the new partner can contribute to the everyday living costs of these children. If so, we can reduce the amount of exempt income ... and this in turn can affect the amount of assessable income of the person with care.<sup>56</sup>

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<sup>55</sup> [HC Deb Children: Maintenance, 28 January 2008 c61W](#)

<sup>56</sup> CSA, [Your child maintenance assessment and help in meeting exceptional circumstances](#), CSA2024, October 2013, p36

## The 2003 and 2012 Schemes

The 2003 and 2012 child maintenance schemes sought to rationalise the number of factors used to calculate child maintenance. As the then Social Security Secretary, Alistair Darling, explained in 2000, “about 100 items of information” were needed to calculate child maintenance in the 1993 scheme, meaning that child maintenance would have to be recalculated if any one of those variables was to change. The then Secretary of State also argued that “a parent who is simply stringing the agency—and, more important, the child—along can delay, or refuse to hand over certain bits of information”.<sup>57</sup>

The features of the 2003 statutory child support scheme, which is referred to below, similarly apply to the current 2012 scheme in this area.

On the issue of the income of the person with care and their partner, the 1999 White Paper, [A new contract for welfare – Children’s Rights and Parent’s responsibilities](#), stated:

The percentage rate system we propose [for the 2003 scheme] ignores the income of the person with care. There is no need to reduce the rate because the person with care has an income of her own. She already contributes to the cost of bringing up children by caring for them in her home. And the child support rates are intended to produce a fair assessment of maintenance on the basis of non-resident parents’ income alone.

Taking into account the income of parents with care would make the new scheme much more complicated. It would give unfairly low levels of maintenance in some cases. And we would face calls to consider other income coming into both parent’s households, such as the earnings of a new partner. This would lead us back to all the old complications.

In any case, the practical effect would be minimal. For 96 per cent of non-resident parents who have a full assessment under the current scheme, the person with care’s net weekly income is less than £100. Fewer than 6,000 parents with care who have a child support assessment now have an income of more than £200 per week. To create complex rules for such a small group is undesirable and unnecessary.<sup>58</sup>

The DWP also provided the following rationale in an archived guide to the 2003 scheme published in 2012. It set out, in short, the principle that non-resident parents must take some responsibility in financially supporting their child, if they have the means to do so:

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<sup>57</sup> [HC Deb, Child Support, Pensions and Social Security Bill, 11 January 2000 c153](#)

<sup>58</sup> Department for Social Security, [A new contract for welfare – Children’s Rights and Parent’s responsibilities](#), cm 4349, July 1999, p14, paras 32–34

**The person with care has more money and/or a high earning new partner, why should the non-resident parent continue to pay maintenance?**

**The non-resident parent now has a new partner and children to support, why should they continue to pay maintenance?**

The principle underpinning the statutory child maintenance service is that a parent's responsibility to support his or her child is an obligation which should have the highest priority and that this financial responsibility is absolute. Child maintenance is a contribution towards the cost of bringing up a child and this includes not only such items as food and clothing but also it is a contribution towards the home that the child lives in and the associated costs of running that home.

Under the 2003 child maintenance scheme the income of the person with care or their partner is not relevant to the child maintenance calculation and does not affect the non-resident parent's liability to contribute to the support of their child or children. The child maintenance calculation is based entirely on the net income of a non-resident parent and is an approximation of what they would spend if their child lived with them. Allowances are applicable if the non-resident has other children living within their household.

The statutory child maintenance service does not guarantee a particular financial outcome for a child within the service; it ensures parents take a degree of financial responsibility for their children. What the person with care is receiving should not remove the responsibility of a non-resident parent to support their child and in most cases the person with care will be supporting the child through the provision of a home and related expenses. This is why the majority of non-resident parents, including those with lower incomes or who are receiving benefits, are required to make at least some contribution to the support of their child.<sup>59</sup>

## 7.2

### Why is the threshold to trigger a recalculation 25%?

Under the predecessor 2003 statutory child maintenance scheme only a 5% change (either way) in the non-resident parent's income was required for the then-CSA to recalculate child maintenance liabilities. In later years, the DWP described this low threshold as a "failing" of the scheme, explaining that this approach meant that relatively small changes in income meant:

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<sup>59</sup> DWP, [Child maintenance frequently asked questions](#), August 2012, pp32-33

The maintenance award has to be recalculated, with consequent changes to payments. Such instability can create uncertainty for parents about their income and results in staff having to review a maintenance award, diverting their time and effort away from keeping money flowing to children.<sup>60</sup>

By using a higher threshold for the change in income, which fewer non-resident parents would ordinarily be expected to exceed, the DWP intended that this would provide “an opportunity to fix maintenance awards for a period of time so reducing the number of cases where changes of circumstances are reported”. However, the DWP conceded that:

The system needs to be sufficiently flexible to deal with major changes in circumstances or unexpected events. In some instances therefore awards would be altered, such as a move in or out of employment or the death of a qualifying child. If income changes in the year, so that it differs by 25 per cent from the figure produced by the tax year data, then the maintenance liability will reflect the new income figure.<sup>61</sup>

The rationale for the 25% threshold was set out in an answer to a parliamentary question given by the then Pensions Minister in 2014:

In determining the level of threshold the criteria considered were: to set a threshold which offered a stable maintenance liability to provide greater certainty to both parents whilst also remaining fair in dealing with unexpected and major changes in circumstances; and, to also set the threshold at a level which supports operational efficiency and secures the right balance between recalculating maintenance and collection and enforcement activity.<sup>62</sup>

During the Coronavirus outbreak in 2020, furloughed individuals on the [Job Retention Scheme](#) receive 80% of their usual wages, meaning non-resident parents were still liable to pay their regular levels of maintenance (if no other changes occurred in their maintenance relationship or financial circumstances). The Government said the £6.5 billion of funding for welfare and business support programmes included measures, such as support for Universal Credit, designed to help household income through the period.<sup>63</sup>

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<sup>60</sup> DWP, [Impact Assessment: The Child Support Maintenance Calculation Regulations 2012](#), 29 March 2012, p11, para 47

<sup>61</sup> DWP, [Impact Assessment: The Child Support Maintenance Calculation Regulations 2012](#), 29 March 2012, p11, para 48

<sup>62</sup> [PQ 218234 \[Children: Maintenance\], 15 December 2014](#)

<sup>63</sup> [PQ 48245 \[Children: Maintenance\], 4 June 2020](#)

## 7.3

## Are some pension contributions a diversion of income?

As noted in Section 4.1, the gross weekly income of the non-resident parent is calculated after occupational and statutory pension contributions have been made. As the CPAG's Child Support Handbook 2019/20 notes, "there is no limit on the amount of pension contributions that can be deducted." However, it adds:

If a person with care is aware of the amount of contributions and consider them to be excessive, or that arrangements have been set up deliberately to reduce liability for child support (eg, if the non-resident parent has made a salary sacrifice arrangement in return for increased employer contributions), s/he can apply for a variation of the grounds of diversion of income.<sup>64</sup>

Relevant case law was summarised by the [Stowe Family Law website](#) in 2015:

The matter of whether pension contributions are reasonable has previously been considered by the Upper Tribunal in [DW v CMEC](#) [DW being the anonymised applicant, and CMEC being the Child Maintenance and Enforcement Commission, whose role has since been taken by the Child Maintenance Group within the Department for Work and Pensions], in which the judge set out a list of factors that may be relevant, such as the age of the individual, their reasonable retirement age and what advice, if any, they have received as to the level of contributions.<sup>65</sup>

The case in question concerned the 2003 child maintenance scheme and was heard before the Upper Tribunal whose ruling was given in June 2010. The judge [summarised](#) the case as follows:

A [anonymised reference for the non-resident parent] was liable to pay P [anonymised reference for the person with care] £87.00 weekly for child support maintenance for their child N from 12 11 2007. This was reduced to £59.00 weekly from 24 03 2008. P asked for this decision to be varied in respect of what she contended to be a diversion of income. P made her claim for a variation succinctly in an application on 19 05 2008. She ticked the box to indicate that she thought that A [the non-resident parent] "has diverted income to other persons or for purposes other than the provision of income for themselves". She confirmed that A worked for a limited company. She then stated:

<sup>64</sup> CPAG, Child Support Handbook 2019/20, 2019, p66

<sup>65</sup> Stowe Family Law LLP, [AVCs reduce child support liability](#), 8 July 2015

“He is diverting his money into a separate [sic] pension. He did this in September and was putting £800 per month in it for a month. Then it went down to £50. He has now changed it again to £850.00 a month because it was investigated and he was found out.”

She contended that the amount being diverted was £850.00 a month. She requested that a variation be applied to the way in which the general rule about deductions for pension contributions was applied to A’s income.<sup>66</sup>

In his [ruling](#), the Judge set out the grounds the tribunal used to determine the level of contributions that were “reasonable” before constituting a “diversion” of income (bold added to original):

The tribunal then needs to consider whether that total is unreasonable. The effect of regulation 19(5)(b) is also to pose the opposite question. If the total pension contributions made by the individual are unreasonable, what amount is reasonable? In deciding that, I commend to the tribunal the approach taken on the facts in CCS 2027 and 2028 2007. The following may be relevant:

How old is the individual?

