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## **Volume 3 - Variations (Chapters 27-36)**

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# Chapter 27 - Variations overview

## Introduction

**27001** An application may be made by the PWC, NRP or child in Scotland to have a maintenance calculation varied<sup>1</sup>. Variations allow some circumstances to be considered which are not taken into account in the normal maintenance calculation rules. If agreed to, a variation can lead to an adjustment to the maintenance calculation.

This guidance explains

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1 CS Act 1991, s28A(1)

## Special expenses variation categories

**27002** NRPs can apply for a reduction in child maintenance if they incur certain additional costs relating to the PWC, QC or relevant other child. PWCs cannot apply for a special expenses variation. The grounds for a special expenses variation<sup>1</sup> are

1. Contact costs, refer to [Chapter 28](#) for further information
2. Illness or disability of a relevant other child, refer to [Chapter 29](#) for further information
3. Prior debts, refer to [Chapter 30](#) for further information
4. Boarding school fees, refer to [Chapter 31](#) for further information
5. Certain payments, refer to [Chapter 32](#) for further information

1 CS Act 1991, sch4B, 2(2) and CSMC Regs 2012, reg 63 to 67

### **Additional income variation categories**

**27003** A PWC, a child in Scotland or the NRP can apply for an increase in child maintenance if the NRP has, or has control of, income that has not been taken into account in the maintenance calculation.

1. Unearned income, refer to [Chapter 33](#) for further information
2. Assets exceeding a prescribed value, refer to [Chapter 34](#) for further information
3. Earned income, refer to [Chapter 35](#) for further information
4. Diversion of income, refer to [Chapter 36](#) for further information

### **Special expenses financial thresholds**

**27004** With the exception of long term illness or disability applications, an application for special expenses will only be agreed if the expenses are equal to or exceed the threshold amount of £10.00 per week<sup>1</sup>.

1 CSMC Regs 2012, reg 68 (1)

**27005** The financial threshold avoids the administrative burden of handling applications that would have little or no effect on the maintenance calculation.

**27006** If the financial threshold is satisfied, the whole amount of the expenses claimed can be considered, DMs do not have to deduct an amount equivalent to the threshold.

**27007** If the application is based on more than one type of expense, the threshold applies separately to each type<sup>1</sup>. For example, if the NRP applies for contact costs and prior debts, both types of expenses must equal or exceed £10.00 per week individually.

1 CSMC Regs 2012, reg 68 (2)

**27008** If one or more of the expense(s) on which the application for a variation is based meet the financial threshold, but the other(s) do not, the DM will only reject the expense(s) that do not meet the threshold. The application based on the other expense(s) can be taken forward.

**27009** Where the DM considers on the evidence available that any expenses are unreasonably high or have been unreasonably incurred, the DM can apply any lower amount that they consider reasonable. This could include an amount below the financial threshold or a nil amount<sup>1</sup>. However, for contact costs the lower amount must not be so low that it prevents the NRP from maintaining contact at the frequency specified in any court order where the NRP is maintaining contact at that frequency <sup>2</sup>.

1 CSMC Regs 2012, reg 68 (3); 2 reg 68 (4)

## Variation Applications

### Who can apply for a variation

**27010** An application for a variation can be made by

1. the NRP
2. the PWC
3. the QC, if they are a child in Scotland. This means they must habitually reside in Scotland, be at least 12 years old and have applied for a maintenance calculation. See [Chapter 37: Application](#) for further guidance on the statutory meaning of habitually resident.

### When can an application for a variation be made

**27011** An application for a maintenance calculation must be in place for a variation to be considered. Applications for a variation can be made before or after a decision has been made on the maintenance calculation<sup>1</sup>.

1 CS Act 1991, s28A(3) and s28G(1)

### How does an application for a variation have to be made

**27012** Applications for a variation may be made:

1. in writing
2. by phone, or
3. via the self-service portal

**27013** The DM can require an application to be made in writing<sup>1</sup>, but this should only be done in exceptional circumstances. For example, if the applicant needs to provide detailed information and evidence that cannot easily be taken over the phone.

1 CS Act 1991, s28A(4)(a)

**27014** A variation application can be made verbally and the client does not have to include a term such as "I wish to apply for a variation".

**27015** The applicant must state the grounds on which the application is made<sup>1</sup>. This requirement is not however intended to be a barrier to people wanting to make an application and so does not mean that the applicant must use a specific form of words to identify the relevant ground. It means that there should simply be an indication from the applicant that genuine grounds for a variation exist.

1 CS Act 1991, s28A(4)(b)

**27016** Statements similar to "I know the NRP earns more, can you take it into account?" can be accepted as an application for variation under the ground of additional income.

**Note:** If the applicant states a specific ground, the application can still be treated as made on another ground, if the facts provided by the applicant indicate that the alternative ground is more appropriate<sup>1</sup>.

### **Example**

NRP John makes an application for a variation on the basis that he is paying the mortgage on the property that PWC Jean and QC Ben live in. John has applied under the ground of payments in respect of certain mortgages, loans or insurance policies. John still retains a financial interest in the property that he is paying the mortgage on and therefore it would fail under this particular ground.

The DM is able to change the ground to prior debts and as such it fully meets the criteria, without John having to make a separate or new variation application.

1 CSMC Regs 2012, reg 56 (4)

### **Current or future special expenses**

**27017** A variation cannot be considered for expenses based on an arrangement that is no longer in place at the time the application is made.

**27018** The costs on which the application is based must be:

1. in place at the time of the application, or
2. due to start at a known future date that is agreed by both parties. In these circumstances, a variation can be considered, with a future effective date, based on the estimated future expenses.

**27019** A variation can still be allowed if, by the time a decision is ready to be made, the expenses have ceased. In these circumstances, the variation should be considered for the period between the effective date of the variation and the date the expenses ceased.

## **Preliminary consideration**

**27020** Once an application has been accepted, it must be given a preliminary consideration<sup>1</sup>.

1 CS Act 1991, s28B(1)

**27021** Although it is not intended to be a barrier to prevent applications, preliminary consideration is an initial sifting process, which allows applications with no prospect of success to be filtered out at the earliest opportunity.

**27022** If an application is made on multiple grounds, then preliminary consideration is applied to each ground individually. Only the ground(s) that fail preliminary consideration would be rejected on this basis. Any other ground(s) can be taken forward.

## **Fact based reasons for rejection**

**27023** The circumstances in which an application may be rejected after preliminary consideration<sup>1</sup> are as set out in paragraphs **27024** to **27030**.

1 CS Act 1991, s28B(2) and CSMC Regs 2012, reg 57 (1)

**27024** The applicant does not state a ground for the variation or provide sufficient information to enable a ground to be identified<sup>1</sup>.

1 CSMC Regs 2012, reg 57 (1)(a)

**27025** Although a ground is stated, the DM is satisfied that the application would not be agreed to because

1. the facts alleged do not bring the case within the ground, or
2. no facts are alleged that would support the ground or could reasonably form the basis of further enquiries<sup>1</sup>

1 CSMC Regs 2012, reg 57 (1)(b)

**27026** A default maintenance decision is in force<sup>1</sup>

1 CSMC Regs 2012, reg 57 (1)(c)

**27027** The NRP is liable to pay the flat rate or nil rate under regulation 44(2) of CSMC Regs 2012 because the NRP or their partner is in receipt of a prescribed benefit<sup>1</sup> refer to [Chapter 25: Rates and](#)



[Rules](#) (paragraph 25013) for further guidance.

1 CSMC Regs 2012, reg 57 (1)(d)

**27028** In the case of an application made by the NRP on special expenses grounds

1. the amount of the expenses does not exceed the relevant threshold
2. the amount of maintenance for which the NRP is liable is equal to or less than the flat rate
3. the amount of the NRP's gross weekly income would exceed the capped amount after deducting special expenses, or
4. the NRP's gross weekly income has been determined on the basis of estimated current income<sup>1</sup>

1 CSMC Regs 2012, reg 57 (1)(e)

**27029** In the case of an application on any additional income grounds the amount of the NRP's gross weekly income (without taking that ground into account) is the capped amount<sup>1</sup>.

1 CSMC Regs 2012, reg 57 (1)(f)

**27030** DMs must use discretion when giving preliminary consideration to the grounds upon which a variation application is made and in deciding whether to accept or reject.

