



## BRIEFING PAPER

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# Coronavirus: Separated Families and Contact with Children in Care FAQs (UK)

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## 1. Introduction

This paper provides brief information in response to some key questions regarding the impact of the coronavirus outbreak on separated families, maintenance arrangements and access to children.

The paper is not intended to address the specific circumstances of any individual or family and suitably qualified legal advice should instead be sought.

Local restrictions should also be consulted. These can be found at the respective pages for [England](#); [Scotland](#); [Wales](#) and [Northern Ireland](#).

The paper addresses:

- Can children move between the homes of separated parents?
- How should parents comply with a court-orders for contact?
- How are child maintenance payments impacted?
- Can I visit my child in care/residential home?
- My child contact centre is closed: What alternatives are being made?
- Where can I go for help and advice?

This is a fast-moving issue and the briefing should be read as correct at the time of publication.

## 2. FAQs

### 2.1 Can children move between the homes of separated parents (UK)?

National [regulations](#) and [guidance](#) issued for England allow access to, and contact between, parents and children where the children do not live in the same household as their parents or one of their parents.<sup>1</sup>

In response to the initial UK Government [guidance issued in March](#), the President of the Family Division of the High Court (England and Wales) [noted](#) that the guidance does not

<sup>1</sup> [The Health Protection \(Coronavirus, Restrictions\) \(No.2\) \(England\) Regulations 2020](#), Section 5

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mean that children must move between homes, the decision being one for parents to take after assessing their circumstances (bold original):

Government guidance issued alongside the Stay at Home Rules on 23rd March deals specifically with child contact arrangements. It says:

**“Where parents do not live in the same household, children under 18 can be moved between their parents’ homes.”**

This establishes an exception to the mandatory ‘stay at home’ requirement; it does not, however, mean that children **must** be moved between homes. The decision whether a child is to move between parental homes is for the child’s parents to make after a sensible assessment of the circumstances, including the child’s present health, the risk of infection and the presence of any recognised vulnerable individuals in one household or the other.<sup>2</sup>

The guidance from the Family Division has not since been updated.

Guidance issued by the Governments of [Scotland](#) and [Wales](#) and [Northern Ireland](#) states that where parents do not live in the same household, children can be moved between their parents’ homes.

### 2.2 How should parents comply with court orders for contact (UK)?

In England and Wales, a child arrangements order is an order regulating where a child lives and when they spend time with each parent. Contact orders are the equivalent in Northern Ireland and Scotland.

#### Background

Whenever a court makes or varies a child arrangements order, a “warning notice” is attached to the order itself warning of the consequences of failing to comply with it. A warning notice states that if someone breaches a child arrangements order, “the court may fine or imprison them for contempt of court, or may make an enforcement order or an order for financial compensation.” An enforcement order can require the person who breached the child arrangements order to undertake between 40 and 200 hours of unpaid work.

Under section 11J of the [Children Act 1989](#), however, a court can decide to not make an enforcement order when somebody fails to comply with a provision of a child arrangements order “if it is satisfied that the person had a reasonable excuse for failing to comply with the provision.” The Act adds that the burden of proof “lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities.” The term “reasonable excuse” is not defined in the legislation or in the explanatory notes to the [Children and Adoption Act 2006](#), which inserted section 11J into the 1989 Act.

Failure to comply with a child arrangements order can be a serious matter. Someone considering doing so on the grounds that they had a “reasonable excuse” would be strongly advised to seek legal advice before doing so.

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<sup>2</sup> President of the Family Division and Head of Family Justice [England and Wales] [Coronavirus crisis: Guidance on compliance with Family Court Child arrangement orders](#), 24 March 2020

## Compliance with child arrangements orders during the Coronavirus outbreak

### England and Wales

The President of the Family Division of the High Court has issued [national guidance](#) for parents whose children are the subject of Child Arrangement Orders made by the Family Court.

This guidance states that parents, acting in agreement, are free to decide that the arrangements set out in a child arrangements order should be temporarily varied. Regarding situations where parents do not agree, the guidance states:

7. Where parents do not agree to vary the arrangements set out in a [child arrangements order], but one parent is sufficiently concerned that complying with the [child arrangements order] arrangements would be against current [Public Health England] advice, then that parent may exercise their parental responsibility and vary the arrangement to one that they consider to be safe. If, after the event, the actions of a parent acting on their own in this way are questioned by the other parent in the Family Court, the court is likely to look to see whether each parent acted reasonably and sensibly in the light of the official advice and the Stay at Home Rules in place at that time, together with any specific evidence relating to the child or family.

