



## BRIEFING PAPER

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# Child maintenance: income in the CMS formula (including why gross income is used, and annual reviews)

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[Victor plays train](#) by [Guillaume Brialon](#). Licensed under [CC BY 2.0](#) / image cropped.

## Summary

This House of Commons Library briefing note sets out how the Child Maintenance Service (CMS) uses, collects and reviews the income of the non-resident parent under the 2012 statutory child maintenance scheme.

The non-resident parent's gross weekly income is used to determine which rate of child maintenance they should pay and, if it is over £100 (but they are not in receipt of certain benefits or pension payments), the amount of child maintenance for which they are liable.

One feature of the 2012 scheme is that, in most cases, the CMS collates income data from tax returns submitted to HM Revenue and Customs (HMRC) – hence the change to gross weekly income in the current statutory scheme (from net weekly income used in the 2003 scheme). However, adjustments were made to the rates used to calculate child maintenance to compensate for this change.

This note considers how the CMS collates income data, the annual review process (and the periodic income check in cases where the non-resident parent submits their own data), and when a change in income does – and doesn't – have to be reported to the CMS.

The note also highlights the policy rationale for the 25% threshold for a change in income to affect the child maintenance calculation, and why only the non-resident parent's income is taken into account.

The definition of gross weekly income used by the CMS excludes payments into a pension, and further details on this matter including case law is highlighted in the final section of this note.

This note applies to Great Britain only (i.e. United Kingdom excluding Northern Ireland).

## 1. The different statutory child maintenance schemes

There are currently three statutory child support schemes operating in Great Britain under the *Child Support Act 1991*. The 1993 and 2003 schemes are both legacy schemes closed to new applicants and administered by the Child Support Agency (CSA). The 2012 scheme is open to new applicants while those with existing CSA cases are being asked if they wish to transfer to it; it is administered by the Child Maintenance Service (CMS).

The Department for Work and Pensions (DWP) is the responsible Government department.

## 2. Quick introduction to child maintenance terminology

- “Non-resident parent” – also referred to as the “paying parent” in CMS literature, is a parent of the child; the non-resident parent does not live with the child;
- “person with care” – also referred to as the “receiving parent” in CMS literature, is the person who “actually and usually” provides day-to-day care of the child. The person with care does not have to be a parent of the child or someone with legal “parental responsibility” for the child.<sup>1</sup> It could, for example, be an older sibling or a friend of the child that the child is living with. It cannot be a local authority (e.g. where a child is looked after in local authority care) or someone with whom a local authority has placed a child (e.g. a local authority foster carer);
- the “qualifying child” – the child for whom child maintenance is payable. For child maintenance purposes the child has to be either:
  - under 16, or
  - aged 16 to 19 years inclusive and either Child Benefit is payable in respect of them (even if it is not actually paid),<sup>2</sup> or they are receiving full-time, non-advanced education (e.g. A-levels).

A young person does not count as being a qualifying child if they are or have been married or in a civil partnership.<sup>3</sup>

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<sup>1</sup> For information on “parental responsibility”, see the Library briefing paper [Children: parental responsibility - what is it and how is it gained and lost \(England and Wales\)](#).

<sup>2</sup> Some parents may choose to forego payment of Child Benefit following the introduction of the High Income Child Benefit Charge.

<sup>3</sup> Child Poverty Action Group, *Child Support Handbook 2018/19*, 2018, pp8–15

### 3. Why income is important for the statutory child maintenance scheme

Firstly, the amount of gross weekly income determines which rate of child maintenance the non-resident parent should pay. Specifically if their gross weekly income is:

- under £7 (or certain circumstances apply) they pay the **nil rate**;
- £100 or less, or they are in receipt of certain welfare benefits or pension payments, they pay the **flat rate** (£7);
- between £100 and £200, the **reduced rate** is payable, which is a hybrid of the flat rate of £7 plus a proportion of any gross weekly income over £100;
- £200 to £800, the **basic rate** which calculates child maintenance as a percentage of their gross weekly income;
- more than £800, the **basic plus rate** which takes the same approach as the basic rate but uses lower percentage rates to take account of the higher rate of tax applied to higher levels of gross weekly income.

Once it has been determined which rate of child maintenance a non-resident parent should be liable for, then for the reduced, basic and basic plus rates, the non-resident parent's gross weekly income determines how much child maintenance they have to pay.

For more information on the child maintenance formula, including the other factors that come in play such as the number of children for whom child maintenance is payable, and overnight and shared care, see the Library briefing paper, [Child maintenance: how it is calculated under the 2012 CMS scheme \(UK excluding NI\)](#).

### 4. Gross weekly income – what it does, and doesn't, include

Child maintenance is calculated on the basis of the non-resident parent's gross salary i.e. before deducting Income Tax and National Insurance.

