

iGuide: Child Maintenance

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Child maintenance refers to maintenance paid by one parent to another for the benefit of a child or children. Child maintenance might be payable pursuant to a Court Order, following an agreement between the parents or pursuant to an assessment by the Child Maintenance Service (CMS).

The principles and formula underlying a CMS assessment can form the basis of a Court order or a voluntary agreement between the parents. It is not necessary to have either Court order or a CMS in order to reach an agreement for child maintenance.

The CMS has power to make assessments for child support where the child, the parent with care (PWC) and the Non-resident parent (NRP) are in England and Wales. The Family Court can only make orders for child maintenance in limited circumstances e.g., the parents agree on what the figure is, the parents are not yet separated, or any are abroad. The Family Court might also make a 'top-up' order or an order for additional payments, e.g., school fees.

If a court order is made, it can be effectively overturned and replaced by an assessment made following an application to the CMS 12 months subsequent to that order, so long as both parents are living in England and Wales.

The CMS uses a formula so as to calculate child maintenance. This formula is often followed even if the CMS is not involved, for example for the purposes of a court order, where one or other of the parents are overseas, or where an agreement is reached without any litigation or assessment.

The CMS have provided an online calculator, here: <https://www.gov.uk/calculate-child-maintenance>

There is also a gateway at <https://www.gov.uk/making-child-maintenance-arrangement>.

CMS Calculations

CMS payments were made up of a flat percentage of a NRP's net pay. The income and assets of the (PWC) are not relevant to this assessment.

The calculation starts with an assessment of the underlying rate, as follows:

Gross Weekly Income of NRP	CMEC Calculation (payable from NRP to resident parent)
Less than £7 per week	Nil
£7 - £100 per week (£416-£5,200 pa)	£7 per week
£100 - £200 per week (£5,200 - £10,400 pa)	A tapered rate upward of £7 per week
£200 - £800 per week (£10,400 - £41,600 pa)	12% for 1 child 16% for 2 children 19% for 3 or more children

£800 - £3,000 per week (£10,400 - £156,000 pa)	9% for 1 child 12% for 2 children 15% for 3 or more children
Over £3,000 per week (£156,000 pa)	With the CMS, the above applies to the first £3,000 of that income. No account is given for any income over and above £3,000 per week. However, a recent High Court decision has given guidance on the rates payable for NRPs with an income in excess of £3,000 per week (£156,000 per annum) and up to £650,000 per annum. The rates for income between £10,400 and £156,000 per annum are considered to be guidance in respect of such incomes. This is guidance only and not formula. The CMS would not provide this assessment. In the same decision, guidance was given for NRPs with an income in excess of £650,000 per annum. The same rates should be applied to a maximum of £650,000. This is guidance only and not formula. The CMS would not provide this assessment.

If the NRP cares for other children in a new family, then a reduction is applied to their gross income for the purposes of applying the above rates.

The reduction is as follows:

11%	One child in new family
14%	Two children
16%	Three or more children

If there is a shared care arrangement for the child or children, the amount of child maintenance payable by the NRP is reduced. This depends on the number of nights the child or children stay with the NRP.

As follows:

Stays of not less than	Reduction of child support
52 nights p/a	1/7
104 nights p/a	2/7
156 nights p/a	3/7
175 nights p/a	50%

Special arrangements may apply if there is genuine equal shared care.

Enforcement

One of the main aims of the new system is to give the agency more ways of enforcing payments.

Powers include:

- To apply for the following Court Orders:
 - To commit the NRP to prison

- An Order deducting the NRP's earnings from their bank account
- Freezing the NRP's bank account
- Liability Orders which are treated as County Court Judgments which can ultimately lead to CMEX applying to repossess the NRP's home to pay off the debt
- Suspending the NRP's driving licence
- Removing the NRP's passport
- Curfew Orders
- Charging Orders
- Against a deceased NRP's estate
- To seek information disclosed within any financial proceedings upon divorce (this was previously contempt of court)
- To seek certain information from credit reference agencies
- To appoint Inspectors to enter homes of NRPs with the aim of gaining information on the parent who is to be paying child maintenance
- To publish the names of NRPs who are successfully prosecuted

Parents are encouraged to reach agreement on matters concerning their children wherever possible. A starting point is to use the CMS calculators available online.

In some circumstances it may be possible to apply to the court for financial provision over and above that provided for by the CSA.

For more information about child maintenance, or other questions you may have, please contact a member of our specialist family law team.

You can do so via our website, by email to enquiries@iflg.uk.com or telephone on +44 (0) 203 178 5668.

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iFLG

Hudson House
8 Tavistock Street,
London WC2E 7PP

Contact

+44 (0) 203 178 5668
enquiries@iflg.uk.com

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