

A GUIDE TO CHILD SUPPORT



Parents have a legal responsibility to provide financially for their children even if they no longer live with them. When child maintenance is paid it can make a significant difference to the lives of families. The parent who does not have the day-to-day care of the child is required to pay maintenance to the parent who does have the day-to-day care of the child.

The law

Child support in England and Wales is governed by the **Child Support Act 1991** (CSA 1991), the **Child Support, Pensions and Social Security Act 2000** (CSPSSA 2000), **Child Support (Variations) Regulations 2000** and the **Child Maintenance and Other Payments Act 2008** ('the 2008 Act').

Terminology

- **Parent** – a biological or adoptive parent or persons who were married or in a civil partnership at the time a child was conceived through artificial insemination if the conception was after 6 April 2009. This means that you do not have to be biologically related to the child to be considered a 'parent'. For more information see our **Guide to Parental Responsibility**.
- **Parent / person with care** – the parent or person who has caring responsibility for the greatest number of nights. In some cases the person receiving child maintenance may be someone who is not a parent such as a grandparent or guardian.

- **Non-resident parent** – the parent who has caring responsibility for the smallest number of nights.

Reform of the child support system

The law on child maintenance changed with the 2008 Act which introduced a new body called the **Child Maintenance and Enforcement Commission** ("the Commission"). Child support is currently calculated and collected by the **Child Support Agency** (CSA) and passed to the parent with care. The Commission has taken over many of the duties of the CSA, and is due to replace it when a new child maintenance scheme is fully implemented in 2013–2014. **Child Maintenance Options** is an agency which has been set up to help parents make an informed choice about whether **private agreements for child maintenance, applications to the CSA for child maintenance or applications to court for child maintenance** are most suited to their needs.

Private agreements for child maintenance

You can agree child maintenance with the non-resident parent, by negotiating directly or through your solicitor, and record this in a private agreement form available from Child Maintenance Options (see 'Useful Contacts'). This agreement will not generally be legally binding. One benefit of reaching an agreement in this way is that it can be changed easily if you both wish. Direct negotiation with the non-resident parent is not appropriate if you have experienced domestic violence.

Applications to the CSA for child maintenance

If you don't think it is possible or safe to negotiate or reach an agreement, or your agreement with the non-resident parent has broken down, you can make an application to the CSA for child maintenance free of charge.

A maintenance order from the CSA is legally binding and can attempt to ensure that the non-resident parent meets their financial responsibilities (see Enforcement).

Which scheme?

Parents who have a child support assessment calculated **before 3 March 2003** must follow previous regulations set by the CSA 1991 called the "old scheme", unless an assessment becomes linked to a new application for child maintenance made on or after 3 March 2003. This is the only time that cases dealt with under the old scheme can be transferred to the current scheme. This may happen if an application for child maintenance is made in regard to another of your children.

Those parents who applied to the CSA on or **after 3 March 2003**, but before the introduction of the '**new scheme**' which starts in 2011, will have their child support calculated according to the '**current scheme**' set by the CSPSSA 2000. **This information sheet sets out the details of the current scheme and provides limited information on the new scheme. If you have an assessment under the old scheme or the new scheme you should seek legal advice.**

How is maintenance calculated?

The current scheme

Under the current scheme child maintenance is worked out on the basis of the non-resident parent's net weekly income. Net income is calculated by deducting income tax, national insurance and pension contributions from the non-resident parent's gross income. Tax credits and occupational pensions can count towards weekly income.

Basic rate: For non-resident parents whose income is £200 per week or more the rates payable are as follows:

- 15% of net income for 1 child;
- 20% of net income for 2 children; and
- 25% of net income for 3 or more children.

Reduced rate: non-resident parents with a net income of more than £100 but less than £200 per week will pay reduced rates of maintenance. This rate is £5 a week on the first £100 of net income plus a percentage of the net weekly income over £100.

Flat rate: non-resident parents with a net income of between £5 and £100 per week or less and those on certain benefits (including contribution based or income-based Jobseekers

Allowance and Income Support) will pay a flat rate of £5 per week.

