



## BRIEFING PAPER

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# Child maintenance: overseas cases and income (UK)

By David Foster, Philip  
Loft

## 1. Introduction

This briefing paper sets out how the child maintenance system operates where a Person with Care, Non-Resident Parent or a Qualifying Child, lives overseas. This includes how overseas income and occupations are treated under the 2012 child maintenance scheme, and how maintenance arrangements can be recognised across certain countries.

The briefing primarily relates to Great Britain; information on Northern Ireland's similar, but separate, statutory child maintenance system is provided in section 6.

Other relevant Library briefings on the child maintenance system are:

- [Child maintenance: Calculations, variations and income](#) (CBP 7770);
- [Child maintenance: Fees, enforcement and arrears](#) (CBP 7774); and
- [Child maintenance: The write-off of arrears on Child Support Agency cases](#) (CBP 7776).

### 1.1 The child maintenance scheme

There are currently three statutory child maintenance 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 are closed to new applicants and all cases with ongoing maintenance liabilities have been transferred to the 2012 scheme. Only "arrears-only" cases continue to operate under these schemes, although the Department for Work and Pensions (DWP) is implementing a large-scale write-off of arrears that accrued under them. The legacy schemes are administered by the Child Support Agency (CSA). More information on the write-off of arrears may be found in the Library Briefing, [Child maintenance: The write off of arrears on Child Support Agency cases](#).

Relevant parties can also agree a private child maintenance arrangement themselves (referred to as "family-based arrangement") without regard to the CMS. These can take the form of a written maintenance agreement and, if such an agreement is endorsed by a court in a [consent order](#), the CMS is prevented from accepting an application for child

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maintenance for 12 months from the date it was made (if it was made after 3 March 2003).<sup>1</sup>

### 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**”): a parent who does not live with the child in question.
- **Person with Care** (“**Receiving Parent**”): 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>2</sup>
- **Qualifying child**: the child for whom child maintenance is payable.
- **Relevant child** (or “**relevant other child**”): a child other than a Qualifying Child for whom Child Benefit is payable to the Non-Resident Parent (or their partner).
- **Child in Scotland/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, and 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.

## 2. Residence requirements

### 2.1 “Habitual residence”

An application for child maintenance under the statutory child maintenance scheme can only be accepted, a maintenance calculation made, and payment requested by the CMS from a Non-Resident Parent, if the Non-Resident Parent, Person with Care and Qualifying Child are all “habitually resident” in the UK, unless an exception applies (see section 2.2).<sup>3</sup> Other children who affect the maintenance calculation (“relevant children”) do not have to be habitually resident in the UK.

The UK is defined as England, Scotland, Wales and Northern Ireland, but does not include the Crown Dependencies of the Isle of Man, or the Channel Islands.

The definition of habitual residence is not laid down in statute and has instead been determined in case law. The Child Poverty Action Group’s (CPAG) Child Support Handbook 2019/20 explains that a person is habitually resident if they are “ordinarily resident in the UK and has been for an appreciable period of time.” It adds that “‘ordinary residence’ means ‘residence for a settled purpose’”.<sup>4</sup>

<sup>1</sup> [Child Support Act 1991](#) (as amended), ss 4 (10)(a) and 7(10)(a); Child Poverty Action Group (CPAG), Child Support Handbook 2019/20, 2019, p19

<sup>2</sup> [Child Support \(Maintenance Calculation Procedure\) Regulations 2001](#), Regulation 21(1).

<sup>3</sup> [Child Support Act 1991](#), Section 44, as amended.

<sup>4</sup> CPAG, Child Support Handbook 2019/20, 2019, p15

While noting that there is no comprehensive list of factors that are relevant when deciding whether a person is habitually resident in the UK, and that a decision must consider all a person's circumstances and intentions, the CPAG Handbook states that some of most important factors considered are:

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

The Handbook also sets out several principles that have been established by case law, including that:

- A person can be habitually resident in more than one country;
- A person can continue to be habitually resident in the UK even though they may be absent for some time (e.g. they are employed overseas); and
- There is no minimum amount of time that a person needs to have lived in a country to be considered to be habitually resident there.