### **Gathering information and evidence**

**27031** If the application is not rejected at preliminary consideration, DMs need to obtain information and evidence from the applicant along with any other sources available. The information and evidence needed will depend on the type of application.<sup>1</sup>

1 CSMC Regs 2012, reg 58 (1).

**27032** Any information requested must be provided within 14 days after the date of notification of the request<sup>1</sup>. The DM may however, allow additional time if satisfied that it is reasonable in the circumstances of the case.

1 CSMC Regs 2012, reg 58(2)

**27033** Where any information or evidence requested is not provided within 14 days, or within the additional time allowed by the DM, DMs may proceed to determine the application<sup>1</sup>. For further information, refer to [Chapter 98 Evidence](#).

1 CSMC Regs 2012, reg 58(3)

## Special expenses

**27034** Special expenses applications relate to the NRP's own expenditure, therefore they are expected to provide any information and evidence needed to support their application.

**27035** For special expenses applications, DMs must obtain details of the amount and type of expenses that the NRP wants to claim. This is basic factual information that a NRP must provide for an application to be properly considered.

**27036** DMs also need to obtain appropriate documentary evidence to confirm the expenses claimed. NRPs should be encouraged to provide supporting evidence, as this will help when making an accurate decision. For further information, refer to [Chapter 98 Evidence](#).

**27037** DMs will make a decision on the balance of probabilities on cases where the NRP is unable to provide documentary evidence, by considering any factual information the NRP has provided. This includes any information and evidence provided by any other party to the calculation.

## Additional income

**27038** Additional income applications are based on the NRP's income. A PWC therefore cannot be expected to have all the evidence needed to support their application.

**27039** The legislation<sup>1</sup> places a duty on the CMS to consider any further information or evidence that is available and to take steps to obtain this information, if it is satisfied that it might affect its decision on whether to agree to a variation. For further information, refer to [Chapter 98 Evidence](#).

1 CS Act 1991, s28D(2b)

**27040** DMs must use all the information sources available to try and obtain details needed for an additional income variation.

**27041** Where there is credible information that the NRP has additional income but there is insufficient or inconclusive evidence, DMs should consider referring the case to FIU.

## Representations

**27042** Where a preliminary consideration has been given to the variation application and it has not been rejected, the DM

1. must usually give notice of the application to any other party informing them of the grounds on which the application has been made and any relevant information or evidence given by the applicant or obtained by the DM, except information or evidence falling within paragraph **27049**<sup>1</sup>, and

2. may invite representations<sup>2</sup> (which need not be in writing but must be in writing if in any case the

S of S so directs) from the other party on any matter relating to that application. Representations must be submitted to the DM within 14 days after the date of notification or such longer period as the DM is satisfied is reasonable in the circumstances of the case.

1 CSMC Regs 2012, reg 59 (1)(a); 2 reg 59 (1)(b)

**27043** It is not always necessary to notify the applicant about representations from the other party. Other parties do not need to be given notice of the application, and representations do not need to be invited

1. if it is clear from information provided by the applicant or other available sources that the variation will not be successful<sup>1</sup>. This will also apply where the applicant has not provided sufficient information to make a decision<sup>2</sup>, or
2. when reinstating a previously agreed variation (e.g. because the client has stopped receiving a prescribed benefit)<sup>3</sup>, or
3. when dealing with an additional income case and the situation outlined in paragraph **27044**<sup>4</sup> applies,
4. when dealing with a variation application in relation to assets and the value of the asset is not above the financial threshold<sup>5</sup>

1 CSMC Regs 2012, reg 59(2)(a); 2 reg 58(3); 3 reg 59(2)(c); 4 reg 59(2)(b); 5 reg 69A (5)

### **Additional income cases**

**27044** Representations do not need to be invited if

HMRC have

1. provided a nil income figure<sup>1</sup>
2. indicated that no income details are held<sup>1</sup>, or
3. provided a figure which is not above the financial threshold<sup>2</sup> **and**

the DM does not have further information that justifies making further enquiries.

1 CSMC Regs 2012, reg 59 (2), (b); 2, reg 68

### **Special expenses cases**

**27045** If any other relevant party agrees with the facts provided by the NRP, and does not wish to make any further comments, the DM can proceed with the application and decide whether to allow the

variation. It is not necessary to invite further comments from the NRP in these circumstances.

**27046** If the other party disagrees with the facts provided and submit additional information and evidence that conflicts with the details provided by the NRP, the DM may need to go back to the NRP for their comments. However, this will only be necessary if the DM is unable to make a decision on the basis of the information and evidence already submitted. For an example see the Just and Equitable paragraph **27059**.

### **Additional income cases**

**27047** Where a PWC has applied for an additional income variation, DMs must always notify the PWC about any representations made by the NRP as the information and evidence may affect the income figure used in the variation. In these circumstances the PWC must be given the opportunity to comment.

**27048** If the PWC agrees with the facts provided and does not want to make further comments, the DM can proceed with the application and decide whether to allow the variation. If the PWC disagrees with the facts provided the DM should consider referring the case to FIU or make a decision on the basis of all the available evidence.

### **Excluded information**

**27049** When giving notice of an application to any other party informing them of the grounds on which the application has been made or of any relevant information or evidence obtained, the following information should not be provided<sup>1</sup>

1. details of the nature of the long-term illness or disability of the relevant other child which forms the basis of a variation application on the ground of illness or disability of a relevant other child, where the applicant requests they should not be disclosed and the DM is satisfied that disclosure is not necessary in order to be able to determine the application<sup>2</sup>
2. medical evidence or medical advice which has not been disclosed to the applicant or the other party and which the DM considers would be harmful to the health of the applicant or that party if disclosed<sup>3</sup>, or
3. the address of the other party or QC, or any other information which could reasonably be expected to lead to that party or child being located, where the DM considers that there would be a risk of harm or undue distress to that other party or that child or any other children living with that other party if the address or information were disclosed<sup>4</sup>.

1 CSMC Regs 2012, reg 59 (5); 2, reg 59 (5)(a); 3, reg 59 (5)(b); 4, reg 59 (5)(c)

## Variation ceases, changes or is to be reinstated

**27050** A variation will cease to have effect on the maintenance calculation:

1. if the NRP becomes liable to pay the flat rate or nil rate because they or their partner are in receipt of a prescribed benefit<sup>1</sup>, or

**Note:** when the prescribed benefit is no longer payable and the NRP starts to pay a rate of maintenance, which means the variation can be allowed, the variation can be reinstated without a new variation application being made<sup>2</sup>

2. If the maintenance calculation decision has been replaced with a DMD<sup>3</sup>

1 CSMC Regs 2012, reg 75(1)(a)(i); 2, reg 75(2); 3, reg 75(1)(a)(ii)

**27051** The variation can be reinstated, if the NRP has subsequently become liable to pay a rate of child support maintenance which can be adjusted to take account of the variation

1 CSMC Regs 2012, reg 75(1)(b)

**27052** The responsibility will be on the parents to notify the CMS if there has been a change in their circumstances that might affect the variation.

**27053** If, within 30 days from the date of the decision to reinstate the variation, a parent reports that the ground(s) upon which the original variation decision was based no longer exist or something has changed, the DM should complete a revision.

**27054** There are two types of situation where the DM may need to make changes to an existing variation:

1. where there has been a change of circumstances affecting the variation that means a new decision is needed (supersession, for example if special expenses have increased, reduced or stopped), and
2. where it is identified that the original decision needs to be replaced from the original effective date (revision, for example, if an error was made when the special expenses or additional income were calculated)

## Making a decision

**27055** DMs need to consider whether the grounds for the variation are satisfied, and what the potential variation amount is, taking into account:

1. all the information and evidence provided by the applicant or obtained from other sources, and

2. any representations made by any party to the maintenance calculation.

**27056** When reaching a decision, DMs must also consider the general principles of child support law<sup>1</sup>. In particular:

1. that parents should be responsible for maintaining their children whenever they can afford to do so
2. where a parent has more than one child, their obligation to maintain any one of them should be no less of an obligation than his or her obligation to maintain any other of them.