However, the CMS definition is not simply the gross salary figure, but rather that figure *after* occupational or personal pension scheme contributions have been deducted.<sup>4</sup>

This means it is possible for a non-resident parent to reduce the gross weekly income figure that CMS uses – and so reduce their child maintenance liability – by increasing their pension contributions. For more information on this point, see section 11.

In addition, the non-resident parent may have interest from savings ("unearned taxable income") or pay their income to their partner. These are not automatically included in the child maintenance calculation, but rather a "variation" has to be applied for.<sup>5</sup>

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<sup>4</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, p6

<sup>5</sup> For more information, see the Library briefing paper, [Child maintenance: variations, including "unearned income" rules \(UK excluding NI\)](#).

## 5. The use of gross, rather than net, income in the CMS formula

### 5.1 The rationale for the change from net to gross income

While under the 2012 statutory child maintenance scheme the CMS uses the non-resident parent's *gross* weekly income in its formula to calculate the amount of child maintenance due, in contrast under the previous 1993 and 2003 schemes its predecessor, the CSA, used *net* weekly income.

The key rationale for moving to the gross salary approach was to allow the CMS and HMRC databases to "talk" to one another, and so allow the CMS to more easily obtain information about the non-resident parent's salary (however, other income sources held by HMRC such as unearned taxable income are not routinely shared).

In the White Paper that laid the foundations for the 2012 scheme, the DWP explained:

Under existing arrangements, changes in the amount of earnings are not routinely reported to the Child Support Agency and cases are not regularly reviewed. As such, the future child maintenance scheme [i.e. the 2012 scheme], based on historic tax-year data, with a system of annual reassessment, is likely to calculate a liability on a more up-to-date income basis than is currently the case ... Given the existing information flows between HM Revenue & Customs and the Department for Work and Pensions, the use of gross income is necessary if we are to use tax-year data. Since this ensures a swifter assessment of income, we have therefore decided to proceed with this proposal.<sup>6</sup>

This approach means that in many cases the CMS uses the latest full tax year data from HMRC without needing to request it from the non-resident parent. However, the downside is that, by using such data, the non-resident parent's historic income, rather than their current income,<sup>7</sup> is used in the calculation of child maintenance.

### 5.2 Adjustment of the formula to account for the move to gross income

In order to ensure that the change from using net weekly income to gross did not affect how much (in cash terms) maintenance was paid, the rates applied to a non-resident parent's income were adjusted downwards to take account of the prevailing income tax rates.

For example, when child maintenance is paid for a single qualifying child, instead of the 15% rate used under the 2003 net weekly income scheme, under the 2012 scheme, it is calculated at:

- the "basic rate" of 12% for gross weekly income of between £200 and £800 (to adjust for the standard income tax rate); and

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<sup>6</sup> Department for Work and Pensions, [A new system of child maintenance – Summary of responses to the consultation](#), Cm 7061, May 2007, pp52 and 53, paras 4.8 and 4.14

<sup>7</sup> The non-resident parent's current income was used when calculating child maintenance under the previous 1993 and 2003 schemes.

- the lower “basic plus rate” of 9% for any gross weekly income of between £800 and £3,000 (in order to adjust for the higher income tax rate).<sup>8</sup>

As the then Parliamentary Under-Secretary of State for Work and Pensions, James Plaskitt, explained during the passage of the legislation for the 2012 scheme, the new rates were chosen:

to match the new calculations as closely as possible in cash terms with the current assessments, thereby smoothing the transition. No new dispensation and no favours are being introduced for people on higher incomes. Instead, a level playing is being retained in relation to the current maintenance. That has to be done, because of the move from net to gross figures for calculation purposes.<sup>9</sup>

### 5.3 Scope to review the rates

Because of the use of gross weekly income, there is a need to tie the thresholds for the different rates of child maintenance to the income tax brackets.

During the passage of the legislation for the 2012 scheme, Mr Plaskitt told the House:

There is provision whereby if that were to change—for example, if a Chancellor were substantially to alter the point at which 40 per cent. marginal rates became applicable—regulations could be made to change the threshold point in line with any alteration that had been made in the Budget in respect of the 40 per cent. band. That would keep it consistent and the facility would be there to make the necessary change.<sup>10</sup>

In addition to the thresholds at which a person becomes liable for the standard and higher rate of income tax, as noted above the actual rates of income tax set by the Government were been factored into the reduced, basic and basic plus rates in the 2012 child maintenance scheme so that the change from net weekly income to gross income did not affect the actual amount of child maintenance paid.

To date, no changes have been made to either the thresholds for the different rates of child maintenance or (for the reduced, basic and basic plus rates) the percentage rates applied to a non-resident parent’s gross weekly income.

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<sup>8</sup> The 2012 child maintenance scheme cannot consider gross weekly income in excess of £3,000; instead an application can be made to the courts for periodic payments of maintenance in respect of income in excess of the threshold.