8. Where, either as a result of parental agreement or as a result of one parent on their own varying the arrangements, a child does not get to spend time with the other parent as set down in the CAO, the courts will expect alternative arrangements to be made to establish and maintain regular contact between the child and the other parent within the Stay at Home Rules, for example remotely – by Face-Time, WhatsApp Face-Time, Skype, Zoom or other video connection or, if that is not possible, by telephone.

The “key message”, the guidance states, should be that “where Coronavirus restrictions cause the **letter** of a court order to be varied, the **spirit** of the order should nevertheless be delivered by making safe alternative arrangements for the child” (emphasis original).<sup>3</sup>

### Scotland

In Scotland, the Court of Session issued [updated general guidance](#) on 16 July 2020 on compliance with Family Court Orders during the coronavirus outbreak.

The guidance states that the arrangements of a court order should be adhered to, within the limits of the most recent Scottish Government guidance, unless both parents have agreed to alternative arrangements.

Regarding situations where parents do not agree, the guidance states (bold added):

**Where there is a dispute about acting in accordance with a court order, parents should bear in mind that, if their actions are challenged by the other parent in court, the court will consider whether each parent has acted reasonably and sensibly in all of the circumstances of the case and the Government guidance in place at the time.**

If there is any reason that a child does not spend time with the other parent or carer as set down in a court order, it is expected that alternative arrangements are to be made to establish and maintain regular contact between the child and the other parent safely. In such circumstances remote contact via FaceTime, WhatsApp, Skype,

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<sup>3</sup> President of the Family Division and Head of Family Justice [England and Wales] [Coronavirus crisis: Guidance on compliance with Family Court Child arrangement orders](#), 24 March 2020

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Zoom or other video connection or, if that is not possible, by telephone, should be facilitated.<sup>4</sup>

### Northern Ireland

The Lord Chief Justice's Office has published guidance as [COVID-19 Guidance for Courts: Family proceedings \(All Court Tiers\)](#). This states that children should continue to travel between homes where possible and taking full account of guidance on social distancing. Guidance allows for temporary variations to contact orders without reference to a court (bold original):

It is important that children should maintain their usual routine of spending time with each of their parents in compliance with a Contact Order unless to do so would put the child, or others at risk with regards to Government and Public Health Authority (PHA) guidance during this period. Where contact can be continued, this will help the child to feel a sense of consistency, whilst also reassuring them that the parent they don't always live with is safe and healthy.

The decision whether a child is to move between parental homes is for the child's parents to make after a sensible assessment of the circumstances, including the child's present health, the risk of infection and the presence of any recognised vulnerable individuals in one household or the other.

Where Coronavirus restrictions cause the letter of a court order to be varied, the spirit of the order should nevertheless be delivered by making safe alternative arrangements for the child. If it is not possible to maintain the child's routine due to illness or self-isolation, or non-availability of, or risk to, people who ordinarily support contact, **the courts will expect alternative arrangements to be made to establish and maintain regular contact between the child and the other parent**, for example remotely – by Face-Time, WhatsApp Face-Time, Skype, Zoom or other video connection or, if that is not possible, by telephone.

#### **Temporary variations to contact orders WITHOUT REFERENCE TO THE COURT can be made by one of the following means:**

- Where parents agree to temporarily vary the arrangements of a contact order they are free to do so, and each should record such an agreement in a note, email or text message sent to each other and to their legal representative (if they have one);
- Where parents do not agree to vary the arrangements of a contact order, because one parent is sufficiently concerned that complying with the arrangements would be against current PHA advice, then that parent may exercise their parental responsibility and vary the arrangement to one that they consider to be safe. If, after the event, the actions of a parent acting on their own in this way are questioned by the other parent in the Family Court, the court will consider whether each parent acted reasonably and sensibly in the light of the official advice and any Stay at Home Rules in place at that time, together with any specific evidence relating to the child or family.

