Volume 1 - The Basic Principles (Chapters 3-16)

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Chapter 3 - The duty to maintain

03001 The statutory child maintenance scheme is based on the principle that each parent of a QC is responsible for maintaining them[1].

1 CS Act 1991, s1(1)

03002 Where a parent is a NRP, a maintenance calculation may be made. It is the duty of the NRP to make any periodical payment as calculated by CMG[1].

1 CS Act 1991, s1(3)

03003 NRPs shall be taken to have met their duty to maintain the QC by making periodical payments of maintenance for that child as calculated and at the time required[1].

1 CS Act 1991, s1(2)

03004 For further guidance on maintenance calculations refer to

1. Chapter 17: Maintenance calculations overview
2. Chapter 18: Historic income
3. Chapter 19: Current income employed
4. Chapter 20: Current income self employed
5. Chapter 21: Universal credit
6. Chapter 22: Umbrella companies
7. Chapter 23: Other factors affecting the maintenance calculation
8. Chapter 24: Estimating current income
9. Chapter 25: Rates and rules
10. Chapter 26: Default maintenance decisions

Chapter 4 - Welfare of the child

Introduction

04001 Where the CMS are applying a discretionary decision in any case, the DM must have regard to the welfare of any child likely to be affected by that decision[1].

1 CS Act 1991, s2

This guidance explains

Relevant information 04002 - 04008

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Relevant information

04002 DMs will consider the welfare of the child[1]. Where there is limited information about a child, there is no need to seek further information to decide whether the decision might have a greater than expected impact on that child. If, however, DMs are aware of a relevant fact, then it must not be ignored. For example, where a child cared for by the NRP has special needs that could be severely impacted by taking order for sale action because the current home is adapted to meet those needs.

1 CS Act 1991, s2

04003 It may be appropriate to seek additional information by contacting

1. all parties involved in the case

2. other PWCs (where there are multiple PWCs

3. parties who are in a position to provide relevant information (for example the NRP's new partner).

This list is not exhaustive.

04004 DMs have a legal obligation to ensure that information about a person is not disclosed to another party without the appropriate authority and therefore must ensure any contact complies with departmental guidance on disclosure of information[1] and the GDPR 2018[2]. For more information see Annex A: Client Contact and DWP's GDPR guidance.

04005 If DMs are uncertain whether further enquiries should be made or contact is appropriate, consider discussing the case with your team leader in the first instance and seeking advice from DMA Leeds where appropriate.

04006 Information and evidence must show either

1. that the discretionary decision being made will have a negative impact on a child that it potentially affects, or

2. that the discretionary decision being made will have a positive impact on a child that it potentially affects. Evidence of this type will be relevant where the interests of different children affected by the decision need to be weighed against each other.

04007 A 'welfare of the child decision' is part of a discretionary decision-making process, not an individual decision.

04008 In addition to considering the impact on any child, DMs must also consider whether their decision is reasonable, whilst remembering the priority is to ensure payment of child maintenance. Therefore, although an enforcement decision may have an adverse effect on a child, this would not necessarily prevent enforcement action being taken to recover arrears.

Note: When deciding on enforcement action, DMs should not use the welfare of the child principle to avoid the full use of its powers unless appropriate.

Which children to consider

04009 The consideration of the welfare of the child is not restricted to QCs. Other children potentially affected may include

1. other children of the NRP

2. other children of the PWC

3. children of the NRP or PWC's new partner who live in the same household.

04010 It is important to identify all children that are potentially affected by a discretionary decision and to consider the impact it will have in relation to them each individually.

04011 One or both of the parents may themselves be a child within the meaning of the legislation. These cases will require sensitive handling. For further information regarding determining the child status, refer to Chapter 5: Meaning of certain terms.

Negative and positive impacts on a child

04012 Welfare of the child issues are not the primary consideration in discretionary decision-making. The full circumstances of a case need to be taken into account and consideration must also be given to the duty of the NRP to maintain their child[1] and the advantages of the PWC receiving child maintenance. There may also be other relevant factors to take into account, such as the particular circumstances of the NRP at the time the relevant decision is being made.

1 CS Act 1991, s1

04013 Where the interests of children conflict, it is necessary for the DM to weigh up all the circumstances of the case carefully. One child should not be unduly disadvantaged in favour of another. The best outcome will be one that provides the highest possible protection for all of the children potentially affected. As a minimum, the aim should be to ensure that each child`s day-to-day basic living requirements can be met.

04014 Considering the welfare of the child means taking into account the physical, psychological, emotional, educational and social needs of all the children that the relevant discretionary decision will potentially affect. DMs need to consider whether there is evidence to suggest that the discretionary decision would have a negative impact on these needs. Factors to consider include:

Contact

04015 A particular course of action may prevent the NRP visiting their child., Any negative impact that this would have on the child's emotional well-being would need to be weighed against the positive impacts of maintenance being collected.

Living standards

04016 NRPs must provide evidence to show that the impact on their resources will have a particularly detrimental effect on their ability to meet a child`s specific needs.

Relationships

04017 Where a PWC and NRP have reconciled, continued action to recover arrears might place the relationship under strain.

General health and well-being

04018 Consideration must be given to the impact on the child`s general health, physical or emotional well-being of the decision being made.

Positive impacts of the decision

04019 Any negative impact of the decision must be weighed against the positive impact. A decision may have both negative and positive impacts for the same child. Alternatively, a decision may have a negative

impact on one child, but a positive impact for another.

Note: In addition to the specific considerations set out above, DMs may also have to take into account other relevant factors in the individual circumstances of the case. It is not possible to provide a comprehensive list of the range of considerations that may arise in making a discretionary decision.

Recording welfare of child consideration

04020 When a discretionary decision is made, it is essential that all the children considered are listed by full name where available unless those names are not known, for example in the residual arrears only cases. This is to demonstrate that they have each been taken into account. DMs must be aware that in some cases they may be recording information about a child that is not known to the other party. However, documenting children's names in this way does comply with the GDPR[1]. For more information on GDPR see DWP GDPR general guidance.

1 GDPR 2018

Recording discretionary decisions

04021 Any discretionary decision to act or not act in a particular way may be challenged on appeal. It is therefore essential that all discretionary decisions are accurately and fully recorded, including the reasons for the decision and any particular evidence and or information that has been taken into account. DMs must ensure that the decision is recorded on the relevant account, for example, a decision relating to the NRP`s other child is recorded on the NRP`s account.

No negative impact

04022 A standard form of wording may be used to record the welfare of the child decision in cases where there is no evidence to suggest that the discretionary decision will have an unduly negative impact.

Negative impact identified

04023 Full details of the welfare of the child decision must be recorded in all cases where there is evidence to suggest that the discretionary decision being made will have a negative impact on a child that it affects.

04024 The fact that a potentially negative impact has been identified does not mean that a different discretionary decision will necessarily be made, but full details must be recorded including

1. the names of the children that have been considered, and

2. the reasons underlying the decision, and

3. the evidence that has been considered, and

4. the consideration that has been given.

Example 1

NRP John pays a maintenance sum of £50 per week. John applies for a variation on the basis that he has contact costs of £40 per week. PWC Jean agrees that John incurs contact costs but opposes the variation on the ground that John recently won £60,000 on the National Lottery. When considering whether a reduction in liability is 'Just and Equitable' to all parties, consideration must be given to any evidence that John has other financial resources available to him from which the costs claimed could be met. This is in addition to consideration of the welfare of Tom, and any other considerations relevant to the facts of the case. Although maintaining contact between John and Tom is in the child's interest, in this situation a relevant factor is that John's contact costs could be met from his lottery winnings. Consideration must be given to the risk that reducing the calculation could cause hardship to Jean and also adversely effect the welfare of Tom.

Example 2

The DM is considering whether bailiff action is appropriate. This could include seizure of the family car. NRP Mary has submitted evidence that she lives some distance away from QC Ben and the family car is therefore essential for her to have continuing contact with Ben. When considering what action should be taken, all the circumstances must be taken into account. This includes whether there is a reasonable alternative means of transport available for contact to continue. Relevant additional information might include any illness or disability of a child, which would make public transport unsuitable. Depending on the circumstances, it may be appropriate to exclude the family car from bailiff action.

Example 3

Arrears of child maintenance have accrued over an extended period and the DM is considering whether to make a deduction order against the NRP Peter's savings account. Peter previously informed the CMS that his income has reduced due to a temporary change of circumstances, and he is using his savings for day to day expenditure. There are two relevant other children in Peter's household. As a general principle, NRPs should make prompt payment to clear any arrears. However, in this situation there is evidence to suggest that the welfare of the relevant other children may be affected by a decision to make a deduction order. The effect of making a deduction from Peter's savings account must be taken into account against his liability to make financial provision for the relevant other children. Consideration must also be given to any information known about QC Janet's circumstances. In this type of case, the interests of different children are conflicting and it is important to achieve an outcome that provides the highest level of protection for each child`s day-to-day welfare. If Peter is paying his current maintenance calculation, it may be appropriate to impose a deduction order for an amount below the full arrears total, so that Peter retains some funds for daily expenditure. Alternatively, it may be appropriate to defer further recovery of the arrears until Peter's financial situation improves.

Example 4

The DM is considering whether bailiff action is appropriate. NRP Jack has previously advised the CMG that his new partner Carol and her child Eve are not aware that he is required to pay Child Maintenance. If bailiffs were to attend Jack's address, this information may come to light and have a negative impact on Jack's relationship with Carol and Eve. There is therefore information to suggest that enforcement action might have a negative impact on a child. However, in these circumstances, it is entirely within Jack's ability to prevent the negative impact identified by reaching an acceptable repayment agreement. There would need to be very exceptional factors, such as severe ill-health or a more efficient enforcement option, for considerations of this type to affect the decision in these circumstances.

Example 5

The DM is considering whether to make an application to commit NRP Bob to prison for failure to pay Child Maintenance. Bob submits evidence showing that the QC Jane is aware her father may be sent to prison and is very distressed. DMs have strong enforcement measures available to them, including the power to apply for committal to prison. These measures are designed to ensure that NRP`s meet their maintenance obligations. It is important to remember that the welfare of the child includes consideration of both emotional and practical well-being. While the child's emotional welfare may be affected by continued action to commit the NRP, the child's practical well-being may be affected by continued non-compliance. Any suggestion that a decision will have a negative impact on a child's emotional welfare will need to be considered very carefully by the DM. In appropriate cases, supporting evidence may be required, for example where a NRP claims that the child suffers from specific behavioural or emotional problems. Supporting evidence in these circumstances might include evidence from a medical professional and/or confirmation from the PWC.

Chapter 5 - Meaning of certain terms

Introduction

05001 The meaning of certain terms used in child maintenance law are defined in legislation[1].

1 CS Act 1991, s3

This guidance explains

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Child in Scotland (CIS) 05003

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Who is a NRP 05025

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Who is a QC

05002 A child will be a QC for maintenance purposes if[1]

1. one or both of their parents is a NRP in relation to them , see paragraph **05025** for definition of NRP **and**

2. they are a child within the meaning set out in child support legislation, see paragraphs **05004 – 05024** for further information **and**

3. an application for statutory child support maintenance has been made in respect of them.

1 CS Act 1991, s 3(1)

Child in Scotland (CiS)

05003 The term CiS applies when a child aged 12 or older who is habitually resident in Scotland makes an application for a maintenance calculation.

Note: a child over the age of 16 will need to satisfy the relevant requirements of the definition of a child to make an application as a CiS.

1 CS Act 1991, s 7

Who is a child

05004 A person is considered a child[1] for child maintenance purposes if

1. they are under the age of 16 **or**

2. they are under the age of 20 and are a qualifying young person.

1 CS Act 1991, s 55; CSMC Regs 2012, reg 76; SSCB Act 1992, s 142

Qualifying young person

Child benefit can still run on and be in payment for a short time even though the child is no longer entitled to it due to child benefit end date. An individual's circumstances determines whether a child who is aged at least 16 but less than 20 qualifies for Child Maintenance, rather than whether child benefit remains payable.

Where evidence is provided that a child is no longer in full-time education, the following must be considered in order to determine if the child remains a qualifying young person **for the purpose of child maintenance**.

05005 A person is considered to be a qualifying young person[1] where

1. they are aged 16 – 19, **and**

2.in full-time, non-advanced education which is not provided by virtue of an employment or office, **or**

3. undertaking approved training, **or**

4. they are receiving home education, approved by the local authority and for which they have received a statement of special education needs from that local authority[2]

1 CSMC regs 2012, regs 76(1), SSCB Act 1992, S.142(2); 2 CB(G) Regs 2006, reg 3(2)

Note: a person remains a qualifying young person, if having completed one of the above courses, they are enrolled or accepted on a further one[1].

1 CB(G) regs 2006, regs 3(2) (b)&(d)

Note: Where a person aged over 16 but under 20:

- who ceases full-time education or training commences paid work (of not less than 24 hours each week) before the termina; date is reached **or**
- starts to receive income support, income based job seekers allowance, incapacity benefit, tax credit, employment and support allowance or universal credit in their own right.

they will cease to be considered a child from the week in which the start work or benefit begins to be received. For more information on terminal dates see paragraph **05018**.

05006 A person is not considered to be a child if they are, or have been, a party to a marriage or civil partnership, even if that marriage or civil partnership has been declared void[1].

1 CS Act 1999

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Education and training

05007 Full-time education[1] means education undertaken in pursuit of a course, where the average time spent during term time in receiving tuition, engaging in practical work, or supervised study, or taking examinations exceeds 12 hours per week.

1 CB (G) Regs 2006, reg 1 & 3

05008 A list of 'Full-time non-advanced education and approved training' can be found here and here.

05009 In calculating the time spent in pursuit of the course, no account should be taken of time occupied by meal breaks or spent on unsupervised study.

05010 Non-advanced education is education not to the level of advanced education[1]. Advanced education is:

1. a course in preparation for a degree, a diploma of higher education, a higher national certificate, a higher national diploma, or a teaching qualification, **or**

2. any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel, a general certificate of education (advanced level), or Scottish national qualifications at higher or advanced higher level.

1 SSCB Act 1992, s 142(2); GB(G) regs 2006, reg 1

Note: A temporary interruptions in education or training may be disregarded if it is considered reasonable **and** lasts no more than six months and/or is due to ill health or disability1. Any breaks in full-time education or training must not be, or be likely to be, followed by a period during which child benefit stops being payable.

Young person studying both non-advanced and advanced education

05011 A young person undertaking both a non-advanced and advanced educational course may continue to meet the qualifying conditions providing they meet the conditions in paragraph **05005 - 05006**.

Example

A young person Mary undertakes an educational course which includes both advanced and non-advanced education. Provided the time spent on non-advanced education meets the full-time condition Mary can continue to be classed as a qualifying young person.

Young person working while undertaking relevant education or training.

05012 A young person may work and undertake relevant education or training providing they meet the conditions in paragraph **05005 - 05006**.

Example

A young person Dylan works 25 hours per week during the evenings. Provided he is continuing his full-time non-advanced education and that education is not being provided by an employer, or because of any office or position he holds, Dylan will continue to meet the qualifying conditions.

05013 A person continues to be a child for the purpose of child maintenance because:

1. they are aged over 16 but under 20 **and**

2. they have finished a course of full-time non-advanced education **and**

3. their terminal date has passed **and**

4. they are enrolled on another such course.

Note: for more information on terminal dates see paragraph **05014**.

Example

On 10 September, PWC Jackie reports that her 18-year-old son Connor, who left school in June having completed his A levels, will begin a further course of A levels at a local college on 15 September.

Connor will continue to be treated as a child whilst he remains in full time non-advanced education or approved training, until the terminal date following completion of (or leaving) the new course, or if sooner his 20th birthday (but not paragraph 05005 concerning remunerative employment and other financial support after finishing/leaving but before the terminal date.)

Terminal dates

05014 A person who has left full-time non-advanced education or approved training, will continue to be a qualifying young person until the first Monday after the earliest of these dates which are known as "terminal dates"[1].

Terminal dates are:

1. the last day of February

2. 31 May

3. 31 August

4. 30 November.

Example

QC Jane is aged 18 and she left school on 1 April 2019, the terminal date will be 31 May 2019. Jane ceases to be a child for the purposes of child support on 3 June 2019.