Nil rate: non-resident parents with a net income of less than £5 per week or who fall into certain specific categories such as some students or prisoners will pay no child support.

Reductions for children from new relationships or current family: The calculation takes into account the non-resident parent's children from any new relationship or any child living with them in their current family. The non-resident parent's net income will be reduced by:

- 15% for 1 child in the current family;
- 20% for 2 children in the current family; and
- 25% for 3 or more children in the current family.

The child maintenance calculation does not take into account:

- the income of the parent with care;
- the income of either parent's current partner;
- housing costs; and
- travel to work costs.

Sometimes it is possible to take into account exceptional circumstances, and either parent could seek a variation of a maintenance payment, upward or downward.

Reductions for shared care or contact arrangements: the amount of child maintenance will be reduced depending on the number of nights the child stays with the non-resident parent in a year:

- 52 to 103 nights will lead to a 14% or 1/7th reduction;
- 104 to 155 nights will lead to a 29% or 2/7th reduction;
- 156 to 174 nights will lead to a 43% or 3/7th reduction; and

- 175 or more nights will lead to a 50% reduction.

Maintenance will also be reduced by an additional £7 per week for each child the non-resident parent looks after for 175 nights or more a year. Maintenance will not be reduced if the child stays with the non-resident parent for less than 52 nights a year.

The new scheme (coming into force in 2011)

A new scheme for calculating maintenance is due to come into force in 2011 and will be fully implemented between 2013–2014. Under the new scheme child maintenance will be worked out using the non-resident parent's **gross income** (this means the full amount of pay someone receives before deduction of tax, national insurance and pension contributions). The key changes are set out below.

Basic rate will be divided into 2 categories:

- For the first £800 of gross weekly income:
 - 12% for one child;
 - 16% for two children; and
 - 19% for three children.
- For the next £800 – £3,000 of gross weekly income:
 - 9% for one child;
 - 12% for two children; and
 - 15% for three or more.

Flat rate: will be applied where non-resident parent's gross income is less than £100 per week and will be increased from £5 to £7.

Civil partnership, lesbian parenting and child maintenance

You may have a financial duty to provide financial support for any children of your civil partnership who do not live with you following

separation even if the children are not biologically yours. Under the **Human Fertility and Embryology Act 2008** if you or your partner were in a civil partnership and conceived a child after **6 April 2009** through artificial insemination at a fertility clinic or through a known donor you are both considered to be your child's legal parents. As such, you will have to provide financially for your child if your civil partnership breaks down.

In some situations if your partner conceives a child and you are not in a civil partnership you will automatically be the child's legal parent and will be required to provide for that child financially if you no longer live with your partner. Whether you will be required to financially support children of your relationship will depend on your child's legal relationship to you and your family's circumstances. Please see our **Guide to Lesbian Parenting** and **Guide to Parental Responsibility**.

Failure to co-operate

It is a criminal offence to fail to provide information when the CSA needs it or knowingly to provide false information. Anyone who fails to co-operate in these circumstances risks being prosecuted and could be liable to pay a £1000 fine. If a non-resident parent does not provide enough information to the CSA it can make them pay a rate of child maintenance based on the average amount for the number of qualifying children.

Enforcement of payment

The statutory maintenance service is currently run by the CSA, however the Child Maintenance and Enforcement Commission ("the Commission") has taken over some of the CSA's enforcement powers.

The CSA/the Commission may take the following action against the non-resident parent to obtain payment of maintenance:

Administrative enforcement (court action *not* required)

Deduction from earnings order: the CSA can make an order that a non-resident parent's employer has to make deductions from the non-resident parent's income before he/she receives their salary. This is only available where the non-resident parent is in employment.

Deduction from accounts: a new method of enforcement that allows the CSA to make regular deductions of maintenance payments from the non-resident parent's bank accounts.

A lump sum deduction order: can be made to collect arrears from the non-resident parent's bank account or from any money owing to them.