At what age is it reasonable that the individual should expect to be able to retire in the light of his or her personal and family medical history? (From April 2010 tax-approved pension funds cannot in normal cases make new pension payments to anyone below the age of 55).

**What entitlements will the individual have** under the various pension schemes of which he or she is a member?

When will they be received?

**What is the past record of pension contributions** of the individual, and what other provision (for example, capital) is available to assist funding the individual’s retirement?

On **what advice, if any, is the individual acting** in making the current level of contributions?

What proportion of current gross income is being used by the individual to fund pension contributions?

The tribunal must, of course, follow the general statutory framework for any decision on a variation. It must have in mind, for example, the general principle that “parents should be responsible for maintaining their children whenever they can afford to do so” (Child

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<sup>66</sup> Administrative Appeals Chamber, [DW v Child Maintenance and Enforcement Commission and JO \(CSM\)](#), DW v CMEC [2010] UKUT 196 (AAC), 9 June 2010, para 3

Support Act 1991, section 28E(2)(a)). And it must be satisfied that, in all the circumstances of the case, it is just and reasonable to agree to the variation, having regard to the welfare of any child likely to be affected by the variation (Section 28F(1)). I stress those points, because they emphasise that it is not only the employee's prospective pension requirements that are to be taken into account. His or her own requirements cannot be viewed in isolation in a variation case. Attention must also be paid to the current needs of the relevant children. To that extent I reject the approach taken by A in his arguments to me.<sup>67</sup>

Although the ruling concerned the 2003 statutory child maintenance scheme, pension contributions were similarly deducted from weekly income (albeit net weekly income rather than gross) before calculating maintenance under that scheme as under the 2012 scheme.

## 7.4

### Why is income from “special occupations” no longer disregarded?

Under the 2003 child maintenance scheme, the earnings from the following “special occupations” were disregarded in full: Auxiliary coastguards; Reserve or territorial force members; Local authority councillors; Part-time firefighters; and Part-time Lifeboat crew members.<sup>68</sup>

These disregards were removed in the 2012 scheme.

The then-DWP Minister Maria Miller explained that the reason for their inclusion under the 2012 system lay with the aim of simplifying the system:

Back in 2003 ... the payments made to clients from the occupations that we are talking about tended to be relatively small. That is no longer always the case.

[...]

Although the current position was established for a number of reasons, I believe that it is unsustainable. No matter how praiseworthy the efforts of those in part-time professions are, they are often parents, and their children must be at the forefront of our minds when we develop such policy.

[...]

The effects of the current position can be serious. For example, a non-resident parent, who is a member of the Territorial Army

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<sup>67</sup> [Ibid](#), paras 37–8

<sup>68</sup> [Child Support \(Maintenance Calculations and Special Cases\) Regulations 2000](#), Part 1, 4 (2)



deployed to Afghanistan for a number of months ... and who derives their sole income for this period from their pay as a soldier has a child maintenance liability of nil. That is different from the position of the regular soldiers serving alongside them who continue to be liable to pay maintenance and of their colleagues whose children continue to be part of their current family. The effect is to leave the children of TA soldiers and any others who fall into this category who are non-resident parents and are deployed on operations entirely unsupported for an extended period. Not including this income within the child maintenance calculation is unacceptable. I ... believe that we should change the rules.

[...]

For the new child maintenance scheme, we propose to base the liability of such non-resident parents on their total weekly income. By using Her Majesty's Revenue and Customs income data, we will avoid the administrative complexities that arose in the original scheme and provide a fairer system for the children of such parents.<sup>69</sup>

## 7.5 Will the calculation formula be updated?

The Social Security Advisory Committee, an independent advisory body of the DWP, published a study in October 2019 on [Separated families](#). It noted that the thresholds for child maintenance rates have not been updated since they were set in 1998 and so “in real terms paying parents now pay child maintenance on lower incomes than was originally intended”.<sup>70</sup> The Advisory Committee were also told of other issues with the current formula by consultees:

- **It does not reflect the true costs of raising a child** – it does not factor in the regional variation in childcare costs or that costs vary by age of the child;
- Reduction in payments for overnight stays with the paying parent do not reflect costs of either parent and creates perverse incentives for the receiving parent – there are fixed costs associated with having a child to stay, for example needing a spare room for children to sleep in and we heard examples of parents needing to buy additional clothes for their children as parents refused to share them.
- **It does not reflect household earnings of the receiving parent** – so there may be instances where a paying parent on

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<sup>69</sup> [HC Deb, Child Support Payments, 20 December 2011 cc416WH-417WH](#)

<sup>70</sup> Social Security Advisory Committee, [Separated parents and the social security system](#), no. 22, October 2019, p22

low income struggles to meet their child maintenance payments, but a receiving parent who has repartnered with a high earner may benefit from their earnings.

- **It does not accurately reflect travel costs for the paying parent to see the children** - the receiving parent may (and can) decide to move away from the other parent, perhaps to be closer to their own parents.

Earnings fluctuations are not always factored into the formula which can leave some paying parents on low incomes struggling to pay – the CMS uses earnings data from the HMRC from the latest available tax year; if the paying parent can prove their actual gross annual income is 25% more or less than the figure used by HMRC, the calculation can be updated. However, for someone on low income, even a small variation in income (for example self-employed and on zero hours contracts) can affect their ability to pay child maintenance.<sup>71</sup>

The report was broadly welcomed by Gingerbread, the single parent’s charity, but it stated “in contrast to the report, we believe that [improvements to the CMS] should primarily focus on safeguarding the wellbeing of children of separated parents, so that they receive the vital financial support that alone lifts a fifth of single parent families out of poverty”.<sup>72</sup>

Marion Fellows MP also introduced a Bill to reform four elements of the child maintenance system in November 2018. The Bill’s purpose was explained by the Member:

There are four specific ways in which the CMS could be improved in order to fulfil its intended purpose, and the aim of my Bill is to enact them. The 4% maintenance levy on parents requiring the collect-and-pay service should be abolished, as should the £20 application fee. There should be a reduction from 25% to 10% in the change-in-income threshold that must be breached for maintenance payments to be recalculated. Finally, the value of any equity in the non-resident parent’s primary residence should be included in maintenance calculations when it exceeds £500,000.<sup>73</sup>

The [Bill](#) did not proceed further than its First Reading.

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<sup>71</sup> [Ibid](#), pp23-4

<sup>72</sup> Gingerbread, [Gingerbread welcomes SACCS call to develop social security strategy for separated parents](#), 23 October 2019

<sup>73</sup> HC Deb, [Child maintenance](#), vol 648, 6 November 2018, c 1396

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## 8 “Additional income” under the different schemes

### 8.1 The 2003 Scheme

In contrast to the 2012 scheme, where unearned income and notional income from assets are grounds for variation, the equivalents in the 2003 scheme were the two below conditions:

- **Assets in excess of £65,000** (excluding the value of their home, and subject to certain other exclusions):
- The weekly value of these assets was calculated by multiplying the value of the assets by the statutory rate of interest (i.e. in England and Wales the statutory rate prescribed for a judgment debt, namely 8%) and dividing this by 52.<sup>74</sup>
- A lifestyle inconsistent with income:
- Where it was found that a non-resident parent had a lifestyle inconsistent with their declared income, the then-CSA could calculate the additional income by establishing the difference between the income required to support their overall lifestyle and the income which would have been taken account of for the purposes of the maintenance calculation. This figure would then be added to their declared income to establish liability.<sup>75</sup>

### 8.2 The 2012 scheme

**Under the 2012 scheme, the amount of annual taxable unearned income, or annual notional income from non-income generating assets, must be in excess of £2,500 for a variation to be made.**

When originally introduced, the 2012 scheme had only “unearned income” as grounds for variation— notional income was introduced in 2018 (see section 6.4).<sup>76</sup>

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<sup>74</sup> [The Child Support \(Variations\) Regulations 2000](#), Section 18

<sup>75</sup> [The Child Support \(Variations\) Regulations 2000](#), Section 20

<sup>76</sup> [The Child Support \(Miscellaneous Amendments\) Regulations 2018](#), Regulation 2

The decision to not carry the “lifestyle inconsistent with income” variation into the 2012 was explained by the then-Child Maintenance and Enforcement Commission as a means to increase accuracy:

The link with HMRC provides the Commission with access to a much wider range of income types. This means the new variations scheme will have a greater emphasis on trying to obtain actual unearned income figures rather than carrying forward the current practice of applying notional amounts based upon a non-resident parent’s assets and lifestyle. As a result of this, the lifestyle inconsistent with declared income and assets grounds will not be carried forward.<sup>77</sup>

In 2011, the single-parent charity Gingerbread criticised the decision to remove the lifestyle variation, which it said had:

... The tremendous advantage that it does allow parents with care to bring to the attention of the Agency [now the CMS] and to a Child Support Tribunal, cases where there is a clear and inexplicable discrepancy between declared income and lifestyle. Whilst this does not always result in a variation on lifestyle grounds, it can often lead to proper scrutiny of a non-resident parent’s actual financial situation and a variation on other grounds, such as diversion of income.<sup>78</sup>

The charity noted that “given the limited powers available to a person with care to obtain full disclosure of a non-resident parent’s declared income”, the lifestyle ground for a variation was “an important tool for parents with care with legitimate concerns that the non-resident parent is seeking to evade paying proper child maintenance”.<sup>79</sup>

## 8.3

### The onus on the person with care to tell the CMS of the non-resident parent’s unearned income

Information on unearned income is collected by HMRC through self-assessment tax returns. However, the CMS only requests this information following an application for a variation from the person with care.<sup>80</sup> This requires them to know their ex-partner’s financial circumstances.