1 CB(G) Regs 2006, reg 7

Where a person has been entered for an external exam in connection with the relevant education they were receiving at that time but then ceases relevant education, they will continue to be a qualifying young person from the later of:

- the date they ceased to receive education, **or**
- the date they reached 16

Up to and including:

- the first 'terminal date' following their exam, **or**
- the end of the week (Sunday) which includes the Monday prior to their 20th birthday.

Note: the restrictions concerning remunerative work during the permitted period and other financial support in paragraph 05015 when considering whether a person is a 'child' for child maintenance.

Extension Periods

05015 Extension periods[1] may "extend" the time that an individual can be treated as a child, for up to a further 20 weeks from the date a young person leaves full-time non-advanced education or approved training.

1 CB(G) 2006 Regs, reg 5

05016 An extension period will apply if the qualifying young person is under the age of 18 and

1. they have ceased to be in education or training

2. they are registered for work, training or education with a qualifying body[1]

3. they are not in remunerative work[2] of more than 24 hours a week for which payment is made or expected

4. CHB was in payment or payable for them immediately before the extension period began

5. the applicable extension period has not expired

6. within three months of the education or training ceasing the individual responsible for the qualifying person has made a request for payment of CHB during the extension period.

1 CB(G) Regs 2006, reg 5(4); 2, reg 1

05017 The extension period[1] starts from the Monday after the education or training ends.

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05018 The extension period must be applied for within 3 months of the date of leaving full-time, non-advanced education or approved training. If no application is made, the child is treated as a child until the next terminal date after leaving full-time, non-advanced education or approved training.

1 CB (G) Regs 2006, reg 5(2)(f)

05019 The extension period[1] ends

1. when the young person reaches age 18

2. when the young person starts in remunerative work of more than 24 hours a week for which payment is made or expected

3. when the young person starts getting IS, UC, IB or a TC in their own right, in any week

4. when the young person stops being registered with a careers service, local authority support service or similar organisation (in Northern Ireland, the Department for Employment and Learning or an Education and Library Board), **or**

5. on the day after the end of the 20-week extension period where it has not ended sooner as a result of the above circumstances.

1 CB (G) Regs 2006, reg 5(3)

05020 The child may satisfy the conditions again if

1. their paid work stops or reduces to less than 24 hours per week, **or**

2. in any week, they stop getting

    2.1 IS

    2.2 IB

2.3 a TC

2.4 UC

2.5 Employment and Support Allowance

2.6 Income based Job seekers allowance

in their own right.

Note: the restriction concerning remunerative work during the permitted period in paragraph 05015 for the purposes of considering whether a person is 'child' for child maintenance.

Example 1

John is aged 17 in May 2018. He left school on 25 June 2018 and registered with a careers service within 20 weeks of leaving education. PWC Jan applied for an extension in respect of John within 3 months. The extension period starts on 30 June (the Monday after education ceases) and ends on 10 November (20 weeks after it started).

Example 2

Henry is aged 17 in April 2018. He left school on 25 June. PWC Harry applied for an extension in respect of Henry within 3 months of him leaving school. The extension period starts 30 June (the Monday after education ceases) however he did not register with a careers service until 7 September. Since he registered within 20 weeks of leaving full-time non-advanced education he will continue to be a child until the end of the extension period on 10 November. There is no break in his status as a child because he registered within 20 weeks.

05021 Remunerative work is calculated based on the number of hours worked in any week1, starting on a Monday2. While hours worked may fluctuate over a period, there is no provision to allow for averaging3 the hours over a period.

1 CB(G) regs 2006, reg 76(2)(a); 2 SSCB Act 1992, S.147(1); 3 EH v SSWP DH: [2025] UKUT 77 (AAC)

05022-05024 SPARE

Who is a NRP

05025 A parent of a QC will be a NRP[1] if

1. they do not live in the same household as the child **and**

2. the child has their home with a PWC or PeWC.

1 CS Act 1991, s3(2)

Note: for more information on cases where an NRP states that they live in the same household as the PWC and the QC, see Chapter 37: Applications.

Who is a PWC

05026 The person who has care of a QC does not have to be the parent of that child[1], or be in receipt of CHB for them. Providing they meet the above requirements, a PeWC can be a relative or any other person, however they will usually be a parent of the QC. A PWC is the person

1. with whom the child has their home **and**

2. who usually provides day to day care for the child (whether exclusively or in conjunction with any other person), unless

3. they fall within a category of persons excluded by child maintenance legislation, for example a local authority who has the child in its legal care see paragraphs **05067** to **05068**.

1 CS Act 1991, s 3(3)

05027 Being a parent is not the same as having parental responsibility. A person may have parental responsibility for a child under a court order or a residence order, but this does not make them a parent of that child.

Example

PeWC Denise makes an application for child maintenance in respect of her granddaughter Grace, naming Mike as the NRP. Denise has a residence order for Grace and provides her day to day care. Denise therefore has parental responsibility for Grace and although Denise is not a parent her application for child maintenance is valid.

Note: for more information on parental responsibility see paragraphs **05059** to **05060**.

05028 A parent is a person who is legally the mother or father of a child[1]. This includes

1. a biological parent (unless the child has been adopted)

2. a parent by adoption

3. a parent under a parental order (used in surrogacy case)

1 CS Act 1991, s 54

05029 The status of a child's care arrangements will help the DM to determine whether their carer can

be deemed as a PeWC, or if they fall into an excluded category. The terminology used for children's care arrangements varies and the legal status of these arrangements may not be immediately clear.

The CHB presumption

05030 It is not necessary for a person to be receiving CHB for them to be treated as a PWC. However, entitlement to CHB is based on an overall care test which is broadly similar to the CMS`s policy on day to day care. Payment of CHB is therefore a very good indicator of who should be treated as the PWC. Therefore, the CMS will apply a CHB presumption.

Note: if a person applies for CHB but elects NOT to receive any payments, the CMS may regard that person as though they were in receipt of CHB.

05031 At the application stage, the CMS will check CIS Searchlight to determine if CHB is in payment or an election not to receive CHB payments has been made to the person named as the PWC for the relevant QC. If so, the CMS can presume that they are providing day to day care for the QC and should be treated as the PWC.

05032 DMs will only need to consider whether the PWC requirements are satisfied if

1. CHB is in payment, or an election made not to receive CHB payments has been made by the PWC, but the other party says they should not be treated as the PWC. For example, because the child no longer has their home with them

2. CHB is not in payment for the QC

3. CHB is in payment but to someone other than the party named as the PWC, **or**

4. an election not to receive CHB has been made.

CHB in payment: PWC status disputed

Note: where the person elects not to receive CHB payments, that person is to be treated as receiving CHB.

05033 If who should be treated as the PWC is disputed, DMs should

1. presume that whoever is receiving CHB for the QC is providing the greatest level of day to day care for them and treat that person as the PWC unless evidence is received to prove that this is not the case.

2. note that the onus will be on the party disputing who should be treated as the PWC to provide this evidence, refer to the meaning of home and the meaning of day to day care **05044** to **05054** for further advice.

05034 The other party should be given the opportunity to comment on any evidence submitted and to

provide evidence of their own.

Note: if the evidence shows that both parties are effectively providing equal day-to-day care of the QC, then neither parent can be treated as the NRP. In that event, the case should be closed or the application rejected.

CHB not in payment

05035 If CHB is not in payment for the QC, DMs should ask the PWC why not. It may simply be that they don't want to receive CHB. However, it could be because the QC is no longer considered to be a child. It is important in these circumstances to ensure the QC can be treated as a child for maintenance purposes. Refer to paragraphs **05004 – 05024** for guidance on Who is a child.

05036 If the DM is satisfied that they can be treated as a child then you should proceed with the maintenance calculation.

05037 If the DM is satisfied that they cannot be treated as a child then the case should be closed, unless there are any other QCs in the case.

CHB in payment, but to someone else

05038 If CHB is in payment for the QC, but to someone other than the person named as the PWC, or an election not to receive CHB payments has been made by someone other than the PWC, DMs should advise them that the CMS cannot treat them as the PWC. This is unless they provide evidence confirming that they are the person with whom the child has their home and who provides greater day-to-day care for the QC.

05039 DMs should refer to the individual sections on the meaning of home and day-to-day care **05044** to **05054** for further guidance.

05040 If the DM is satisfied that the QC does not have their home with the person being treated as the PWC, or that they do not provide the greatest level of day-to-day care, then they should close the case or reject the application.

05041 If the DM is satisfied that the QC does have their home with the PWC and that they do provide the greatest level of day-to-day care then the DM should proceed with the maintenance calculation.

Confirmation of CHB ending

05042 The CMS will make automated monthly requests to HMRC asking for all children aged 16 to19 who are included in its caseload, in order to establish whether CHB is still in payment.

05043 If CHB for a child has ceased, HMRC will provide the award end date and the reason why the award ended. This will be one of the following

1. the death of child

2. the child is now habitually resident abroad

3. the child is no longer living with a person responsible for them

4. another reason not listed above.

Home and day to day care

05044 DMs will need to consider the evidence where the CHB presumption

1. does not apply (because CHB is not in payment or is not in payment to the party claiming to be the PWC or election not to receive payments was not made by the PWC), **or**

2. is disputed (because CHB is in payment to the party claiming to be the PWC, but the other party disputes that they are the PWC).

This will enable the DM to confirm who the PWC is.

Refer to paragraphs **05030 - 05043** for the CHB presumption guidance.

Who does the child have their home with

05045 The child`s home must be with the PWC, however, there is no legal definition of 'home' for these purposes. When deciding whether a child has their home with a particular person, based on Social Security Commissioner and Upper Tribunal decisions DMs should

1. concentrate on the nature and extent of the child`s association with the person alleged to be the PWC, rather than on the child`s association with particular premises

2. take into consideration that it is possible for a child to have their home with a particular person, despite considerable absences from them. The fact a child is separated from a person for lengthy periods therefore does not, of itself, prevent the child`s home from being with that person

3. consider if a child is absent from home because they are attending boarding school or are in hospital. It will usually be obvious who they would otherwise be living with in these circumstances. Usually the person who would otherwise have provided day to day care but for the absence should be treated as continuing to do so. However, there may be exceptional cases in which there is no clear answer and which will require a careful analysis of all the circumstances of the case.

Who usually provides day to day care?

05046 There is no statutory definition of day to day care, DMs will therefore need to determine who is taking responsibility for a child`s care where more than one person has care, which one of them can be

viewed as having primary responsibility.

05047 In many cases, the need for this action will not arise, as most parents will accept the CMS presumption that the person receiving CHB for the child is the person with primary responsibility for day to day care.

05048 When deciding whether a person provides day to day care, DMs should consider the following

1. who does the child spend most of their time with when they are not at school, nursery or childcare

2. who pays for most of the child's clothes and meals

3. who arranges and pays for any childcare costs

4. who is the usual contact for the child`s school and, or child-minder

5. whose GP and dentist is the child registered with and who arranges appointments and accompanies the child

6. who has the greatest involvement with the child`s recreational activities and is responsible for paying for them

7. who already receives any financial support for the child, such as benefits or local authority assistance.

05049 In cases where the CHB presumption is challenged, the onus is on the person making the challenge to support their claim. Any party disputing who should be treated as the PWC should be required to submit evidence on the above points and any other factors that they wish to be considered. The other party should be given the opportunity to comment on any evidence provided and to submit their own information. Refer to paragraphs **05030 - 05043** for the CHB presumption guidance.

05050 Verbal evidence can be accepted if it is agreed by the other parent. If verbal evidence is not agreed, the person making the challenge will be required to provide documentary evidence. Examples of documentary evidence include the following

1. evidence from schools, GPs or dentists. Evidence from these organisations may show that the disputed PWC has the most contact with the child. Alternatively, it may show that the disputed PWC shares contact equally with someone else.

2. evidence from childcare providers - written evidence from the care provider showing that the disputed PWC has the most the contact with the child or shares contact equally with someone else, or showing that the disputed PWC had a main or equal part in the drawing up of any childcare contract

3. evidence from bank statements, receipts, contracts or similar which shows the disputed PWC has the most involvement in major spending decisions for the child. Alternatively, the evidence could show that decision-making is shared equally with another party.

05051 DMs should use the information provided by both parties to decide who, on the balance of probabilities, is providing the greatest level of day to day care for the QC. This person should be treated as the PWC.

Temporary absences from the home

05052 If a QC is temporarily living away from the home because they are at a boarding school or have been admitted to hospital[1], the PWC should be regarded as continuing to have day to day care of the child[1].

1 CSMC Regs 2012, reg 55

05053 If the NRP disputes that the liability should be continuing, DMs will need evidence that the absence is one which does entitle the PWC to continue receiving maintenance. The PWC should be asked to provide documents

1. if the QC is in hospital: written evidence from the hospital that the QC has been admitted

2. if the QC is at boarding school: evidence from the school that the child is registered with them as a boarder and details of the school's term dates.

Note: if the NRP already receives a special expense variation for boarding school fees for the child in question, no further evidence is needed. If the NRP continues with the dispute, they should be asked if that variation ground still applies.

05054 If the PWC does not supply evidence, or gives another reason for the child's absence, the DM should consider if they are still likely to be providing day to day care for the child.

Note: if the absence is due to the fact that the child is in local authority care, consider if the liability needs to be adjusted to reflect this.

Persons who are not a PeWC

05055 The following categories of person cannot be treated as a PeWC for the purposes of the Child Support Act[1]

1. local authorities[2]

2. a person, where the local authority has placed a child with that person and the child is 'looked after' (see paragraphs **05086** to **05089**, except where that person is a parent of the child and the local authority allows the child to live with that parent

3. in Scotland, a family or relative with whom a child is placed by a local authority[4]

4. in Wales, a parent who has a child looked after by a local authority and who does not have the child sleep in their household[5]

1 CS Act 1991, s3 ; 2 CSMC Regs 2012, reg 78; 3 C Act 1989, s22 (2), s23(5) ; 4 CSMC Regs 2012, reg 78 (1)(c) ; 5 CSMC Regs 2012 reg 78 (1)(d)

Who is a parent

05056 A person does not have to be a parent to be a person with care and receive child maintenance. But only parents[1] have a statutory duty to support their children and are potentially liable to pay child maintenance.

1 CS Act 1991, s 54

05057 Being a parent is not the same thing as having parental responsibility. A person may have parental responsibility for a child under a court order or a residence order, but this does not make them a parent of that child.

05058 A parent is a person who is legally the mother or father of a child. This includes

1. a biological parent (unless the child has been adopted

2. a parent by adoption

3. a parent under a parental order (used in surrogacy cases).

Demonstrating parental responsibility

05059 Where multiple applications are made for one QC it may be necessary for DMs to determine who has parental responsibility.

05060 Parental responsibility can be demonstrated in a number of ways, which will vary depending on the circumstances. Documents that could demonstrate parental responsibility include

1. a valid parental responsibility agreement

2. a court order stipulating parental responsibility

3. a document showing the applicant is registered under the applicable births and deaths legislation as the child`s parent

4. in cases where a person is appointed as the child`s guardian, a valid will or court order

5. Birth and marriage certificates

5.1 the child's birth certificate will be sufficient evidence to confirm that the mother has parental responsibility

5.2 Where the disputed parent is male and was married to the child's mother, or in a civil partnership with her, at some time during the period beginning with the child's conception and ending with the child's birth he will be presumed to be a parent.

5.3 if an unmarried father`s name appears on the birth certificate this will also be sufficient evidence of parental responsibility for births registered in England and Wales on or after 1 December 2003 or in Scotland on or after 4 May 2006

5.4 if an unmarried father`s name appears on a birth certificate issued before this date, they will need to provide one of the additional documents referred to above to confirm they have parental responsibility.

Children conceived by artificial insemination or in vitro fertilisation (IVF)

05061 If a child was conceived by artificial insemination or IVF in the UK or elsewhere

1. the mother[1] is the woman who gave birth to the child, unless an adoption or parental order is subsequently made

2. the father[2] is the man who provided the sperm

3. since April 2009[3], a female partner of the child`s mother will be treated as a parent if they have, or are treated as having, consented to the relevant treatment.