1 CS Act 1991, s28E(2)

### **Just and Equitable**

**27057** If the grounds are satisfied, and having identified the potential variation amount, DMs need to decide whether it is just and equitable to allow the variation<sup>1</sup>. This is to ensure that any decision made is fair to all the parties.

1 CS Act 1991, s28F(1)(b)

**27058** In cases where an application is made on multiple grounds, or in cases where more than one application has been made, DMs will need to consider the overall effect that allowing the application(s) will have.

**27059** DMs must consider whether the welfare of any child might be unfavourably affected by a decision to allow the variation<sup>1</sup>. There is no additional definitive list of factors to be taken into account, save that each case must be considered individually and on its own merit.

1 CS Act 1991, s28F(2)(a)

**27060** The DM's main consideration if they allow the variation is whether it will be fair and reasonable for the maintenance calculation to be increased or reduced.

**27061** If the DM decides it is not just and equitable to allow the variation in full, or on some of the grounds applied for, they can consider allowing the variation for a reduced amount or on just some of the grounds requested.

### **Example**

PWC Jane applies for child maintenance in January 2018. HMRC's latest income information for NRP John is for 2015/16 and the calculation is based on this. Jane discovers that John's current income differs from the historic income figure by 23%. The current income figure cannot be accepted because of the tolerance rule. John applies for special expenses contact costs and Jane requests that the CMS consider refusing the application for the special expenses as John's income has increased. In this scenario, if the

DM considers that the special expenses application is a valid claim, the DM would award the special expenses, but reject the variation application on the basis that the income increase is not 25% or over.

**27062** One of the CMS's main objectives is to encourage parents to maintain contact with their children so DMs will consider the effect on the child's welfare. PWCs have the right to appeal against the decision. Refer to [Chapter 48: Appeals](#) for further guidance.

## Effect of a variation

**27063** The effect of a variation on a maintenance calculation will depend on the type of application, and on other relevant circumstances relating to the case.

## Effect of a special expenses variation

**27064** If a variation is awarded for special expenses, the NRP's gross weekly income is reduced by the weekly amount of those expenses allowed<sup>1</sup>.

1 CSMC Regs 2012, reg 72(1)

**27065** This deduction is made before any adjustment for shared care or relevant other children in the NRP's household.

## Special Expenses: gross weekly income exceeds the capped amount

**27066** In these cases, the amount allowed for the variation must be deducted from the NRP's actual gross weekly income. If this reduces the gross weekly income figure below the capped amount, then this adjusted figure should be used to calculate the new maintenance liability<sup>1</sup>.

1 CSMC Regs 2012, reg 72(2)

## Example

NRP Mark's gross weekly income is £3,200. For the maintenance calculation, this figure has been capped at £3,000. A special expenses variation is allowed for boarding school fees of £400 per week. The £400 allowed for the variation is deducted from the actual gross weekly income of £3,200, reducing the gross weekly income figure to £2,800.

**27067** If the result of subtracting special expenses from the actual gross weekly income is a figure that is above the capped amount, then the special expenses variation should be refused.

## Effect of an additional income variation

**27068** If a variation is awarded for additional income, the NRP's gross weekly income is normally increased by the weekly amount of the additional income. For assets exceeding a prescribed value, the NRP's gross weekly income will be increased by the notional income calculated as a percentage of the

assets value<sup>1</sup>.

1 CSMC Regs 2012, reg 73(1).

## **27069** Exceptions are if

1. if the adjusted income figure would exceed the capped amount, it will be capped at £3000
2. if the NRP's liability is based on the flat rate or an equivalent:
  - 2.1 DMs would identify the additional income amount
  - 2.2 calculate the NRP's liability based on this income using the usual rates and rules
  - 2.3 add the flat rate amount to this liability.

### **Example**

NRP Janice is liable to pay the Flat Rate of £7 weekly. Additional Income of £250 per week is identified. Janice has one QC Ben. Janice's liability based on her additional income will be  $12\% \times £250 = £30$ .

This amount is added to the flat rate (£7) to give a total liability of £37.

## **Effect of multiple variation applications**

**27070** If, at any time, more than one variation application is agreed to within the same period, the amounts relating to each application must be aggregated (combined) to create a single variation figure<sup>1</sup>.

1 CSMC Regs 2012, reg 74 (1)

**27071** This applies in cases where both applications are made at the same time and in circumstances where a further variation application is made while a variation amount is already in place.

### **Example**

NRP James has a contact costs variation in place. Six months later, PWC Diane applies for an unearned income variation. The resulting maintenance calculation will reflect the aggregated outcome of both applications.

## **Effect of a variation in shared care cases**

**27072** If a variation is agreed to and the NRP also has shared care<sup>1</sup>, then the shared care reduction should be applied to the varied maintenance liability<sup>2</sup> i.e. the amount reached following the variation. The system will do this automatically.

1 CS Act 1991, schedule 1 para 7; 2 CSMC Regs 2012, reg 74 (2),(3),(4)





## Chapter 28 - Contact costs

### Introduction

**28001** Contact costs<sup>1</sup> are certain expenses for travel and accommodation that a NRP has incurred or may reasonably be expected to incur in order to maintain regular contact with a QC. These contact costs represent a special expense, and can therefore be taken into account in the maintenance calculation. This is called a contact costs variation.

This guidance explains

[Permitted costs 28002 - 28011](#)

[NRP receives financial assistance 28012](#)

[Financial thresholds 28013](#)

1 CSMC Regs 2012, reg 63(1)

### Permitted costs

**28002** The permitted costs for a contact costs variation are set out in paragraphs **28003** to **28011**.

**28003** Public transport tickets<sup>1</sup> - Tickets for any form of public transport which are necessary for the purpose of maintaining contact with a QC.

1 CSMC Regs 2012, reg 63 (1)(a)

**28004** Fuel<sup>1</sup> - The cost of purchasing fuel for travel by private car i.e. a car which is not carrying fare-paying passengers. See paragraph 28005 for Taxi Fares and paragraph **28006** for Car Hire. If the NRP provides an account of contact costs which DMs or the PWC consider unreasonably high or to have been unreasonably incurred, DMs can use the average fuel costs provided by HMRC Advisory Fuel Rates guidance based on the mileage the NRP travels.

To calculate the contact cost, DMs will need to know the fuel type and engine size of the vehicle used by the NRP in order to choose the correct rate and multiply it by the mileage the NRP travels to maintain contact with the QC.

**Note:** Use the applicable fuel rate at the effective date of the variation.

1 CSMC Regs 2012, reg 63 (1)(b)

**28005** Taxi fares<sup>1</sup> - The taxi fare for a journey or part of a journey where the DM is satisfied that the disability or long-term illness of the NRP or the QC makes it impracticable for any other form of transport to be used for that journey or part of that journey.

**28006** Car hire<sup>1</sup> - The cost of car hire, where the cost of the journey would be less in total than it would be if public transport or taxis, or a combination of both, were used.

**28007** Overnight accommodation<sup>1</sup> - The cost of the NRP or QC's overnight accommodation may be considered a special expense where the following apply

1. the DM considers the NRP's return journey on the same day is or would be impracticable, or
2. there is an established or intended pattern of contact with the QC which includes contact over two or more consecutive days for the number of nights the Secretary of State considers appropriate in the circumstances of the case.

Where breakfast is included in the accommodation cost it may be permissible; refer further to Minor incidental costs at paragraph **28010**. The cost of meals or sundries are not permissible.

### **Example**

NRP John has a contact arrangement allowing him to spend every other Saturday and Sunday with QC Sarah. John and PWC Mary live 120 miles apart, and it takes 3 hours for John to travel to Mary's home.

Without an overnight stay, John would need to make a 12-hour round journey for a contact visit with Sarah. It is therefore reasonable to consider allowing an amount for overnight accommodation in these circumstances.

**28008** Court directed accommodation. Where a NRP has a court order directing that they secure a specific type of accommodation in a specific area to maintain contact with the QC a proportion of these costs must be considered.

**28009** If the DM is satisfied that a more suitable/appropriate alternative accommodation cannot be used for the purpose of maintaining contact with the QC, the NRP should be allowed the amount of the cost of only the time that they and the QC spend together in the property.

### **Example**

The rent on the property that NRP John has secured for access to the QC Sarah is £800 per month. Sarah stays overnight with John at the property 4 nights per month.