In the [2017 consultation](#), the Government proposed including unearned income in the initial CMS calculation, when the CMS is advised about possible

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<sup>77</sup> Child Maintenance and Enforcement Commission, [The Child Support Maintenance Calculation Regulations 2012 – A technical consultation on the draft regulations](#), 1 December 2011, para 89

<sup>78</sup> [Ibid](#), p26

<sup>79</sup> [Ibid](#), p21

<sup>80</sup> CPAG, [Child support handbook](#), 2019, p97.

unearned income. Respondents agreed with the proposal, and the UK Government said this would “not be achievable without changes to primary legislation” but had begun to work with the HMRC on “ways to speed up the current process for sharing the relevant unearned income data they hold”.<sup>81</sup> In addition, the DWP said that such legislative changes and required changes to its IT system to enable the CMS to automatically request information on unearned income from HMRC were “unlikely to be possible in the near future.”<sup>82</sup>

It added that it would seek to raise awareness of unearned income:

Our aim is to ensure clients understand what constitutes unearned income, the affect it can have on a child maintenance liability, and the importance of raising the issue at the start of the case. We believe this, along with enhancing our procedures, will help factor unearned income into the initial calculation in more cases.<sup>83</sup>

New caseworker guidance on unearned income was launched in 2018 to help caseworkers identify and factor in unearned income.<sup>84</sup>

## 8.4 Work and Pensions Committee report

In May 2017, the Work and Pensions Select Committee published a [report](#) on the CMS, and noted that in evidence submitted to the Committee’s inquiry the DWP had told it the “unearned income” variation was an effective replacement to the “lifestyle inconsistent with income” ground for variation:

Where a non-resident parent has a lifestyle which it does not appear could be supported purely from their earnings, we [the DWP] are confident that such funds will be identified through the “unearned income” variation ground in the CMS, providing the Paying Parent has not failed to disclose any other sources of income.<sup>85</sup>

The DWP argued that the new ground had “removed the need for ‘subjective decision-making’ necessary in the old scheme”.<sup>86</sup>

However, the Committee stated it heard evidence that the new variation allowed non-resident parents to more easily divert income:

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<sup>81</sup> DWP, [The Child maintenance compliance and arrears strategy – Government response to the consultation](#), 12 July 2018, p6, para 6

<sup>82</sup> [Ibid](#), para 72

<sup>83</sup> [Ibid](#), para 73

<sup>84</sup> PQ 142985 [[CMS: Training](#)], 28 January 2021

<sup>85</sup> Work and Pensions Committee, [Child Maintenance Service](#), 2016–17 HC 587, 2 May 2017, p30, para 79

<sup>86</sup> Work and Pensions Committee, [Child Maintenance Service– written evidence from the Department for Work and Pensions \(CHM103\)](#), April 2017

James Pirrie [a Board Member of Resolution and Director of Family Law in Partnership] told us that, ultimately, the reinstatement of the inappropriate lifestyle challenge was necessary to address NRPs [non-resident parents] diverting income: “You can’t hide lifestyle but you can definitely hide capacity to pay behind a tax return” ... He told us that capacity to investigate complex cases had been diminished with the loss of the lifestyle challenge.<sup>87</sup>

The Committee went on to “recommend that the Department reinstate provisions for parents to challenge child maintenance awards on the grounds of assets and lifestyle inconsistent with income”.<sup>88</sup>

### Government response

In its [response](#) to the Committee in 2017, the DWP said that it recognised “some parents have complex income arrangements” and that “it is vital that the CMS has the right powers to ensure that a fair assessment of child maintenance liability can be made in these cases”.

The DWP continued in saying that under the 2012 scheme the CMS had access to income information reported by the HMRC and could “capture a much wider range of income types received by non-resident parents than under previous [statutory child maintenance] schemes”. It said that either parent at any time could request that the CMS takes into account additional income received by the non-resident parent through a variation request, and that it would refer cases that require further investigation to the Financial Investigations Unit (FIU). The DWP stated:

If either parent is unhappy with the calculation they can first ask us to look at it again and we will swiftly amend any incorrect calculations or investigate further if appropriate. If parents remain dissatisfied after the decision has been reviewed, they can appeal to Her Majesty’s Courts and Tribunals Service.

But the DWP did not accept the Committee’s recommendation to reinstate the grounds for a variation based on lifestyle inconsistent with income, explaining it believe it to be subjective and uncertain:

We have no plans to reintroduce this provision, which was difficult for parents to use and uncertain in effect. The onus to prove that grounds for a variation existed lay with the applicant, typically the person with care, and it was often difficult to obtain such details. As a result, very few applications for ‘lifestyle’ variations resulted in changes to the existing liability. The decisions on these grounds also involved a degree of subjectivity and a large proportion of such

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<sup>87</sup> Work and Pensions Committee, [Child Maintenance Service](#), 2016–17 HC 587, 2 May 2017, p30, para 80

<sup>88</sup> [Ibid](#), p31, para 82

decisions were challenged or appealed, delaying the receipt of a steady maintenance amount.<sup>89</sup>

The Government has subsequently said that the introduction of the notional income variation in 2018 (Section 8.6) was a means to target those with complex earnings and income from property, savings and investments.<sup>90</sup>

## 8.5 Private Member's Bills

**There have been two Private Members Bills that sought to reinstate the ground for variation. Both fell at First Reading.**

- David Burrowes MP, [Child Maintenance \(Assessment of Parents' Income\) Bill\) 2016-17](#).
- Heidi Allen MP, [Child Maintenance \(Assessment of Parents' Income\) Bill 2017-19](#).

## 8.6 The introduction of the notional income variation

Notional income was introduced as a ground for variation in [The Child Support \(Miscellaneous Amendments\) Regulations 2018](#) (Regulation 2).

The UK Government argued that the notional income grounds for a variation “will be particularly appropriate in situations where an individual has an affluent lifestyle, and a source of income cannot be identified but ownership of significant assets can be”.<sup>91</sup> It added that the change was an attempt to address concerns that non-resident parents were able to use complex arrangements to lower their child maintenance liability:

The Child Maintenance Calculation Regulations 2012 are being amended to go some way towards addressing the concerns of stakeholders that a small number of wealthy NRPs [non-resident parents] are currently able to use complex arrangements of assets to artificially lower their child maintenance liability, or avoid it entirely. The legacy schemes have provisions to determine a notional income from assets held that were not carried forward to the 2012 scheme, as the method of calculation on that scheme allowed for a more comprehensive range of income types to be taken into account

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<sup>89</sup> [CMS: Government response to the Committee's fourteenth report of Session 2016-17](#), 12 September 2017

<sup>90</sup> [HC Deb, Child Maintenance Service, vol.663, c554 WH, 23 July 2019](#)

<sup>91</sup> [Explanatory memorandum to The Child Support \(Miscellaneous Amendments\) Regulations 2018](#), p4, para 7.5

– i.e. earned and unearned income (subject to taxation by HM Revenue & Customs).<sup>92</sup>

For the new power to be “proportionate”, the Government set:

A minimum single value of £31,250 below which we would not use this power. This is to prevent large numbers of low value assets being targeted, as this would be difficult to administer (although, to be clear, where for example the NRP [non-resident parent] has a number of gold bars or a number of shares, these will be treated as one asset).<sup>93</sup>

The use of the £31,250 threshold means that the notional annual income calculated from such assets will (using the statutory 8% interest rate) be a minimum of £2,500 –the same threshold as for the inclusion of unearned taxable income.