1 HF and E Act 1990, s27; HF and E Act 2008, s33 – 34; 2 HF and E Act 1990, s28; HF and E Act 2008 s35 – 41; 3 HF and E Act 2008, s42 – 47

05062 There are exceptions to the above depending on when the treatment took place.

Insemination took place on or after 1 August 1991 but before 6 April 2009

05063 If the mother is married, the father is the mother`s husband, unless

1. he did not consent to, **or**

2. he died before insemination.

05064 In these situations, the mother`s husband cannot be treated as the father of the child.

05065 If the insemination was during licensed treatment services provided for the mother and a man, that man is the father.

Note: the man and woman must have received treatment services together. The rule does not apply to a woman inseminated or fertilised outside the UK.

Insemination took place on or after 6 April 2009

05066 If the mother is married, the father is the mother`s husband, unless

1. he did not consent to the treatment. In this situation, the mother`s husband cannot be treated as the father of the child

2. if a man and a woman are not married and the woman has a child as the result of licensed treatment, the man is the father if there is a notice of consent between them

3. female civil partners are treated the same way as married couples. If one partner gives birth to a child as a result of donor insemination (anywhere in the world), she is the mother of the child and her civil partner is automatically the other parent, unless she did not consent to the mother's treatment

Local authority caring for the child

05067 If a case already exists for a QC who is in the care of a local authority, DMs will need to establish if the care is shared with an existing PWC or PeWC, and if that person is still the primary provider of care. Refer to Chapter 11 Shared care, Care provided in part by a local authority.

05068 The DM will also have to determine if another person could be considered to be a PeWC.

Foster carer caring for the child

Fostering through local authority or fostering agency

05069 Fostering a child is normally done through a local authority or through a fostering agency that works with the local authority.

05070 If a person looks after a foster child on behalf of the local authority that person is not treated as providing day to day care of the child. In these cases, the local authority is regarded as having day to day care.

05071 Therefore, the local authority or fostering agency foster parents cannot be regarded as a PeWC.

Private fostering

05072 Private fostering[1] is when a child under the age of 16, or under 18 if the child is disabled, starts to be cared for by someone who is not their parent or a close relative through a private agreement made between their parent and a carer for 28 days or more.

05073 Close relative is defined as a step-parent, grandparent, brother, sister, uncle or aunt, whether of full-blood, half-blood or by marriage.

1 C(PAF) Regs 2005, reg 3

05074 A private foster carer can be a PeWC and evidence of the local authority's acceptance of them as a private foster carer can be used as evidence of them being the principle provider of care.

05075 If the child is not under the care of the local authority and is privately fostered, it will need to be determined if the child's private foster carer has become the PeWC or whether the child's parent (or guardian) would remain the PWC (or PeWC). This will depend upon which of them provides a home for the child and on who provides the majority of the day to day care.

05076 If it is deemed that the private foster parent does satisfy the relevant conditions[1], then they can be considered a PeWC.

1 CS Act 1991, S3(3)

Special guardian caring for the child

05077 A special guardian is created when the court issues a special guardianship order for a child to an individual or to a couple.

05078 Special guardianship orders are similar to adoption but without the absolute legal severance from a child's birth family i.e. the birth parents retain some parental rights.

05079 Children for whom a special guardianship order is in place are not deemed to be 'looked after' by the local authority.

05080 Therefore the special guardian can be considered a PeWC if they satisfy the relevant conditions[1].

1 CS Act 1991, S3(3)

05081 If guardianship is awarded to a couple who subsequently separate, but one of them retains care of the child(ren), they cannot make a claim for maintenance against the other (now former) guardian. Any claim would need to be made or continue against the biological parent(s).

Special guardianship allowance

05082 Allowances to assist with the care of a child may be paid to special guardians by the local authority. These payments do not prevent an application for child maintenance but the special guardian(s) should be advised that they should inform the local authority that they have claimed statutory maintenance, as this may impact the amount of their special guardianship allowance.

Kinship carer caring for the child

05083 In Scotland children who are cared for by people such as grandparents, aunts, uncles and family friends can be referred to as being in kinship care.

05084 The legal status of kinship care arrangements need to be established to identify if the kinship carer can be considered as a PeWC.

05085 Some children in kinship care are formally 'looked after' by the local authority and some are not.

Looked after

05086 A child may become looked after as a result of being taken into care by a local authority under a formal court order, or as a result of the local authority providing accommodation for the child for a continuous period of more than 24 hours in exercise of its social services functions.

05087 A child may be taken into care where a court is satisfied that he or she is suffering, or is likely to suffer, significant harm.

05088 A child may be accommodated by a local authority at the request of the child's parent where

1. there is no person with parental responsibility for the child
2. a child is lost or abandoned
3. a person who is providing accommodation for a child is prevented from doing so.

05089 The local authority in Scotland can place a looked after child with a relative or family friend in a kinship care arrangement. If the child is still deemed to be looked after by the local authority, the kinship carer cannot be regarded as a PWC.

Evidence

05090 Evidence of the looked after status of the child(ren) in kinship care is required. For further guidance refer to Chapter 99: Evidence – other factors affecting the maintenance calculation.

The carer of the child(ren) must be asked to provide:

1. a copy of the court direction, **or**
2. written confirmation of the looked after status from the social work/children's services department.

Not looked after

05091 Where a relative or family friend acts as a kinship carer for a child whose status is not looked after, they can be regarded as a PeWC provided they satisfy the conditions[1].

1 CS Act 1991, S3(3).

Cases with more than one child

05092 For cases with more than one child, each child could have different care arrangements in place. This could mean that the children's carer could be considered as a PeWC for one child and not for another. Each child's care arrangements must be investigated separately.

Cases with more than one PWC

05093 There may be cases with more than one PWC, as two people may have joint day to day care of the child.

1 CS Act 1991, S3(5)

Child support maintenance

05094 Periodical payments, which are required to be paid in accordance with the maintenance calculation are referred to[1] as 'child support maintenance'

1 CS Act 1991, S3(6)

Chapter 6 - Relevant other child

Introduction

06001 Where a NRP has a relevant other child ('ROC') in their household their maintenance liability may be reduced.

This guidance explains

Who is a ROC? 06002 - 06003

ROCs temporarily away from home 06004 - 06006

ROCs in local authority care 06007

The effect of a ROC on the maintenance calculation 06008 - 06010

Who is a ROC?

06002 A child will be a ROC for maintenance purposes if they are not a QC in the case concerned, but are a child for whom the NRP or their partner receives Child Benefit.

Note: DMs must carry out a check of Child Benefit records to establish whether an alleged ROC meets the specific legislative requirements.

06003 A child can also be a ROC if the NRP or their partner

1. does not receive child benefit solely because either of them or the child are not considered to be resident in Great Britain according to child benefit law, or

2. would receive child benefit but for an election not to receive it because it would result in liability for the 'high income child benefit charge' in income tax[1].

Note: 'Partner' means a spouse or civil partner who is a member of the same household as the NRP, or a person who is not married or in a civil partnership with the NRP but who lives together with the NRP as their spouse or civil partner.

1 CS Act 1991, Sch 1, para 10C(2) and CSMC Regs 2012, reg 77

Example 1

Denise lives together with her partner Sam, and his son, Theo. Sam receives Child Benefit because he provides the day to day care for Theo. Theo is considered a ROC in the claim when calculating Denise's child maintenance liability for her own daughter, Sarah. This is because Theo forms part of Denise's household and it can be said that Denise is likely to share some liability for maintaining him by things such as providing food and transport.

Example 2

Helen lives together with her partner Paul. Paul's son, Ethan, lives with Paul's ex-partner who receives Child Benefit because she provides the day to day care for Ethan. Ethan is not considered a ROC in the claim when calculating Helen's child maintenance liability for her own daughter. This is because Ethan does not form part of Helen's household and Helen cannot be said to be liable for him.

Note: household is not defined in legislation, refer to Chapter 37: Application for guidance.

ROC temporarily away from home

06004 A ROC will normally live in the same household as the NRP and their partner, although there are circumstances where this will not be the case.

06005 Where a child is away from home as a boarder at boarding school, or an in-patient in a hospital they will be considered a ROC.

06006 A ROC may include a child in respect of whom a NRP or their partner would receive Child Benefit but do not solely because the child is temporarily out of the country[1].

1 CSMC Regs 2012, reg 77

ROC in local authority care

06007 Where a child other than a QC is cared for in part or in full by a local authority, and the NRP or their partner receives Child Benefit for that child, the child is considered a ROC[1].

1 CSMC Regs 2012, reg 54

Effect of ROC on the maintenance calculation

06008 The effect of a ROC on the maintenance calculation will depend on the rate that the calculation is based on.

Maintenance calculation based on the basic rate or basic rate plus

06009 If a NRP's liability is based on the basic or basic rate plus, their gross weekly income is reduced to reflect any ROCs by the following percentages[1].

Number of ROCs	Percentage reduction

1	11%
2	14%
3 or more	16%

1 CS Act 1991, Sch 1, para 2 and CSM (CBRCMAL) Regs 2012, reg 2

Maintenance calculation based on the reduced rate

06010 If a NRP's liability is based on the reduced rate, the calculation will be based on the number of QCs and ROCs[1], see Chapter 25: Rates and Rules, for the percentages that should be applied.

1 CSMC Regs 2012, reg 43

Chapter 7 - Spare

Spare

Chapter 8 - Child of the family or child abroad

Introduction

08001 Where the NRP is liable to maintain a child of the family or a child abroad[1] due to a court order (or under other relevant legislation), this may affect the calculation of the NRP's liability under the statutory child maintenance scheme.

This guidance explains

Child of the family or child abroad 08002 - 08003

Evidence of a child of the family order 08004 - 08005

Evidence of a child supported abroad 08006 - 08007

Effect of a child of the family or child abroad 08008 - 08010

1 CSMC Regs 2012, reg 52

Child of the family or child abroad

08002 If a NRP's liability for a QC is based on the basic, basic plus or reduced rate, or would be calculated following agreement to a variation where the nil rate or the flat rate would otherwise apply, (see Chapter 25: Rates and Rules for further guidance), their liability will be calculated differently if they are supporting

1. a child of the family, due to a UK court order. This applies where a court has ordered that a person who is not a child's parent is responsible for supporting them, or

2. a child living abroad, due to a foreign court order or another country's child maintenance scheme.

Note: for more information on other types of court orders and how they affect child maintenance, refer to Chapter 12: Court Orders.

08003 This may apply to children where the NRP is not the natural or adopted parent, but for whom a court has decided the NRP should have continuing parental responsibility. For example, the NRP may be a guardian or former step-parent.

Evidence of a child of the family order

08004 If the NRP states that they are supporting a child under a child of the family order, DMs will need to request a copy of the court order.

08005 If the NRP does not provide this evidence, DMs should advise the NRP that their claimed liability to maintain the child cannot be taken into account in the maintenance calculation.

Evidence of a child supported abroad

08006 If the NRP states they are supporting a child who lives abroad, DMs will need to request a copy of

1. the foreign court order, or

2. a liability order (or similar) made under a foreign state's child support scheme.

08007 Where the NRP does not have the required evidence, there is no requirement to contact the other parent. In these circumstances, the DM should advise the NRP that the child will not be considered in the maintenance calculation.

Effect of a child of the family or child abroad

08008 If evidence confirms that the NRP is supporting a child of the family or a child abroad, that child will be treated as if they were an additional QC when working out the basic rate or reduced rate applicable, but no weekly amount will be payable in respect of that child[1]. For example, a NRP with one QC and one child supported abroad will be treated as having two QCs for the purposes of calculating the basic/reduced rate.

1 CSMC Regs 2012, reg 52(2); CS Act 1991, sch 1, para 5A

Note: A child of the family or child abroad would not be treated as a QC when calculating a DMD

08009 The weekly rate calculated will be apportioned between an amount for any QC(s) who the NRP is liable to support under the statutory scheme and a notional amount for any child(ren) supported abroad.

Note: the weekly rate so calculated must be at least £7.

Example

NRP John has a gross weekly income of £500. John has a QC Mary with PWC Jean and a child Mark supported abroad with PWC Angela. Apply the calculation for two QCs = £500 x 16% = £80. Apply the apportionment = £40 to Jean. The other £40 is a notional amount in respect of Mark and Angela, which will not be payable.

08010 Once a child of the family or child supported abroad has been recognised, the CMS is not required to carry out regular reviews of whether the arrangement continues to apply. It is the responsibility of the parents to notify the CMS if the arrangement ceases. The child will continue to be treated as a child until

1. they reach the age of 20, or

2. other circumstances apply which mean they can no longer be treated as a child, or

3. the arrangement has ceased.

1 CSMC Regs 2012, reg 52(2) and CS Act 1991, sch1 para 5A

Chapter 9 - Child supported under family based arrangement (CIFBA)

Introduction

09001 If the NRP's liability is based on the basic, basic plus or reduced rate or would be calculated following agreement to a variation where the nil rate or the flat rate would otherwise apply, (see Chapter 25: Rates and Rules for further guidance) their liability will be calculated differently if they have another child or children that they are supporting under a family based arrangement or court order[1].

This guidance explains

What is a family based arrangement? 09002 - 09004

Evidence to consider 09005 - 09015

Effect on the calculation 09016 - 09018

1 CS Act 1991, sch1, para 5A and CSMC Regs 2012, reg 48

What is a family based arrangement?

09002 A key objective is to maximise the number of effective arrangements between parents who live apart in order to ensure appropriate financial support is in place for their children without the need for State involvement.

09003 There are likely to be cases where a NRP is supporting a child outside the statutory scheme (either by way of a family based arrangement or due to a court order) in addition to supporting a QC. The CMS should recognise such arrangements when calculating the NRP's liability, to ensure that their financial responsibility to all their children is accurately reflected.

09004 A family based arrangement may be oral or written and must satisfy the following conditions

1. it must relate to a child of the NRP who is habitually resident in the UK

2. it must be between the NRP and a person with whom the child has their home (but not in the same household as the NRP and who usually provides day to day care for that child, **and**

3. it must provide for the NRP to make regular payments for the benefit of the child

Note: the payments mentioned in number 3 (above) may include payments made by the NRP direct to the person mentioned in number 2 (above) or payments to other persons.

Evidence to consider

09005 If a NRP states they are supporting a child under a family based arrangement, DMs will

determine whether a verbal declaration by the NRP of that arrangement can be accepted: see paragraphs **09006** to **09015** for the checks to complete. See also Chapter 99: Evidence – other factors affecting the MC, for further guidance.

Verbal declaration that there is a child who is being supported under a family based arrangement

09006 A verbal declaration of a CIFBA may be accepted by DMs if

1. the child is recognised on CIS Searchlight and

2. Child Benefit is in payment for the child, or

3. Child Benefit is payable but an election has been made not to receive it.

09007 If there is a record of the child on CIS Searchlight and Child Benefit is in payment (or election has been made not to receive it), DMs will need to contact the NRP to obtain details of the family based arrangement, including the amounts paid and the frequency of payments.

Is there a record of the child on CIS Searchlight?

09008 The majority of people who live in the United Kingdom will be recorded on the CIS Searchlight database and will have a National Insurance number or a child reference number assigned to them

1. if the child is not recognised on CIS Searchlight the child cannot be considered as a CIFBA unless further evidence is received which would allow a determination of

    1.1 whether the child meets the definition of a child

    1.2 the child's address (to ensure the child does not reside with the NRP), and

    1.3 whether the child is habitually resident in the UK.

2. if the child is recognised on CIS Searchlight, DMs will need to check whether Child Benefit is in payment or whether an election not to receive Child Benefit has been made.

Is Child Benefit in payment?

09009 If Child Benefit is in payment for the child, or an application has been made but the parents have elected not to receive Child Benefit payments, ask the NRP for details of the arrangement.

Note: a Child Benefit check will not inform the DM who the Child Benefit is being paid to.

Child is recorded on CIS Searchlight but child benefit is not in payment

09010 If there is a record of the child on CIS Searchlight but Child Benefit is not in payment for them, DMs should ask if the NRP is able to provide evidence that the child named meets the definition of a

child. Acceptable evidence may be proof from the child's school or college that a child is in full time non-advanced education.

Note: The CMS are not legally entitled to contact a child's school, college or employer for information. DMs should therefore not do so.