If any court directed contact arrangements are missed or found to be unreasonable, the court may take this into consideration when making further orders, and separated parents may be able to 'make up' time with the child after the restrictions are lifted. It is vital that child's needs are put to the fore by both parents, and the child should not be used as a source of tension or conflict– especially at a time when the child is likely to be feeling anxious about the effects of the pandemic.<sup>5</sup>

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<sup>4</sup> Lord President, [Coronavirus crisis: Updated guidance on compliance with Court orders relating to parental responsibilities and rights](#), 16 July 2020. Previous guidance was issued in March: Lord President, [Guidance on compliance with Family Court Orders](#), 27 March 2020

<sup>5</sup> Judiciary NI, [COVID-19 Guidance for courts Family proceedings \(all court tiers\)](#), 12 June 2020, pp3-4

## 2.3 How are child maintenance arrangements impacted (UK)?

Broadly, there are three forms of child maintenance: informal (agreed between parents); court-ordered and statutory (organised by the separate Child Maintenance Service (CMS) in Great Britain or Northern Ireland). These are described in the Library Briefing [Child maintenance: Calculations, variations and income \(UK\)](#) (CBP-7770).

If child maintenance is paid under an informal agreement, then, in the first instance, any changes to payments would be between the resident and paying parent to discuss. If maintenance is made in accordance with a court order, individuals should seek qualified legal advice and refer to the contents of their specific order.

In **Great Britain**, regulation 34 of [The Child Support Maintenance Calculation Regulations 2012](#) states that adjustments to child maintenance payments for any paying parent will be made if their gross weekly income has changed by 25%. This remains the case during the Coronavirus outbreak.

On changes that should be reported to the CMS, CMS [Information for Paying parents](#) says it should be told:

- If you have lost your job
- If you are temporarily receiving no income while you are self-isolating during the outbreak of coronavirus
- If you are temporarily receiving statutory sick pay during the outbreak of coronavirus
- If child maintenance should no longer be paid because of a change in circumstances
- If you are adopting a child, or
- If you are reporting a bereavement

The CMS says it will “take action if child maintenance is not paid”<sup>6</sup> and “may begin collection action activity to recover any unpaid child maintenance”. The CMS will contact parents to discuss how this can be paid.<sup>7</sup> If the paying parent used the Child Maintenance Service to calculate child maintenance but pays directly, the receiving parent needs to ask the service to take action.

It was previously confirmed by the Department of Work and Pensions that the CMS was accepting “verbal evidence of reduction of income but will revert to the previous standards when the crisis is over”, meaning action can be taken against parents “who abuse the change in the evidence threshold”.<sup>8</sup>

On temporary changes to shared care, the CMS says:

If your shared care arrangements have changed temporarily due to coronavirus we will not be able to make any changes to the amount of child maintenance you pay. This is because this change in care arrangement is temporary.

If this change in care arrangements continues into a longer-term arrangement, please tell us as soon as you can.<sup>9</sup>

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<sup>6</sup> Gov. UK, [Manage your child maintenance service case: If a parent does not pay](#)

<sup>7</sup> Child Maintenance Service, [Paying parent information](#)

<sup>8</sup> [Single mothers are losing out on child maintenance payments as a result of coronavirus](#), The Independent, 16 April 2020 (updated 13 July 2020).

<sup>9</sup> Child Maintenance Service, [Paying parent information](#)

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The CMS has also said parents should expect delays in initial payments and in the time taken to make new arrangements with the CMS:

It is taking longer than usual to set up Child Maintenance Service cases because of coronavirus (COVID-19). [...]

The first payment is usually made within 12 weeks of making payment arrangements. Payments may take much longer because of coronavirus.<sup>10</sup>

The Department for Work and Pensions said on 7 September 2020 that it was beginning to reinstate a full enforcement service, in consultation with its enforcement partners:

Where payments have been missed we have asked parents to report the changes via the self-service portal. In order to ensure that receiving parents do not lose out in the long run, the Child Maintenance Service is updating cases with notified changes. Where payments have been missed the Service is taking action to re-establish compliance and collect any unpaid amounts that may have accrued.

Those found to be abusing the system are subject to the full extent of our enforcement powers and the Child Maintenance Service will pursue these, where appropriate.