The Handbook also notes that cases concerning habitual residence that do not directly relate to child support are "'persuasive', but do not necessarily have to be followed."<sup>5</sup>

Undated CMS guidance on jurisdiction and habitual residence under the 2012 scheme, released by the organisation Voice of the Child and under FOI, states that caseworkers "should ignore temporary absences when considering habitual residence". The guidance defines temporary absence as "usually" less than 12 months, unless there are special circumstances, such as an accident that delays a person's return, or there is a "reasonable prospect" of the absence ending.<sup>6</sup>

## 2.2 Non-resident parent not "habitually resident" but deemed to do so because of their occupation

The CMS page, [If a parent lives abroad](#), states that if a Non-Resident Parent is working abroad for certain organisations, it may be possible to contact the CMS and make a new child maintenance claim. These include working overseas:

- As a civil servant;
- For Her Majesty's Diplomatic Service;
- As a member of the Armed Forces (including people employed in a territorial, auxiliary or volunteer reserve association under the *Reserve Forces Act 1996*).<sup>7</sup>
- For a company based and registered in the UK (i.e. a company which employs somebody to work abroad but which makes payment arrangements in the UK);
- For the NHS; or
- For a local authority.<sup>8</sup>

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<sup>5</sup> CPAG, Child Support Handbook 2019/20, 2019, pp15-16

<sup>6</sup> CMS, [Annex A- Jurisdiction/Habitual residence](#), n.d released by Voice of the Child; WhatDoTheyKnow, [Specific paragraphs in polices and procedure manual](#), June 2017

<sup>7</sup> Section XI of the Act

<sup>8</sup> Regulation 7A of the [Child Support \(Maintenance Arrangements and Jurisdiction\) Regulations 1992](#) as amended; CPAG, Child Support Handbook, 2019/20, 2019, p16

### 3. Overseas income if parent is habitually resident in the UK

The rules on how overseas income is taxed in the UK and taken account of in child maintenance calculations are “complex”. As explained by the CPAG 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>9</sup> In addition, 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>10</sup>

The CPAG Handbook notes some types of income that are **disregarded**:

- Social security benefits from outside the UK, equivalent to non-taxable UK benefits;
- One-tenth of the amount of an overseas pension or pension payable in the UK by governments of certain other countries;
- Tax-free lump sum payments under an overseas pension scheme; and
- Income the parent is prevented from transferring to the UK by law or by the government of the country where the income arises or because foreign currency cannot be obtained in that country.<sup>11</sup>

The Financial Investigations Unit, a CMS organisation that investigates complex income arrangements, cannot investigate overseas tax returns or bank accounts.<sup>12</sup>

## 4. Enforcing ongoing maintenance if a Non-Resident Parent lives overseas

### 4.1 Involvement of the courts

The CMS must cancel a child maintenance calculation if the Non-Resident Parent, Person with Care or Qualifying Child is deemed to no longer be habitually resident in the UK.<sup>13</sup> If this happens, the courts may make, vary or revive a maintenance order. A maintenance order is when the person with the higher income is told by a court to make regular maintenance payments to help with the other person’s living costs. If an application is made within six months of a person becoming no longer “habitually resident”, the order may begin from the date maintenance was ended.<sup>14</sup>

An individual considering legal action abroad should seek legal advice from a solicitor in that country. The UK Government maintains a [list of lawyers](#) abroad.

If they agree, individuals can also decide to [make a child maintenance arrangement themselves](#), if one or both parents live abroad.