Court ordered enforcement (court action required)

Liability order – requires the CSA to make an application to court and is used in situations where a non-resident parent is in arrears and a deduction from earnings is not appropriate for some reason, for example when the non-resident parent has an income which will not cover the arrears in a reasonable amount of time. This allows the court to enforce the maintenance payments in a number of ways, for example by:

- Bailiff action, whereby the non-resident parent's goods will be seized and sold to pay the debt. If you can tell the bailiff specific information, for example the make, model and registration number of the non-resident parent's car, this can increase the

likelihood of a successful recovery of assets.

- Obtaining a charging order or order for sale on the non-resident parent's home.
- Third party debt orders can be made to recover money owed to the non-resident parent, for example, payment of a bill for services to them, if they are self employed. This type of order can also be made if the non-resident parent is to inherit money or is due to receive life policy proceeds.
- As a last resort, the non-resident parent can be committed to prison. This is being used increasingly by the court as a way to enforce child maintenance payments.
- The court can also order that the non-resident parent is disqualified from driving.
- Orders can also be made to stop a non-resident parent disposing of or transferring property if it is being done to avoid paying child maintenance.

If you believe any of the above may be appropriate you should ask the CSA to take the required enforcement action and complain if this action is not taken (see Complaints).

New measures are due to be introduced later this year to allow the CSA/the Commission to enforce child maintenance to ensure parents fulfil their financial responsibilities to their children including:

- **Administrative liability orders:** this will mean that an order can be made to seize the non-resident parent's goods to cover arrears of child maintenance, without the need to apply to court.
- **Disqualification from holding or obtaining a passport.**
- **Curfews:** imposed on the non-resident parent for failure to comply with their maintenance obligations.

Variations

In certain circumstances you can ask the CSA to adjust the calculation of maintenance. These adjustments are called variations. You can ask the CSA to increase child maintenance if you think the non-resident parent has:

- Assets of over £65,000.
- Non-benefit income of more than £100 per week.
- An income of over £100 per week that has not been included in the calculation.
- A lifestyle inconsistent with his declared income.
- Control over his income and he has unreasonably reduced his income, for example, the non-resident parent owns a company and he has reduced his salary significantly to avoid his child maintenance obligations.

Complaints

If you are not satisfied with the way that the CSA has dealt with your case you can complain by speaking to someone in the CSA's Complaint Resolution Team who will investigate and try and resolve your complaint. A complaint can also be made by filling in an online complaints form. If you are not satisfied with the Complaint Resolution Team's reply, you can ask for it to be reviewed by the Complaints Review Team. If you follow this complaints process and are still not satisfied that your complaint has been sorted out appropriately you can contact the Independent Case Examiner (ICE). The ICE investigates complaints about the way that the CSA deals with cases. It cannot deal with complaints about the level of child maintenance set by the CSA but can deal with complaints about issues like mistakes or delays in dealing with your case.

The ICE can only investigate your complaint **after** you have exhausted the CSA's complaints procedure. You must complain to the ICE within 6 months of the Complaints Review Team's final response to you.

Depending on the outcome of its investigation the ICE can recommend that the CSA takes action to put matters right, offer you an apology or explanation, give you compensation or review CSA procedures.

What if I think the child maintenance calculation is wrong?

If you think the CSA's calculation of child maintenance is wrong, for example, because they overlooked some important fact like the non-resident parent has a second income or if you believe the calculation is no longer accurate, for example, because the non-resident parent is now earning more money, you can ask the CSA to review their decision. You can do this by writing to the CSA and explaining why you think the decision is wrong. The CSA will review their decision and then send you a letter explaining the decision. If the decision is wrong they will change it and confirm this in writing.

If the CSA have reviewed their decision and you are not satisfied you may be able to **appeal** the decision. An appeal should be brought within one month of the date the decision was made, in certain circumstances the CSA will allow a total of 13 months to bring an appeal. An appeal can be brought where the CSA has misinterpreted the facts or misapplied the law and, as a result, you have not received the correct amount of child maintenance.

For more information on how to appeal a decision see the CSA leaflet: *How can I appeal against a child maintenance decision?*

(CSL307). If you believe that you may be able to appeal you should seek legal advice.

Child maintenance and benefits

If you are a parent with care and you or your partner claim benefits, you are not required to make an application to the CSA for child maintenance and you can keep all child maintenance payments without your benefit payments being affected.