$\text{£}800 \text{ (monthly rental)} \times 12 \text{ (months)} = \text{£}9600.00 \text{ (annual rental cost)} / 365 \text{ (days)} = \text{£}26.30 \text{ (daily cost)} \times 4$

(nights) = £105.21 allowable monthly contact cost for rental of this property.

**28010** Minor incidental costs<sup>1</sup>. Minor incidental costs can be permitted if they relate to

1. toll fees or
2. other fees that are payable for the use of a particular road or bridge and/or
3. breakfast where it is included as part of the accommodation costs referred to in overnight accommodation.

1 CSMC Regs 2012, reg 63 (1)(f)

### **Example**

The NRP's journey involves travelling through specific areas of London where congestion charges apply. The cost of that charge would be an allowable contact cost.

**28011** Third party costs<sup>1</sup> Permitted costs include the cost of a person (third party) traveling with the NRP or QC where DMs are satisfied that a third party is required on the journey where

1. it is necessary due to the young age of the QC
2. long term illness or disability of the NRP
3. long term illness or disability of the QC

1 CSMC Regs 2012, reg 63 (2)

**Note:** in these circumstances, the NRP must show that it is required / reasonable for them to meet the third party's costs.

### **Examples**

1. The presence of a third party<sup>1</sup> may be considered reasonable if the NRP or QC has a health condition which makes it impracticable for them to travel alone.
2. The presence of a third party may be accepted if a court decision requires any form of contact to be supervised.

### **NRP receives financial assistance**

**28012** Where, at the date on which the variation application is made, the NRP has received, is in receipt of or will receive financial assistance towards the contact costs, other than a loan, that amount must be deducted from the contact costs total before the variation is calculated<sup>1</sup>.

1 CSMC Regs 2012, reg 63 (4)

## Example

NRP John is visiting QC Sarah. John's friend David accompanies him on the journey. The fuel cost is £40 for the journey and David gave John £20 towards the cost.

John applies for a contact costs variation for fuel. As David contributed £20, that amount must be deducted from the expenses total before John's variation is calculated.

## Financial thresholds

**28013** A special expenses variation for contact costs will only be agreed if the expenses are equal to or exceed a threshold amount<sup>1</sup>. For guidance on variation thresholds refer to the [Chapter 27-Variations Overview](#).

1 CSMC Regs 2012, reg 68

# Chapter 29 - Illness or disability of a relevant other child

## Introduction

**29001** Certain expenses incurred for the care of a ROC as a result of illness or disability can be taken into account in the maintenance calculation where the illness or disability is considered to be long term (see **29002**). This is called an illness or disability of a ROC variation.

This guidance explains

[Definitions of relevant terms 29002 - 29003](#)

[Permitted expenses 29004](#)

[NRP receives financial assistance 29005 - 29009](#)

[Excluded information 29010](#)

[Financial thresholds 29022](#)

1 CSMC Regs 2012, reg 64

## Definitions of relevant terms

**29002** Long term illness<sup>1</sup>. Long term illness is defined as an illness from which the child is suffering at the date of the application (or the date from which the variation, if agreed, would take effect) and which is likely to last for

1. at least twelve months from that date, or
2. for the rest of the relevant child's life, if that is likely to be shorter than 12 months.

1 CSMC Regs 2012, reg 64(2)(d)

**29003** Disability<sup>1</sup>. A ROC can be treated as disabled if at the time the variation application is made:

1. The daily living component of Personal Independence Payment (PIP)/the care component of Disability Living Allowance (DLA)/Armed Forces Independence Payments (AFIP)/Child Disability payment (CDP)/Adult Disability payment (ADP) are being made to or in respect of them, or have been awarded but are not yet paid, or
2. the ROC is entitled to PIP/DLA/AFIP/CDP/ADP, but benefit is not in payment because they are a patient in hospital, though they remain part of the applicant's family, or
3. the ROC is registered blind or has only ceased to be registered as blind within the last 28 days. A child who has ceased to be registered as blind, because they have regained their eyesight, should

still be considered disabled for variation purposes for a period of 28 days from the date on which they ceased to be registered.

**Note:** The mobility component of PIP or DLA does not count.

1 CSMC Regs 2012, reg 63(3), reg 64(2)(a), reg 64(2)(a)(i), reg 64(2)(a)(ii)

## **Permitted expenses**

**29004** The permitted expenses for an illness or disability of a ROC are<sup>1</sup>

1. personal care and attendance
2. personal communication needs
3. mobility
4. domestic help
5. medical aids where these cannot be provided under the health service

**Note:** where an aid or appliance can be provided by the NHS (by health services or local authorities) a variation will normally not be agreed, even if the item is not available due to lack of funds at a particular time. However, a variation can be agreed where there is likely to be a serious delay in supplying an item which could lead to the child's condition seriously deteriorating.

6. heating
7. clothing
8. laundry requirements
9. payments for food essential to comply with a diet recommended by a medical practitioner
10. adaptations required to the NRP's home
11. day care
12. rehabilitation or
13. respite care

1 CSMC Regs 2012, reg 64(1)

## **NRP receives financial assistance**

**29005** An NRP, or a member of their household, may receive financial assistance where they have expenses related to the illness or disability of a ROC. If this is the case the amount of that assistance should be deducted from the total value of the expenses before the variation is carried out.<sup>1</sup>

**29006** The financial assistance must relate to the variation application expense, e.g. if costs for a personal care variation are claimed, where DLA is in payment, the care component can be deducted from the amount claimed, but not the mobility component.

1 CSMC Regs 2012, reg 64(3)

**29007** Financial assistance may be received from a range of sources, such as<sup>1</sup>

1. grants
2. charitable funding
3. DLA, PIP, CDP, ADP and AFIP

1 CSMC Regs 2012, reg 64(3)

**29008** If DLA, PIP, CDP, ADP or AFIP<sup>1</sup> has been applied for but not yet awarded, it can be deducted if, when awarded, it will cover the effective date of the variation. If no financial assistance is in payment, then no amount should be offset against the expenses claimed.

1 CSMC Regs 2012, reg 64(3)

**29009** It is also possible for DLA/PIP/CDP/ADP/AFIP to be in payment for a ROC, but paid to a person outside the NRP's household. In these circumstances, it would be unreasonable to deduct the payment from the expenses total and no reduction should be made.

## **Excluded information**

**29010** When giving notice of the application to any other party, the following information must be excluded<sup>1</sup>

1. medical evidence or advice that has not been disclosed to the applicant or the other party and that DMs consider could be harmful to the health of the applicant or the other party if disclosed.
2. the address of the other party or qualifying child and any other information that could lead to that person or child being located.
3. details of the nature of the long term illness or disability of the ROC, if the applicant asks for these details not to be disclosed, and you are satisfied disclosure is not necessary for the application to be decided.



## **Financial thresholds**

**29011** There is no financial threshold for illness or disability of a ROC variations.

# Chapter 30 - Prior debts

## Introduction

**30001** Prior debts<sup>1</sup> are certain debts that a NRP is legally required to repay. These prior debts represent a special expense and can therefore be taken into account in the maintenance calculation. This is called a prior debts variation.

This guidance explains

[Definitions of certain terms](#) 30002

[Permitted debt](#) 30003 -30004

[Non permitted debt](#) 30005

[Financial thresholds](#) 30006

1 CSMC Regs 2012, reg 65

## Definitions of certain terms

**30002** Repairs or improvements<sup>1</sup> are defined as repairs that DMs consider are major repairs necessary to maintain the fabric of the home and any of the following:

1. installation of a fixed bath, shower, wash basin or lavatory, and necessary associated plumbing
2. damp-proofing measures
3. provision or improvement of ventilation and natural light
4. provision of electric lighting and sockets
5. provision or improvement of drainage facilities
6. improvement of the structural condition of the home
7. improvements to the facilities for the storing, preparation and cooking of food
8. provision of heating, including central heating
9. provision of storage facilities for fuel and refuse
10. improvements to the insulation of the home, or
11. other improvements which DMs consider reasonable in the circumstances.