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<sup>10</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](#)

<sup>11</sup> CPAG, Child Support Handbook 2019/20, 2019, p72

<sup>12</sup> [PO 240473 \[Children: Maintenance\]](#), 3 April 2019

<sup>13</sup> CPAG, Child Support Handbook 2019/20, 2019, p129

<sup>14</sup> [Children Act 1989](#) Schedule 1(3); CPAG, Child Support Handbook 2019/20, 2019, p21

## 4.2 The “REMO” system

In some cases where the Non-Resident Parent lives abroad, it can be possible to seek the payment of child maintenance through a Reciprocal Enforcement of Maintenance Order (REMO). Under the REMO system:

- UK residents can apply to enforce or change an existing maintenance order or make a new maintenance order against a person resident in another country.
- Residents of other countries can enforce or change an existing maintenance order or make a new order against a person resident in the UK (i.e. if a Person with Care is habitually resident outside the UK in a country with a REMO agreement, and the Non-Resident Parent is habitually resident in the UK, then the Person with Care may seek ongoing maintenance from the Non-Resident Parent via their relevant central authority).

The REMO process can also be used to enforce an ongoing child maintenance arrangement (or court order) in situations where the Non-Resident Parent is habitually resident in the UK but has assets and/or income overseas.<sup>15</sup>

Under the REMO process, the UK Courts and Tribunal Service cannot compel foreign courts to commit to a timescale or enforce a maintenance order. The UK Government have said it may take “several months” for a court to decide whether to enforce a maintenance decision.<sup>16</sup>

The UK Government maintains a [list of REMO countries](#) where child maintenance decisions made in UK courts may be enforced or changed outside the UK.

REMO arrangements are made under different treaties, depending upon the country. For example, these include the [EU Regulation 4/2009](#), the [Hague Convention of 23 November 2007 on the International recovery of child support and other forms of family maintenance](#), and the [Maintenance Orders \(Facilities for Enforcement\) Act 1920](#).

A summary of the REMO process is available on Gov.uk at [Child maintenance if a parent lives abroad](#). This process may change from 1 January 2021, as the transition period following the UK’s departure from the European Union ends (see Section 5.1, below). The CMS states that individuals may be told to fill in another form so that their application can continue after this date.<sup>17</sup>

## 5. Recovering arrears from overseas parents

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

The CMS can use its powers to collect any arrears that accrued while all the parties to a child maintenance calculation were habitually resident in the UK. In doing so, the CMS can use certain collection actions and enforcement powers in respect of any assets that the Non-Resident Parent has retained in the UK, such as in property or bank accounts, as these fall within the jurisdiction of UK courts.<sup>18</sup> Further information on the CMS’s

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<sup>15</sup> Email from DWP officials to the House of Commons Library, 17 March 2016

<sup>16</sup> Gov.UK, [Child maintenance if a parent lives abroad](#), accessed 17 December 2020

<sup>17</sup> Gov.UK, [Child maintenance if a parent lives abroad](#), accessed 17 December 2020

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

collection and enforcement powers is provided in Library briefing, [Child maintenance: fees, enforcement and arrears](#) (CBP 7774).

[EU Regulation 4/2009](#) Article 51(2)(e) states that central authorities in each EU state should “facilitate the ongoing enforcement of maintenance decisions, including any arrears”. The regulations additionally allow the enforcement of certain arrears of child maintenance that accrued while both parents were resident in the UK where the Non-Resident Parent now resides elsewhere within European Union (special rules apply to Denmark). However, this only concerns arrears payable to the Secretary of State for Work and Pensions (in effect the CMS/CSA). Such arrears may have accrued when CSA payments were made in lieu of welfare benefits: if the Non-Resident Parent did not meet their obligations, then the DWP paid the welfare benefits to the person with care instead, and then sought to reclaim the maintenance from the Non-Resident Parent.<sup>19</sup>

## 5.1 Arrangements post-Brexit

Further information has been published by the Ministry of Justice as [Family law disputes involving the EU: Guidance for legal professionals from 1 January 2021](#) (last update 16 December 2020). The EU Commission has also published [guidance](#) on family law disputes.