Information the CMS does not need to consider

09011 When deciding whether a family based arrangement can be taken into account, there is no requirement to consider

1. the amounts payable under the terms of the arrangement. However, DMs should however note any such details when recording their decision)

2. whether the NRP is fully complying with the terms of the arrangement. However, if there is complete default by the NRP on payments, the DM may decide conclude that the family based arrangement should not be recognised)

3. whether there is any shared care of the child.

Evidence of a family based arrangement where there is a dispute

09012 Where the PWC disagrees with or disputes that an arrangement between the NRP and another party exists, evidence of the family based arrangement will be required. See Chapter 99: Evidence – other factors affecting the MC, for more information on the types of evidence a NRP may provide.

Contacting the other parent or party to the arrangement

Other parent confirms arrangement

09013 If the other parent confirms the arrangement, the child can be accepted as a CIFBA.

Other parent does not confirm arrangement

09014 If the other parent does not confirm the arrangement, the child will not be considered as a CIFBA.

Other parent provides contradicting information

09015 If the other parent agrees there is an arrangement, but contradicts the details provided by the NRP, DMs can accept there is an arrangement in place. There is no requirement for the CMS to consider any disagreement in the detail of the arrangement.

Effect on the calculation

Effect of a child supported under a family based arrangement

09016 A CIFBA will be treated as if they were an additional QC when calculating the basic rate, although

no payment is made for a CIFBA under the scheme. This means that a NRP with one QC and one child supported under a family-based arrangement will be treated as having two QCs when determining the percentage of the NRP's gross weekly income that is payable by way of the basic rate.

Note: A CIFBA would not be treated as a QC when calculating a DMD

09017 The weekly rate calculated will be apportioned between an amount for the QC who the NRP is liable to support under the statutory scheme, and a notional amount for the child supported under the family-based arrangement.

Example

NRP John has a gross weekly income of £500. John has a QC Ben with PWC Mary and a child David supported under a family-based arrangement with PWC Jean. The calculation for two QCs £500 x 16% = £80. The apportionment that applies for Ben = £40 to Mary. The remaining £40 is a notional amount which will not be enforced by the CMS. John and Jean are free to decide whether to continue with the payments made under their agreement or to replace it with the share worked out under the maintenance calculation.

09018 The weekly amount of child maintenance payable after having taken into account a CIFBA must be at least £7.

Note: once a family-based arrangement has been recognised, the CMS is not required to carry out regular reviews of whether the arrangement continues to apply. It is the responsibility of the parents to notify the CMS if the arrangement ceases. The child will continue to be treated as a child until

1. Child Benefit ceases to be payable

2. a parent reports another type of change which means they are no longer a child or

3. a parent reports that the family based arrangement has ceased.

Chapter 10 - Spare

Spare

Chapter 11 - Shared care

Introduction

11001 Shared care[1] applies if the NRP provides overnight care for a QC for at least 52 nights per year. If shared care is in place the NRP's liability will be reduced or there will be no liability.

1 CS Act 1991, Sch 1, 7(4), 8(2),

This guidance explains

Shared care agreements 11002

What is overnight care? 11003 - 11005

Pattern of shared care 11006

Evidence 11007

Disagreement about shared care arrangements 11008 - 11009

Court Orders 11010 - 11012

Common ground 11013

PWC Agrees with the number of nights of shared care claimed by the NRP 11014

NRPs who work night shifts 11015

Equal shared care 11016 - 11020

The effect of shared care on the maintenance calculation 11022 - 11027

Care shared with a local authority 11028 - 11034

Shared care arrangements

11002 Shared care is based on the number of nights the NRP is expected to have overnight care of a QC, usually within a 12-month period. Shared care arrangements should be taken into account by the DM from the effective date of the relevant maintenance calculation decision[1].

SMC Regs 2012, reg 46(2)

What is overnight care?

11003 For overnight care to be provided, the QC will normally stay at the same address as the NRP[1] and be cared for by them[2]. However, any night where the child is an in-patient in hospital or at boarding school may still be treated as a night's shared care, if the child would otherwise have been cared for by the NRP[3].

1 CSMC Regs 2012, reg 46(5)(a);2, reg 46(5)(b);3, reg 46(5)(c)

11004 Overnight care can take place on any night of the week, or in blocks of nights or weeks, providing it amounts to a minimum of 52 nights throughout the year.

Note: The Secretary of State may take into account a period of less than 12 months if a shorter timeframe is appropriate[1], for example, when the parties have mutually agreed upon a reduced period.

1 CSMC Regs 2012, reg 46(3)

11005 The number of nights where the NRP has overnight care of the QC is divided into shared care bands. See paragraph 11025 for information on shared care bands and how they affect the maintenance calculation.

Pattern of agreed Care

11006 Where the parents agree with the number of nights shared care then no further evidence is required.

Evidence

11007 In determining what shared care arrangements exist, DMs must consider whether any of the

following exist:

1. a court order[1] - providing for contact between the NRP and QC (See Chapter 12: Court Orders for further information)

Note: If the QC is 16 years old or over, it might not be possible to obtain a court order. Please consider other evidence in these circumstances.

Note: If both NRP and PWC confirm there is no shared care or agree that there is a different level of shared care with the QC while a court order is in place, the caseworker can accept this evidence over the contents of the court order. See paragraph 11010.

2. an agreement made between both parties[2] – For example, a written agreement, drawn up by a solicitor, or a verbal agreement providing for contact between the NRP and QC

3. where there is no court order or agreement, whether a pattern of shared care has already been established over the past 12 months (or such period as the DM considers appropriate in the circumstances of the case)[2].

1 CSMC Regs 2012, reg 46(4)(a); 2, reg 46(4)(b)

Note: If both parents have previously established a regular pattern of shared care, this can be considered as the basis for future shared care. But, determinations about shared care are based on the anticipated number of nights the NRP is expected to have care of a QC, reflecting a forward-looking approach. Accordingly, a past pattern of care is not determinative of the level of shared care if there is evidence that this is no longer applies for example, because the parents dispute the evidence as to the past pattern .

Disagreements about shared care arrangements

PWC disagrees, but number of nights fall within the same shared care band

11008 If the PWC does not agree with the number of nights of shared care but the number stated by both the NRP and the PWC falls within the same shared care band, no further evidence is required.

PWC disagrees and number of nights claimed fall into a different shared care band

11009 If the PWC and the NRP each specify a different number of nights shared care, each of which falls into a different shared care band, both parties may be asked to provide evidence to support their claims.

Formal evidence establishing the number of nights a NRP is expected to have care of a QC may include:-

1. a current court order providing contact between the NRP and the QC

2. a written agreement, for example drawn up by a solicitor, or

3. other official documents for example, Social Services or Children and Family Court Advisory and Support Service (CAFCASS) reports.

This list is not exhaustive

Consideration of Court Orders in Shared Care Decisions

11010 If a court order is presented, DMs should use it as the basis for shared care decisions unless there is evidence that it is not being followed. In such cases, DMs should consider the other evidence and make a decision on the balance of probabilities based on all the evidence provided.

DMs must also recognise that there may be other relevant factors influencing shared care decisions[1]. If additional evidence is presented that indicates the court order is not being followed, this information should also be taken into account. The DM should carefully consider and balance such evidence against the court order to ensure an accurate and fair assessment of the actual shared care situation.

1 EA v Secretary of State for Work and Pensions and SA (CSM): [2019] UKUT 149 (AAC)

11011 Evidence that a court order is not being adhered to could include,

1. Both parties agree that it is not being followed.

2. Recent contradictory evidence from a trusted and verified source – such as court, solicitor, social services, CAFCASS.

3. Practical evidence such as customer location which makes contact improbable, where otherwise un-explained.

This list is not exhaustive.

Other types of evidence

11012 Where no formal evidence (e.g a court order or written agreement) exists, DMs should consider if there is other evidence which establishes the number nights the NRP is expected to have care of the QC. This could be independent and verified evidence, such as information from schools or doctors.

Informal, unverified information such as diaries, receipts or statements from friends can be considered, but such evidence is generally less robust than verifiable or formal evidence e.g a court order. DMs should consider whether the evidence provided is sufficient to reach a decision on the balance of probabilities about the number of nights the NRP is expected to have care of the QC

Common Ground

11013 If there is no formal evidence or agreement between the RP and NRP and a pattern of care has not already been established, DMs will need to consider whether there is any agreed common ground. To do this DMs will look for any points of agreement in what both parents have said. Even where parents don't agree on the total amount of shared care, they might agree that at least a certain amount is happening. In these cases, the DM can make a decision based on the lowest level both parents agree on and use that as the care level until the parents can reach an agreement or provide official proof.

Examples

1. NRP John and PWC Mary agree that QC Ben stays with John 2 nights per week (Saturdays and Sundays). John also claims that Ben stays with him on Tuesdays, but Mary disagrees. Where there is no evidence to verify John or Mary's claim, DMs may decide that the shared care arrangement means that John looks after Ben for 2 nights per week. There is clear evidence of a common ground of this between the parties.

2. NRP Derek and PWC Dawn agree that QC Mark stays with Derek 1 night a week (Saturdays). Derek also claims that Mark stays with him on Thursdays, but Dawn disagrees. Where there is insufficient evidence to verify Derek or Dawn's claim, DMs may decide that the shared care arrangement is that Derek looks after Mark 1 night per week, as there is common ground as to this between the parties.

Parents disagree on the number of nights but agree in principle that there is shared care

11014 Where there is a dispute DMs should consider each party's statements, the evidence provided and then make a decision on the balance of probabilities. Where the parties agree in principle that there is a level of shared care but there is insufficient evidence to make the decision on the basis set out in paragraph 11007, (for example because the parents have not agreed a pattern of care or the evidence about a past pattern of care is disputed) DMs can make an assumption of shared care of one night per week[1]. If either party disagrees with the decision, they are able to request that it be superseded, after which they may choose to appeal.

1 CSMC Regs 2012, reg 47(2) & 47(3)

NRPs who work night shifts

11015 NRPs who work night shifts may be given a reduction for shared care if

1. the QC stays overnight at the same address as the NRP

2. the NRP returns to the same address each day before commencing another night shift, and

3. the NRP is able to return immediately if there was an emergency.

Examples:

1. NRP Lisa works night shifts at a hospital but has overnight care of her son, QC Alex on Tuesdays and Fridays. On nights when Lisa is scheduled to work, Alex still stays overnight at Lisa's home. Before each shift, Lisa returns home after her previous shift has ended and is always able to come back immediately if there's an emergency with Alex. Because Alex consistently stays overnight at Lisa's address, and Lisa is able to return quickly in emergencies and comes home before starting each new night shift, Lisa may be eligible for a reduction for shared care based on these arrangements.

2. NRP David has overnight care of QC Peter on Fridays and Saturdays. David works on an oilrig, his working pattern is 3 weeks on and 1 week off. Due to the nature of his work during his 3 weeks on he does not return home between shifts. In these circumstances, as Peter is not residing at the same address as David on the nights that David is on the oilrig, the total number of nights per year for which shared care can be considered to be provided is less than 52. David would therefore not be treated as providing shared care for Peter.

Equal shared care

11016 Equal shared overnight care applies where the NRP has care of a QC for 175 nights or more within a 12-month period.

Note: equal shared care differs to equal day to day care. See Chapter 5: Meaning of certain terms, for more information on determining who has day to day care.

Abatement for equal shared care

11017 Abatement is an adjustment made to the NRP's liability where there is equal shared care of a QC.

11018 Where shared care applies and an equal shared care adjustment of one half has been made to the maintenance liability in respect of a specific QC, a further reduction (abatement) of £7.00[1] is made to the amount payable in respect of that child.

Note: abatement applies to each QC for whom there is equal shared care.

1 CS Act 1991, Sch1, 7(6)

11019 If, after allowing for abatement for any QC, the total weekly amount of child maintenance payable by the NRP would decrease to less than £7.00, the NRP will instead be liable to pay a weekly rate of £7.00.

11020 Similarly, if, after abatement for any QC, the total weekly payment by the NRP to all the PWCs within the case group falls below £7.00, the NRP will instead be liable to pay a weekly rate of £7.00[1]. Where this applies, the £7.00 is subject to apportionment.

1 CS Act 1991, Sch1, 7(7)

Example

John has a QC - Ben, John's maintenance liability is £60.62. John has shared care of Ben for 180 nights of the year. A shared care reduction of 1/2 applies plus the abatement. £60.62 ÷ 2 = £30.31 - £7 = £23.31.

John's maintenance liability is £23.31.

Spare 11021

The effect of shared care on a maintenance calculation

Basic, basic plus or reduced rate liability

11022 If it is accepted that the NRP has care of a QC for 52 nights or more during a 12-month period, the following reductions will apply to the child maintenance calculation:

Shared care bands[1]

Number of nights	Reduction
52 – 103	1/7th
104 – 155	2/7th
156 – 174	3/7th
175 or more	1/2 Plus an additional further decrease in the total amount of maintenance by £7 for each child for whom the NRP provides this level of care.

1 CS Act 1991, Sch 1, 7(4)

Note: Where the NRP is liable to maintain a child abroad or a child of the family, or is supporting a child under a family based arrangement, and the rate of child maintenance is determined on that basis, a reduction for shared care can still be considered in the usual way for QCs under the statutory scheme[1].

1 CS Act 1991, Sch 1, 5A

Flat rate liability

11023 Where a flat rate maintenance calculation is in place, the effect of shared care will depend upon the reason for the flat rate maintenance calculation. The flat rate of £7 will either be in place because

1. the NRP or their partner is in receipt of a prescribed benefit, pension or allowance, or
2. the NRP's gross weekly income is £100 or less[1].

1 CS Act 1991, Sch 1, 8

11024 If the flat rate is as a result of a prescribed benefit, pension or allowance being in payment for the NRP or his partner, any level of overnight care of more than 52 nights per year will result in the maintenance calculation reducing to Nil.

11025 If the flat rate is in place because the non-resident parent's gross weekly income is less than

£100, the weekly rate will be £7, irrespective of the degree to which overnight care is provided.

Different levels of shared care for different QCs

11026 A NRP may provide different levels of shared care for each child. The shared care reduction in these circumstances is calculated by

1. working out the shared care reduction for each child, and adding them together, then

2. dividing the result by the total number of QCs[1].

1 CS Act 1991, Sch 1, 7(5)

Example

NRP John has 2 QCs - Ben and Anne. His maintenance liability is £40. John has shared care of Ben for 156 nights of the year, but has no shared care for Anne. A shared care reduction of 3/7th will apply for Ben. There will be no reduction for Anne. The reduction is therefore (3/7 + 0) ÷ 2 = 3/14. £40 ÷ 7 = £5.71428. £5.71428x 3 = £17.142857. £17.142857÷ 2 = £8.57. £40 - £8.57 = £31.43. John's maintenance liability is £31.43.

More than one PWC

11027 Any shared care adjustment must be made after the NRP's liability has been apportioned between the PWCs[1].

1 CS Act 1991, Sch 1, 6

Example 1

NRP John has a gross weekly income of £200. John has 2 QCs, Ben and Anne, with different PWCs Jean and Mary. John shares care of Ben for 52 nights a year (PWC Jean). John does not share care for Anne (PWC Mary). John's maintenance liability is apportioned between Jean and Mary. £200 x 16% (for 2 QCs) = £32. £32 ÷ 2 = £16. Shared care reduction for 52 nights per year with Jean would be 1/7th of £16 = £2.29 which reduces the liability to £13.71 for Jean.

Example 2

John is liable for the flat rate because he receives a prescribed benefit. There are 2 QCs, Ben and Anne with different PWCs Jean and Mary. John shares care of Ben for 52 nights a year (PWC Jean). John does not share care for Anne (PWC Mary). John's maintenance liability is apportioned between Jean and Mary. £7 ÷ 2 = £3.50. John's liability for Jean is reduced to nil because there is shared care. John's liability for Mary is £3.50, as there is no shared care.

Care shared with a local authority

Care provided in part by a local authority

11028 There may be cases where a QC spends at least 52 nights per year in the care of a local authority[1]. These cases are covered by different legislation to normal shared care cases. However, the effect on the child maintenance calculation is the same, as the NRP's liability will be reduced according to the amount of time the QC child spends in the care of the local authority in the same way as it is in shared care cases.

1 CSMC Regs 2012, reg 53

11029 Accordingly, the maintenance liability will be reduced by applying the appropriate shared care reduction as set out in the following table[1].