<sup>9</sup> [PBC Deb 9 October 2007 c277](#)

<sup>10</sup> [PBC Deb 9 October 2007 c277](#)

## 6. How the CMS collates income data for the initial calculation

When calculating child maintenance for the first time, the CMS requests income data from either:

- HM Revenue and Customs (HMRC); or
- the non-resident parent.

Income data can be supplied by the non-resident parent, their employer or a third party (such as an accountant).

Where the CMS cannot obtain income data for a non-resident parent, then it assumes a level of income. (see section 6.3)

### 6.1 Historic income data from HM Revenue and Customs

The CMS explains that “in most cases” it uses HMRC data on the non-resident parent’s gross annual income to work out their gross weekly income.

The CMS explains: “we always use the latest available information and make sure it is for a complete tax year. A tax year is any 12-month period for which the government works out an amount of income tax that must be paid”.<sup>11</sup>

If the latest tax year is not available, then the CMS uses income data from the most recent year going back to a maximum of six years.<sup>12</sup> The CMS notes that “we will always tell the paying parent and the receiving parent which tax year has been used to get the gross annual income information”.<sup>13</sup>

Before finalising the child maintenance calculation, the CMS sends a letter to the non-resident parent which details the provisional weekly child maintenance calculation and how it has been worked out. It also gives the HMRC income figure that has been used for the calculation and asks the non-resident parent to call the CMS within the next 14 days to discuss it – for example, to provide details of their current income if this is more than 25% different to the figure supplied by HMRC (section 6.2).<sup>14</sup>

In addition, the person with care is informed of the income figure used in the initial calculation letter (although they are not sent the provisional calculation figure). It should be noted that the person with care will have “Mandatory Reconsideration” rights to challenge the assessment if they think the CMS have used the wrong information.<sup>15</sup> They can also apply for a variation if they believe the non-resident parent has not disclosed their true income (for example, because they are diverting it to a new partner) or if they have significant unearned taxable income.<sup>16</sup>

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<sup>11</sup> Child Maintenance Service, [How we work out child maintenance](#), February 2017, p7

<sup>12</sup> Child Poverty Action Group, [Child Support Handbook 2018/19](#), p68

<sup>13</sup> Child Maintenance Service, [How we work out child maintenance](#), February 2017, p7

<sup>14</sup> Email from DWP official to the House of Commons Library, 2 November 2018

<sup>15</sup> Email from DWP official to the House of Commons Library, 2 November 2018

<sup>16</sup> For more information, see the Library briefing paper, [Child maintenance: variations, including "unearned income" rules \(UK excluding NI\)](#).



## 6.2 Current income data from the non-resident parent

Where either:

- the CMS is unable to obtain historic income data from HMRC – due to data sharing problems for example, or because HMRC does not have such data; or
- the non-resident parent tells the CMS that their current income is at least 25% different (higher or lower) than the HMRC data that the CMS proposes to use

then the non-resident parent's current income will be used in the child maintenance calculation instead.

On the second bullet point, the CMS notes that:

A paying parent, their employer or their accountant can send proof of gross annual income direct to us if they want.

But we will only use this amount to work out child maintenance if it is at least 25 percent more or less than the income figure given to HMRC by the paying parent, their employer or their accountant.

The proof we need to confirm a change to income of at least 25 percent is a single taxable gross income figure. You can get this from your employer or from a recent self-assessment tax return. The figure you give us should allow us to work out a weekly amount of income. The change to your income should be one that is likely to be a permanent or long-term change.<sup>17</sup>

The CMS also notes that the person with care "can also tell us if they have a reason to believe the paying parent's income is different to the amount we've used to work out child maintenance".<sup>18</sup>

## 6.3 No income data

Where the CMS is unable to obtain either historic or current information about the non-resident parent's income, then it can either make:

- a best evidence assessment, or
- a default maintenance decision.

A **best evidence assessment** can be made where the CMS has details about the non-resident parent's past income, or if it is satisfied that the non-resident parent works in a particular occupation.

The CMS can use the official Annual Survey of Hours and Earnings (ASHE) to estimate a non-resident parent's income based on the average income for their profession for the area of the UK in which they live – the ASHE "has information about the levels, distribution and make-up of earnings and hours worked for employees in all industries and occupations".<sup>19</sup>

Alternatively, where this is not possible, then the CMS can make a **default maintenance decision**. The applicable weekly rates are:

- £39 for one child;
- £51 for two children;

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<sup>17</sup> Child Maintenance Service, [How we work out child maintenance](#), February 2017, p8

<sup>18</sup> As above, p8

<sup>19</sup> As above, pp10–11 and Child Poverty Action Group, *Child Support Handbook 2018/19*, pp72–73

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- £64 for three or more children.<sup>20</sup>

Unlike the standard child maintenance calculation method, no adjustment is made if the non-resident parent is responsible for children in a new relationship (known as “relevant other children”).<sup>21</sup>

If the non-resident parent’s child maintenance calculation (when it is made) is greater than the default maintenance decision, then the difference between the two is accrued as arrears that have to be repaid.