The Government said that it would introduce a number of safeguards in regard to the new rules, so as to “not require the Paying Parent to pay more maintenance where this would mean that assets would have to be sold and this would cause hardship to the Paying Parent or any child of the Paying Parent”.<sup>94</sup>

The single parent charity Gingerbread described the notional income variation as “reintroducing the ‘assets variation’” of the 2003 child maintenance scheme.<sup>95</sup>

During the consultation on the measures, the DWP argued against the reintroduction of the lifestyle inconsistent with income variation:

It has been suggested that we should re-introduce an approach from the 2003 scheme, where Receiving Parents could apply for a variation to increase the maintenance calculation on the basis that the Paying Parent’s lifestyle was inconsistent with their reported earnings. In many cases the lifestyle of the Paying Parent was supported by debt rather than income and many other such applications were unsuccessful due to insufficient information. We have no plans to reintroduce this approach as it proved ineffective in the past.<sup>96</sup>

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<sup>92</sup> [Explanatory memorandum to The Child Support \(Miscellaneous Amendments\) Regulations 2018](#), 7.3

<sup>93</sup> [Ibid](#), para 7.7a

<sup>94</sup> DWP, [The child maintenance compliance and arrears strategy – Government response to the consultation](#), 12 July 2018, p10, paras 29 and 30, and p11, paras 32-3

<sup>95</sup> Gingerbread, [Government U-turn on child maintenance avoidance is “welcome but not enough”](#), 12 July 2018

<sup>96</sup> DWP, [Child Maintenance: A new compliance and arrears strategy– Public consultation](#), December 2017, p12, para 40



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## 9 Poverty, welfare and child maintenance

### 9.1 How does the 2012 scheme interact with Universal Credit?

Research has suggested that child maintenance payments impact particularly heavily on those in receipt of Universal Credit. [Evidence](#) by Dr Christine Davies, Visiting Senior Lecturer in Mathematics at Royal Holloway University of London, to the Work and Pensions Committee argued in 2017 that:

The 2012 regulations are inappropriate – they produce maintenance amounts that are beyond the reach of many non-resident parents, especially those on low income.

Under Universal Credit, non-resident parents paying for 1, 2 or 3 (or more) children on the 2012 Scheme through the CMS collection service have “marginal tax rates” of

- 92.5, 102 and 109.2 percent as weekly earnings pass £100
- 90.6, 95.4 and 99 percent for weekly earnings above £200

Assessments that are impossible to pay lead inevitably to non-payment, growing arrears and expensive (often ineffective) enforcement.<sup>97</sup>

The Social Security Advisory Committee (an independent advisory body of the DWP) study, [Separated parents and the social security system \(2019\)](#), stated it had heard from several consultees that the maintenance formula leaves some non-resident parents on Universal Credit “with weak work incentives”, meaning that “some can be better off out of work”. Its illustrative figure for a non-resident parent on Universal Credit earning £200 a week and paying the basic rate of child maintenance suggested that for:

every extra pound earned, the paying parent loses around 80-85 pence in lower benefits and child maintenance payments, rising to just over 90 pence if they have three children and use the Collect &

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<sup>97</sup> [Written evidence from Dr Christine Davies \(CHM0079\)](#), 2017

Pay service. This compares to a marginal effective tax rate of 67% for a single adult with no children in this scenario.<sup>98</sup>

It also referenced research by the [Centre for Social Justice](#) in 2019 that “once Universal Credit is fully rolled out, around 640,000 paying parents could face marginal effective tax rates between 87% and 107%”.<sup>99</sup> However, the Advisory Committee study also noted that the impact of the maintenance formula on work incentives was “opaque” due to the way earnings are considered under the formula (using historic income data, and allowing current income to be taken into account if it is 25% greater or less than the figure obtained from HMRC).<sup>100</sup>

The Social Security Advisory Committee recommended that the “housing element of Universal Credit should [be changed to] enable young parents, under 35 years, who are sharing care and paying child maintenance, to have their children to stay overnight”.<sup>101</sup>

## 9.2 Do child maintenance payments reduce poverty?

The stated purpose of the statutory maintenance scheme has changed since its introduction. The initial CS1 scheme primarily sought to reduce the cost of benefits paid to lone parents and improve work incentives. Poverty reduction was an implicit, rather than explicit, aim.<sup>102</sup> In contrast, 1998 and 2006 proposals for reform cited tackling child poverty as a key reason for a reformed maintenance system.

### DWP aims and analysis, 1999-present

In the [Green Paper on child support](#) in 1998, the Labour Government said “tackling poverty” is “perhaps the most fundamental reason why effective child maintenance arrangements are needed”.<sup>103</sup>

The Government in 2006 again placed an explicit emphasis on making “tackling child poverty the first and most critical test for [CSA] reform”. The Labour Government estimated that maintenance payments “currently” lifted 100,000 children out of poverty and set a target for a further 40,000 by

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<sup>98</sup> Social Security Advisory Committee, [Separated parents and the social security system](#), no. 22, October 2019, p21

<sup>99</sup> Centre for Social Justice, [The hidden parent poverty trap: Child maintenance and Universal Credit](#), 2019, p2

<sup>100</sup> Social Security Advisory Committee, [Separated parents and the social security system](#), no. 22, October 2019, p22

<sup>101</sup> [Ibid](#), p4; Social Security Advisory Committee, [Government needs to do more to improve the welfare of separated families](#), 22 October 2019

<sup>102</sup> House of Commons Library, [Child Support, 94/20](#), January 1994

<sup>103</sup> Department for Social Security, [Children First: a new approach to child support](#), 1998,

2010.<sup>104</sup> The Work and Pensions Committee heard in 2010 that it could not be quantified whether this target was met.<sup>105</sup>

Under the Liberal Democrat-Conservative Coalition Government the DWP reassessed the impact of maintenance payments on child poverty, and argued these previous estimates were based on a flawed methodology.<sup>106</sup>

The DWP in 2011 said the role of child maintenance payments in reducing relative income poverty was “small” but said encouraging separated parents to work together would result in better outcomes for the children involved:

Analysis carried out by the Department shows that child maintenance payments are estimated to have a small, non-reportable, impact on the number of children in relative income poverty.

This is because statutory child maintenance payments to children living on or near the poverty line involve moving relatively small amounts of money between families. These payment levels do not have a reportable impact on lifting children out of poverty.

For those individual households however, where child maintenance provides parents with a stable income stream, it can make a real difference to the lives of children in poor households.

We are committed to addressing child poverty and improving children's life chances and we believe that all families should receive the child maintenance that they are due. Beyond actual child maintenance payments, evidence indicates that ongoing involvement of both parents in children's lives is better for children on a range of outcomes. This is why supporting parents to make family-based arrangements for maintenance is absolutely central to our proposals for reforming the child maintenance system.<sup>107</sup>

The DWP's [consultation on maintenance reform](#) in the same year stated that the “guiding principles for reform” were encouraging and supporting parents to fulfil their responsibilities to their children and to make family-based arrangements to cover these issues, where possible.<sup>108</sup> Reducing poverty was not a measure explicitly included in the DWP's [evaluation strategy for child maintenance reforms](#) in 2014.

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<sup>104</sup> DWP, [A new system of child maintenance](#), December 2006, para 16; CSA, [CSA Operational improvement plan 2006-2009](#), 2006, p

<sup>105</sup> Work and Pensions Committee, [The Child Maintenance and Enforcement Commission and the CSA's Operational Improvement Plan](#), HC 118, February 2010, para 68-72

<sup>106</sup> [Secretary of State for Work and Pensions to Chair of the Work and Pensions Select Committee](#), January 2011, p2

<sup>107</sup> HC Deb, [Poverty: Children](#), 31 January 2011, c589W

<sup>108</sup> DWP, [Strengthening families, promoting parental responsibility: The future of child maintenance](#), 2011, para 4

## Family Resources Survey estimates, 2020

The [Family Resources Survey \(FRS\)](#) collects information from a representative sample of around 19,000 UK households on any child maintenance arrangements they may have. It is intended to be used by the DWP to develop, monitor, and evaluate its programmes.

The FRS estimated that for financial years ending 2018 to 2020, child maintenance arrangements (of any type, not solely statutory):

Reduced the number of children living in low income households. 120,000 children were moved out of low income households on the absolute low income measure. Most of this impact related to single parent families.<sup>109</sup>

For this estimate, a household was defined as:

In relative low income if their equivalised income is below 60% of median household income, while they are said to be in absolute low income if their equivalised income is below 60% of the median household income adjusted for inflation for the financial year ending 2011.<sup>110</sup>

## Academic research & reports

There are several academic publications that estimate the impact of child maintenance payments on poverty.

A [2011 paper](#) by Dr [Mia Hakovirta](#), University Lecturer in Social Policy at the University of Turku, Finland, estimated that around 22% of non-widowed lone-parent families received child maintenance in 2004 and 2005, and of these, child maintenance constituted around 27% of the lone parent's average gross earnings and around 17% of their disposable income.<sup>111</sup> The paper argued that "the relative reduction in child poverty is low in...the UK" as the child poverty rate in all non-widowed lone-parent households in 2004 and 2005 was around 4.6% lower after child maintenance (46% compared to 50%). However, when measured for only those households that received child maintenance payments, **the child poverty rate in such families in the UK fell from 35% to 20%**.<sup>112</sup> The paper set the poverty line at 60% of the disposable median income of households. The child poverty rate was calculated by multiplying the number of poor families with children by the number of children in them.