The vast majority of CMS enforcement powers involve third parties, including Her Majesty's courts, enforcement agents and financial institutions. The COVID-19 crisis meant that these third parties had to pause business. The CMS is now beginning to reinstate a full service and remains committed to working with these key partners to establish how best to restart enforcement activity.<sup>11</sup>

In **Northern Ireland**, the CMS guidance states that parents should inform the CMS if there is an increase or decrease of 25% or more in the paying parent's gross weekly income if they are on the 2012 statutory maintenance scheme.<sup>12</sup> The CMS has also said that "the Service will not be able to put child maintenance in place as quickly as usual, and may not be able to pursue missed payments."<sup>13</sup>

The Northern Ireland CMS has confirmed that it is currently accepting verbal evidence of changes in income but action will be taken against those found to abuse the measure:

In the short-term, CMS will accept verbal evidence of a reduction in income and will prioritise loss of job changes over other changes in income. CMS will monitor the impact of this and will revert to the previous standards of evidence required for changes of circumstances as soon as possible.

In addition, CMS will also revise calculations, and pursue arrears and / or enforcement action against anyone who has abused this short-term measure once the coronavirus (COVID-19) crisis has stabilised.<sup>14</sup>

Further information can be found on the NI Direct page: [Coronavirus \(COVID-19\) and Child maintenance services](#).

### 2.4 Can I visit my child in care/residential home (England)?

Under section 34 of the [Children Act 1989](#), where a child is in local authority care, the local authority must allow "reasonable contact" between a child and their parents, guardian, any person with parental responsibility or a named person who had previous care of the child. However, this can be halted for seven days if the local authority believes

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<sup>10</sup> Gov. UK, [Manage your child maintenance service case: Overview](#)

<sup>11</sup> PQ 84290 [\[Children: Maintenance\]](#), 7 September 2020

<sup>12</sup> NI Direct, [Changes Child Maintenance Services need to know](#)

<sup>13</sup> NI Direct, [Coronavirus \(COVID-19\) and Child Maintenance Services](#)

<sup>14</sup> NI Direct, [Coronavirus \(COVID-19\) and Child Maintenance Services](#)

it necessary to safeguard or promote the child's welfare; the refusal is decided upon as a matter of urgency.

UK Government [guidance for children's social care](#) states that the Government "recognise[s] that the challenging context means that in some circumstances, local authorities, providers, agencies, and partners may find it more difficult to meet the full range of statutory duties relating to vulnerable children."

The guidance states that the Government expects contact between children in care and their relatives to continue and for the spirit of contact orders to be met:

We expect that contact between children in care and their birth relatives will continue. It is essential for children and families to remain in touch at this difficult time, and for many children, the consequences of not seeing relatives would be traumatising.

Contact arrangements should, therefore, be assessed on a case by case basis taking into account a range of factors, including the government's current [social distancing guidance](#) and [guidance on meeting people outside your household](#) and the needs of the child. However, we expect the spirit of any court-ordered contact in relation to children in care to be maintained.

Where it may not be possible, or appropriate, for the usual face to face contact to happen at this time, keeping in touch will, for the most part, need to take place virtually. In these circumstances, we would encourage social workers and other professionals to reassure children that this position is temporary. We would also expect foster parents and other carers to be consulted on how best to meet the needs of the children in their care and to be supported to facilitate that contact, particularly if those carers are shielding or medically vulnerable.

We recognise that some young children may not be able to benefit from virtual contact with their family, because of their age or other communication challenges. In these circumstances, local authorities should work with families to identify ways to have safe face to face interactions, whilst still adhering to social distancing guidance.

When considering the most appropriate ways for children to stay in touch with their families, social workers and carers should seek the views of children who may welcome different forms of contact, including less formal and more flexible virtual contact with their birth families.<sup>15</sup>

Regulation 22(1) (contact and access to communications) of the [Children's Homes \(England\) Regulations 2015](#) has been amended in relation to children meeting friends, parents and relatives. It states that a children's home must ensure that there are suitable facilities to allow such meetings, and that, where meetings cannot take place face to face, facilities should be available to allow private meetings over the phone, video-link or other electronic communication method. The [guidance for children's social care services states](#):

[Visits] may not be possible or practical in the current circumstances, but it is important that children are allowed to maintain contact with their families and people who are important to them. During this period, the regulations now provide that where meetings cannot take place face to face at the children's home, facilities should be made available to enable such private meetings to take place over the telephone, a video-link or via other electronic communication methods. We encourage providers to explore ways to achieve this sort of contact.