However, for those non-resident parent’s for whom the default maintenance amount is greater than the amount of child maintenance they should have been paying, there is no scope for the difference to be repaid to them.

Furthermore, the CMS notes that:

It is a criminal offence if a person:

- doesn’t give us information when we ask for it, or
- gives us information that they know is untrue.

If convicted, they can be fined up to £1,000.<sup>22</sup>

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<sup>20</sup> Child Maintenance Service, [How we work out child maintenance](#), February 2017, p11

<sup>21</sup> Child Poverty Action Group, *Child Support Handbook 2018/19*, p125

<sup>22</sup> Child Maintenance Service, [How we work out child maintenance](#), February 2017, p11

## 7. The CMS's annual review of income data

### 7.1 Overview

The CMS will review the figure it uses for the non-resident parent's income once a year, although the method of the review – and the need for a “periodic income check” – will depend on how the existing income figure used by the CMS was submitted to it.

The Annual Review usually takes place on the anniversary of the date when a non-resident parent was told about a child maintenance application.<sup>23</sup>

The Annual Review checks to see if the non-resident parent's income has changed – for example, comparing the income for the latest (newly available) tax year to that currently used in the CMS's calculation. However, the CMS takes the opportunity to review other factors included in the calculation – which can be submitted by the non-resident parent or person with care during the 20 day consultation period – including:

- to see if the current payment arrangement is appropriate e.g. would Direct Pay be more appropriate for an existing Collect and Pay case;<sup>24</sup>
- changes to shared overnight care arrangements;
- if the non-resident parent is supporting other children (“relevant other children”);
- changes to the non-resident parent's pension payments.<sup>25</sup>

### 7.2 Existing income data supplied by HMRC (i.e. historic income)

The annual review process is as follows:

- 30 days before the Annual Review date – the CMS obtains the latest income data for the non-resident parent from HMRC, usually the latest available tax year;
- the CMS then calculates the new child maintenance figure using the latest gross income figure – it always uses the new figure from HMRC irrespective of the 25% change in income threshold used elsewhere in this regard;
- the CMS informs both the non-resident parent and the person with care of the following:
  - the gross weekly income figure (and other information) used in the new calculation;
  - the weekly amount of child maintenance that will be paid from the Annual Review date; and
  - how this amount has been calculated.

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<sup>23</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, p5

<sup>24</sup> Under the 2012 statutory child maintenance scheme, if a case is a “Collect and Pay” case – where the non-resident parent pays the CMS who then passes the money onto the person with care – then ongoing fees are charged of a 20% surcharge (of the child maintenance amount) to the non-resident parent and a 4% deduction from the amount of maintenance from the person with care. The CMS can only exercise its collection and enforcement powers if a case is on the Collect and Pay scheme. However, where a non-resident parent is paying child maintenance on time and in full, then the case could be transferred to “Direct Pay” – which as its name suggests is where the non-resident parent pays the person with care directly and for which there are no ongoing CMS charges.

<sup>25</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, p6

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- the non-resident parent and the person with care have 20 days to submit any changes to the income figure used or other factors in the calculation (see section 7.1 above).

It should be noted that if the non-resident parent's current income is different to the latest income data figure from HMRC that the CMS is proposing to use, then the difference has to be 25% or greater (higher or lower) for the CMS to use the current income figure;<sup>26</sup>

- on the Annual Review date, the CMS makes its child maintenance decision which lasts for another 12 months, unless it is informed of a change of circumstances. The non-resident parent is sent a "Payment Plan" and the person with care receives an "Expected Payments Plan", and both receive a statement showing all the payments paid or received during the past 12 months.<sup>27</sup>

### 7.3 Existing income data submitted direct to the CMS by the non-resident parent (i.e. current income)

#### Annual review

The annual review process is as follows:

- 30 days before the Annual Review date, the CMS obtains the latest income data for the non-resident parent from HMRC, usually for the latest available tax year;
- the CMS compares this amount to the current income amount it has been using:
  - the CMS uses the HMRC data if the difference between the two figures is less than 25%;
  - the CMS continues to use the current income amount (meaning the child maintenance calculation is unchanged, assuming nothing else changes) if the difference is more than 25%;
- the CMS informs both the non-resident parent and the person with care of the following:
  - the gross weekly income figure (and other information) used;
  - the weekly amount of child maintenance that will be paid from the Annual Review date; and
  - how this amount has been worked out.
- the non-resident parent and the person with care have 20 days to submit any changes to the income figure used (including for the non-resident parent their latest current income) or other factors in the calculation (see section 7.1 above).

It should be noted that if the non-resident parent's current income is different to the income figure that the CMS is proposing to use, then the difference has to be 25% or greater for the CMS to use the non-resident parent's latest current income figure;<sup>28</sup>

- on the Annual Review date, the CMS makes its child maintenance decision which lasts for another 12 months, unless it is informed of a change of circumstances. The non-resident parent is sent a "Payment Plan" and the person with care receives an

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<sup>26</sup> If the CMS is informed of a change in the non-resident parent's income and it accepts this change, then it may also change the amount of child maintenance being paid up to the date of the Annual Review.