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<sup>109</sup> DWP, [Estimates of the separated family population statistics: April 2014 to March 2020](#), 25 March 2021, section 5

<sup>110</sup> [Ibid.](#), section 5

<sup>111</sup> M. Hakovirta, [Child maintenance and child poverty: A comparative analysis](#), *Journal of Poverty and Social Justice*, 19 (2011), pp249-62, at p254

<sup>112</sup> [Ibid.](#), pp255, 258

A 2013 [Nuffield Foundation study](#) found that maintenance payments (both statutory and non-statutory) resulted in a **19 percentage point reduction in the proportion of single parents on benefit receiving maintenance living in poverty**:

Without maintenance, six in ten (57 per cent) of all of the single parents on benefit who received maintenance would have been living below the poverty line – that is, they would have had an income of less than 60 per cent of the median equivalised household income of the UK population. Taking into account the maintenance received, 38 per cent of all single parents on benefit receiving some maintenance were living below the poverty line [...].<sup>113</sup>

The research was conducted through a survey of 760 single parents on benefit across the UK in 2012 and data from the [2007 DWP survey of relationship breakdown](#).<sup>114</sup>

A further [academic paper](#) published in the Journal of Social Policy in 2017 calculated the impact of child maintenance payments in ten scenarios. It concluded that because the UK system passes through almost all maintenance payments and disregards it in calculating recipient's entitlements to other benefits, "child maintenance (in combination with cash benefits and earnings) **decreased the poverty gap for lone parent families in the UK more effectively compared to the other countries with similar child maintenance schemes**" (specifically Australia, the US and New Zealand).<sup>115</sup>

However, some [academic research](#) has also suggested that making child maintenance payments pushes some non-resident parents into poverty. For example, one study presented data that showed **12.2% of single fathers with no children lived in poverty before contributing to child maintenance, rising to 14.4% after paying** (the poverty threshold was defined as 50% of median incomes). This was also the case for those with children and living with a couple— overall, there was a rise in the proportion of those living in poverty from 6.2% to 8.1%.<sup>116</sup>

Regarding the impact of child maintenance payments on the non-resident parent's other children, the Child Maintenance and Enforcement Commission in 2009 said that there:

Is an over-riding duty to consider the welfare of the child in child support law and this extends to the responsibility the non-resident

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<sup>113</sup> Nuffield Foundation, [Kids aren't free: The child maintenance arrangements of single parents on benefit in 2012](#), 2013

<sup>114</sup> [Ibid](#), p20

<sup>115</sup> C. Skinner, D. Meyer, K. Cook and M. Fletcher, [Child maintenance and social security interactions: The poverty reduction effects in model lone parent families across four countries](#), Journal of Social Policy, 46 (2017), pp495-516, at p512

<sup>116</sup> M. Hakovirta, D. Meyer and C. Skinner, [Does paying child maintenance support impoverish fathers in the United States, Finland and the United Kingdom?](#), Children and Youth Services Review, 106 (2019), pp2-11

parent may have towards any second family. The Child Support Agency also takes into account representations of hardship from the non-resident parent when negotiating an arrears arrangement.<sup>117</sup>

## 9.3

### Why were charges introduced, and what impact have they had?

Information on charges can be found in the Library's [Fees, enforcement and arrears](#) briefing.

Charges were initially in place under the 1993 scheme but suspended in 1995.<sup>118</sup>

Application, collection and enforcement fees for using the CMS were introduced in [2014 Regulations](#). These include an application fee of £20 per case to make an application and charges to use the Collect and Pay service, comprising a 20% addition to the paying parent's maintenance liability and a 4% deduction from the payment to the receiving parent.

Successive Governments have sought to use the child maintenance system to incentivise parents to take financial responsibility for their children and to consider the cost of statutory maintenance schemes to the taxpayer.

For example, the Labour Government's decision to implement Sir David Henshaw's [recommendation](#) in 2006 to increase the benefits disregard (allowing receiving parents to keep a greater proportion of benefit payments when maintenance was paid) was intended to "increas[e] the incentive for parents with care to seek, and for non-resident parents to pay, child maintenance".<sup>119</sup>

The Henshaw review also recommended that a relaunched agency should be given the power to charge clients (with protections for vulnerable users) as a means to "deter" cases where "there is very little prospect of ever being able to trace the non-resident parent" and to "incentivise parents to make their own arrangements where possible".<sup>120</sup>

In 2011, the DWP said that it agreed with this recommendation and proposed charging users to encourage parents to consider family-based

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<sup>117</sup> HC Deb, [Children: Maintenance](#), January 2009, c20W

<sup>118</sup> Department of Social Security, [Improving child support](#), Cm 2745, January 1995, p8; HC Deb, [28 January 1997](#), c188W

<sup>119</sup> DWP, [A new system of child maintenance](#), December 2006, para 2.14; Sir David Henshaw, [Recovering child support: Routes to recovery](#), July 2006, p17; Department for Children, Schools and Families, [Support for all: The families and relationships Green Paper](#), 2010, para 5.59

<sup>120</sup> Sir David Henshaw, [Recovering child support: Routes to recovery](#), July 2006, para 23, p22

arrangements.<sup>121</sup> It set out the reasons for this, and why both the non-resident parent and parent with care would be charged for using Collect and Pay:

Collection fees are intended to provide an ongoing incentive for both parents in the collection service to consider making payments direct rather than via the Government, as evidence shows that collaboration results in the best outcome for children.<sup>122</sup> [...]

Where non-compliance results in a case moved into the collection service, it should be recognised that it is the non-resident parent who faces by far the highest charges, both through the 20 per cent collection fee and also through enforcement charges if they continue to fail to comply. To not charge the parent with care risks locking the non-resident parent into the collection service, as the parent with care would have no incentive to collaborate or agree to a Direct Pay arrangement in the future. This would be unfair for the non-resident parent. [...]

Enforcement fees are not dissimilar to bank charges in that they are intended to encourage people to comply with their commitments and off-set the cost of administrative action to enforce compliance. We therefore believe non-resident parents should contribute to the cost of enforcement action, which is expensive and is only taken where we believe non-resident parents have failed to meet their obligations to pay child maintenance.<sup>123</sup>

An application fee exemption for victims of domestic abuse was introduced as a safeguard for vulnerable groups alongside the changes.<sup>124</sup>

The [impact assessment](#) on the fee regulations in 2013 estimated that around 1 in 12 parents who would have previously applied to the CSA would make no arrangement as a result of application, collection and enforcement fees:

The survey estimates, after allowing for the impact of the domestic violence exemption, are that 88% of current CSA applicants would apply to the CMS with application fees. This means that 105,000 (88% of 120,000) applications will be made to the CMS annually. Of the 15,000 who choose not to apply to the CMS because of fees, an estimated 5,000 will make alternative family based arrangements while 10,000 will make no arrangement.<sup>125</sup>

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<sup>121</sup> DWP, [Government's response to the consultation on Strengthening families, promoting parental responsibility: The future of child maintenance](#), 2011, para 4

<sup>122</sup> The consultation response cited: Department for Children, Schools and Families, [Impact of family breakdown on children's wellbeing](#), 2009

<sup>123</sup> DWP, [Supporting separated families, securing children's futures](#) (2013), pp14, 16

<sup>124</sup> DWP, [Child maintenance application fee: Exemption for victims of domestic violence](#), updated August 2017

<sup>125</sup> DWP, [Impact assessment: The Child Support Fees regulations 2014](#), para 124

It is not compulsory to have any maintenance arrangement, and some parents choose to make no arrangements or provide indirect support instead, preferring the flexibility.<sup>126</sup>

The DWP conducted a [30-month review of charging](#) in 2017. Prior to the publication of the review, the Work and Pensions Committee, following recommendations from the single-parent's charity Gingerbread and the Child Poverty Action Group, said that the Government should exempt applicants on means tested benefits from the application fee.<sup>127</sup> The Government said it had no plans to do this.<sup>128</sup>

The 2017 DWP review found that the application fee had more influence with new clients, who “tended to be more open to trying a family-based arrangement than former” CSA clients.<sup>129</sup>

The review said that “roughly half of parents surveyed said that the on-going charges for Collect And Pay influenced their decision to try Direct Pay” and concluded that the “available evidence does not indicate that charges are having an excessive impact on parents’ decisions about using the different services available within the Child Maintenance Service”.<sup>130</sup>

The review stated that there was insufficient evidence to determine the application fee’s impact in influencing the decisions of parents from low-income households:

Evidence from the NatCen surveys tells us that some parents, particularly those on low incomes, can find the application fee difficult to afford, but we do not have any evidence that this is preventing these families from making an application. The research does not allow us to assess the relative impact of the application fee compared to other factors that parents consider when deciding whether to apply to the statutory scheme.<sup>131</sup>

The single parent’s charity, Gingerbread, subsequently [argued](#) in 2019 that Collect and Pay charges should be removed as they acted as an “disincentive to the receiving parent to secure enforcement”.<sup>132</sup>

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<sup>126</sup> DWP, [Relationship separation and child support study](#), 2008, chapter 5.3; DWP and Government Social Research, [Long-term separated parents: Developing support to encourage child maintenance arrangements](#), 2015, para 3.4.1

<sup>127</sup> Work and Pensions Committee, [CMS](#), HC 587, 2 May 2017, para 29, 33

<sup>128</sup> DWP, [Government response to the Committee’s fourteenth report of session 2016-17](#), September 2017

<sup>129</sup> DWP, [Child maintenance reforms: 30 month review of charging](#), 2017, para 26

<sup>130</sup> [Ibid](#), paras 26, 30

<sup>131</sup> [Ibid](#), para 28

<sup>132</sup> Gingerbread, [Direct pay child maintenance: Innovation or failure?](#), 2019, p14



## 10

# Northern Ireland

Northern Ireland has a similar, but separate, system of child maintenance to the rest of the UK. This section provides an overview of rates and calculations in the 2012 Child Maintenance scheme in Northern Ireland. The statutory child maintenance system is provided by the Department for Communities (DfC) and can issue [guides to the system](#).