Number of nights	Adjustment
52 - 103	1/7th
104 - 155	2/7th
156 - 207	3/7th
208 - 259	4/7th
260 - 262	5/7th

1 CSMC Regs 2012, reg 53(6)

Note: an adjustment only applies if the NRP is liable to pay maintenance at the basic, basic plus or reduced rates or has a flat or nil rate case which has been adjusted following an additional income variation[1].

1 CSMC Regs 2012, reg 53(1)

More than one QC

11030 Where there is more than one QC and a local authority does not provide shared care for all of the children, the shared care fraction must be divided by the total number of QCs[1].

1 CSMC Regs 2012, reg 53(4)

Example

NRP David and PWC Linda have 2 QCs Ben and Tracey. David's weekly maintenance liability is £40. Ben is in local authority care for 104 nights a year. Tracey is wholly cared for by Linda. A shared care reduction

of 2/7th will apply for Ben, with no reduction for Tracey. The two adjustments are added together and divided by the total number of QCs. The reduction is therefore (2/7 + 0) ÷ 2 = 2/14. Maintenance liability for 2 QCs = £40. £40 ÷ 14 = £2.85714. £2.85714 x 2 = £5.71. £40 - £5.71 = £34.29. David's total maintenance liability is £34.29. If the reduction takes the liability to below the flat rate, the liability will be increased to £7.

Local authority care is more than 262 nights per year

11031 If a local authority provides shared care of a QC for 263 nights or more per year, the maintenance liability will be reduced to nil[1].

1 CSMC Regs 2012, reg 53(10)

Care shared between PWC, NRP and local authority

11032 If care of a QC is shared by a PWC, NRP and a local authority, the total shared care reduction is combined[1].

1 CSMC Regs 2012, reg 53(8)

Example

PWC Lynn has one QC Zoe. NRP John has shared care for 104 nights per year and a local authority (LA) has shared care of 52 nights per year. The reduction is 2/7 (NRP) + 1/7 (LA) = 3/7 combined.

Care provided by a local authority over a period of less than 12 months

11033 The number of nights for which care is shared with a local authority is usually determined over a 12-month period, but DMs may make use of a shorter or longer period where they consider that period to be more representative of the current arrangements for the care of the QC. For example, if the child will cease to be a QC in 6 months' time, the DM may consider the level of care the local authority will provide during the next 6 months. In these circumstances, a reduction for shared care can only be made if the number of nights of care is in the same ratio as 52 nights to 12 months[1].

1 CSMC Regs 2012, reg 53(2)(b)

Evidence that a QC is in local authority care

11034 The following types of evidence will be required to confirm a child is in local authority care:

1. a care order (England & Wales) - a supervision requirement order or court order granted by a sheriff (Scotland), or

2. a letter from the local authority or children`s residential home, providing it clearly identifies that the child in question is in their legal care.

For further information on gathering evidence, refer to Chapter 96 - Evidence and decision making.

Chapter 12 - Court Orders

Introduction

12001 In some cases, a maintenance order granted by a court could mean that the CMS is prevented from making a maintenance calculation. An application for child maintenance cannot be accepted by CMS if any of the following apply

1. a maintenance order made before 3 March 2003 is still in force[1]

2. a maintenance order has been made on or after 3 March 2003 and has not yet been in force for one year[2].

1 CS Act 1991, s4(10)(a) and s7(10)(a) and CS (A:PD) Regs 2003, reg 2; 2 CS Act 1991, s4(10) (aa) and s7(10) (b) and CS (A:PD) Regs 2003, reg 2

This guidance explains

Maintenance orders 12002 – 12003

Maintenance agreements as orders (Scotland) 12004 - 12005

Maintenance orders made on or after 3 March 2003 12006 - 12009

Consent orders 12010 - 12012

Orders that would not prevent an application for child maintenance 12013

How to identify a valid maintenance order 12014 - 12015

Written maintenance agreements 12016

Maintenance orders

Maintenance orders (England and Wales & Scotland)

12002 A maintenance order[1] is an order that requires a person to make or secure periodical payments to, or for the benefit of, a child.

12003 Maintenance orders differ from written maintenance agreements, see further paragraph 12016 in that they are a decision of the court, and will have been made under one of the following pieces of legislation

1. Part II of the Matrimonial Causes Act 1973
2. The Domestic Proceedings and Magistrates Courts Act 1978
3. Part III of the Matrimonial and Family Proceedings Act 1984
4. The Family Law (Scotland) Act 1985
5. Schedule 1 to the Children Act 1989
6. Schedule 5, 6 or 7 of the Civil Partnership Act 2004

7. The Conjugal Rights (Scotland) Amendment Act 1861

8. The Sheriff Courts (Scotland) Act 1907

9. The Children and Young Persons (Scotland) Act 1937;9. The National Assistance Act 1948

10. The Matrimonial Proceedings (Children) Act 1958

11. The Children Act 1975

12. The Supplementary Benefits Act 1976

13. The Social Security Act 1986

14. The Social Security Administration Act 1992

15. Guardianship of Infants Act 1925

16. Illegitimate Children (Scotland) Act 1930

17. Custody of Children Act (Scotland) Act 1939

18. Affiliation Orders Act 1948

19. Affiliation Proceedings Act 1957

20. Guardianship of Minors Act 1971

21. Guardianship Act 1973

22. Family Law (Scotland) Act 1985.

1 CS Act 1991, s8(11) & CS(MAJ) Regs 1992, reg 2 and 3

Maintenance Agreements as Orders (Scotland)

12004 In Scotland, written maintenance agreements, which post-date 5 April 2003, prohibit applications for a maintenance assessment[1], providing that they are registered for preservation and execution in the Books of Council and Session or the sheriff court books and the agreement has been in force for less than one year. Such registration gives Scottish written maintenance agreements the status of being court orders for the purposes of paragraphs **12003** and **12006** to **12009**.

1 CS Act 1991, s4(10)(ab);

12005 If such agreements are registered for 'preservation' only or not registered at all, the agreement does not constitute a court order and there is no issue with CMS having jurisdiction to make a maintenance assessment. An application for a maintenance assessment should be handled the same as any other such application that does not involve a court order.

1 Commissioner’s Decision R(CS 3/99)

Maintenance orders made on or after 3 March 2003

12006 Any order made on or after 3 March 2003 must have been in force for one year or more, beginning on the date that the order was made, before an application for child maintenance can be accepted.

Order in force for less than one year at the date of application

12007 Where an application is made to the CMS and an order made on or after 3 March 2003 has been in force for less than one year, the DM must advise the applicant no action can be taken until the order has been in force for a full year and the application should be rejected.

Order in force for more than one year at the date of application

12008 If an order made on or after 3 March 2003 has been in force for one year or more at the date of application, it will cease to have effect on the effective date of the maintenance calculation[1]. Please note, however, that

1. the order will only cease to have effect so far as it relates to periodical payments for any qualifying children to which it relates, and

2. any part of the order that does not relate to these payments will normally remain in force.

Note: in some cases, a court order may not cease to have effect where it relates to the payment of expenses incurred for the provision of education or training undertaken by a QC, or expenses attributable a QC's disability[2].

1 CS Act 1991, s10(1) and CS(MAJ) Regs 1992 reg 3(2); 2 CS Act 1991 s8(7), 8(8) and 8(9)

12009 If a maintenance calculation will affect a maintenance order in this way, DMs should notify the following relevant parties

1. the court where the order was made

2. the PWC

3. the NRP

4. the child (in Scotland).

Note: the parties to the calculation will also receive a notice of the maintenance calculation, showing what the new payments will be, and how they were arrived at.

Consent orders

12010 A Consent Order is an order made by the court with the written consent of both parties, which is legally binding and can be enforced like any other court order. It cannot be changed by one party without the court's permission.

12011 A 'Christmas consent order' is a maintenance order that automatically renews each year. Christmas consent orders are separate orders, with no order lasting more than a year and granted by a court.

12012 CMS do not have the jurisdiction to accept a child maintenance calculation where a Christmas consent order is in place[1].

1 CS Act 1991, s4(10) (aa).

Orders that would not prevent an application for child maintenance

12013 The following do not prevent an application for child maintenance being made

1. an order for top up maintenance[1] - where the NRP's gross weekly income exceeds £3,000

2. an order that provides solely for the costs associated with a child's educational or training needs[2]

3. where disability living allowance (DLA) or personal independence payment (PIP) is in payment, or where neither of these benefits is in payment but the child is disabled, an order that provides solely for the costs associated with a child's disability

4. a maintenance order, where that order provides for the periodic payments of maintenance, against the PWC[3]

5. a maintenance order in relation to step-children

6. an order relating to the spouse or civil partner of the NRP/PWC.

1 CS Act 1991, s8(6)(b); 2 CS Act 1991 s 8(7); 3 CS Act 1991 s8(10)

How to identify a valid maintenance order?

12014 To identify a valid maintenance order ensure the order

1. is complete - DMs should ensure that the full order has been provided. For example, by checking the paragraphs and subparagraphs run in alphabetical or numeric sequence, and

2. states that the maintenance is for the child - the order is only a valid maintenance order if the maintenance for the child is included in the section titled 'IT IS ORDERED THAT' when both parties agree or otherwise 'the following order is made' when both parties do not agree.

Note: if maintenance for the child is only mentioned in the undertakings, the order is not a valid maintenance order.

12015 In addition to paragraph **12013**, DMs should also be aware that maintenance orders, including those made by consent

1. are usually headed 'In the County Court of XXXXXXX'

2. will have a matter number or a case number on the top right-hand corner of the first page

3. will name a Claimant and a Respondent (these should be the same as the names of the parties to the CMS)

4. will usually name the Judge the order was made by

5. must have a court stamp or a seal impressed on it

6. may be signed and dated by the judge.

7. are usually in two parts

    7.1 a preamble, with undertakings (also known as recitals) to the court setting out `agreements`, beginning with UPON or AND UPON and

    7.2 a section headed IT IS ORDERED THAT or similar, which covers the orders of the court

8. must include in the latter section wording such as “the Respondent do pay or cause to be paid periodical payments to xxx for the benefit of the children of the family”. otherwise, it is not a maintenance order for child support purposes

9. usually ends with Dated this (day) of (Month) (Year).

Note: if the signatories are the Claimant, the Respondent, their respective solicitors, and there is no court seal, it is only a draft of the proposed consent order which is not acceptable evidence of a valid court order. If the document has a matter or case number, DMs could contact the relevant County Court and ask them to confirm whether the order is in force and when it was actually made.

Written maintenance agreements

12016 A written maintenance agreement means any written agreement for the making or securing of periodical payments, by way of maintenance (in Scotland: aliment) to be made to or for the benefit of the child[1]. Agreements do not prevent an application being made to the CMS[2].

Note: payments do not have to be made directly to the PWC or the child. For example: an agreement to make mortgage payments on the child’s home could be included.

1 CS Act 1991, s9(1) and s54; 2 CS Act 1991, s4(10), 7(10), s9(3) and s9(4)

Chapter 13 - Initial effective dates

Introduction

13001 The initial effective date of a maintenance calculation[1] is the date on which legal liability for child maintenance commences in relation to a QC.

1 CS Act 1991, s11

This guidance explains

General principles 13002 - 13004

Notification of the initial effective date 13005 - 13007

General principles

13002 The initial effective date of a maintenance calculation resulting from an application to the CMS, is the date provided in the notice given to the NRP[1]. For more information on the requirements for a successful application for child maintenance see Chapter 37: Applications.

1 CSMC 2012 Regs, reg 12(1)

13003 Where the NRP is to be notified in writing, the notice must be posted to the NRP's last known address, at least 2 days before the initial effective date[1].

1 CSMC 2012 Regs, reg 12(2)(a)

13004 Where the NRP is notified by telephone it must be done on or before the initial effective date and must be followed with a written notice posted to the NRP's last known address[1].

1 CSMC 2102 Regs, reg 12(2)(b)

Notification of the initial effective date

13005 If a maintenance application is made by a PWC or a child in Scotland the initial effective date will be contained in the provisional calculation letter issued to the NRP.

13006 If a maintenance application is made by a NRP the initial effective date will be contained within the initial calculation letter. For more information on provisional and initial maintenance calculations, see Chapter 17 - Maintenance calculations overview and for more information on notification of a maintenance calculation see Annex C: Notifications.

13007 The initial effective date contained in the provisional calculation letter or initial calculation letter is set by taking the date of the next working day after the letter was requested by the DM for issue and adding 5 calendar days to that date.

Note: this period is not a legislative requirement but ensures sufficient time is available to issue the letter allowing for any delays in printing or in the postal service. Working days for this purpose are considered to be Monday to Friday and do not include Saturdays, Sundays or bank holidays.

Example

PWC Lynsey makes an application for child maintenance in respect of QC Luke. Lynsey names Richard as the NRP. The provisional calculation letter is generated on Tuesday 9 April 2019. The initial effective date for that case as recorded in the letter is Monday 15 April 2019, provided the letter is sent to Richard's last known address at least two days before the initial effective date, that is, no later than 13 April 2019.

Chapter 14 - Effective dates (Effective date tables)

Introduction

14001 Any decision that will start, change or end the child maintenance liability requires an effective date. That is the date from which that new decision will take effect. This chapter does not include information about setting the initial effective date of a child maintenance calculation. For more information on Initial effective dates, see Chapter 13.

Note: the law on effective dates is contained in a number of regulations, which may or may not apply depending on the type of decision being made.

This guidance explains the effective date principles for

Revisions 14002 - 14003

Future changes 14004 - 14005

Changes to relevant benefit status 14006 - 14007

Changes ending liability 14008 - 14009

Changes in income that the NRP must report 14010 - 14011

Changes to include a new QC 14012

The CMS initiated changes 14013 -14014

Other changes reported by a client that affect liability 14015

Changes In income for Self employment 14016 -14018

Effective date Table 1 - Initial effective date

Effective date Table 2 - Supersession - income related changes

Effective date Table 3 - Supersession - existing case - new QC, ROC, CIFBA or Child Abroad added

Effective date Table 4 - Supersession - remove child

Effective date Table 5 - Supersession - other

Effective date Table 6 - Case closure

Effective date Table 7 - Revisions

Effective date Table 8 - Determining the date a variation application takes effect

Revisions

14002 Where a decision is to be revised the new decision will usually take effect as from the date on which the original decision took or was to take effect[1].

1 CS Act 1991, s16 (3)

14003 If a decision is revised and it is found that the effective date of the original decision was incorrect, the revised decision will take effect from the date on which the original decision would have taken effect if it had not been wrong[1].

1 CSMC Regs 2012, reg16

Note: for more information, see Chapter 42: Revisions.

Future changes

14004 Where a change affecting the maintenance liability is expected to occur on a future specified date the decision will take effect from the date that the change is expected to occur[1]. Once that change has occurred, the parent should contact the CMS to confirm that the change has occurred at which point a supersession decision can be considered.

1 CSMC Regs 2012, reg 18(2)

Note: for more information, see Chapter 43: Supersessions.

14005 Where the future notified date relates to the inclusion of a ROC, the ROC cannot be taken into account until Child Benefit is in payment. Once payment of child benefit has been confirmed by the NRP, the effective date will be determined as follows

1. if Child Benefit is awarded from a date which falls on or before the date the NRP reported the ROC, the effective date will be the date the change was reported

2. if child benefit is awarded from a date that falls after the date the NRP reported the ROC, the effective date will be the date Child Benefit was awarded.

Changes to relevant benefit status

14006 Where an NRP starts or stops receiving one of the prescribed benefits that affect a maintenance calculation the decision takes effect from the date on which the change occured[1].

1 CSMC Regs 2012, reg 18(3)(d)

14007 The effective date principles detailed in para **14006** also apply where the NRPs partner starts or stops receiving one of the benefits listed.

Note: for more information on prescribed benefits see Chapter 25: Rates and Rules. For more information on changes to benefit status, see Chapter 43: Supersessions.

Changes ending liability

14008 If a change occurs that ends the maintenance liability either on the entire case or for a particular QC, the effective date of the decision is the date the change occurred.

14009 The circumstances which may lead to liability ending are

1. a child ceases to be a QC

2. the PWC dies or ceases to be the PWC, **or**

3. the PWC, the NRP or a QC ceases to be habitually resident in the UK[1, 2, 3].