## Permitted debt

**30003** In order to be classed as a permitted debt the debt must have been incurred<sup>1</sup>:

1. before the applicant became a NRP in relation to the QC and
2. at the time when the NRP and PWC were a couple

1 CSMC Regs 2012, reg 65 (1)

**30004** In order to be classed as a permitted debt the debt must have been any one (or more) of the following:

1. A debt incurred for the joint benefit of the NRP and the PWC.<sup>1</sup>
2. A debt incurred for the benefit of the PWC where the NRP remains legally liable to repay the whole or part of the debt. <sup>2</sup>
3. A debt incurred for the benefit of any person who is not a child, but who at the time the debt was incurred<sup>3</sup>
  - 3.1 was a child
  - 3.2 lived with the NRP and the person with care, and
  - 3.3 of whom the NRP or the PWC is the parent, or both are the parents
4. A debt incurred for the benefit of the QC<sup>4</sup>, or
5. A debt incurred for the benefit of any child, other than the QC, who, at the time the debt was incurred<sup>5</sup>
  - 5.1 lived with the NRP and the PWC, and
  - 5.2 of whom the PWC is the parent.

1 CSMC Regs 2012, reg 65 (2)(a); 2 reg 65 (2)(b); 3 reg 65 (2)(c); 4 reg 65 (2)(d); 5 65 (2)(e)

## Non permitted debt

**30005** Debts will not be permitted if they meet any of the following criteria:

1. Where the NRP has retained the use and benefit of the asset in connection with the purchase of which the debt was incurred<sup>1</sup>

2. A debt incurred for the purposes of any trade or business<sup>2</sup>
3. A gambling debt<sup>3</sup>
4. A fine imposed on the NRP<sup>4</sup>
5. Unpaid legal costs in respect of<sup>5</sup>
  - 5.1 Separation from the PWC
  - 5.2 Divorce from the PWC, or
  - 5.3 Dissolution of a civil partnership that had been formed with the PWC
6. Amounts due after use of a credit card<sup>6</sup>
7. A debt incurred by the NRP to pay for any of the items at 3, 4, 5, 6 and 10. <sup>7</sup>
8. Amounts payable by the NRP under a mortgage or loan taken out on the security of any property, except where that mortgage or loan was taken out to facilitate the purchase of, or to pay for repairs or improvements to any property, which was and continues to be, the home of the PWC and the QC<sup>8</sup>
9. Amounts payable by the NRP in respect of a policy of insurance, except where that policy of insurance was obtained or retained to discharge a mortgage, or charge taken out to facilitate the purchase of, or to pay for repairs or improvements to, any property which was and continues to be the home of the PWC and the QC<sup>9</sup>

### **Examples**

1. There is a joint mortgage between the PWC Mary and NRP John for a property where Mary and QC Jack are residing

If John is paying half of the mortgage, the DM should only consider a variation for the amount John is paying.

If John is paying the whole mortgage, the DM should consider the whole amount.

2. There is a mortgage solely in John's name. Mary and QC Jack are residing in the property. The DM should consider a variation for the full amount being paid towards the mortgage.

10. A bank overdraft, except where the overdraft was at the time it was taken out agreed to be for a specified amount repayable over a specified period<sup>10</sup>

11. A loan obtained by the NRP other than a loan obtained from a qualifying lender or the NRP's current or former employer<sup>11</sup>

12. Any other debt which the Secretary of State is satisfied is reasonable to exclude<sup>12</sup>

13. Where the repayment is being made as part of a financial settlement with the PWC or in accordance with a court order, it is not permitted for the purpose of a Prior Debts variation unless the debt was incurred for the purchase of, or to pay for repairs or improvements to, a property which was and continues to be, the home of the PWC and QC.<sup>13</sup>

14. Where the NRP is repaying a single debt that was incurred in order to clear or consolidate a number of previous debts, only consider the part of the debt that relates to a permitted debt type.<sup>14</sup>

### **Example**

When the NRP John and PWC Mary were in a relationship, John took out a £10,000 loan. £8,000 was used to buy a car and £2,000 was used to pay off an existing credit card. Following their separation, Mary retained the car and John continued to make the monthly repayments as they were legally liable for the loan. Only the element relating to the car loan can constitute a special expense. The amount used to pay off the credit card debt is not a permitted expense.

1 CSMC Regs 2012, reg 65 (3)(a); 2 reg 65 (3)(b); 3 reg 65 (3)(c); 4 reg 65 (3)(d); 5 reg 65 (3)(e); 6 reg 65 (3)(f); 7 reg 65 (3)(g); 8 reg 65 (3)(h); 9 reg 65 (3)(i); 10 reg 65 (3)(j); 11 reg 65 (3)(k); 12 reg 65 (3)(l); 13 reg 65 (4) 14 reg 65 (5)

### **Financial thresholds**

**30006** A special expenses variation for prior debt will only be agreed if the expenses are equal to or exceed a threshold amount. For guidance on variation thresholds refer to the [Chapter 27 -Variations Overview](#).

1 CSMC Regs 2012, reg 68

# Chapter 31 - Boarding school fees

## Introduction

**31001** The maintenance element of boarding school fees represents a special expense, and it can therefore be taken into account in the maintenance calculation<sup>1</sup>. This is called a boarding school fee variation.

This guidance explains

[Calculating the maintenance element](#) 31002 - 31005

[Financial thresholds](#) 31006

1 CSMC Regs 2012, reg 66

## Calculating the maintenance element

### Maintenance element of boarding school fees

**31002** Only the maintenance part of payment made may be considered for a boarding school fee variation. This means contributions made by the NRP towards the child's day to day living expenses, such as food and accommodation, can be considered, but that the contribution to the child's education cannot.

### Maintenance element not identified

**31003** Where the maintenance element cannot be identified, the DM will use an estimated amount. The maximum amount that can be allowed in these circumstances is prescribed in legislation as 35% of the total fees payable<sup>1</sup>.

1 CSMC Regs 2012, reg 66 (2)

**31004** The maximum amount of 35% of the total fees payable should be applied unless there is contradictory or conflicting information to indicate that the maintenance element is a lower amount: e.g. the school confirm that more than 65% of the total fees payable are specifically allocated to other elements, such as

1. tuition and, or
2. extra-curricular activities

## Examples

1. St. Marks boarding school confirms that the annual fees are £10,000 for QC Sarah, but state they cannot estimate how much of the total is related to food and accommodation. In the absence of

contradictory evidence, the maintenance element should be estimated at 35%.  $\text{£}10,000 / 100 \times 35 = \text{£}3500$ .

2. St. Marks boarding school confirms that the annual fees are  $\text{£}10,000$ , but state they cannot estimate how much of the total is related to food and accommodation. However, they do provide a breakdown showing 70% of the fees is specifically allocated to Sara's tuition costs and swimming and gymnastics lessons. The maintenance element is estimated at 30.  $\text{£}10,000 / 100 \times 30 = \text{£}3000$ .

Where the NRP John pays the full fees, the figure in example 2 should be treated as the amount paid towards the maintenance element.

### **NRP makes partial contribution or receives a contribution**

**31005** Where, at the date on which the variation application is made, the NRP only makes a partial contribution towards the boarding school fees or the NRP receives or is in receipt of a contribution<sup>1</sup> from a

1. friend
2. relative
3. scholarship award or
4. other third party

the DM must complete the calculation<sup>2</sup> as follows

$$(M/B) \times A$$

M = the maintenance element of the boarding school fees

B = the overall boarding school fees

A = the actual contribution made by the NRP towards boarding school fees

### **Example**

NRP David provides evidence that he contributes  $\text{£}2000$  per year towards QC Jack's boarding school fees. The school confirms that the annual fees are  $\text{£}10,000$ , with  $\text{£}2500$  intended to cover food and accommodation. The amount of David's contribution that should be treated as paid towards the maintenance element will be calculated as follows:  $\text{£}2500 (M) / \text{£}10,000 (B) \times \text{£}2000 (A) = \text{£}500$  per annum.

## Financial thresholds

**31006** A special expenses variation for boarding school fees will only be agreed if the expenses are equal to or exceed a threshold amount<sup>1</sup>. For guidance on variation thresholds refer to the [Chapter 27 - Variations Overview](#).

1 CSMC Regs 2012, reg 68



# Chapter 32 - Certain payments

## Introduction

**32001** Certain payments<sup>1</sup> made by the NRP which they are not legally required to pay, can be considered to be a special expense. Such payments can be taken into account in the maintenance calculation. This is called a certain payments variation.