The system of calculations is set out in the [Child Support \(Northern Ireland\) Order 1991](#), Sections 5-14 and the 2012 Scheme in Northern Ireland is set out in the [Child Maintenance Act \(Northern Ireland\) 2008](#) and [The Child Support Maintenance Calculation Regulations \(Northern Ireland\) 2012](#).

The DfC maintains a [list of appropriate legislation](#). Paying Parents are referred to as non-resident parents in this legislation. The NI Direct pages [Calculate child maintenance](#) and [Having a child maintenance arrangement](#) provide an overview.

### 10.1

## Separated families and maintenance arrangements

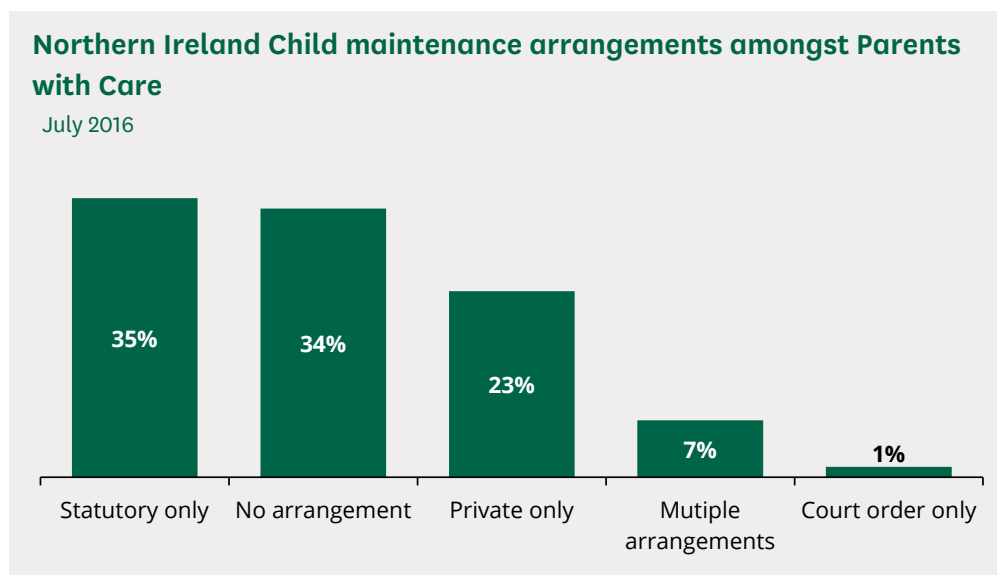
### 2017 survey of the child maintenance population

The Northern Ireland Statistics Research Agency's [Survey of the Northern Ireland Child Maintenance population](#) (2017) sampled databases and interviewed 800 persons with potential maintenance arrangements in Northern Ireland. Its report estimated that:

- In July 2016 there were around 48,000 households in Northern Ireland with a child maintenance interest, around 6.8% of households.<sup>133</sup>
- Just over a third of Parents with Care had statutory only child maintenance arrangements, and a further third had no arrangements, either private or statutory:<sup>134</sup>

<sup>133</sup> Northern Ireland Statistics Research Agency, [Survey of the Northern Ireland Child Maintenance population](#), 2017, p3. Estimates are liable to sampling variation.

<sup>134</sup> [Ibid.](#), pp3, 22



Note: Estimates are liable to sampling variation

Source: Northern Ireland Statistics Research Agency, [Survey of the Northern Ireland Child Maintenance population, 2017](#), p22 & 31. Estimates are liable to sampling variation

- Around three-fifths of respondents had one child eligible for child maintenance, and one-fifth had more than two.<sup>135</sup>
- In around half of statutory arrangements, the child stayed overnight with the non-resident parent at least one night a week.<sup>136</sup>
- Around 40% of Parents with Care on the statutory scheme said they were not currently in a friendly relationship with the non-resident parent, and around 80% said it was difficult to discuss financial matters with them.<sup>137</sup>
- Around 40% of Parents with Care on the statutory scheme were working more than 16 hours a week, 20% were “looking after the home or family, or caring for a sick, elderly or disabled person” and 20% were unemployed.<sup>138</sup>
- On the reported gross annual income of Parents with Care on the statutory scheme, the survey found around 43% had less than £10,000, around 37% had between £10,000-£20,000, and 20% had income greater than £20,000.<sup>139</sup>
- 96% of Parents with Care across all arrangements were women and 60% had never been in a marriage or civil partnership.<sup>140</sup>
- Department for Communities Statistics

<sup>135</sup> [Ibid.](#), p31

<sup>136</sup> [Ibid.](#), p34

<sup>137</sup> [Ibid.](#), pp46, 48

<sup>138</sup> [Ibid.](#), p87

<sup>139</sup> [Ibid.](#), p91

<sup>140</sup> [Ibid.](#), p93

- Please note that further statistics can be found at: Department for Communities, [CMS statistics Northern Ireland](#).
- Department data shows that at the end of July 2021 there were:
  - 15,500 cases being managed by the CMS (including arrears-only cases); and
  - 20,190 children covered by child maintenance arrangements (65% on direct pay).<sup>141</sup>

## 10.2

### Process

There are [6 steps](#) the CMS in Northern Ireland follows to calculate child maintenance:

1. It works out the gross weekly income of the non-resident parent, with information from the HMRC. It also checks if they are in receipt of any benefits
2. Takes account of what affects income, such as pension payments and other children the non-resident parent supports
3. Applies one of [five child maintenance rates](#)
4. Takes account of the number of children the non-resident parent must pay maintenance for
5. Calculates the weekly amount of child maintenance
6. Makes a deduction from the weekly figure for any shared care

### Income

As in the rest of the UK, in Northern Ireland the CMS uses taxable gross income (the non-resident parent's yearly income before income tax and national insurance but after contributions to occupational or personal pension schemes) from the latest available tax year to calculate child maintenance liabilities. "Relevant tax year" is any one of the six tax years immediately preceding the date of the request. The highest amount of income taken into account is £3,000 per week.

The non-resident parent's gross weekly income should be historic unless their current income differs by an amount that is at least 25% of historic income, historic income is nil, or no historic income figure is available.

The 2012 scheme does not take the person with care's income into account.<sup>142</sup>

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<sup>141</sup> Department for Communities, [Northern Ireland Child Maintenance Service Statistics: Data to June 2021 \(experimental\)](#), 15 September 2021

<sup>142</sup> [The Child Maintenance Calculation Regulations \(Northern Ireland\) 2012](#), Sections 4, 33

For complex earners, the Financial Investigations Unit can also investigate cases in Northern Ireland.<sup>143</sup>

The CMS may also make best evidence assessments and default maintenance decisions, as explained on [NI Direct: How CMS calculates your income](#).

## Income adjustments/variations

The **non-resident parent** can request for special expenses and pension payments to be taken account of in order to reduce their gross annual income used to calculate child maintenance liability. Further information is available in: [NI Direct: Paying Parent income adjustments](#). Among other elements, this explains that if a non-resident parent pays into a private pension scheme in addition to an occupational or employer pension scheme, the CMS can take these into account.

All **special expenses**, aside from supporting children if they have a disability or a long-term illness, must be for more than £10 per week. If the non-resident parent's income is less than £7 a week, or they are receiving benefits, they cannot ask for special expenses to be considered. As [NI Direct: Other financial commitments in child maintenance cases](#) explains, either parent may apply for a variation. Non-resident parents may apply for a variation for:

- the costs of keeping contact (e.g. transport);
- supporting children with a disability or long-term illness;
- repaying debts from former relationships;
- some forms of boarding fees; or
- making payments on a loan, mortgage or insurance policy for the home they used to share with the person with care.