### 2007 Hague Convention

The 2007 [Hague Convention on the International recovery of child support and other forms of family maintenance](#) is a multilateral treaty that provides rules for the international recognition and recovery of child support and family maintenance. It seeks to provide certainty to parents and their children when one parent has moved abroad, enabling, for example, a parent to put in place enforceable child maintenance obligations.<sup>20</sup>

Under the Convention, central authorities in each state “should facilitate the ongoing enforcement of maintenance decisions, including arrears”,<sup>21</sup> when a “competent authority” (such as the CMS in Great Britain) makes a request to another Convention state.<sup>22</sup>

In addition, under the Convention, states may not impose charges on applications for the enforcement of maintenance in an overseas jurisdiction, save for “exceptional costs”, and can make available internal law powers to enforce decisions under the Convention (for example, wage withholding and garnishment from bank accounts). The costs of translating any documents should be met by the state from which the request originates.<sup>23</sup>

### Contracting parties and UK accession to the Convention

The EU is currently the contracting party to the 2007 Convention, and the UK continues to adhere to the Convention during the Brexit transition period (to 31 December 2020).

The UK Parliament legislated to give domestic effect to the 2007 Hague Convention in the [Private International Law \(Implementation of Agreements\) Act 2021](#). The Act applies to the whole of the UK.<sup>24</sup>

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

<sup>20</sup> [Private International Law \(Implementation of Agreements\) Bill \[HL\], Explanatory Notes](#), 2020, para 14

<sup>21</sup> Note this is the same terminology to that used in EU 4/2009, which the DWP has said means arrears can only be collected if they are owed directly to the CSA/CMS.

<sup>22</sup> [Ibid](#), Article 6 (1) and (2)

<sup>23</sup> [Ibid](#), Articles 8, 34, 44

<sup>24</sup> See the House of Commons Library briefing [Private International Law \(Implementation of Agreements\) Bill 2019-21](#), produced for the Bill’s second reading the Commons, for background

The UK deposited its accession to the 2007 Hague Convention on 28 September 2020. This ensures continuity in the application of the Convention following the transition period.<sup>25</sup>

The Hague Conference has published a list of [contracting parties to the Convention](#). This includes all EU states, except Denmark. For Denmark, the 1973 Hague Maintenance Enforcement Convention will continue to operate after the transition period ends.<sup>26</sup>

## EU Regulation 4/2009

When the UK was an EU member state, the EU's internal civil justice cooperation framework took priority over the 2007 Convention regarding maintenance enforcement amongst EU states through [EU Regulation 4/2009](#) (with special rules applying to Denmark). The framework detailed in the Regulation did not, however, conflict with the provisions of the 2007 Convention.<sup>27</sup>

EU Regulation 4/2009 was revoked on the UK's "exit day" from the EU. The UK is currently in a transition period until the end of 2020, with pre-existing rules applying until 31 December 2020. The EU Regulation will continue to apply where cases, applications and requests for assistance have begun, or maintenance is due to be paid, before exit day.<sup>28</sup>

## Other legislation

Other laws, such as, but not limited to, the [Maintenance Orders \(Facilities for Enforcement\) Act 1920](#), govern the enforcement of maintenance arrangements between the UK and other relevant states. Such arrangements are unaffected by the Hague Convention or the UK's leaving of the European Union.

# 6. Northern Ireland

Northern Ireland has a similar, but separate, system of child maintenance to the rest of the UK. For the purpose of making and enforcing a maintenance calculation in Northern Ireland, the Person with Care, the Non-Resident Parent and Qualifying Child must be "habitually resident" in the UK.<sup>29</sup>

As is the case for Great Britain, the Northern Ireland child maintenance service may be able to enforce ongoing statutory maintenance arrangements. This may be the case if a Non-Resident Parent lives outside the UK, but works:

- in the Armed Forces
- in the service of the Crown overseas
- for a local authority or health trust,