1 CSMC Regs 2012, reg 18(3)(a), 2 reg 18(3)(b), 3 reg 18(3)(c)

Note: for more information on changes ending liability see Chapter 43: Supersessions. For more information on habitual residence decisions see Chapter 37: Applications.

Changes in income that the NRP must report

14010 NRPs are required by law to report certain changes in their income, see Chapter 19: Current income- employed and Chapter 20: Current income - self employed.

14011 Where there is a change to the maintenance liability as a result of a change to the NRP's current income (that the NRP is required to report), the effective date of the decision is the date the change occured[1].

1 CSMC Regs 2012, reg 18(4)

Changes to include a new QC

14012 Where there is a new QC in relation to an existing NRP, liability to pay maintenance for that QC takes effect from the date that would have been the initial effective date, if there had not already been a live case[1]. For more information on initial effective dates see Chapter 13.

1 CSMC Regs 2012, reg 18(5)

The CMS initiated changes

14013 If a decision to change a maintenance liability is made as a result of information provided by a third party, the effective date of the decision is the date on which that information is provided[1].

1 CSMC Regs 2012, reg 18(6)(b)

14014 Where the CMS initiates a change in liability for some reason other than information provided by a third party, the effective date is the date on which the decision is made[1].

1 CSMC Regs 2012, reg 18(6)(c)

Other changes reported by a client

14015 Other changes not covered in the above paragraphs, reported by the applicant seeking a supersession, and which affect liability, will take effect from the date on which the supersession application was made[1].

Note: Before taking the details of a change, an attempt will be made to signpost customers to the self-service portal where the change can be reported. Where the customer agrees to the re-direction, no details of the change will be taken, and the customer will be advised that the supersession application has not yet been made. In those circumstances, a supersession application is made at the point that the change is reported via the portal, and the effective date would be that date, rather than the date of the initial contact (except for circumstances where other effective dates apply).

1 CSMC Regs 2012, reg 18(6)(a)

Changes In income for Self employment

14016 This paragraph applies where the NRP was previously employed under PAYE but becomes self-employed before the end of the most recent tax year, meaning that they won't yet have needed to file a self-assessment tax return for that tax year. NRPs whose liability is based on current income and where liability is nil are required to inform the CMS if they start receiving gross weekly income of £7 or more per week. Upon raising a Change of Income to report this increase and declaring that they are now newly self-employed and already generating a profit of at least £7 from a specific date, the Effective Date[1] for the income change will be set as the date provided by the NRP that they started generating a profit of at least £7 per week. At this stage, the NRP may be required to provide details regarding their projected turnover, expenses, and anticipated profit up to the end of the tax year. Please see CMDMG chapter 20 for more details on newly self- employed and chapter 97 for more information on evidence from self employment.

1 CSMC Regs 2012, Reg 18(4); CSI Regs 2008, reg 9A(9)

NOTE: This is only for where a person is classed as newly self employed – meaning a person who has not traded as self- employed in the previous tax year.

14017 Where the NRP who is currently self employed was also self employed in the last tax year **and** reports a change from NIL Self-Employed Income to Increased self-employed Income:

1. The effective date[1] for the income change is the date the NRP submitted their most recent self-assessment tax return to HMRC, which shows the increased income.

2. If the exact date of submission is not known, the default effective date[2] to use is 31 January following the end of the tax year to which the return relates

1 CSMG Regs 2012, reg 36: 2 CSMG Regs 2012, reg 39

This process ensures that the maintenance calculations reflect the most recent and accurate income information, in line with statutory requirements.

14018 In cases where the NRP currently has NIL income under PAYE, having left their previous employer, if either the PWC or NRP reports an increase in income from employment to at least £7 per week, the following applies:

1. The effective date[1] for the income change is the date the NRP started earning more than £7 per week.
2. This will correspond to the date the NRP commenced employment with the new employer.
3. The Real Time Information (RTI) start date can be used to confirm this date.

1 CSMC Regs 2012, reg 18(4) & CSI regs 2008, reg 9A(9)

Effective date table 1 - Initial effective date

Circumstances	**Effective date**
New application from PWC, PeWC or Child in Scotland	**Set by the date contained in the provisional calculation letter.** The initial effective date is set by taking the date of the next working day after the letter was requested for issue and adding 5 calendar days to that date. See note below. **Example 1** The provisional calculation letter for a case is requested for issue on Tuesday 02 April 2019. The initial effective date for that case as recorded in the letter is Monday 8 April 2019. **Note:** Legislation only requires that the letter is sent at least 2 days before the initial effective date. If a letter is requested but not issued until a later date, then as long as the date on which the letter is sent is at least 2 days before the initial effective date stated in the letter, the effective date is legally valid. **Example 2**

	On Thursday 4 April 2019 the DM requests that the CMS issues the provisional calculation letter. The initial effective date for that case recorded in the letter is Wednesday 10 April 2019. Due to a technical problem the CMS did not process the issue of the letter until the following day - Friday 5 April 2019. The letter was issued by the CMS on the next working day - Monday 8 April 2019. The initial effective date on the letter of Wednesday 10 April 2019 will be legally valid as the NRP has been given at least 2 days' notice of the initial effective date.
New application from NRP - HMRC data held	**Set by the date contained in the initial calculation letter.** The initial effective date is set by taking the date of the next working day after the letter was requested for issue and adding 5 calendar days to that date. See note below. **Example 1** The initial calculation letter is requested to be issued on Friday 11 October 2019. The initial effective date for that case as recorded in the letter is Saturday 19 October 2019. **Note:** Legislation only requires that the letter is sent at least 2 days before the initial effective date. This means that, if a letter is requested but not issued until a later date, then as long as the date on which the letter is sent at least 2 days before the initial effective date, the date is legally valid. **Example 2** The initial calculation notice is requested to be issued on Tuesday 3 December 2019. The initial effective date as recorded in the letter is Monday 9 December 2019. Due to a technical problem, the CMS did not process the issue of the letter until the following day - Wednesday 4 December 2019. The letter was issued by the CMS on Thursday 5 December 2019. The initial effective date on the letter of Monday 9 December 2019 will be legally valid as the NRP has been given at least 2 days' notice of the initial effective date.
New Application from	**Set by the date contained in the letter requesting proof of income.**

NRP – No HMRC data held	The initial effective date is set by taking the date of the next working day after the letter was requested for issue and adding 5 calendar days to that date. See note below. **Example 1** An application is made by the NRP on Tuesday 1 October 2019. No data is returned from HMRC regarding the NRP's historic income. The letter requesting proof of current income is requested to be issued on Friday 4 October 2019. The initial effective date for that case as recorded in the letter will be Saturday 12 October 2019. **Note:** Legislation only requires that the letter is sent at least 2 days before the initial effective date. If a letter is requested but not issued until a later date, then as long as the date on which the letter was sent at least 2 days before the initial effective date, the date is legally valid. **Example 2** An application is made by the NRP on Friday 02 August 2019. No data is returned by HMRC regarding the NRP's historic income. The letter requesting proof of current income is requested for issue on Thursday 15 August 2019. The initial effective date as recorded in the letter is Wednesday 21August 2019. However, due to system upgrades CMS did not process the issue of the letter until Friday 16 August 2019, and it was issued on the next working day Monday 19 August 2019. The initial effective date of Wednesday 21 August 2019 will be legally valid as the NRP has been given at least 2 days' notice period of the initial effective date.

Effective date table 2 - Supersession - Income related changes

Circumstances	**Effective Date of a supersession decision**
The MC is based on historic income and the PWC or NRP requests a change to current income.	The effective date is the date the change was reported. **Note:** If the maintenance calculation is based on historic income the NRP is not legally required to report a change. For reports of future changes please see Effective date table 5 -

	supersession – other.
25% decrease in current income reported - PWC or NRP report decrease in current income of 25% (not as a result of a periodic current income check).	The effective date is the date the change was reported.
Increase in employed income reported - PWC or NRP report increase in current income of 25%, where the nil rate does not currently apply.	The effective date is the date the increase in income occurred. If the maintenance calculation is based on current income the NRP is legally required to report an increase of 25% or more.
25% increase in self-employed income - PWC or NRP report increase in current income of 25% (not as a result of a periodic current income check). The nil rate does not currently apply.	The effective date is the date the change was reported. If the existing calculation is based on current income and liability is not set to the nil rate, the NRP is not required to report any change in their current income from self-employment.
Decrease to nil income – PWC or NRP report that NRP now has nil income (not as a result of a periodic current income check).	The effective date is the date the change was reported.
Increase from nil current income – PWC or NRP report increase in the NRP's current income to at least £7 per week	The effective date is the date the increase in income occurred. NRPs whose liability is based on current income and the liability is nil are required to inform the CMS if they start receiving gross weekly income of £7 or more per week. **Note:** if the NRP's current income is self-employment the change will only apply if the increased income is reflected in a tax return which has been submitted to HMRC. The effective date will be 1. the date the return was submitted to HMRC, or 2. where the exact date is not known, the 31 January following the

	tax year to which the return relates. If the NRP has a nil rate liability for other reasons (for example they are a child or they are a prisoner) there is no obligation on them to report an increase in current income.
CMS notified NRP has started or ceased claiming a prescribed benefit	The effective date is the date the change occurred.
A NRP in receipt of UC with no earned income, starts receiving earned income from new employment	The effective date is the start of the assessment period in which the NRP start to receive earnings from their new employment.
Annual review	The effective date of an Annual Review decision is the annual review date. This will always be the anniversary of the initial effective date. Where the initial effective date was 29th February (leap year), the Annual Review Date will be set for 1 March of the following year. **Note:** Where a maintenance calculation is already in force and there is a further application in relation to the same NRP for a new QC, the review dates should be aligned so that the date for the new application and the existing one are the same.
Periodic current income check	The effective date of a supersession decision following a periodic Income check is the date the decision is made. **Example** The NRP's liability is based on current income. A periodic current income check is due to take place on 01June 2019 to ensure it remains appropriate to base the calculation on an amount of current income. The CMS requests current income details on 01 May 2019. Evidence is provided on 10 May 2019 that the NRP's current income is no longer at least 25% different to the latest HMRC figure. Their gross weekly income is therefore recalculated based on the HMRC figure. The decision is made on 10 May 2019, therefore the effective date is 10 May 2019.
Nil rate applied – NRP in prison	The effective date of the Nil rate and its subsequent removal when the

or serving a sentence of imprisonment detained in hospital	sentence/detainment ended is the date the change was reported.
Current income – PWC or NRP report that the NRP is paying into a private or occupational pension	The effective date will be the date the change is reported.
Estimated current income - NRP or a third party provides actual current income.	The effective date is the date the actual income is reported. If a maintenance calculation is based on estimated income and a NRP or a third party provides evidence confirming their actual income, the tolerance rule will not apply. This is because an assessment based on evidence of actual income is always preferable to an estimate. Non-resident parents will therefore not be required to show that their actual income is at least 25% different to their estimated income for a supersession to be agreed. The effective date of the change will be the date that the actual income is reported to the CMS.
Default maintenance decision (DMD) in place – Income or employer information provided by the client.	If the information shows that the income commenced after the effective date of the DMD, the DMD will remain in place and a supersession can be considered. The effective date of the supersession is the date the income is reported by the client
Default maintenance decision (DMD) in place – NRP employer information obtained from a third party (HMRC)	There may be occasions where CMS obtains NRP employer information (for example from HMRC). This will provide the opportunity to consider replacing the DMD with a maintenance calculation. If the information subsequently obtained about the NRP's earnings shows that the income commenced after the effective date of the DMD, the DMD will remain in place and a supersession can be considered. The effective date is the date the earnings details are subsequently received from the employer. **Example** a DMD is in place from the initial effective date of 07 January 2019. Employer details received via HMRC on 01 May 2019. An Enquiry form is issued to the NRP's employer to request earnings details from them on 07 May 2019. The NRP's employer provides information on 20 May 2019 detailing earnings from the start of the NRP's employment which commenced on

	15 April 2019. Therefore, the effective date of the supersession is 20 May 2019. This is the date that the information is received from the employer. The key reason for using this date is that this information is needed in order to convert the DMD into a maintenance calculation. To make that conversion, the DM needs to know the income of the NRP. The information provided to the CMS through HMRC's contact provides employer details but, in itself, is not sufficient to enable the CMS to make a maintenance calculation. Therefore the DMD will remain in place, followed by a supersession with an effective date of 20 May 2019.
Off Benefit Changes which are completed manually	For Income Support and Pension Credit, the award end date displayed within Searchlight is the first day of non-benefit entitlement (the last day of benefit entitlement plus 1 day). **Example:** CIS Searchlight shows award end date of 01 February 2019 for Income Support. The last day of benefit entitlement will be 31 January 2019. The effective date for the supersession will be 01 February 2019.
	For all other benefits, the award end date displayed within CIS Searchlight is the last day of benefit entitlement. **Example** CIS shows an award end date of 01 April 2019. The last day of benefit entitlement will be 01 April 2019. The effective date for the supersession will be 02 April 2019.

Effective date table 3 - Supersession – Existing case – new QC, ROC, CIFBA or Child Abroad added

Circumstances	Effective Date

QC – New application from PWC for additional QC **or** NRP reports that the PWC has care of an additional QC	Where, on an existing case, the PWC or NRP report there is an additional QC with the same NRP: The effective date will be the date the NRP is notified in writing of the application. This date is set by taking the date of the letter informing them of the application for the additional child was generated and adding 6 calendar days to that date. **Example** The letter to notify the NRP is generated on Tuesday 2 April 2019. The effective date for the new QC as recorded in the letter will therefore be Monday 8 April 2019.
ROC – CMS notified of ROC and Child Benefit is in payment **or** Child Benefit not in payment due the conditions about presence in Great Britain not satisfied, or where the NRP or their partner has elected not to receive child benefit because they would be liable to the 'high income child benefit charge' in income tax	The effective date will be the date the change is reported.