The **person with care** may apply for a variation if they think the non-resident parent has additional income that should be considered. This includes:

- unearned income, such as rent (of at least £2,500 a year);
- earned income (if the non-resident parent or their partner were getting benefits and qualified to pay the flat rate but also have gross income from a pension or employment of at least £100 a week);
- diverted income (for example, by diverting their income to someone else); or
- assets (money or property, worth more than £65,000 once mortgages are accounted for, and does not include the home they live in or a business asset).

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<sup>143</sup> Department for Communities, [Child maintenance information for advisers](#), accessed 14 July 2020

## Rates

There are five rates of maintenance in the 2012 child maintenance scheme in Northern Ireland. Rates and criteria are set out on [NI Direct: Child maintenance rates](#).

## Child maintenance and benefits

As explained on [NI Direct: How child maintenance affect benefits](#), if the person with care receives child maintenance payments, this does not affect social security benefits, housing benefit or tax credits. Some contributions made “in kind”, such as the non-resident parent contributing part or all of the person with care’s mortgage, can affect benefit claims, so child maintenance arrangements should always be reported.

In the case of the non-resident parent, a flat rate of child maintenance is payable (£7 per week) if they receive one of the 23 categories of benefit listed on the [NI Child Maintenance page](#). Shared care could reduce the £7 weekly payment.

## Support for other children

If a non-resident parent (or their partner) receives child benefit in respect of a child and their gross income is between £200 and £3,000 per week, the CMS will reduce the gross weekly income by a percentage depending on the number of children they receive child benefit for. The applicable percentages are set out on [NI Direct: Paying Parent income adjustments](#).

If the non-resident parent has a gross weekly income between £100 and £200, the CMS will take other children into account when calculating the amount of child maintenance. The applicable percentages are set out on [NI Direct: Child maintenance rates explained](#).

## Shared care

If a child stays overnight with the non-resident parent for at least one night a week (an average of 52 nights a year), this shared care can affect the amount of child maintenance payable. If day-to-day care is shared equally, the non-resident parent does not have to pay any child maintenance. The CMS in Northern Ireland asks parents to give formal (including a Court order), informal or spoken evidence of agreements reached about shared care. If both parents agree that care is shared, but cannot agree on how many nights, the CMS will make an estimate of **assumed share care**.

If a non-resident parent is on the Flat Rate and has shared care for at least 52 nights a year, they do not pay any child maintenance. The proportional impact of shared care on child maintenance is set out on [NI Direct: Shared care](#).

## Annual reviews

[NI Direct: Annual reviews](#) states that the period of an annual review lasts 30 days. During this period, it will contact HMRC to find out the latest available gross income for the non-resident parent and check whether they are getting any benefits. The CMS will then work out the weekly amount of child maintenance and write to both parents. Either parent may make representations or provide further information.

## Periodic income checks

If the non-resident parent's gross weekly income is based on current income and that amount has not been changed in the previous 11 months, then the Department can request evidence of current income to be provided by the non-resident parent.<sup>144</sup>

## Informing the CMS of any changes

Information on the changes that individuals must inform the CMS about is provided in: [NI Direct: Changes Child Maintenance Services needs to know](#). These include when the non-resident parent starts or stops receiving benefits, start or stops working, or is required to support another child. Either the Non-Resident Person or parent with care must tell the CMS within 7 days if a shared care arrangement changes and should tell the CMS within 7 days if there is an increase or decrease of 25% or more in the non-resident parent's gross weekly income.

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<sup>144</sup> [The Child Maintenance Calculation Regulations \(Northern Ireland\) 2012](#), Section 22

## 11

# Key contacts and resources

### General

- [UK] Ginger Bread Charity for Single-Parent Families: [Helpline](#): 0808 802 0925 and [Information Pages](#)
- [\[UK\] Families need Fathers “Because both parents matter”](#). Charity for separated parents. [Helpline](#): 0300 0300 363 and [admin@fnf.org.uk](mailto:admin@fnf.org.uk)
- [Scotland] One Parent Families Scotland Charity for Lone Parent: [Helpline](#) 0808 801 0323
- [Scotland] [Shared Parenting Scotland](#), a charity supporting separated families, on 0131 557 2440 and [info@sharedparenting.scot](mailto:info@sharedparenting.scot)
- [Northern Ireland] Gingerbread NI: [Helpline](#) 0808 808 8090 and [advice@gingerbreadni.org](mailto:advice@gingerbreadni.org)

### Information and Guides

- Child Poverty Action Group’s [Child Support Handbook](#). These are updated annually and published in hard copy.
- DWP, [Child Maintenance: Decision Makers Guide](#) (first published October 2020)
- [DWP, Child Maintenance Service: Factsheets](#)

### Complaints & appeals against the CMS

This process for England, Scotland and Wales is [published](#) on Gov.UK.

Northern Ireland has separate processes for child maintenance decisions [before 11 July 2016](#) and [on or after 11 July 2016](#)

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## Annex 1: The rates in detail

This Annex sets out the eligibility criteria for each of the 5 rates, the amount of maintenance due from a Paying Parent on the specific rate, and any impact of shared care. The CMS guides, [How the CMS works out child maintenance](#) and [How we work out child maintenance](#) provide further detail. Individuals may also wish to seek independent financial advice before making decisions.

### 1 Nil rate

#### Eligibility

A non-resident parent may be eligible for the nil rate if they:

- have **gross weekly income** (including any of the prescribed benefits listed for the flat rate) **of less than £7 per week**; or
- are a child; or
- are aged 16 or 17 years old and:
  - they or their partner (if they are in a couple) are receiving Universal Credit on the basis that they (or their partner) have no earned income; or
  - they are receiving Income Support, income-based Jobseeker's Allowance or Income-related Employment and Support Allowance; or
  - they are in a couple and are included in their partner's claim for Income Support, income-based Jobseeker's Allowance or income-related Employment and Support Allowance; or
- **receive an allowance for work-based training** for young people (such as a training allowance or (in Scotland or Wales) an **education maintenance allowance**); or
- are resident in a care home or independent hospital; or are being provided with a care home service and/or independent healthcare service and receiving one of the qualifying benefits for the flat rate (see below); or have the whole or part of the cost of their accommodation met by a local authority; or
- are a **prisoner**.<sup>145</sup>

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<sup>145</sup> Child Poverty Action Group (CPAG), Child Support Handbook 2019/20, 2019, p57



### Amount due

No child maintenance payable for those non-resident parents eligible for the nil rate.

### Shared Care

This has no impact on the nil rate.

## 2 Flat rate

### Eligibility

A non-resident parent may be eligible if they do not qualify for the nil rate and they:

- have gross weekly income of between £7 and £100 inclusive; or
- receive, or their partner who they live with receives, any of the following income-related benefits:
  - Universal Credit calculated on the basis that they do not have any earned income;
  - Income Support;
  - Income-based Jobseeker's Allowance;
  - Income-related Employment and Support Allowance;
  - Pension Credit; or
- receive any of the following benefits themselves:
  - Category A, B, C or D Retirement Pension;
  - State Pension;
  - Incapacity Benefit;
  - Contributory Employment and Support Allowance;
  - Carer's Allowance;
  - Maternity Allowance;
  - Severe Disablement Allowance;
  - Industrial Injuries Benefit;
  - Widowed Mother's Allowance or Widowed Parent's Allowance;
  - Widow's Pension;
  - Contribution-based Jobseeker's Allowance;
  - A training allowance (other than work-based learning for young people);
  - War Disablement Pension;
  - War Widow's Pension, War Widower's Pension, or Surviving Civil Partner Pension;
  - Payments under the Armed Forces Compensation Scheme;

- A social security benefit paid by a country other than the United Kingdom.<sup>146</sup>

### Amount Due

£7 per week. This has not been adjusted since its initial introduction in the 2012 scheme.<sup>147</sup>

### Shared Care

If a non-resident parent qualifies for the flat rate based on their gross weekly income, no allowance is made for shared care.<sup>148</sup>

**The exception** to this is if the non-resident parent is on the flat rate because they or their partner (if applicable) are in receipt of one of the benefits listed above, and the qualifying child stays with them for 52 nights of the year or more. In this case, **the amount of maintenance due will be reduced to £0**. In these circumstances, the non-resident parent also does not have to pay maintenance for any other qualifying children who live in the same household as the child with shared care (i.e. even if the other children do not stay with the non-resident parent for 52 nights a year or more).<sup>149</sup>

## 3 Reduced rate

### Eligibility

If neither the nil or flat rate applies, and the non-resident parent has gross weekly income of between £100.01 and £199.99.

### Amount Due

- This is calculated through a formula comprising the sum of:
- a flat rate of £7; and
- a proportion of that part of the non-resident parent's gross weekly income that exceeds £100 and is lower than £200.
- The proportion of gross weekly income payable in maintenance depends on:
- The number of children the non-resident parent must pay child maintenance for (up to a maximum of 3); and
- If there are any other children that the non-resident parent supports ("relevant children").