Applications to Court

If you are involved in Court proceedings to divide assets following a divorce or dissolution of a civil partnership and you can agree child maintenance you can apply to court to have this agreement turned into a **consent order**. If the non-resident parent fails to pay the maintenance agreed in the consent order, then the Court has powers to enforce the order. You may not apply for child maintenance through the CSA until the consent order has been in place for 12 months.

There are certain limited circumstances when a parent with care can seek orders from the Court under **Schedule 1** of the **Children Act 1989** (CA) in addition to seeking maintenance through the CSA, or sometimes Schedule 1 can be used where no CSA assessment is available. This includes when:

- The non-resident parent lives abroad.
- The income of the non-resident parent is greater than the statutory scheme's upper limit which is currently £104,000 per year after income tax, national insurance and pension contributions.
- The application concerns costs for a child's education or to support a child with a disability.
- The resident parent is seeking a sum of

money for example to provide a home for the child.

Under the CA 1989 you can apply to the court for a carer's allowance, a lump sum or the transfer of property into your sole name. When deciding an application the Court will consider all the circumstances in the case including the welfare of the child and the following factors:

- the income, earning capacity, property and financial resources of both parties now and in the future;
- the financial needs, obligations and responsibilities of the parties now and in the future;
- the financial needs of the child;
- the income, earning capacity, property and other financial resources of the child;
- the physical or mental disability of the child; and
- how the child was or was expected to be educated or trained.

Any financial provision that the court orders will last until your child reaches 18 unless she or he is, or would be, in full time education or training or there are special reasons why the provision should continue (e.g. because your child has a disability and requires further support).

Child maintenance from someone living abroad

As detailed above an application can be made to Court under **Schedule 1** of the **Children Act**

1989 to secure child maintenance from a non-resident parent who is living abroad.

The CSA only deals with applications for child support where both parents live in the UK unless the parent with care or non-resident parent is working abroad for the Government (e.g. a diplomat), the Armed Forces, a UK based company or on secondment for certain organisations (e.g. local authority).

The UK has arrangements with over 100 countries and overseas territories that enable someone from one jurisdiction to claim maintenance from someone in another. The **Reciprocal Enforcement of Maintenance Orders** (REMO) is the process by which maintenance orders made by UK courts can be registered and enforced by courts or other authorities in other countries. If the non-resident parent lives in Australia then the Australian Child Support Agency may be able to accept an application for child maintenance.

For more information contact Rights of Women's legal advice line or a family law solicitor (see 'Useful Contacts').

The issues relating to child support can be complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would strongly advise you to also contact the CSA directly and seek legal advice by either telephoning our legal advice line or a solicitor.

Please note that the law referred to in this information sheet is as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only. © Rights of Women October 2010

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call 020 7251 6577 (telephone) or 020 7490 2562 (textphone). The advice line is open on Tuesday, Wednesday and Thursday 2pm–4pm and 7pm–9pm and Friday 12noon–2pm.

For free, confidential, legal advice on sexual violence, criminal, immigration and asylum law call 020 7251 8887 (telephone) or 020 7490 2562 (textphone). The advice line is open on Mondays 11am–1pm and Tuesdays 10am–12 noon.

Other useful telephone numbers

Child Support Agency	08457 133 133	www.csa.gov.uk
Child Maintenance Options	0800 988 0988	www.cmoptions.org
Child Maintenance and Enforcement Commission		www.childmaintenance.org
Community Legal Advice (for finding a family solicitor)	0845 345 4345	www.communitylegaladvice.org
Gingerbread	0808 802 0925	www.gingerbread.org.uk
National Debtline	0808 808 4000	www.nationaldebtline.co.uk
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk
National Family Mediation	0300 4000 636	www.nfm.u-net.com
Relate	0845 130 40 16	www.relate.org.uk
Reciprocal Enforcement of Maintenance Orders	0845 345 5303 www.dca.gov.uk/family/remo/contents.htm	
Resolution (for finding a family solicitor)	016898 202 72	www.resolution.org.uk
Shelterline	0808 800 4444	www.shelter.org.uk
Working Families	0800 0130313	www.workingfamilies.org.uk

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