

Child Support

This is a detailed area of law which has and continues to undergo much change. This note is intended as a brief guide only to outline the schemes currently in place.

TERMINOLOGY

In 2009 the Child Support Agency (CSA) was replaced by the Child Maintenance and Enforcement Commission (C-MEC). Confusingly however C-MEC continues to trade as the Child Support Agency. The "Child Maintenance Service" (or CMS) has managed the most recent scheme on behalf of the Department of Work & Pensions since December 2012, and will gradually replace the CSA, which will close from 2014 over the following three years.

INTRODUCTION

The previous scheme as set out in the Child Support Pensions and Social Security Act has been in operation since 3 March 2003 ('the old scheme'). However the Child Maintenance and Other Payments Act 2008 introduced another scheme in December 2012 for the collection and enforcement of child maintenance ('the new scheme'). The new scheme is being gradually phased in. Since 10 December 2012, only new applicants with four or more children (by the same parents) are able to apply under the new scheme. However, since 29 July 2013, new applicants with two or more children (and at least two of the children have the same parents) can now also apply under the new scheme. There are therefore currently two schemes in operation.

A person can ask for a statutory child maintenance arrangement as long as the child named in the application is under the age of 16, or between 16 and their 20th birthday and undertaking full-time, non-advanced education (no higher than A-Levels). Previously the upper age limit was the 19th birthday, this changed in late 2012 to bring the age limits in line with those of Child Benefit. This change applies to all of the child maintenance schemes.

Calculating child maintenance under the new scheme

The Child Maintenance Service refers to the parent who looks after a child most of the time as the 'receiving parent' (referred to in the legislation as the "parent with care") and the parent who does not live with the child most of the time and will be liable to pay child maintenance as the 'paying parent' (referred to in the legislation as the "non-resident parent.")

Child maintenance will be calculated using the **gross weekly income** of the paying parent and the CMS will use HMRC records to access the income of the paying parent and make a calculation. The income will be checked by HMRC every year to ensure that the calculation is still correct. However, the calculation may need to change before a review takes place and the paying parent should tell the CMS if their current income changes by 25% or more or they have another child with a new partner. Where a non-resident parent has made pension contributions these will be deducted from their assessable income (though there is an anti-avoidance provision for excessive pension contributions).

The rates of maintenance

- Nil rate (for weekly income below £10 or where other circumstances apply).
- Flat rate (for weekly income below £100 or if the paying parent is receiving certain benefits).
- Reduced rate (for weekly income between £100 and £200).
- Basic rate (for weekly income between £200 and £800).
- Basic Plus (for weekly income between £800 and £3,000).

The basic formula is that a non-resident parent, depending on whether he or she has one, two, or three children living with the parent with care and who earns up to £800 per week will pay 12, 16, or 19% of their gross income, and then 9, 12, or 15% of his or her income from £800 up to the new maximum of £3,000 per week. If information on earnings is not available, or is withheld, the CMS can use a 'default maintenance decision' to ensure the child maintenance is paid as quickly as possible. This means applying a default rate based on the number of children the paying parent must pay child maintenance for. These rates are an overall amount, and not 'per child':

- £39 a week for one child.
- £51 a week for two children.
- £64 a week for three or more children.

CHARGING

It is expected that when the new scheme is fully up and running (expected to be in 2014) applicants will have to pay an upfront application fee of £20 to use it.

DIRECT PAY

Using this, the CMS will work out the maintenance calculation but will not be involved in collecting or enforcing payments. Here, the money should be paid to the receiving parent directly by the paying parent and parents will need to come to their own agreement about how to do this. This is called "Direct Pay." It avoids the collection charges outlined below.

COLLECTION SERVICE

If there are problems receiving the payment, the receiving parent should contact the CMS so it can collect the money from the paying parent and transfer the funds to the receiving parent. The CMS can also enforce arrears. This is called the "Collection Service." Once the service is up and running (expected to be in 2014) there will be charges for both parents to use this service. The idea behind this being to encourage collaboration between parents who can avoid the ongoing collection charges altogether by opting to use Direct Pay. It is proposed that the paying parent will have to pay an additional 20% on top of the usual child maintenance amount as a collection charge, and the receiving parent will have the amount of child maintenance they receive reduced by 4%. The receiving parent can ask to leave the collection service at any time. The paying parent can ask to leave the collection service but the receiving parent has to agree.

