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Guide

Services

Children Law
Criminal Law & Fraud
Education Law
Employment Law
Family Law
Human Rights &
Civil Liberties
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Mental Health &
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Family Law



Parents have a legal obligation to financially support their children throughout their minority. Usually this becomes an issue where the parents have separated and the children live with one parent. The non-resident parent then has an obligation to pay maintenance to the resident parent for the benefit of the children.

The financial responsibility of parents to their children arises whether or not the parents are married to each other. It also exists regardless of whether the non-resident parent has contact with their child.

Child Support Agency

In the vast majority of cases the responsibility of enforcing parents' financial obligations falls to the Child Maintenance Enforcement Commission (CMEC) which is also sometimes referred to as the Child Support Agency (CSA).

Unless the parents can agree child maintenance between them, either parent can approach CMEC for an assessment. The court will not have jurisdiction to make orders in relation to child maintenance where CMEC is responsible. The instances where the court does have jurisdiction are set out below.

CMEC uses a prescribed formula for calculating child support whereby the non-resident parent must pay a certain percentage of their income net of tax, national insurance and pension contributions. The percentage rates are:

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

Net income taken into consideration is capped at £2,000 per week net. If the non-resident parent earns more than that, the resident parent can make an application to court for what is known as 'top-up maintenance', see below for more details.

There are also certain reductions that apply. If the non-resident parent has other children living with him/her, they will be taken into account and he/she will pay less. Similarly, if the child has frequent overnight staying contact with the non-resident parent, there will also be a reduction in child support.

Success Starts Here Free Information Guide

Services

[Children Law](#)
[Criminal Law & Fraud](#)
[Education Law](#)
[Employment Law](#)
[Family Law](#)
[Human Rights & Civil Liberties](#)
[Immigration Law](#)
[Legal Disputes](#)
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Court orders for maintenance

Below are the various types of court orders that can be issued for maintenance.

Top-up maintenance

Where a non-resident parent earns more than £104,000 per annum net, an application can be made to the court for a top-up order. Before such an order is made, the resident parent should first have applied to CMEC for the maximum award of child support.

When the court makes a top-up order, it must look at all the circumstances of the case, in particular the financial needs of the child, the available resources and the family's standard of living. The maintenance order is for the benefit of the child although the court may award a 'carer's allowance' to the resident parent.

In cases where the non-resident parent is extremely wealthy, the court has been known to make very generous orders for top-up maintenance.

Children resident overseas

The CMEC regime only applies to children living in the jurisdiction. If the children live overseas, the court has jurisdiction to make orders for maintenance where the non-resident parent lives in England and Wales.

School fees orders

The court has power to order a non-resident parent to make payments to meet the costs of education. This means that the resident parent can ask the court to make an order to cover private school fees.

Non-biological children

The CMEC regime only applies to biological or adopted children. Therefore step-children would not be covered, even if they had always been treated as the non-resident parent's own children. The court can make an order in relation to 'children of the family' and this would include step-children. In making such an order, the court would have regard to the biological parent's legal obligation to maintain their child.

Lump sum payments and settlements

The court has power to make an order for a non-resident parent to pay a lump sum or settle property for the benefit of a child. These types of orders are quite rarely made because it is necessary for the resident parent to establish that there is a capital need for the child (as opposed to the parent). It is usually only used where the non-resident parent is very wealthy.

Child maintenance orders on divorce

If the parents are married, the court can approve agreements for payment of child maintenance when either spouse applies for a financial remedy on divorce.

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Services

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Criminal Law & Fraud
Education Law
Employment Law
Family Law
Human Rights &
Civil Liberties
Immigration Law
Legal Disputes
Mental Health &
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However, if the CMEC regime applies, the court can only approve an order made by consent between the parents. It cannot impose an order if both parties do not agree.

Furthermore, any order approved by the court is only enforceable for 12 months. After that period, both parties can approach the CMEC for an assessment and this application will cancel the agreement contained in the consent order.

This is usually only a problem where the consent order provides for the non-resident parent to pay either more or less than their CMEC liability and means that these sorts of agreements are uncertain. It is therefore preferable to reach an agreement which is in line with the CMEC rate.

My partner and I can't agree on child maintenance, what should I do now?

If you cannot reach an agreement in relation to child maintenance, your first port of call will usually be CMEC.

However, you should seek the advice of a specialist family solicitor who will be able to explain the options available to you.

Useful links

Child Support Agency
www.csa.gov.uk

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