<sup>27</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, pp10–12

<sup>28</sup> If the CMS is informed of a change in the non-resident parent's income and it accepts this change, then it may also change the amount of child maintenance being paid up to the date of the Annual Review.

“Expected Payments Plan”, and both receive a statement showing all the payments paid or received during the past 12 months.<sup>29</sup>

### Periodic current income check

If a child maintenance decision is based on a non-resident parent’s current income, then the CMS may undertake a “periodic income check” in order to validate that income figure. The CMS says that “this is the yearly check of an income figure given to us [direct] by a paying parent, their employer or a third party”.<sup>30</sup>

For an example of how the annual review and periodic current income check interact, see page 12 of the CMS guidance, [Changes you need to tell us about](#) (November 2013).

The CMS notes that:

A periodic check is likely to happen if the current income figure has not been updated at the annual review and is still at least 25 per cent different from the updated historic income figure obtained at the review.<sup>31</sup>

In terms of the process of the periodic income check:

- where the CMS has been told the non-resident parent’s current income, and that figure “has been in place and unchanged for at least 11 months”, then the CMS “will ask you [the non-resident parent] for more proof so we can check if this figure has changed by at least 25 per cent or not”;
- the CMS compares this to the latest HMRC historic income data available:
  - the CMS uses the HMRC data if the difference between the two figures is less than 25%;
  - the CMS uses the updated current income amount submitted by the non-resident parent if the difference is more than 25%;
  - If no up-to-date proof of income is submitted by the non-resident parent, the CMS may use the most recent historic income figure from HMRC.

Unlike the annual review process, there is no 20 day review period.<sup>32</sup>

## 7.4 If the CMS cannot get an up-to-date income figure for the Annual Review

As noted above, 30 days before the Annual Review date, the CMS seeks an updated income figure for the non-resident parent.

The course of action that the CMS will take if it does not receive or cannot obtain an up-to-date income figure at the annual review depends on how the last income figure was submitted:

- If the non-resident parent’s historic income – obtained from HMRC – was being used in the child maintenance calculation, then for the Annual Review the CMS seeks income data from HMRC and the non-resident parent (see section 7.2 for more detail).

If the CMS has not received the information it needs to make a child maintenance decision by the Annual Review date, then it can make either a best evidence assessment, or a default maintenance decision (for more information, see section 6.3 above). The CMS states that if it takes either course of action, it writes to both

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<sup>29</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, pp14–17

<sup>30</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, p17

<sup>31</sup> Child Poverty Action Group, [Child Support Handbook 2018/19](#), p76

<sup>32</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, pp17–18

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the non-resident parent and the person with care to inform them of this, and it will also “ask the paying parent [non-resident parent] for information about their income at regular intervals after the Annual Review date”.

- if the child maintenance calculation is based on the non-resident parent’s current income, then the CMS will then continue to use that figure until the periodic income check takes place. If the CMS do not get up-to-date proof of income from the non-resident parent at the periodic income check, then it will “use the most recent figure given to HMRC to make a new child maintenance decision”.

The non-resident parent is sent a “Payment Plan” and the person with care receives an “Expected Payments Plan”, and both receive a statement showing all the payments paid or received during the past 12 months.<sup>33</sup>

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<sup>33</sup> Child Maintenance Service, [The Annual Review - How it works](#), November 2013, p18 and pp20–22

## 8. When does – and doesn't – a change in income have to be reported

In addition to the annual review and the periodic income check, a non-resident parent or a person with care can inform the CMS of a change of income at any point – to do so is to request a “supersession”.

In terms of reporting a change in income to the CMS outside of the Annual Review process, the rules in this regard depend on how the income figure currently being used by the CMS was given to it:

- CMS using historic income (from HMRC) – a non-resident parent's current income must be at least 25% different from the historic figure that the CMS is using. The non-resident parent does not need to inform the CMS of this change;
- CMS using current income – a non-resident parent (who is not self-employed) must tell the CMS within seven working days if:
  - their current income is 25% or more higher than the figure used by the CMS;
  - they had been eligible for the nil rate of child maintenance, but their income subsequently increases to £7 per week or more.

The CMS adds that “the change to your income should be one that is likely to stay the same for the foreseeable future”.

Failure to inform the CMS of either of these changes may result in the non-resident parent being prosecuted and, if found guilty, fined up to £1,000. In addition, child maintenance payments may also be backdated to the date when the change happened.