ROC – CMS notified of ROC and Child Benefit NOT yet in payment	If Child Benefit is not yet in payment then this should be treated as a future change. The DM should advise the NRP that the change cannot be completed until Child Benefit is actually in payment. When it is confirmed that child benefit is in payment, the effective date of the change will be one of the following: 1. if Child Benefit is awarded or payable from a date which falls on or before the date the NRP reported the ROC - the effective date will be the date the change was reported 2. if Child Benefit is awarded or payable from a date that falls after the date the NRP reported the ROC - the effective date will be the date Child Benefit was awarded or payable from.
CIFBA	The effective date will be the date the change is reported unless it is a future notified date in which case it would be the date that the family based arrangement commenced.
Child Abroad	Where the NRP is liable to maintain a child abroad, the effective date will be the date the change is reported

Effective date table 4 - Supersession- Remove child

Circumstances	**Effective Date**
1.ROC –Child no longer in PP's household or Child Benefit (CHB) ceases to be paid or payable	The effective date is the date the change occurred.
2.CIFBA – the CMS is notified that the arrangement is no longer in	The effective date is the date the change occurred.

place	
3.Child supported abroad – the CMS is notified that a child is no longer supported under this arrangement.	The effective date is the date the change occurred.
5.PWC no longer primary carer of QC **or** no longer providing day to day care	The effective date is the date the change occurred.
6.QC, ROC, CIFBA or child supported abroad has died	The child is removed from the case from the date of death.
7. A person aged 16 who has left full-time non-advanced education or approved training and does not qualify for an extension period (see **Note 1**)	The Child will continue to be a QYP whilst CHB remains payable. They will cease to be considered a child from the first Monday following the first terminal date that occurs after they leave full-time non-advanced education. Terminal dates are the first of these dates that arise after a child or qualifying young person leaves education or training 1. 31 August 2. 30 November 3. The last day of February 4. 31 May **Note 1**: a young person may continue to be treated as a child for up to 20 weeks from the date the young person leaves full-time non-advanced education. This is known as "the extension period". The period begins on the Monday after education ceases. This applies if within 20 weeks of leaving full-time non-advanced education or approved training the young person have registered for

	1. further education 2. work or training with a careers service, an authority support service, or similar organisations, or 3. they have been accepted to join the armed forces and are waiting for a placement. **Note 2**: if the child commenced remunerative work (of not less than 24 hours each week) before their terminal date they cease to be a child on the day work commences.
8. A person aged 17-19 who has left full-time non-advanced education or approved training and does not qualify for an extension period (see **Note 1** above)	The 17-19 year old continues to be a QYP whilst CHB remains payable. They will cease to be a QYP from the first Monday following the first terminal date that occurs after they leave full-time non-advanced education. For terminal dates see above.
9. A 16 or 17 year old who has left full-time non-advanced education or approved training and qualifies for the 20 week extension period (see **Note 1** above)	The 16-17 year old continues to be a QYP whilst CHB remains payable. They will cease to be a QYP on the first Monday that occurs after the end of the 20-week extension period (for terminal dates see above) unless the young person 1. reaches the age of 18, if the young person's 18th birthday is earlier than the terminal date. If the terminal date comes after the young person's 18th birthday, then the terminal date should be used to determine when the child stops being a QC 2. starts remunerative work (i.e. not less than 24 hours per week), for which payment is received or expected 3. starts getting Universal Credit, Income Support, income-

	based Jobseeker's Allowance, Employment Support Allowance, Incapacity Benefit or a tax credit in their own right, for any week, or 4. stops being registered with a careers service, Connexions, local authority support service or similar organisation. The child may satisfy the conditions again if 1. Remunerative work stops or their working hours decrease to less than 24 hours per week or 2. they stop getting Universal Credit, Income Support, income-based Jobseeker's Allowance, Employment Support Allowance, Incapacity Benefit or a tax credit in their own right, for any week. **Example 1** John is 17 on 27.05.19. He left school on 25.06.19 and registered with Connexions. His extension period starts on 01.07.19 (the Monday after education ceases) and ends on 18.11.19 (the first Monday after the end of the 20 weeks). **Example 2** Henry is 17 on 21.04.19. He left school on 25.06.19. His extension period starts 01.07.19 (the Monday after education ceases) however he did not register for Connexions until 09.09.19. Since he registered within 20 weeks of leaving full-time non-advanced education he will continue to be a child until the first Monday that follows the end of the extension period, 18.11.19. There is no break in his status as a child because he registered within 20 weeks.
10. QYP – A 17, 18 or 19 year old, who has left full-time non-advanced education or approved training and has not enrolled on another course of qualifying education or training	The young person continues to be a QYP whilst CHB is payable. They will cease to be a QYP on the first Monday following the first terminal date after leaving FTE date, unless they commenced remunerative work (of not less than 24 hours each week) before their terminal date, in which case they cease to be a child on that day work commences. **Note:** If a person has completed or left a course of full-time non-advanced education or approved training, and has passed their terminal date or the end of their extension period, they will continue to be a QYP (and therefore a child for child maintenance

	purposes) if they are enrolled on another course of qualifying education or training. **Example 1** On 10.09.19 PWC Joyce reports that an 18-year-old QC Claire, who left school in June having completed her A levels, will begin a further course of A levels at a local college on 16.09.19. Claire will continue to be treated as a child until the terminal date after completing or leaving the new course or, if sooner, her 20th birthday. **Example 2** On 01.04.19 NRP Susan reports that QC Ryan left school in the middle of March to start work. The CHB check shows CHB still to be in payment. When the PWC is contacted, they confirm that Ryan started a full time job on 12.03.19. Maintenance liability for Ryan ceases from 12.03.19.
11. QYP who starts to receive Universal Credit, Income Support, Incapacity Benefit, Jobseeker's Allowance or a tax credit in their own right	Where a person who was a child makes a claim to a prescribed benefit in their own right, the CHB will cease only once the benefit begins in payment, so they remain a child until that point (i.e. not from the date of the benefit claim itself). However, if the child remains in FTE, irrespective of the CHB position, they remain a QC for our purposes by virtue of their education status.
12.Any child – Reaches maximum age (20)	The effective date is the date the child turns 20.

Effective date table 5 - Supersession - other

Circumstances	**Effective Date**

PWC or NRP reports any change in Shared Care	The effective date will be the date the change is reported.
PWC or NRP reports a future change	If a PWC or NRP reports a change in advance of the date on which it is expected to occur, DMs should advise them to call again once the change has actually taken place. The effective date of a supersession in these circumstances will be the date on which the change is expected to occur. **Example** The NRP Mark reports on 21 January 2019 that from 28 January 2019 they will have shared care of the QC Luke for two nights per week. A record of the change and the date on which it is expected to occur is recorded in case notes. Mark is advised to call again on 29 January 2019 to confirm that the change did in fact take place. Mark calls on 29 January 2019 and confirms that shared care is now taking place. This is confirmed with the PWC Lynsey and a supersession decision is completed using an effective date of 28 January 2019.
CMS initiated change – change reported by Third Party	Where a third party reports a change that, had it been reported by the PWC or NRP, would be effective from the reported date, the DM may make a supersession decision on their own initiative. The decision will take effect from the date on which information about the change was provided. However, where a change reported by a third party would normally be effective from the date the change occurred, that date would still apply. **Example 1** A third party notifies the CMS on 5 March 2019 that the NRP Lynn has been in prison since 28 January 2019. A supersession decision to reduce the MC to Nil is required. The effective date is 5 March 2019. **Example 2** A third party notifies the CMS on 6 June 2019 that the PWC Anne is no longer the primary carer of the QC Karen. Anne confirms that Karen left her household on 4 May 2019. The effective date is the 4 May 2019 as this is the day the change

	occurred rather than the date the third party provided the information. **Example 3** On 5 March 2024 CIS reported that the NRP has changed address to a Prison address. Form CSF314 is issued to the Prison Service to gather further information to consider if the Nil Rate should be applied. On 12 March 2024 the form is returned from the Prison Service confirming the NRP is in Prison and relevant dates. A supersession is made to reduce the MC to Nil. The effective date is 12 March 2024, the date the Prison Service returned the form. **Example 4** A NRP is currently listed as DLO. The DM begins trace activity to identify an address and identifies from other government systems that the NRP may be in Prison. On 4 September 2024 Form CSF314 is issued to the Prison Services to gather further information to consider is the Nil Rate should be applied. The form is returned on 12 September 2024 reporting that the NRP has been in Prison since 8 July 2024. A supersession is made to reduce the MC to Nil. The effective date is 12 September, the date the Prison Service returned the form.
CMS initiated change - not as a result of a third party report.	The DM may initiate a supersession decision which, had the change been reported by the PWC or NRP, would have taken effect from the reported date. In these cases, the supersession takes effect from the date on which the decision is made. Where the change would normally be effective from the date the change occurred that date would still apply. **Example 1** NRP Richard's liability is based on current income. A periodic current income check is due to take place on 2 June 2019 to ensure Richards income remains at least 25% different to the latest HMRC figure. The DM requests current income details on 2 May 2019. Evidence is provided on 10 May 2019. The NRP's current income is no longer at least 25% different to the latest HMRC figure and so they are placed back on HMRC data. The decision is made on 10 May 2019. Therefore, the effective date is 10 May 2019. **Example 2** NRP Elaine's liability is based on current employed income. A periodic current income check is due to take place on 2 June 2019 to ensure Elaine`s income

	remains at least 25% different to the latest HMRC figure. The CMS requests current income details on 2 May 2019, and evidence is provided on 10 May 2019. The new Current Income figure is at least 25% higher than the existing Current Income figure in place. This is an increase in income that Elaine was legally obliged to report. Elaine confirms this increase in income started from 8 April 2019. The effective date is 8 April 2019, the date the change occurred.
Child starts or stops having their care provided by a Local Authority.	The effective date of a decision in these circumstances is the date the change is reported. Note: Where all of a child's care is provided by a Local Authority the PWC would cease to be a PWC in relation to that QC, and the resulting supersession would take effect from the day the change occurred.
Supersession required following a successful appeal to First Tier Tribunal	A decision of a tribunal which finds a CMS decision to be wrong in law, takes effect from the date of the relevant tribunal decision.
Supersession of a decision made by a First Tier Tribunal	In most cases a decision superseding a decision of a tribunal is subject to the ordinary rules about effective dates set out elsewhere in the effective date tables. Exceptions to those rules are detailed below.
	Where the decision of the tribunal was given following service of notice that a test case which could have affected that decision was pending, the effective date of that supersession decision would be the date the tribunal decision would have taken effect had it been decided in accordance with the test case.
	Where the decision of the tribunal is found to be wrong due to a misrepresentation about, or failure to disclose a material fact, and the decision was more advantageous to the person who made the misrepresentation, or failed to disclose, the effective date of the supersession is the date on which the tribunal decision took or was to take effect.

Effective date table 6 - Case Closure

Circumstances	Effective Date
PWC or NRP report that they have reconciled	The effective date of this decision will be the date the change is reported. **Note:** if either party is reporting a retrospective period of reconciliation that has ended, the opportunity to report this change will have been missed by the parties, as the effective date of the decision to supersede would be the date the change is reported. A case closure decision in these circumstances is therefore not possible.
PWC or NRP has died	Child maintenance ceases to be payable from the date of death.
Last QC ceases to be a QC or QYP	The effective date of the closure is the date the change occurred.
Case applicant requests case closure	The effective date of the case closure will be the date the request is made.
PWC, NRP or Qualifying Child(ren) not habitually resident	The effective date is the date the change occurred. **Note;** where there are other PWCs or QCs left in the case who continue to be habitually resident, closure may not be appropriate.
PWC in prison or held on remand	The effective date is the date the change occurred as that parent would no longer have day to day care of the QC.

Effective date table 7 - Revisions

Circumstances	Effective Date

A decision is revised and the date from which the original decision took effect is found to be wrong	The revised decision takes effect from the date on which the original decision would have taken effect had the error not been made
Mandatory reconsideration requested – change accepted as applicable at the effective date of the decision under dispute	The effective date is the same effective date as the decision under dispute. **Note:** In line with CMDMG 14003, if a decision is revised and it is found that the effective date of the original decision was incorrect, the revised decision will take effect from the date on which the original decision would have taken effect if it has not been wrong.
Mandatory reconsideration requested – change was not applicable at the effective date of the decision under dispute	A supersession must be considered as the alleged change has occurred since the effective date of the calculation. See relevant table for supersession: Effective Date Table 2 – Supersession - Income Related Changes Effective Date Table 3 – Supersession – Existing case – new QC, ROC, CIFBA or Child Abroad added Effective Date Table 4 – Supersession – Remove Child role Effective Date Table 5 – Supersession - Other Effective Date Table 6 – Case Closure
Original decision was wrong because a client misrepresented or failed to inform the CMS about a relevant fact and the original decision was advantageous to the client as a consequence	The original decision is revised to correct the misrepresentation and, or include the relevant fact. The effective date of the decision will be unchanged.
Appeal has been made but not determined	If a client submits an appeal against the original decision to the First Tier Tribunal within the relevant appeal time limits and the CMS identifies that there are grounds for a revision, DMs can revise the decision at any time before the Tribunal makes a decision on the appeal.

	The effective date of the decision will be unchanged. **Example** PWC Sandra appeals the maintenance calculation because she believes the income information for NRP Richard, provided by HMRC, is incorrect. The CMS later receives confirmation that HMRC have amended their data due to an official error which produced an incorrect income figure for Richard. The Tribunal have not yet made a decision on the appeal and therefore the CMS can proceed with the Revision. The effective date of the original decision will be unchanged.
CMS becomes aware within 30 days of the initial maintenance calculation being notified that the maintenance calculation was incorrect	The maintenance calculation can be revised from the initial effective date. **Example** Following the initial maintenance calculation on a case, a third party notifies the CMS that NRP Wes is in prison. The CMS therefore needs to complete a revision to place the NRP on to the nil rate from the initial effective date.
A decision was incorrect due to an official error by the CMS, DWP or HMRC	The effective date of the revised decision will be the same as the original decision, **or** where the original effective date is found to be incorrect, the revised decision will take effect from the correct effective date.
A maintenance calculation is based upon information from HMRC and that information is subsequently amended	The calculation that included the information originally provided by HMRC is revised with effect from the original effective date of that calculation. This could be the initial effective date or following an annual review. **Example** The CMS completes an annual review based on gross weekly income of £550 from HMRC for the tax year 2016 to 2017. HMRC subsequently receive further information and amend their records to reflect £600 gross weekly income for the same period. The CMS

	updates their records and revises the maintenance calculation from the effective date of the original decision.
A person named as a parent of the QC is later found not to be a parent	The liability ends from the initial effective date of the maintenance calculation for that child. **Note:** this may not be the initial effective date of the case if there are two or more QCs and the person is only found not to be the parent for one child. **Example** NRP Paul has a maintenance liability based on two QC's, Rose and Ruby. He subsequently provides evidence in the form of a DNA test which confirms he is not the father of Ruby. The CMS updates their records and revises the maintenance calculation from the date Ruby was first included in the calculation. Any subsequent maintenance calculations will also be revised to remove Ruby from the calculation.
A DMD has been imposed and the NRP provides, or the CMS obtains, information enabling a full maintenance calculation to be made	Once the CMS has sufficient income information in respect of the period commencing on or before the effective date of the DMD, then the DMD is replaced from its original effective date. If the evidence relates to the period after the effective date of the DMD, then a supersession will be required for the case and the caseworker will still need the NRP to provide information for the period covered by the DMD in order to replace it. The effective date of such a "later" change will be 1. the date the change to income is reported by the client 2. the date information is provided to us, if received from a third party (e.g. employer), **or** 3. the date the decision is made if the change was not reported by a client or a third party. **Example** A DMD is in place from 7 October 2019. NRP Alex notifies the CMS on 11 November 2019 of new employment that started 28 October 2019. The DMD cannot be replaced using this evidence as it is not effective from 7 October 2019. The DMD remains in place and a supersession is completed with the effective date of 11 November

	2019.

Effective date table 8 - Determining the date a variation application takes effect

Circumstances	**Date variation takes effect**
A verbal application for a variation is received post initial MC and all of the relevant information is provided at the time of that call.	The effective date of the variation application is the date the information was given.
A variation application is received in writing.	The effective date is the date the information is received.
Where a client contacts CMS with the intention of making an application for a variation and requests that an application form be sent to them	1. Where the form is returned within 14 days the effective date is set by the date of the telephone call requesting the application form. 2. Where the form is not returned within 14 days and the variation application has been rejected, but the form is returned within the mandatory reconsideration period, the effective date is set by the date of the telephone call requesting the application form. 3. Where the form is returned after the 14 days and the variation application has not been rejected, the effective date is set by the date of the telephone call requesting the application form. 4. Where the form is returned after the mandatory reconsideration period and the variation application has been rejected, the effective date is set by the date when the application form is received.

If a verbal application for a variation is received and the client is unable to provide all of the required information and agrees to send further details	1. Where further details are provided within 14 days the effective date is set by the date of the telephone call when the initial application for the variation was received. 2. Where further details are not provided within 14 days and the variation application has been rejected, but the details are provided within the mandatory reconsideration period, the effective date is set by the date of the telephone call when the initial application for the variation was received. 3. Where further details are returned after the 14 days and the variation application has not been rejected, the effective date is set by the date of the telephone call when the application for the variation was received. 4. Where further details are returned after the mandatory reconsideration period and the variation application has been rejected, the effective date is set by the date when all of the required information is received.
A variation application is received after the initial effective date, but before the initial MC.	1. The effective date of the variation is the initial effective date (if the ground the application is based on existed from the initial effective date of the MC). 2. Where a variation application is received between the initial effective date and the initial MC and further information is required which is not returned within 14 days, but is returned within the mandatory reconsideration period. The effective date of the variation application will be the initial effective date (if the ground the application is based on existed from the initial effective date of the MC).
A variation application is received post initial MC, but within the mandatory reconsideration period.	The effective date of the variation will be the initial effective date.
A decision is made to revise an existing MC to a nil or flat rate MC and the PWC disputes the decision within the mandatory reconsideration period.	A variation could be implemented and would take effect from the effective date of the decision under dispute (if the ground the application is based on existed at the effective date).

