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# Child Maintenance: Statutory, Voluntary or Court Order

## Guide to how maintenance payments for children works in England and Wales

### Introduction

The Child Support Agency (CSA) has been around for many years and has been often dogged with bad press on its abysmal performance. This statutory body morphed into the Child Maintenance Enforcement Commission (CMEC) in 2008 and has now been transformed into the Child Maintenance Service (CMS). The CMS is the statutory body to whom applications should be made for child maintenance.

### DIY Child Maintenance

Payment of child maintenance can be arranged in a number of different ways. Parents are of course free to reach an agreement between themselves as to how much maintenance is paid for their children. Such agreements should always be recorded in writing for clarity. Sometimes parents agree that one party will pay school fees instead of child maintenance and again such arrangements should be properly documented. If court proceedings are taking place for financial provision, then a court order for child maintenance can be made *if the parties agree on the amount*. However court orders in relation to child maintenance only stand for one year after which point either party can make a referral to CMS and, if an assessment were made, that part of a financial provision order would then stand discharged.

The CMS, however, will only make a maintenance calculation in relation to a 'qualifying child,' which is a child who lives with only one or neither of their natural parents. A stepchild is therefore not a qualifying child.

If a child maintenance order is made, whether by Court Order or through the CMS, they can be registered and enforced internationally. This can be done directly in EU member states or through the reciprocal Enforcement of Maintenance Orders (REMO unit) where the paying parent resides in the USA. There are also a number of other reciprocal arrangements with other non-EU member states.

Where parties do come to a voluntary arrangement between themselves as to the payment of maintenance, these are often based on the amounts that would be paid under the CMS.

### The Statutory Scheme: How does the CMS calculate child maintenance?

The current child maintenance scheme is known as the Gross Income Scheme. The underlying basic nature of the child maintenance calculation remains unchanged. Maintenance is still calculated according to:

- 1) Number of children
- 2) Number of nights spent with paying parent and
- 3) A percentage of the paying parties' income. The exact percentage will depend on which rate of child maintenance applies and how many qualifying children there are. The most common rate is the 'basic rate':
  - 12% - one child
  - 16% – two children
  - 19% – three or more children

The paying parent will be determined by who has more care of the children. Amendments to the system reflect shared parenting arrangements in cases where parents agree that the children's care is shared equally between the parties. In such cases there is sometimes no requirement on one party to pay maintenance to the other as the responsibility is equal between the parties.

The calculation for maintenance is obtained through the gross weekly income information provided by HMRC. These figures are reviewed on a yearly basis – at least that is the aim of the CMS. 30 days before the specified 'review date', the CMS contacts HMRC to ascertain the paying parent's income and works out the child maintenance due accordingly. 20 days before the review date, the CMS writes to both parents to inform them of the final figure and how it was reached. If either parent disagrees, they can provide extra information or notify CMS of changes prior to the review date.

Downwards adjustment from the basic percentage calculations can be made if the paying parent's gross income increases or decreases by 25 percent; the paying parent has other dependants e.g. from a new relationship and depending on the number of nights per year that a child stays with the paying parent. In a twelve month period child maintenance can be reduced by the amounts in the table below depending upon how many nights the qualifying child stays with the paying or non-resident parent.

Nights per annum with paying parent	Fraction to subtract
< 52	0
52-103	One sevenths
104-155	Two sevenths
156-174	Three sevenths
175 plus	One half (and deduct a further seven pounds per week per child but reducing to no less than £5 a week)

### CMS charges

In order to discourage people from applying to the CMS or indeed to encourage them to enter voluntary into arrangements between themselves, CMS is now charging any new applicant the following fees:-

- Initial £20.00 fee payable by the applicant or receiving parent for the CMS calculation to be undertaken
- If the collection service offered by the CMS is used then the paying parent will be charged 20 percent per week in addition to their liability for child maintenance and the receiving parent will be charged 4 percent of the receipt, ultimately receiving 96 percent of the calculated liability.

### Involvement of HMRC

As mentioned above, the CMS will now have to contact HMRC asking them to provide details of the gross income of the paying parent, i.e. their latest available tax return going back six years. Instead of applying a notional rate of interest to the capital to establish notional income, the CMS will look to see the actual income earned. A paying party will still be able to ask for their current circumstances to be taken into account but this will not affect the gross income figure calculated unless the circumstances have led to a 25% increase or decrease on the gross income. Unearned income of £2500 or above will be considered investment income.

### Pension contributions

Gross income figures will be adjusted to take into account any relevant children living in the paying party household and his/her pension contributions. Where a non-resident parent has made pension contributions these will be deducted from their assessable income. There does not appear to be

a limit to the amount of pension contributions that the CMS consider reasonable when working out maintenance calculations. Despite anti-avoidance provision for excessive pension contributions being in place, this change may prove to the benefit of those trying to minimise their liability to pay child maintenance. Parents who suspect paying parents of making excessive pension contributions can apply it to the CMS for a variation. In cases such as this the CMS can ask for evidence of the pension contributions and may recalculate maintenance payments.

### Those still under CSA

The effect of the new CMS Scheme is that there are actually three separate categories of statutory child maintenance in operation:

- 1) Those made pre-March 2003 (CS1)
- 2) March 2003 onwards (CS2)
- 3) Those that fall under the gross income scheme since December 2012 and all new cases (CS3).

Since 2014 the CMS has been in the process of closing all existing CS1 and CS2 cases on a staggered basis with the aim of doing so by the end of 2017. Parents who wish to continue to use the statutory system will have to make fresh applications and enter into CS3.

### Jurisdiction of the court to make child maintenance orders

The courts has limited power to make child maintenance orders. The primary jurisdiction is with the CMS.

- The courts only has jurisdiction to make orders for child maintenance where:
- The CMS does not have jurisdiction (situations may include where the child or parent is habitually resident outside the UK; the child is a stepchild; and where the child is no longer a qualifying child for the purposes of the CSA 1991).
- The parties agree a child maintenance order by consent
- The order is of a prescribed type including:

- orders for educational expenses;
- orders for costs attributable to a disability;
- top-up orders; and
- orders against a person with care (PWC).

*(Section 8, Child Support Act 1991)*

If none of these circumstances apply, a PWC (i.e. the main parent a child resides with) has no right to apply to the court for child maintenance and must, if they seek child maintenance, apply to the CMS.

The exception to this is where the court has made a child maintenance order before March 2003. This would have the effect of preventing an application for a CMS maintenance assessment being made unless the PWC was compelled to apply because they were in receipt of benefits.

### Varying child maintenance orders

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

- It was made before March 2003 and the operation of section 4(10) of the Child Support Agency Act 1991 prevents an application for a maintenance assessment (the power to vary in this situation did not exist until September 1995).
- It was made after March 2003 and no maintenance calculation has been made.

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

### Top-up maintenance

An application can be made to the court for a top-up maintenance order where a maintenance calculation has been undertaken by the CSA or the CMS. It does not, however, extinguish or replace the maintenance calculation.

For the court to be able to make a top-up order the following must apply:

- There must be a maintenance calculation in force with respect to the child.
- The non-resident parent's (NRP) weekly income must exceed the specified figure:
  - For the old scheme and net income scheme, this figure is £2,000 net each week; and
  - For the gross income scheme, i.e. where the new formula is introduced by the Child Maintenance and Other Payments Act 2008 (CMOPA 2008) applies, this figure is £3,000 gross each week.

The court is satisfied that the circumstances of the case make it appropriate for the NRP to pay additional periodical payments over and above the maximum maintenance calculation.

**For further information, please contact:**



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