The non-resident parent may tell the CMS if their gross income falls by 25 per cent or more, but they are not required to do so.<sup>34</sup>

- CMS using current income for self-employed non-resident parents – the CMS states that a non-resident parent does “not have to tell us about changes to your gross weekly income within seven days if you are self-employed. This is because you would not be able to tell if a 25 per cent change had taken place until the end of the financial year”. In such cases, the CMS uses the Annual Review to make sure that child maintenance payments are kept up to date. Non-resident parents may tell the CMS of a change of income in excess of 25 per cent if they wish by sending the CMS an up-to-date self-assessment tax return.<sup>35</sup>

It should be noted that certain other changes have to be reported to the CMS; to fail to do so can result in a fine. For more information, see the CMS factsheets:

- [I'm a paying parent. What changes do I need to tell you about?](#)
- [I'm a receiving parent. What changes do I need to tell you about?](#)

and the CMS guidance

- [Changes you need to tell us about.](#)

<sup>34</sup> Child Maintenance Service, [Changes you need to tell us about](#), November 2013, pp8–10

<sup>35</sup> Child Maintenance Service, [Changes you need to tell us about](#), November 2013, p13

## 9. Why only the non-resident parent's income is taken into account

A fairly common question to the Library is why is only the non-resident parent's income taken into account when calculating child maintenance, especially if their new partner has a high-paying job. Also, some non-resident parents ask their MP why neither the person with care's income, nor that of a new partner, is taken into account.

### 9.1 The original (1993) statutory child maintenance scheme

#### Partner of the non-resident parent

Under the original, 1993, child maintenance scheme, it was the case that the income of both the non-resident parent and their partner (if applicable) were taken into account, although the non-resident parent's partner was not expected to contribute towards child maintenance – rather, their income could affect the amount that the non-resident parent had to pay.

As the then Department for Work and Pensions Minister, James Plaskitt, explained to the House in 2008:

In the old child support scheme [the 1993 scheme], the non-resident parent's partner's income may be taken into account in order to assess the extent to which the partner may be expected to contribute financially to the upkeep of any children of their relationship, and to ensure that that family has sufficient disposable income to meet their day-to-day needs. This could affect the amount of maintenance that the non-resident parent must pay [to the person with care].<sup>36</sup>

#### Person with care

The income of the person with care was also taken into account under the 1993 child maintenance scheme. The CSA explained:

We work out the parent with care's assessable income because sometimes they will have enough income to contribute more towards the everyday living costs of their child or children.

If the parent with care has a net income that is greater than their exempt income, they will have an assessable income. This means they can contribute more towards the everyday living costs of their child or children. So we may reduce the amount of child maintenance the non-resident parent has to pay to reflect this.

The parent with care does not have to pay any child maintenance, but they will get less child maintenance because they can contribute more to the everyday living costs of their child or children.

However, many parents with care will have no assessable income, particularly if they receive income-related benefits, or if they are working and get Working Tax Credit.<sup>37</sup>

#### Partner of the person with care

The CSA said that, under the 1993 scheme:

In general, we don't take account of the income of the parent with care's partner, if they have one, when working out how much child maintenance must be paid. The exception is when the parent with care has a child or children with a new partner, and

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<sup>36</sup> [HC Deb 28 January 2008 c61W](#)

<sup>37</sup> Child Support Agency, [Your child maintenance assessment and help in meeting exceptional circumstances](#), CSA2024, October 2013, p35



the new partner can contribute to the everyday living costs of these children. If so, we can reduce the amount of exempt income ... and this in turn can affect the amount of assessable income of the parent with care.<sup>38</sup>

## 9.2 The 2003 and 2012 schemes – rationale for only including the non-resident parent’s income

The inclusion of the income of people other than the non-resident parent were part of a huge number of factors that were used to calculate child maintenance in the 1993 statutory scheme.

As the then Social Security Secretary, Alistair Darling, explained, “about 100 items of information” were needed to calculate child maintenance, meaning that child maintenance would have to be recalculated if any of those variables changes, and also that, as the Secretary of State put it, “a parent who is simply stringing the agency—and, more important, the child—along can delay, or refuse to hand over certain bits of information”.<sup>39</sup>

The replacement for the complicated and unwieldy 1993 child maintenance scheme was set out in a 1998 Green Paper consultation document, *Children first: a new approach to child support* (Cm 3992), which was followed in July 1999 by a White Paper entitled *A new contract for welfare – Children’s Rights and Parent’s responsibilities*.

The features of the 2003 statutory child support scheme, which is referred to below, similarly apply to the current 2012 scheme in this area.

On the issue of the incomes of the person with care, and also their partner, and the calculation of child maintenance, the White Paper stated:

The percentage rate system we propose [for the 2003 scheme] ignores the income of the parent with care. There is no need to reduce the rate because the parent with care has an income of her own. She already contributes to the cost of bringing up children by caring for them in her home. And the child support rates are intended to produce a fair assessment of maintenance on the basis of non-resident parents’ income alone.

Taking into account the income of parents with care would make the new scheme much more complicated. It would give unfairly low levels of maintenance in some cases. And we would face calls to consider other income coming into both parent’s households, such as the earnings of a new partner. This would lead us back to all the old complications.