Face to face contact should continue to happen, taking account of social distancing guidelines, and children should be supported to manage this, but it is only where this is not possible that other ways to facilitate contact should be provided. Providers should be as flexible as possible in finding ways for children to have visits. Where it is necessary for safeguarding or welfare purposes to impose conditions, restrictions or

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<sup>15</sup> Department for Education, [Coronavirus \(COVID-19\): Guidance for children's social care services](#), 28 August 2020

prohibitions on a child's contact with family or friends this remains possible under regulation 22.

Concerning situations where a child in residential care needs to self-isolate, [guidance](#) states that managers of such settings should speak to parents to establish what should happen:

If you are a manager of a residential setting, you should seek parents' and carers' views on whether the child or young person should return home for any period of self-isolation (due to them, or someone else in the same setting, displaying symptoms) or should remain at the setting. You should do this pre-emptively, rather than waiting until someone shows symptoms.

For looked after children, you will need to seek the view of the child's [placing authority](#). The assumption should be that they would self-isolate in their children's home. Where possible, the decision should also include consideration of the impact on the child or young person from the disruption of their usual staff relationships and routines.

The guidance goes on to say that "most" children and young people will benefit from isolating in their setting to allow their usual support to continue. However, it also states that "others may benefit from self-isolating at their family home". In cases where they return home, any necessary health and therapy support should continue.<sup>16</sup>

### 2.5 My child contact centre is closed: What alternatives are being made (UK)?

In **England, Wales and Northern Ireland**, Child Contact Centres are run by a variety of independent organisations that form the National Association of Child Contact Centres (NACCC). They deal with:

- Private law cases, where there is an agreement or court order made for supervised contact, and
- Public law cases, where a child is in the care of the local authority and a contact order has been made with respect to the child for supervised contact.

The NACCC is maintaining a [webpage on Covid-19](#). Guidance issued on 10 September 2020 states that the centres can continue to remain open, in adherence with national and local guidance. In June, the NACCC said it was "recommending that centres make independent decisions about whether they feel able to re-open their services". The guidance also says that "no centre should consider opening their services if they do not feel fully prepared or if doing so contravenes any local advice".

The NACCC states that impacted members of the public should contact NACCC directly or a local contact centre to find out what services are available. Contact details for local centres may be found here: <https://naccc.org.uk/find-a-centre>.

In **Scotland**, parties should contact their local Contact Centre.<sup>17</sup>

Contact Centres in **Northern Ireland** can also be contacted individually.<sup>18</sup>

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<sup>16</sup> Department for Education and Public Health England, [Coronavirus \(COVID-19\): Guidance on isolation for residential educational settings](#), 27 May 2020.

<sup>17</sup> Relationships Scotland, [Child contact centre services](#)

<sup>18</sup> Child Contact NI, [Centre locations](#)

## 2.6 Where can I go for help and advice?

Anyone seeking to vary a court order should seek legal advice. The Library Briefing [Legal help: where to go and how to pay](#) provides further information.

The following charities and groups provide advice on family law and arrangements:

- [Gingerbread](#), a single parent's charity: 0808 802 0925
- [Child Law Advice Service](#), providing an email service on [education](#) and [family law](#)
- [Family Rights Group \(England & Wales\)](#) for parents who have a social worker involved in their child's life or require support for children's services: 0808 801 0366
- [Cafcass](#) [Children and Family Court Advisory and Support Service] (England), provide advice on co-parenting and child arrangements in relation to the Family Courts: 0300 456 4000
- [National Association of Child Contact Centres](#), provides advice to parents around child contact arrangements on 0845 4500 280 or via [contact@nacc.org.uk](mailto:contact@nacc.org.uk)
- [Scottish Child Law Centre](#), provides advice and information about children's rights and law in Scotland, via [advice@sclc.org.uk](mailto:advice@sclc.org.uk)
- [Clan Childlaw](#), a legal and advocacy service for children and young people in parts of Scotland, on 08081290522
- [One Parent Families Scotland](#), offers advice to one-parent families, on 0808 801 0323 and [info@clanchildlaw.org](mailto:info@clanchildlaw.org)
- [Shared Parenting Scotland](#), a charity supporting separated families, on 0131 557 2440 and [info@sharedparenting.scot](mailto:info@sharedparenting.scot)
- [Families Need Fathers](#), a charity offering support to both parents, on 0300 0300 363
- [Gingerbread Northern Ireland](#): 028 9023 1417

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