This guidance explains

[Permitted payments](#) 32002

[Non-permitted payments](#) 32003

[Financial thresholds](#) 32004

1 CSMC Regs 2012, reg 67

## Permitted payments

**32002** The permitted payments<sup>1</sup> must be made in relation to a property or home that the PWC and QC live in and are in respect of

1. a mortgage or loan taken out by a person other than the NRP, which was taken out to purchase or make repairs or improvements to the property, or
2. an insurance or endowment policy taken out for the discharge of a mortgage or loan which was taken out to purchase or make repairs or improvements to the property, and
3. the property must have been the home of the NRP and the PWC when they were a couple, and must remain the home of the PWC and QC.

1 CSMC Regs 2012, reg 67

## Non-permitted payments

**32003** Payments cannot be accepted where the NRP has a legal or equitable interest in the property, or a charge or a right to have a charge over the property<sup>1</sup>. The NRP must not

1. have any legal obligation to make the payment for the period of the variation, and
2. have any legal or financial interest in the property or policy

1 CSMC Regs 2012, reg 67(2)(a)(iv)

**Note:** where the NRP has a legal obligation to make payments and / or a financial interest in the property,

a variation may be applicable on prior debt grounds. Refer to [Chapter 30 -Prior Debts](#) for further guidance.

### **Financial thresholds**

**32004** A special expenses variation for certain payments fees will only be agreed if the expenses are equal to or exceed a threshold amount<sup>1</sup>. For guidance on variation thresholds refer to the [Chapter 27 - Variations overview](#).

1 CSMC Regs 2012, reg 68

# Chapter 33 - Unearned income

## Introduction

**33001** Certain categories of taxable income that are not captured by the standard calculation are classed as unearned income<sup>1</sup>. As this represents additional income it can be taken into account in the maintenance calculation. This is called an unearned income variation.

**33002** Any unearned income figure must always be based on evidence for a complete tax year. This is because a taxable income figure must be identified and this will not be possible until the end of a full tax year.

This guidance explains

[Permitted unearned income categories](#) 33003 - 33008

[HMRC information](#) 33009 - 33020

1 CSMC Regs 2012, reg 69

## Permitted unearned income categories

**33003** A variation may be considered where the unearned income is equal to or exceeds £2,500 per annum<sup>1</sup> and is chargeable to tax<sup>2</sup> as set out in paragraphs **33004** to **33008**.

1 CSMC Regs 2012, reg 69 (1); 2 reg 69 (2)

## Property income

**33004** In line with Part 3 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA)<sup>1</sup>, property income is where a NRP is in receipt of rental income from properties or land in the UK or in foreign countries, and that rental income is subject to UK Income Tax. The capital value of the property or land is not taken into account.

**Note:** As landlords can claim tax relief for certain cost linked to their properties, the rental income provided to the CMS is usually the amount once HMRC allowable expenses have been deducted (i.e. mortgages, maintenance of the property, rent, ground rent and service charges).

1 CSMC Regs 2012, reg 69 (2)(a)

## Savings and investment income

**33005** In line with Part 4 of ITTOIA<sup>1</sup>, this type of income exists where a NRP earns interest on savings or receives income from investments or trusts. This also includes income in the form of dividends received by company directors.

**33006** Dividends are payments issued to shareholders from a company's annual profits after tax. Company directors determine how much of the company's profits will be distributed in this way and they may take minimal salaries and receive a large amount of their income as dividends.

**33007** For child support purposes, dividend payments are treated as unearned income. If a variation application is made on unearned income grounds, check HMRC data for dividend payments.

## Miscellaneous income

**33008** In line with Part 5 of ITTOIA<sup>1</sup>, this captures a small minority of income types that do not fall into the other income categories, for example: casual earnings from one-off jobs, or late payments received for a business that is no longer active.

## HMRC information

### Understanding HMRC information

**33009** HMRC will only look back to the latest available complete tax year for the NRP. The latest available tax year will not necessarily be the latest actual tax year. The 'available' tax year means the last year that HMRC hold complete data for.

1. If a positive figure is found - HMRC will provide a breakdown showing the income element for each unearned income category.
2. If the NRP has no record of unearned income - HMRC will provide a response stating 'nil income'.
3. If there is no record of the NRP on the tax system - HMRC will provide a response stating, no income details.

### Positive figure for the latest available tax year

**33010** If the income figure obtained is £2,500 per year or more, DMs should proceed with the application and invite representations from the NRP.

### Nil HMRC figure / figure less than £2,500 / no income details held

**33011** DMs should reject the application if the response from HMRC states that:

1. the unearned income figure is nil, or
2. the unearned income figure is below £2500 (the threshold for an Unearned Income Variation), or
3. no unearned income details are held / there is no match for the NRP.

**33012** DMs must consider whether it is appropriate to obtain evidence of Current Unearned Income from the NRP. Refer to the specific guidance in paragraphs **33018** to **33020** for advice on Savings and Investment cases where the NRP is employed (and therefore may not be required to complete a tax return).

**33013** For all other cases, consider whether a more recent complete tax year has passed that the NRP may have evidence for before deciding whether to proceed with the application

**33014** Acceptable evidence for these purposes would be a completed self-assessment return.

**33015** Paragraph **33017** explains when tax returns must be submitted by. NRPs are not required to have evidence of their unearned income available before these dates. If they state this is the case, accept this and reject the application. Refer to the guidance on HMRC tax years and self-assessments for an example of this scenario.

### **HMRC tax years and self-assessments**

**33016** HMRC tax years run from 6 April to 5 April.

**NOTE:** The tax year used must be in relation to the effective date and:

1. When sourced from HMRC, it should be the latest available tax year at the effective date, or
2. When sourced from the NRP (a submitted self-assessment), this can only be for the latest completed tax year at the effective date.

#### **Example 1**

PWC Mary makes an application in June 2023 (this is the effective date), a decision however isn't made until December 2024.

The latest available tax year that HMRC hold a record for is the tax year which ended on 05.04.2024.

The latest completed tax year relevant to the effective date is for the tax year ending 05.04.2023.

#### **Example 2**

PWC Michael makes an application in February 2023 (this is the effective date), but the variation isn't considered until August 2024.

At the date the variation is considered the latest available tax year is for the tax year ending 05.04.2024.

The latest tax year relevant to the effective date is for the tax year ending 05.04.22.

The latest available tax year that HMRC hold a record for is the tax year ending 05.04.2020. HMRC provide a nil figure for this year. Although this is the latest tax year that HMRC have data for, it is not the most recent complete tax year at the effective date, and so information is requested from the NRP.

NRP Alison supplies her submitted self-assessment tax returns for the tax years ending 05.04.2021, 05.04.2022, 05.04.23 and 05.04.2024.

We accept the variation using the NRP's self-assessment tax return for the tax year ending 05.04.2022, as this was the latest completed tax year at the effective date for which no information was available from HMRC.

Because the variation completed in August 2024 is backdated to the effective date of February 2023, it has also changed the Maintenance Calculation completed for all Annual Reviews following this date. NRP Alison will have new Mandatory Reconsideration (MR) rights for these Annual Reviews. If an MR is requested the evidence of the submitted self-assessment tax returns, they have already supplied during the application for variation can be used to revise the unearned income amount.

**33017** Self-assessment returns are due by

1. paper returns - 31 October
2. electronic returns - 31 January

### **Example**

PWC Mary makes an application in September 2014. The current tax year runs from 6 April 2014 to 5 April 2015.

The latest available tax year that HMRC hold a record for is 2012 – 2013. HMRC provide a nil figure for this year. Although this is the latest tax year that HMRC have data for, it is not the most recent complete tax year.

The most recent complete tax year is 2013 – 2014. Although NRP John has until 31 January 2015 to submit his self-assessment, he may already have evidence of his taxable profits for that year.

Because a more recent complete tax year has passed, ask John for a self-assessment tax return from a more recent tax year. If John states that this is not available yet, accept this statement and reject the application.

## **Savings and investment income: employed NRPs**

**33018** NRPs who are employees (e.g. are not self-employed as well) and are subject to PAYE only, are not required to complete a self-assessment return if their net income from savings or investments is less than £10,000 per year.