In any case, the practical effect would be minimal. For 96 per cent of non-resident parents who have a full assessment under the current scheme, the parent with care’s net weekly income is less than £100. Fewer than 6,000 parents with care who have a child support assessment now have an income of more than £200 per week. To create complex rules for such a small group is undesirable and unnecessary.<sup>40</sup>

More recently, the Department for Work and Pensions (DWP) provided the following rationale in a Q&A guide to the 2003 scheme published in 2012:

**The parent with care has more money and/or a high earning new partner, why should the non-resident parent continue to pay maintenance?**

<sup>38</sup> Child Support Agency, [Your child maintenance assessment and help in meeting exceptional circumstances](#), CSA2024, October 2013, p36

<sup>39</sup> [HC Deb 11 January 2000 c153](#)

<sup>40</sup> Department for Social Security, *A new contract for welfare – Children’s Rights and Parent’s responsibilities*, Cm 4349, July 1999, p14, paras 32–34

**The non-resident parent now has a new partner and children to support, why should they continue to pay maintenance?**

The principle underpinning the statutory child maintenance service is that a parent's responsibility to support his or her child is an obligation which should have the highest priority and that this financial responsibility is absolute. Child maintenance is a contribution towards the cost of bringing up a child and this includes not only such items as food and clothing but also it is a contribution towards the home that the child lives in and the associated costs of running that home.

Under the 2003 child maintenance scheme the income of the parent with care or their partner is not relevant to the child maintenance calculation and does not affect the non-resident parent's liability to contribute to the support of their child or children. The child maintenance calculation is based entirely on the net income of a non-resident parent and is an approximation of what they would spend if their child lived with them. Allowances are applicable if the non-resident has other children living within their household.

The statutory child maintenance service does not guarantee a particular financial outcome for a child within the service; it ensures parents take a degree of financial responsibility for their children. What the parent with care is receiving should not remove the responsibility of a non-resident parent to support their child and in most cases the parent with care will be supporting the child through the provision of a home and related expenses. This is why the majority of non-resident parents, including those with lower incomes or who are receiving benefits, are required to make at least some contribution to the support of their child.<sup>41</sup>

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<sup>41</sup> Department for Work and Pensions, [Child maintenance frequently asked questions](#), August 2012, pp32–33 [Retrieved via "Wayback Machine"]

## 10. Why 25% is the threshold for a change in income used to trigger a recalculation

As noted above, the figure of “25 per cent” – in terms of a change in gross weekly income – is the “magic” number under the 2012 statutory child maintenance scheme: if the non-resident parent’s income changes (in either direction) by 25% or more, then child maintenance is recalculated (with some exceptions, see sections 6 and 7).

In contrast, under the predecessor 2003 statutory child maintenance scheme a change in income of only 5% was required. In later years, the DWP described this low threshold as “a failing” of the scheme, explaining that this approach meant that relatively small changes in income meant that:

the maintenance award has to be recalculated, with consequent changes to payments. Such instability can create uncertainty for parents about their income and results in staff having to review a maintenance award, diverting their time and effort away from keeping money flowing to children.<sup>42</sup>

By using a higher threshold for the change in income, which fewer non-resident parents would ordinarily be expected to exceed, it would provide “an opportunity to fix maintenance awards for a period of time so reducing the number of cases where changes of circumstances are reported”. However, the DWP conceded that:

The system needs to be sufficiently flexible to deal with major changes in circumstances or unexpected events. In some instances therefore awards would be altered, such as a move in or out of employment or the death of a qualifying child. If income changes in the year, so that it differs by 25 per cent from the figure produced by the tax year data, then the maintenance liability will reflect the new income figure.<sup>43</sup>

The rationale for the 25% threshold was set out in an answer to a parliamentary question given by the then Pensions Minister in December 2014:

In determining the level of threshold the criteria considered were: to set a threshold which offered a stable maintenance liability to provide greater certainty to both parents whilst also remaining fair in dealing with unexpected and major changes in circumstances; and, to also set the threshold at a level which supports operational efficiency and secures the right balance between recalculating maintenance and collection and enforcement activity.<sup>44</sup>

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<sup>42</sup> Department for Work and Pensions, [Impact Assessment: The Child Support Maintenance Calculation Regulations 2012](#), 29 March 2012, p11, para 47

<sup>43</sup> As above, p11, para 48

<sup>44</sup> [PQ 218234 15 December 2014](#)

## 11. Pension payments and gross weekly income

The Child Support Handbook published by the Child Poverty Action Group notes that:

There is no limit on the amount of pension contributions that can be deducted [from gross weekly income]. If a person with care is aware of the amount of contributions and consider them to be excessive, or that arrangements have been set up deliberately to reduce liability for child support (eg, if the non-resident parent has made a salary sacrifice arrangement in return for increased employer contributions), s/he can apply for a variation of the grounds of diversion of income.<sup>45</sup>