Calculating child maintenance under the old scheme

The CSA will continue to deal with all new applications for parents with one child under the 2003 scheme in addition to existing cases for the time being. It is anticipated that these families will be brought within the gross income regime in the future. The non-resident parent's gross income is subject to the deduction of tax, National Insurance contributions, all pension contributions and allowances relating to the children of the family in which that parent resides.

THE BASIC RATES OF MAINTENANCE

Non-residents parents have to pay from their **net weekly income**:

- 15% for one qualifying child.
- 20% for two qualifying children.
- 25% for three or more qualifying children.

LEVELS OF PAYMENT

If the non-resident parent has a net weekly income of between £100 and £200 reduced rates will apply. There is a ceiling of £2,000 net income per week for the calculation and a maximum payment of £500 per week. The court retains a residual right to top this up in the wealthiest of families.

DEDUCTIONS

From the basic rates set out above a non-resident parent's net weekly income is reduced if he or she has children in a new family unit regardless of whether they are biologically related. The number of children in that unit affects the income said to be available for assessment. The same percentages are allowed against income for the children of the new family, namely 15% for one child, 20% for two children and 25% for three or more children. Thus only the net income as reduced by the relevant percentage for children of the new family unit would then be subject to assessment.

The non-resident parent's weekly income is also reduced to take account of staying contact for the children in the first family. Adjustments are made to the rates of payment for staying contact as follows:

- 52-103 nights per annum by 1/7th.
- 104-155 nights per annum by 2/7ths.
- 156-174 nights per annum by 3/7ths.
- 174 or more nights per annum by 1/2 (the maximum reduction).

VARIATIONS

Either parent may apply for a variation from the basic rate. This is dealt with by the Child Support Officer. The Child Support Officer will have the power to make an order based on the non-resident parent's apparent lifestyle in the absence of proof of income commensurate with that lifestyle.

The non-resident parent can ask for special expenses to be taken into account if they:

- relate to contact with a child who is the subject of the calculation.
- are attributable to a long term illness or disability of any child.
- relate to debts incurred before separation in relation to the child who is the subject of the calculation (provided they were incurred for the joint benefit of the parents or any other child).
- are boarding school fees - the boarding as opposed to the educational element of the fees is allowed.

SCOPE

You are unable to use the schemes if the parent with care or the child lives outside the UK. The statutory services can only help in certain circumstances if the paying parent lives abroad including if they work for the civil service, Diplomatic service, are a member of the Armed Forces, are working for a company that is based and registered in the UK or is working on secondment for a 'prescribed body', like a regional health authority or local authority.

ROLE OF THE COURT

The court has jurisdiction to endorse any agreement reached directly between the parties as to the rate of child maintenance but the court order will be pushed to one side after one year if **either** parent decides that he/she would prefer to use the schemes outlined above.

The court can however make orders for children where the above schemes do not have jurisdiction as follows:

- **Parentage:**
The court can make orders for children treated as children of the family and therefore stepchildren.
- **Geography:**
The court can make orders where the child or the parent with care is out of the UK or the non-resident parent is out of the UK and not working for a UK registered company or a Government Service.
- **Age:**
The court can make orders where the child is no longer in full time secondary education.
- **Separation:**
The court can make an order if for any other reason there is no qualifying child and no non-resident parent. For example, where there has been no separation of the parents, there is no separate household and so the non-resident parent cannot exist. If there is no non-resident parent then there is no CMS age restriction and the court is free to make an order.
- **Orders to deal with aspects where the CMS did not presume to tread:**
The court also has powers to make limited sorts of orders to deal with other aspects, namely:
 - for education.
 - for the costs of disability.
 - for top up fees where incomes are very high.

CONTACT US

For further information about child support please contact:

Nicola Harries –
Tel: 01483 401262

Partner and Head of Family
Email: nicola.harries@stevens-bolton.com

Caroline Gordon-Smith –
Tel: 01483 401215

Partner, Family
Email: caroline.gordon-smith@stevens-bolton.com

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