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<sup>25</sup> Hague Convention, [UK joins 2005 Choice of Court and 2007 Child Support Conventions](#), 28 September 2020; Hague Convention, [\[UK\] Declaration/Reservation/Notification \[on the 2007 Convention\]](#), 28 September 2020

<sup>26</sup> Ministry of Justice, [Family law disputes involving the EU: Guidance for legal professionals from 1 January 2021](#), updated 16 December 2020

<sup>27</sup> [Explanatory Memorandum to the above](#), para 7.1; [Explanatory Memorandum to The International Recovery of Maintenance \(Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance 2007\) \(EU Exit\) Regulations 2018](#), para 2.9

<sup>28</sup> [The Jurisdiction and Judgments \(Family\) \(Amendment etc\) \(EU Exit\) Regulations 2019; Explanatory memorandum to The Jurisdiction and Judgments \(Family\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#), paras 2.1, 2.5, 7.9.

<sup>29</sup> [The Child Support \(Northern Ireland\) Order 1991](#), Section 41



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- for a UK-based Company that is registered in the UK under the [Companies Act 1985](#) or the [Companies \(Northern Ireland\) Order 1986](#),

Enforcing child maintenance overseas through a Reciprocal Enforcement Arrangement Order (REMO) is also possible in Northern Ireland.<sup>30</sup> A list of REMO countries is published by NI Direct: [REMOs](#). The REMO team of the [Northern Ireland Courts and Tribunals Service](#) should be contacted to arrange this.

As in the rest of the UK, parents may also choose to make a family-based arrangement or consider legal action overseas. An individual considering legal action abroad should seek legal advice from a solicitor in that country. The UK Government maintains a [list of lawyers](#) abroad.

## 7. Contacts

- [UK] GingerBread Charity for Single-Parent Families: [Helpline](#): 0808 802 0925 and [Information Pages](#)
- [Scotland] One Parent Families Scotland Charity for Lone Parents: [Helpline](#) 0808 801 0323
- [Northern Ireland] Gingerbread NI: [Helpline](#) 0808 808 8090 and [advice@gingerbreadni.org](mailto:advice@gingerbreadni.org)
- Foreign, Commonwealth and Development Office, [List of lawyers abroad](#)

If an individual wishes to enforce a statutory child maintenance arrangement overseas with a REMO country, they should contact the relevant authority:

### Greater London

Maintenance Enforcement Business Centre London  
Central Family Court  
First Avenue House  
42-49 High Holborn  
London  
WC1V 6NP

[mebc.london@justice.gov.uk](mailto:mebc.london@justice.gov.uk)

Telephone: 020 7421 8657

### England

Maintenance Enforcement Business Centre Bury St Edmunds  
Triton House  
St Andrews Street North  
Bury St Edmunds  
Suffolk  
IP33 1TR

[mebc.bse@justice.gov.uk](mailto:mebc.bse@justice.gov.uk)

Fax: 01284 829 518

### Wales

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<sup>30</sup> NI Direct, [Reciprocal Enforcement Maintenance Orders](#), accessed 17 December 2020



Maintenance Enforcement Business Centre Wales  
Port Talbot Justice Centre  
Harbourside Road  
Port Talbot  
South Wales  
SA13 1SB

[mebc.wales@justice.gov.uk](mailto:mebc.wales@justice.gov.uk)

Telephone: 0300 303 5175

**Scotland**

The Scottish Government Justice Directorate  
Central Authority and International Law Team  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

[maintenanceenforcement@gov.scot](mailto:maintenanceenforcement@gov.scot)

Telephone: 0131 244 3570 or 0131 244 4829

Fax: 0131 244 4848

**Northern Ireland:**

Northern Ireland Central Authority  
Laganside Courts Complex  
45 Oxford Street  
Belfast  
BT1 3LL

[reciprocalenforcement@courtsni.gov.uk](mailto:reciprocalenforcement@courtsni.gov.uk)

Telephone: 0289 072 8869 or 0289 041 2215

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