In an article published in July 2015 on the Stowe Family Law website, it was noted that:

The matter of whether pension contributions are reasonable has previously been considered by the Upper Tribunal in *DW v CMEC* [DW being the anonymised applicant, and CMEC being the Child Maintenance and Enforcement Commission, whose role has since been taken by the Child Maintenance Group within the Department for Work and Pensions], in which the judge set out a list of factors that may be relevant, such as the age of the individual, their reasonable retirement age and what advice, if any, they have received as to the level of contributions.<sup>46</sup>

The case in question concerned the 2003 child maintenance scheme and was heard before the Upper Tribunal whose ruling was given in June 2010. The judge summarised the case as follows:

A [anonymised reference for the non-resident parent] was liable to pay P [anonymised reference for the parent with care] £87.00 weekly for child support maintenance for their child N from 12 11 2007. This was reduced to £59.00 weekly from 24 03 2008. P asked for this decision to be varied in respect of what she contended to be a diversion of income. P made her claim for a variation succinctly in an application on 19 05 2008. She ticked the box to indicate that she thought that A [the non-resident parent] “has diverted income to other persons or for purposes other than the provision of income for themselves”. She confirmed that A worked for a limited company. She then stated:

“He is diverting his money into a separate [sic] pension. He did this in September and was putting £800 per month in it for a month. Then it went down to £50. He has now changed it again to £850.00 a month because it was investigated and he was found out.”

She contended that the amount being diverted was £850.00 a month. She requested that a variation be applied to the way in which the general rule about deductions for pension contributions was applied to A’s income.<sup>47</sup>

In his ruling, the Judge stated that, having “determined the total amount of pension contributions actually being made ... in each relevant month”:

The tribunal then needs to consider whether that total is unreasonable. The effect of regulation 19(5)(b) is also to pose the opposite question. If the total pension contributions made by the individual are unreasonable, what amount is reasonable? In deciding that, I commend to the tribunal the approach taken on the facts in *CCS 2027 and 2028 2007*. The following may be relevant:

How old is the individual?

At what age is it reasonable that the individual should expect to be able to retire in the light of his or her personal and family medical history? (From April 2010 tax-

<sup>45</sup> Child Poverty Action Group, *Child Support Handbook 2018/19*, pp67–68

<sup>46</sup> Stowe Family Law LLP, [AVCs reduce child support liability](#), 8 July 2015

<sup>47</sup> Administrative Appeals Chamber, [DW v Child Maintenance and Enforcement Commission and JO \(CSM\)](#), *DW v CMEC* [2010] UKUT 196 (AAC), 9 June 2010, para 3

approved pension funds cannot in normal cases make new pension payments to anyone below the age of 55).

What entitlements will the individual have under the various pension schemes of which he or she is a member?

When will they be received?

What is the past record of pension contributions of the individual, and what other provision (for example, capital) is available to assist funding the individual's retirement?

On what advice, if any, is the individual acting in making the current level of contributions?

What proportion of current gross income is being used by the individual to fund pension contributions?

The tribunal must, of course, follow the general statutory framework for any decision on a variation. It must have in mind, for example, the general principle that "parents should be responsible for maintaining their children whenever they can afford to do so" (Child Support Act 1991, section 28E(2)(a)). And it must be satisfied that, in all the circumstances of the case, it is just and reasonable to agree to the variation, having regard to the welfare of any child likely to be affected by the variation (Section 28F(1)). I stress those points, because they emphasise that it is not only the employee's prospective pension requirements that are to be taken into account. His or her own requirements cannot be viewed in isolation in a variation case. Attention must also be paid to the current needs of the relevant children. To that extent I reject the approach taken by A in his arguments to me.<sup>48</sup>

Although, as noted above, the ruling concerned the 2003 statutory child maintenance scheme, under that scheme pension contributions are similarly deducted from weekly income (albeit net weekly income rather than gross) before calculating child maintenance, as is also the case for the 2012 scheme. Or as the Child Support Handbook states, "the way that diversion of income is interpreted [for the 2012 scheme] is the same as for the '2003 rules'".<sup>49</sup>

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<sup>48</sup> Administrative Appeals Chamber, [DW v Child Maintenance and Enforcement Commission and JO \(CSM\)](#), DW v CMEC [2010] UKUT 196 (AAC), 9 June 2010, paras 37–38

<sup>49</sup> Child Poverty Action Group, Child Support Handbook 2015/16, p118

**Other Library briefings on child maintenance**

- [Child maintenance: how it is calculated under the 2012 CMS scheme \(UK excluding NI\);](#)
- [Child maintenance: inclusion of earnings from "special occupations" in the 2012 CMS scheme;](#)
- [Child maintenance: variations, including "unearned income" rules \(UK excluding NI\);](#)
- [Child maintenance: enforcing payment of arrears \(UK excluding NI\);](#)
- [Child maintenance: cases when someone lives overseas \(England & Wales\);](#)
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