**33019** This means a NRP may have Savings and Investment income, which meets the financial threshold of £2,500, but HMRC will not have any details unless the income exceeds their threshold of £10,000 per year.

**33020** If the DM is satisfied that a NRP may have Savings and Investment income of at least £2,500 per year, take the application forward and request evidence from the NRP. Acceptable evidence for these purposes would be up to date statements from their bank / building society or copies of stocks and shares statements.

# Chapter 34 - Assets exceeding a prescribed value

## Introduction

**34001** Where a NRP has a legal or beneficial interest in an asset and the value of that asset exceeds the prescribed value, a notional income can be taken into account in the maintenance calculation<sup>1</sup>. This is called an 'assets exceeding a prescribed value variation'.

This guidance explains

[Definitions of assets](#) 34002 - 34004

[Non permitted assets](#) 34005

[Prescribed value](#) 34006 - 34007

[Calculating the notional income of an asset](#) 34008 - 34009

1 CSMC Regs 2012, reg 69A

## Definition of assets

**34002** Assets exceeding a prescribed value are cases where the DM is satisfied that there is an asset in which the NRP has a legal or beneficial interest and the value of that interest exceeds the prescribed value (see paragraph **34006**).

1 CSMC Regs 2012, reg 69A (2), (3)

**34003** Assets are defined in legislation<sup>1</sup> as:

1. Money, whether in cash or on deposit, including any money which is due to a NRP where the DM is satisfied that requiring payment of the monies to the NRP immediately would be reasonable<sup>1</sup>
2. Gold, silver or platinum bullion bars or coins<sup>2</sup>
3. A virtual currency which is capable of being exchanged for money<sup>3</sup>, e.g. bitcoin
4. land or rights in or over land<sup>4</sup>, including property
5. Shares within the meaning of section 540 of the Companies Act 2006(6)<sup>5</sup>. A share is a type of investment that gives an individual the right to a portion of a specific company's capital.
6. Stock and unit trusts within the meaning of section 6 of the Charging Orders Act 1979(7)<sup>6</sup>. Stock refers to ownership of a group of shares from a range of different companies. Unit trusts are a type of investment that is run by a fund manager. That manager purchases shares in a company



or companies and then divides the value of the investments into individual 'units' which people then buy. Purchasers can claim the value of their units periodically, and sell them at any time.

7. Gilt edged securities within the meaning of paragraphs 1 and 1A of Part 1 of Schedule 9 to the Taxation of Chargeable Gains Act 1992<sup>7</sup>. A gilt edged security is a bond issued and guaranteed by a national government.

8. A chose in action which has not been enforced on the date of an application for a variation and where the DM is satisfied that such enforcement would be reasonable<sup>8</sup>. 'A chose in action' is a comprehensive term used to describe a property right or the right to possession of something that can only be obtained or enforced through legal action.

1 CSMC Regs 2012, reg 69A (2)(a); 2 reg 69A (2)(b); 3 reg 69A (2)(c); 4 reg 69A (2)(d); 5 reg 69A (2)(e); 6 reg 69A (2)(f); 7 reg 69A (2)(g); 8 reg 69A (2)(h)

**34004** Asset includes any asset which is subject to a trust where the NRP is a beneficiary.<sup>1</sup>

1 CSMC Regs 2012, reg 69A (3)

## Non permitted assets

**34005** Certain assets are excluded from the variation process. Those are any asset which:

1. has been received by the NRP as compensation for personal injury suffered by the NRP
2. is being used in the course of the NRP's trade or business (see example 1)
3. the DM is satisfied could have been purchased from the gross weekly income of the NRP which has been taken into account for the purposes of a maintenance calculation (**Note** - this exclusion will only apply to assets purchased during the life of the child maintenance case), (see example 2)
4. will need to be sold in order to meet any additional maintenance payment required as a result of a variation under paragraph 4(1) of Schedule 4B to the 1991 Act where the DM is satisfied that the sale of that asset would cause hardship to a child of the NRP, or would otherwise be unreasonable having taken into account all relevant circumstances
5. is a legal or beneficial interest in land where the land in question is the primary residence of the NRP or any child of the NRP (see example 3)

1 CSMC Regs 2012, reg 69A (4)

## Examples

1. NRP John has a haulage company with a fleet of trucks. The company's profit should be used to determine an actual income for John, rather than applying a notional income based on the value of the

assets (the trucks).

2. PWC Mary makes a variation application on the grounds that NRP Mark has a collection of gold coins. Evidence confirms the value of the coins exceeds the prescribed value required for a variation to be accepted. Mark is a high earner and a maintenance calculation has been based on the income evidence provided. Mark challenges the variation on the grounds that his weekly income is of a level that would make buying the coins easily affordable. Mark's collection of gold coins would only be excluded as assets for the purpose of this variation if they were purchased after the start of the child maintenance case.

3. The DM is considering calculating the notional income from a property where David, a child of the NRP Ian, resides. As a result of a recent change in David's circumstances he now falls outside of the Child Maintenance definition of a child. This change does not mean the automatic inclusion of the asset. Instead, the DM would need to consider whether its inclusion would be reasonable before making a decision.

## Prescribed value

**34006** The NRP must have a legal or beneficial interest in an asset that exceeds the prescribed value of £31,250<sup>1</sup>, after deductions have been made for any amounts owing under a mortgage or charge<sup>2</sup>.

1 CSMC Regs 2012, reg 69A (5); 2 reg 69A (6)

**34007** Where there is more than one type of asset held, their value will not be added together to meet the threshold. Where there is only a single type of asset, they can be considered as one asset, and their aggregate value considered against the threshold limit.

## Examples

1. NRP John owns land valued at £20,000 and shares valued at £20,000. Their value should not be added together. They do not therefore meet the £31,250 threshold. The DM should reject the variation.

2. NRP David owns 5,000 shares worth £7 each. The total value of the asset is £35,000 and therefore meets the threshold. The DM may consider a variation.

3. NRP Mark owns 2,000 shares in one company, worth £10 each and 3,000 shares in a different company worth £5 each. The total value of the assets is £35,000. This meets the threshold, therefore the DM may consider a variation.

## Calculating the notional income of an asset

**34008** To determine the notional income a non-resident parent might receive from an asset, a statutory interest rate of 8% will be applied against assets where the total value of the asset/s is over £31,250. The 8% interest rate has been upheld by the Upper tribunal as a reasonable figure to use for this purpose.<sup>1</sup>

**34009** The regulations<sup>1</sup> prescribe that to calculate a notional income, the value of the NRP's assets should be divided by 52 to arrive at the weekly income figure that is to be used in the maintenance calculation. However, it has been agreed that for operational purposes the weekly income figure will be established by taking the notional income figure dividing by 365 and multiplying by 7.

1 CSMC Regs 2012, reg 69A (7)

**Example**

NRP John has assets (meeting the legal definition) with a value of £79,750. John's notional income from those assets would be 8% of the total value,  $£79,750 \times 8\% = £6,380$ .

$£6380 / 365 \times 7 = £122.36$  (notional weekly income added to the gross weekly income figure used in the maintenance calculation).

# Chapter 35 - Earned income

## Introduction

**35001** In certain cases an NRP is only liable to pay the nil rate or the flat rate of maintenance. However, if the NRP has a gross weekly income (earned income) of more than £100, this income can be taken into account in the maintenance calculation. This is called an earned income variation.

This guidance explains

[Prescribed categories](#) 35002 - 35004

[Earned income](#) 35005

## Prescribed categories

**35002** An earned income variation<sup>1</sup> may apply in certain circumstances where the NRP's child support maintenance liability is either the nil rate (see **35003**) or the flat rate (see **35004**), and the NRP has earned income of more than £100 per week.

1 CSMC Regs 2012, reg 70

**35003** Where the liability to pay child support maintenance is the nil rate an earned income variation can apply where the NRP is either<sup>1</sup>

1. a child
2. a prisoner
3. a person receiving an allowance in respect of work-based training for young people, or in Scotland, Skillseekers training
4. a person resident in a care home or an independent hospital or who is being provided with a care home service or an independent health care service, who
  - 4.1 is in receipt of a pension, benefit or allowance specified in CSMC Regs 2012 regulations 44(1) and 44(2); or
  - 4.2 has the whole or part of the cost of their accommodation met by a local authority

**Note:** Refer to [Chapter 25 Rates and Rules](#) for more information on the nil rate, which includes the list of applicable social Security benefits pursuant to regulation 44(1) and (2).