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<sup>146</sup> CPAG, Child Support handbook 2019/20, 2019, p58

<sup>147</sup> [Public Bill Committee Deb. Child Maintenance and Other Payments Bill, 9 October 2007 c279](#)

<sup>148</sup> CMS, [How we work out child maintenance](#), February 2017, p28

<sup>149</sup> CMS, [How your child's living arrangements affect child maintenance](#), October 2013, p2

### Reduced rate calculation if there are no other children who the Non-Resident Parent supports

No. of children the Non-Resident Parent must pay maintenance for	Standard rate (for first £100 of gross weekly income)	Percentage of remaining weekly gross income (up to £199.99)
1	£7	17%
2	£7	25%
3+	£7	31%

Source: CMS, [How we work out child maintenance](#), February 2017, p21

Thus, a parent with 2 qualifying children would pay the standard amount of £7 plus 25% of their gross weekly income in excess of £100 (up to £199.99).

Where there are also “relevant children” (i.e. children for whom child benefit is payable to either the non-resident parent or their partner), then the appropriate (detailed in the table below) is applied to that part of the non-resident parent’s gross weekly income that exceeds £100 and is lower than £200. This figure should be added to the standard rate of £7.<sup>150</sup>

Thus, if a non-resident parent had one child they supported and one child they are due to pay child maintenance for, they would pay £7 per week on the first £100 of gross weekly income and 14.1% on the remainder of their gross weekly income up to £199.99.

See the below table:

### Reduced rate calculation if the Non-Resident Parent supports qualifying and relevant children

**In addition to the standard £7 rate for the first £100 of gross weekly income, use the below formula to calculate the proportion of remaining gross weekly income (up to £199.99):**

		Number of qualifying children		
		1	2	3+
Number of relevant children	1	14.1%	21.2%	26.4%
	2	13.2%	19.9%	24.9%
	3+	12.4%	18.9%	23.8%

Source: CMS, [How we work out child maintenance](#), February 2017, p22

### Shared Care

Where the child for whom the non-resident parent is paying child maintenance stays with them for at least 52 nights a year (i.e. an average of

<sup>150</sup> CMS, [How we work out child maintenance](#), February 2017, p22

one night a week), then the amount of child maintenance that is payable is reduced by the proportions shown in the below table:

Shared care and reduction to child maintenance	
Nights of shared care/year	Reduction to child maintenance (for each child with shared care)
52-103	1/7th
104-155	2/7th
156-174	3/7th
175+	1/2 plus an extra £7/week reduction for each child in this band

Source: CMS, [How we work out child maintenance](#), February 2017, p27

However, the amount of child maintenance cannot fall below £7 per week after shared care has been considered.<sup>151</sup>

When day-to-day care is shared equally, then neither person is treated as the non-resident parent (irrespective of which person claims child benefit for the qualifying child(ren)) and no child maintenance is due, even if the parents have significantly different levels of income.<sup>152</sup>

### Comparison with other rates

Although the proportions of remaining income between £100 and £199.99 due in child maintenance are higher than the proportions due under the basic and basic plus rates (see next section), because the child maintenance liability of the first £100 of gross weekly income is only 7% (i.e. £7) it means that, overall, the proportion of the non-resident parent's gross weekly income that is their child maintenance liability is always lower under the reduced rate compared to the basic or basic plus rates for a given number of qualifying and relevant children.

For example, if a non-resident parent has a gross weekly income of £150 and pays child maintenance in respect of one qualifying child (and has no relevant children), their child maintenance liability is calculated as:

- the flat rate of £7 plus
- 17% of their gross weekly income in excess of £150 (i.e. 17% of £50, which is £8.50).

This means that the non-resident parent's child maintenance liability is £15.50 per week, or 10.3% of their gross weekly income.

<sup>151</sup> [Ibid.](#), pp27-8

<sup>152</sup> CPAG, Child support handbook 2019/20, 2019, p14

## 4 Basic rate & Basic rate plus

### Eligibility

If neither the nil, flat or reduced rate apply, and the non-resident parent has gross weekly income of between £200 and £3,000.

### Amount due

This is calculated through a formula. The applicable rate is calculated as a proportion of the non-resident parent's gross weekly income, based on:

- the number of children eligible for child maintenance; and
- how many children Child Benefit is payable in respect of to either the non-resident parent or their partner ("relevant children").

#### Basic rate: Reductions in gross weekly income for relevant children

Number of relevant children	Reduction
1	11%
2	14%
3+	16%

There can also be an adjustment for shared care.

The basic rate applies on gross income of up to £800 a week and the **basic rate plus** is applied on income of £800.01-£3,000 a week.<sup>153</sup>

Before the amount of maintenance due is calculated, adjustments to the gross-weekly income are made according to the number of relevant children the non-resident parent is responsible for supporting (see table opposite).

Source: CMS, [How we work out child maintenance](#), February 2017, p14

#### Basic rate and Basic rate plus: Calculation of child maintenance

Number of children needing maintenance	Percentage applied to first £800 of gross weekly income	Percentage applied to gross weekly income between £800.01-£3,000
1	12%	9%
2	16%	12%
3+	19%	15%

Source: CMS, [How we work out child maintenance](#), February 2017, p18-19

The basic rate and basic rate plus are then applied to the non-resident parent's gross weekly income, adjusted for any relevant children. The rates applied depend on the number of qualifying children the non-resident parent must pay child maintenance for.

The amounts of child maintenance calculated under the two rates are added together to give the non-resident parent's child maintenance liability.

<sup>153</sup> CMS, [How we work out child maintenance](#), February 2017, p15

## Shared care

If the child to whom the non-resident parent is paying child maintenance stays with them for at least 52 nights a year, the amount of maintenance is reduced by the proportions shown in the table below.

Shared care and reduction to child maintenance	
Nights of shared care/year	Reduction to child maintenance (for each child with shared care)
52-103	1/7th
104-155	2/7th
156-174	3/7th
175+	1/2 plus an extra £7/week reduction for each child in this band

Source: CMS, [How we work out child maintenance](#), February 2017, p27

The amount of child maintenance cannot fall below £7 per week after shared care has been considered.<sup>154</sup>

Where day-to-day care is shared equally, then neither person is treated as being the non-resident parent (irrespective of which person claims child benefit for the qualifying child(ren)) and no child maintenance is due, even if they have significantly different levels of income.<sup>155</sup>

## 5 Issues related to the basic plus rate

### The £3,000 gross weekly income cap

Only gross weekly income up to £3,000 (£156,000 a year) can be considered under the statutory child maintenance scheme.<sup>156</sup> This was an increase from a weekly £2,000 gross income cap in the 2003 scheme. Where a non-resident parent has gross weekly income in excess of £3,000, the courts are able to make a top-up maintenance order under [The Children Act 1989](#), Schedule 1, as amended.

Explaining the purpose of the then £2,000 cap in 2010, the then Child-Maintenance Commissioner said that it:

Was set at a level sufficiently high to ensure that all children benefit from a reasonable level of maintenance and only those who are already likely to have more complicated financial arrangements are affected.

<sup>154</sup> [Ibid.](#), pp27-8

<sup>155</sup> CPAG, [Child Support Handbook 2019/20](#), 2019, p14

<sup>156</sup> [Child Support Act 1991](#), Schedule 1, Part 1, 10(3), as amended

Regarding the increase to £3,000 they stated:

As a consequence of moving from net to gross weekly income in the future [2012] scheme we propose that the maximum amount of weekly income taken into account in a maintenance calculation will increase to £3,000. This is broadly the same as the current cap in net income terms and in keeping with the objective that there should not be major differences in liabilities when comparing current scheme and future scheme rules.<sup>157</sup>

### **The lower rate of child maintenance paid on income over £800 (Basic rate plus)**

Higher earning non-resident parents pay a lower proportion of their income under the Basic plus rates than under the Basic rate (for example, 12% on the first £800 under the Basic Rate if one child requires maintenance, and 9% on income between £800 and £3,000 under the Basic Rate Plus).

During the passage of the legislation that introduced the 2012 scheme (the [Child Maintenance and Other Payments Act 2008](#)), the then Minister said the purpose of the two percentage tiers and £800 threshold was to match “new calculations as closely as possible in cash terms with the current assessments”, smoothing the transition into the 2012 system which uses gross rather than net income for calculations.<sup>158</sup> Providing an example, the Minister said “without the second tier of rates, a non-resident parent with gross weekly earnings of £2,000 would end up paying £320 a week for two children instead of £282 under the current scheme.”

The then-Government stated that the relevant legislation could be amended to change the threshold point for the Basic plus rate in line with any changes in the threshold for the higher rate of income tax.<sup>159</sup>

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<sup>157</sup> [HC Deb Children Maintenance, c361W, 15 June 2010](#)

<sup>158</sup> [Public Bill Committee Deb, Child Maintenance and Other Payments Bill, 9 October 2007 c277](#)

<sup>159</sup> [Ibid](#)

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