1 CSMC Regs 2012, reg 70 (3)

**35004** Where the liability to pay child support maintenance is the flat rate an earned income variation

can apply due to the NRP being in receipt of the benefits specified in CSMC Regs 2012 regulation 44(1)<sup>1</sup>.

**Note:** Refer to [Chapter 25 Rates and Rules](#) (paragraph 25012) for more information on the flat rate, which includes the list of applicable social Security benefits pursuant to regulation 44(1).

1 CSMC Regs 2012, reg 70 (1)(a)(ii)

## **Earned Income**

**35005** Earned income for a variation is calculated in the same way as earned income in the main calculation (i.e. taking the historic figure unless current income is 25% different, no historic income is available, or the required information cannot be obtained) and includes:

1. employment income (including benefits in kind)
2. trading income (for self-employed)
3. pension income
4. Social Security income (taxable benefits only) - Incapacity Benefit, Contributory Employment and Support Allowance, Jobseekers Allowance, Income Support.

**Note:** Refer to Chapters 18 – 26 for more information on the maintenance calculation rules.

# Chapter 36 - Diversion of income

## Introduction

**36001** Where there is income that would have been taken into account as gross weekly or unearned income but has been diverted elsewhere, that income can be taken into account in the maintenance calculation<sup>1</sup>. This is called a diversion of income variation.

**Note:** although some NRP's may not be reducing their income with the intent to reduce their child maintenance liability, the DM must consider whether the reduction in the gross weekly income used in the calculation is unreasonable.

This guidance explains

[Ways to divert income](#) 36002 - 36004

[Diversion to a third party/business](#) 36005 - 36006

[Excessive pension contributions](#) 36007 - 36022

1 CSMC Regs 2012, reg 71

## Ways to divert income

**36002** Although the NRP may consider it is reasonable to make high pension contributions or accept a minimal wage to help their business, it is for the DM having considered the circumstances of the case to make the decision whether it is reasonable.

**36003** A diversion of income variation may apply if the NRP has the ability to control, whether directly or indirectly, the income they receive, or which is taken into account as their gross weekly income, and has unreasonably reduced the amount of that income by

1. diverting it to another person, or
2. diverting it in another way that means it cannot be included in the maintenance calculation.

this includes income from employment and self-employment.

**36004** The most common ways to divert income are

1. diversion to a third party (see example 1)
2. diversion to a business (see example 2)
3. excessive pension contributions (see example 3)

## Examples

1. NRP John is the director of a limited company. John registers his new partner Mary as a director or company executive in name only and pays Mary a salary (usually higher than or equivalent to his own),. Mary is not actually doing any work for the business, despite John paying her a salary.

2. NRP Elizabeth accepts a low salary to enhance the capital growth or value of her company, or

Elizabeth pays herself a low salary, but makes pension contributions directly through her business, (although this cases involves pension contributions, the DM may deem that they are to be treated as diversion of income through a business.).

3. NRP Mark is paying a high percentage of his gross weekly income into a private or occupational pension.

## Diversion to a third party / business

**36005** Diversion of income to a third party is likely to be made to someone that the NRP has a close relationship with. It may be their current spouse or partner, but could also be a sibling, parent or friend.

**36006** Variation applications based on diversion to a third party or diversion to a business are exceptionally complex. As such, DMs should seek advice from their team leader, and consider a referral to FIU.

## Example

NRP David has been running his own company for the last 10 years, which has been considerably successful for the past 6 years. This has resulted in David taking a good monthly salary from the company.

Since PWC Jean applied for child maintenance, David's business appears to have taken a dip and David's salary has reduced. This could suggest that David is deliberately diverting income to avoid or reduce his child maintenance payments.

## Excessive pension contributions

**36007** A percentage of a NRP's income, which could be considered a reasonable pension deduction, may be estimated at around 12% of the gross income figure. However, when considering whether a NRP's pension contributions are excessive, the DM will consider each case individually, taking into account all the information available.

**36008** The information needed for an application on the basis of pension contributions will depend on whether the NRP has an occupational or a private pension.

## Private pensions

**36009** NRPS who are paying into a private pension can have their gross weekly income reduced to take

their contributions into account.

### **Private pension: contributions declared and taken into consideration**

**36010** If the private pension contributions have been declared the DM should consider whether they seem excessive compared to the NRP's personal circumstances, including, for example, their age. The former Financial Services Authority (FSA) guidelines should be used for comparison.

**36011** The FSA was abolished from 1 April 2013, to be replaced by two new bodies: the Financial Conduct Authority (FCA) and the Prudential Regulation Authority. Neither of these have provided any new guidelines at present so the previous FSA guidelines should still be referred to, for comparison purposes see paragraph 36015.

### **Examples of information that should be considered**

**36012** Some examples of information the DM should consider

1. are the pension contributions being paid into occupational or private pension schemes?
2. are any employer pension contributions being paid?
3. have occupational/private pension amounts already been taken into account in the gross income figure? (If private pension amounts have not been declared by the NRP for their gross income figure, then the gross income figure has not been reduced)?
4. are the NRP's pension contributions over 12% of the NRP's gross income?
5. the age of the NRP and how old they were when they started contributing to their pension? For example, a NRP who began making pension contributions in their 40s could be paying a significantly higher amount of pension contributions than someone in their 20s?
6. has the FSA table been checked for comparison purposes?
7. has the NRP previously made pensions contributions of less than 12%?

**36013** It is acceptable for a NRP to make high pension contributions. The NRP may not consider this to be unreasonable and it may not be intended as to deliberately reduce their child maintenance.

### **Financial Services Authority guidelines**

**36014** The FSA previously provided the following guidelines on adequate pension contributions depending on the age at which the individual started making their contributions.

**Note:** the information in this table is only to be used as a guide to aid the decision-making process.



Age contributions started	Required % of income
30	12 - 18%
35	16 - 22%
40	18 - 25%
45	25 - 30%
50	30 - 45%
55	45 - 70%

**36015** Where pension contributions relate to a mortgage on the NRP's home, the DM should consider ignoring around 25% of those contributions.

### Occupational pensions

**36016** The gross weekly income figure provided to the CMS by HMRC is usually automatically adjusted to take occupational pension payments into account. The DM will therefore not be able to identify whether the NRP is paying into an occupational pension from the CMS records.

### Pensions Decision Making

**36017** When the DM is in receipt of the pensions payment detail they will consider whether the NRP is diverting income and if so whether the amount being diverted is unreasonable.

**36018** As it is not necessary to take the whole amount of the diverted income into account, the DM will only take into account the amount that is being unreasonably diverted<sup>1</sup>.

1 CSMC Regs 2012, reg 71(2)

**36019** The DM should initially refer to the FSA's guidelines (see paragraph **36014**) with the Pension Commission guidelines (see paragraph **36020**) to be used as an alternative source in borderline and complex cases, or cases where the NRP or PWC disputes the initial decision.

### Pension Commission guidelines

**36020** Having considered the individual circumstances of the NRP and their age, refer to the table below to check the NRP's projected pension income. This information will be provided on the NRP's Annual Benefit statement. If the projected pension income exceeds the percentage of the NRP's current income that is indicated on the table below, it may be appropriate to treat part of their pension payments as an unreasonable diversion of income.

Gross Income	Benchmark gross replacement rate %
Less than £9,500	80
£9,500 - £17,499	70
£17,500 - £24,999	67
£25,000 - £49,999	60
£50,000 +	50

**Example**

NRP John's gross income is £30,000. The Annual Benefit Statement shows a projected pension income of £25,000, the benchmark gross replacement rate is 60%. 60% of John's current gross income figure is £18,000 ( $£30,000 \times 0.6 = £18,000$ ).

As John's projected income (£25,000) exceeds 60% of his gross income (£18,000) the difference of £7,000 ( $£25,000 - £18,000 = £7,000$ ) can be applied to the variation. This will increase John's income by £7,000 for the purposes of the child maintenance calculation.