A Variation application is made for a change expected to occur in the future.	The effective date of an application for a variation or a change to a variation that is expected to occur from a known future date, is the date that change is expected to occur. **Example** The NRP has an existing Variation in place for Prior Debts. The NRP reports on 18 February 2019 that they have agreed with the PWC to start having contact with the QC once a week from 01 March 2019. The NRP will travel by train which will cost £20 for a return journey. The decision will be made with a future effective date of 01 March 2019.
Variation – change to existing variation	The effective date of a reported change to an existing Variation is the date the CMS is notified. The only exception to this is where there is an earned income variation in place and the NRP has a duty to report increases in current income of 25% or more. In these circumstances, the effective date will be the date the change occurred. **Example** The NRP reports on 18 February 2019 that their Contact Costs have increased because the QC has moved further away. The effective date will be the 18 February 2019.

Chapter 15 - Service types and methods of payment

Introduction

15001 Where a maintenance calculation is to be made as a result of an application to the CMS, the PWC can ask the CMS to arrange collection of maintenance on their behalf[1].

This guidance explains:

What are service types? 15002 – 15003

Direct pay 15004 - 15023

Methods of Payment 15024 - 15026

Preferred Methods of Payment 15027

Methods of Payment from the NRP 15028 – 15040

Deductions from benefit 15041 - 15051

Methods of Payment to the PWC 15052 – 15056

Direct Pay MOPs for PWC who have experienced Domestic Abuse 15057 - 15060

1 CS Act 1991 s4(2)(a) and s29(1)

What are service types?

15002 The CMS offer two types of service for payment of child maintenance to the PWC

1. **Direct pay** - following a schedule issued by the CMS, the NRP makes payments directly to the PWC. See paragraphs **15007** to **15012**.

2. **Collect and pay** - once the CMS has calculated the child maintenance liability, it then collects payments directly from the NRP to pass onto the PWC. Both clients are issued a payment schedule advising how and when payments must be made, and will be charged for the use of this service.

If clients select the collect and pay service, DMs will arrange the appropriate method of payment (MOP) from the NRP (see paragraphs **15028** to **15040**) and an appropriate MOP to the PWC (see paragraphs **15052** to **15056**).

15003 For information about what to do when clients cannot agree on a service type see paragraphs **15011** and **15015** for further guidance.

Direct pay

15004 Once a case has been set up both parties will be asked to confirm whether they wish to establish a direct pay agreement and therefore avoid collection fees, or whether they wish to use the collect and pay service which will attract collection fees.

15005 Where an applicant chooses direct pay, the CMS will calculate the NRP's statutory child maintenance liability and notify both parents of this.

15006 Parents on direct pay are issued with payment schedules detailing the maintenance and arrears due to be paid or received, and the collection fee amounts avoided by opting to use direct pay. The CMS may only become involved in the collection of payments if one of the parents asks for their service type to be changed to collect and pay (see paragraph **15011** below for further details).

Note: when a case is direct pay the NRP has an obligation to pay his or her full ongoing maintenance liability to the PWC. They should not agree to a different amount. If the parties want to agree to an amount lower than the ongoing maintenance liability they should consider closing their case with the CMS and making a family based arrangement.

15007 If an amount less than the ongoing maintenance liability is paid, the NRP is still liable to pay the remainder. However, the CMS will only consider pursuing any arrears that accrue during a direct pay period if the case is brought into the collect and pay service and the PWC says that arrears have accrued.

New case: both clients request direct pay

15008 If both clients want direct pay as their service type, then the DM should accept the request.

15009 DMs, if asked, must clearly explain to both parties that they will be responsible for managing their payments on direct pay and that they should keep appropriate records (for example: bank statements) to confirm how much has been paid and when. DMs should emphasise the importance of this in case of any future dispute about payments made and received.

15010 If asked by the PWC DMs should advised that they need to tell the CMS quickly if payments are not received and if they want to change to collect and pay and, or have the arrears collected.

New case: dispute over service type

15011 Only a PWC or child in Scotland[1] may apply for collection of child maintenance to be carried out by the State (i.e. collect & pay). Where a request for collect & pay is made, this may only be granted if either the NRP agrees or if the DM deems the NRP unlikely to pay. This ensures that neither client will incur collection fees when it is not necessary.

1 CS Act 1991, s(4) (2a); s7(3a)

PWC requests direct pay

15012 A PWC or child in Scotland has the right to request direct pay at any point in the process of the case, without the need to obtain permission from the NRP. Where a PWC or child in Scotland requests direct pay this decision is to be accepted regardless of the NRP's preferred service type or unlikely to pay status. The DM may not make arrangements for collection in this circumstance.

15013 For information that should be explained to both clients when a case is made direct pay refer to paragraphs **15008** to **15011**.

NRP selects direct pay

15014 Where a NRP selects direct pay as their service type DMs must determine whether the PWC has already selected a service type and, if so, whether the PWC has also selected direct pay. This will determine whether or not an unlikely to pay check needs to be carried out. An unlikely to pay check will be required only where a NRP selects direct pay but the PWC or child in Scotland selects the collection service. Refer to Chapter 49 - Unlikely to Pay for further guidance.

1. If the NRP is deemed to be 'unlikely to pay' then the request for collect & pay will be granted.

2. If the NRP is not deemed to be 'unlikely to pay' then the case will be made direct pay.

PWC refuses to comply

15015 The CMS has no legal power to compel a PWC to disclose their bank account details or to co-operate with a direct pay agreement. Where the PWC is unwilling to comply with the direct pay decision and the NRP has not been found to be unlikely to pay, the NRP must be advised to retain the amounts of maintenance that are due to be paid, until such time as the PWC complies.

Note: there may be occasion where the PWC is refusing to disclose their bank account details or comply with a direct pay arrangement because they have experienced domestic abuse. For more information on dealing with such concerns see para 15057- 15060.

Ongoing case: client requests direct pay

15016 Clients can request to change from the collect and pay service to direct pay at any point.

15017 Where a PWC makes a request for a change of service type to direct pay this must be accepted.

15018 Where a NRP makes a request for a change of service type to direct pay this will only be granted if

1. the PWC agrees, or

2. the NRP successfully passes a compliance opportunity. For information on eligibility for the compliance opportunity and how it works please refer to Chapter 49 - Unlikely to pay.

Arrears case changes to direct pay

15019 The CMS will not take enforcement action to collect arrears while the direct pay service type is in place even if the arrears accrued while the case was collect and pay. However, arrears can be added to the payment schedule. If a PWC wants the CMS to continue collecting arrears, they should be advised this will only be done if

1. the case is on collect and pay, or

2. they change to a family based arrangement for ongoing maintenance. In this situation, their case would be closed, and the CMS would continue collecting arrears only.

15020 If there are arrears on the case, explain to both parties that the NRP will need to pay the arrears directly to the PWC, as well as the ongoing payments due. Both parties should be advised that it is essential that they keep full records of any arrears payments made or received (such as bank statements) in case the case changes back to collect and pay and there is any dispute about the amount of arrears that have been paid.

Arrears case: direct pay to collect and pay

15021 If a case changes from direct pay to collect and pay, the CMS can consider collecting

1. arrears that the PWC states have accrued whilst the case was direct pay, and or

2. arrears that accrued before the case was direct pay.

Arrears accrued while case was direct pay

15022 The CMS should only consider collecting arrears for a direct pay period if the PWC states they want this to be done.

Note: there is no legal limit on how far back a breakdown of direct pay can be retrospectively applied. In general, DMs only need to consider retrospectively applying payments back to the last annual review. However, where exceptionally a PWC asks CMS to pursue arrears which accrued prior to the last annual review, the exceptional nature of that request, including any reasons the PWC may have for not reporting the missed payments sooner, must be considered. DMs must consult their Team Leader where such requests are made.

15023 If a NRP does not agree that payments have been missed, they will need to provide evidence confirming the payments were made. Acceptable evidence for these purposes would include

1. bank statements

2. duplicate(s) of any cashed cheque(s)

Methods of Payment

15024 Method of payment (“MOP”) is the term used to describe the way the NRP pays maintenance to

the CMS where the collect and pay service is being used (see paragraphs **15028** to **15040**). The term MOP is also used to describe the way that the CMS passes on these payments to the PWC (see paragraphs **15052** to **15056**).

15025 Where appropriate the DM may specify that the NRP pays by a MOP from the following

1. standing order

2. any other method which requires one person to give his authority for payments to be made from an account of his to an account of another's on specific dates during the period for which the authority is in force and without the need for any further authority from him

3. an arrangement whereby one person gives his authority for payments to be made from an account of his, or on his behalf, to another person or to an account of that other person

4. cheque or postal order

5. cash

6. debit card

7. credit card

8. deduction from earnings order[1].

1 CS(CE) Regs 1992, reg 3(1)

15026 DMs must consider any representations the NRP and PWC make. Where there is good reason for declining a preferred MOP, an alternative payment method can be chosen.

1 CS(CE) Regs 1992, reg 6

Preferred Method Of Payment

15027 The CMS's preferred MOP for a NRP are those most likely to ensure that payments are made or collected when they are due. They are

1. deduction from earnings orders[1]

2. Direct Debit[2].

1 CS(CE) Regs 1992, reg 3(1)(i); 2, reg 3(1)(b)

Methods of Payment from the NRP

Direct debit

15028 A Direct Debit is where the NRP gives the CMS authority to draw money from their bank or building society account on a regular basis.

1 CS(CE) Regs 1992, reg 3(1)(b)

Deduction from earnings order (DEO)

15029 A DEO can be issued by the CMS without the requirement to obtain a court order. A DEO instructs the NRP's employer to make deductions directly from the NRP's wages and pay them to the CMS[1].

1 CS Act 1991, s31

15030 NRPs can choose a DEO as their preferred MOP, even if they are not in arrears, this is referred to as a voluntary DEO.

15031 Mandatory DEOs can also be imposed on the NRP in the following scenarios

1. as a specified MOP[1]. A DEO may be imposed by the CMS where the NRP will not agree a MOP, unless there is a good reason not to do so. See further guidance in Chapter 55 - DEOs and DERs, or

2. for the purposes of enforcement[2]. A DEO may be imposed where it is a reasonable course of action to take in order to secure payment of amounts of child support maintenance which will become due under the calculation, and or where there are arrears.

1 CS(CE) Regs 1992, reg 3; 2 CS Act 1991, s31(3), s32

Default standing order

15032 This MOP must be put in place where a NRP will not agree to a MOP and

1. a mandatory deduction from earnings order cannot be imposed, or

2. the NRP is self-employed and a regular deduction order cannot be set up, or

3. the DM has been unable to contact the NRP to establish a MOP.

Standing order

15033 A standing order allows payments to be made directly from the NRP's bank or building society to the CMS. This is not one of the CMS's preferred methods of payment, as

1. it is dependent on the NRP setting up the standing order with their bank, and

2. the standing order amount can only be changed by the NRP.

15034 Standing orders are less reliable or efficient than Direct Debit, however it may be appropriate to agree a standing order in certain circumstances. For example, if the NRP wants to pay arrears towards a specific liability order (LO), using the LO reference number. Refer to Chapter 73 - Liability orders for England and Wales or Chapter 83 - Liability orders for Scotland, for liability order guidance.

Note: a MOP must be specified by the CMS before child maintenance liability can be enforced. Although setting a default standing order as the MOP does not guarantee that payments will be made in this way by the NRP, because a MOP has been set means that any arrears which accrue can in principle be enforced subject to enforcement procedures. Where a default standing order is in place and one missed payment occurs, DMs should consider instigating arrears action immediately. See paragraphs **15033** to **15034** for the difference between a Default standing order and a Standing order.

1 CS(CE) Regs 1992, reg 7(1)(c)

15035 SPARE

15036 SPARE

Split care offsetting

15037 Where a couple have more than one QC and they are both a NRP to at least one child, they will be liable to pay and receive child maintenance simultaneously.

15038 Split care offsetting can be used as a MOP in these circumstances, so that the parent who is liable to pay the higher amount just pays the difference between this amount and the amount they are entitled to receive[1]. A separate MOP will need to be set up for these payments to be made and recorded.

1 CS(MPA) Regs 2009, reg 5

15039 Although only one of the clients is making a payment in these circumstances, DMs must record that the remaining payments are being made via adjustment.

15040 Split care offsetting should be recorded as the MOP from the client who does not need to make active payments. The client who needs to make active payments should have a separate MOP set up for the amount they have to pay in the usual way.

Deduction from benefits (DFB)

15041 DFB is a MOP that enables deductions to be made directly from certain benefits[1] received by the NRP[2]. Deductions can be made in respect of ongoing maintenance where a NRP is liable to pay maintenance at the flat rate, or where they would pay at the flat rate but for a variation having been agreed to.

1 UC, PIP, JSA and ESA (CP) Regs 2013, Sch 7, paras 1 and 2; 2 SS (C and P) Regs 1987, Sch 9B, paras 1 and 2

15042 Deductions can also be made for fees. From 04 July 2019, deductions may be made at a fixed amount of £8.40, of which £7 can be deducted for maintenance, and £1.40 for fees. For arrears only cases, a deduction from benefits of a fixed amount of £8.40 can be made towards these arrears.

15043 A DFB for ongoing maintenance may only be made from one type of specified benefit in any one week, or other period in respect of which that benefit is payable.

15044 The maximum amount which can be deducted from an award of Universal Credit, must not exceed 30% of the standard allowance. For NRP's in receipt of new style JSA, the amount of benefit in payment must be at least the same as the amount of the deduction plus 10p.

15045 When a NRP is in receipt of benefits, wherever possible, the system will automatically set up a DFB to collect ongoing maintenance. However, in some cases manual intervention may be required, such as where a NRP has a case in the full collection service and a case that is set up on direct pay, because non-standard amounts will be deducted, i.e. amounts of less than £7.

Example

NRP Jason is in receipt of JSA. Jason has a direct pay case with PWC Mary for QC Danny and a CMS case in the full collection service with PWC Dawn for QC Carol. Jason's £7 maintenance liability is split between the 2 cases. Jason is therefore liable to pay £3.50 direct to Mary in respect of Danny. The CMS request a DFB of £3.50 in respect of Dawn plus a £1.40 collection fee. As £3.50 is not the standard amount of £7, it is referred to as a non-standard amount.

15046 When a DFB is not automatically set up it may be necessary to manually select the benefit that deductions are made from. In these circumstances use the following order of preference

1. income based benefit, or

2. where there are no such benefits in payment, the benefit that is paid at the highest rate.

Note: For more information on how deductions are apportioned where the NRP has a child maintenance liability to more than one PWC, see Chapter 25 - Rates and Rules. For information on apportionment of deductions where UC is paid jointly to the NRP and a partner who also has a child maintenance liability, see Chapter 21 - Universal Credit.

15047 Deductions from arrears and ongoing maintenance cannot be made at the same time to ensure that deductions for on-going maintenance take priority. Deductions for arrears will only be made once deductions for on-going maintenance have ended.

15048 The list of benefits from which the CMS can deduct arrears has been extended to include income related benefits. This means that the maximum deduction of £8.40, whether for on-going child maintenance or arrears, can now be made from the following benefits

1. CA

2. SP

3. New Style ESA

4. New Style JSA

5. IIDB

6. WPA

7. WP

8. WWP

9. MA

10. SDA

11. IS

12. SPC

13. UC

Deductions from Universal Credit

15049 Deductions can be made from UC where a NRP has earnings and is liable to pay flat rate maintenance.

15050 Where a NRP is in receipt of UC with earnings and fails to pay their child maintenance, collection via DFB should be attempted before further enforcement action is considered.

Cases that are sanctioned or subject to hardship

15051 Some NRPs will be subject to a fraud penalty or undergo sanctions whilst claiming benefits and may be eligible to claim hardship payments. Where a fraud penalty or a sanction is applied to a UC award, and the sanction is equal to or more than 30% (as of October 2019) of the standard allowance, deductions for child maintenance will cease.

Note: NRPs can still pay arrears via another method, at the same time as the DFB, should they wish.

Methods of Payment to the PWC

15052 Where parties choose the collect and pay service, a suitable method for making payments from the CMS to the PWC will need to be arranged.

Direct payment

15053 The CMS may receive payments from the NRP and then pay them directly into a bank or building society account that has been nominated by the PWC. This will normally be their own account, but can be someone else's if the PWC requests this.

Post Office card account (POCA)

15054 The CMS may receive payments from the NRP and then pay them directly into a Post Office card account that has been nominated by the PWC. This will normally be the PWC's own account, but may be someone else's if the PWC requests this.

Simple Money Transmission Service (SMoTS)

15055 This MOP should only be used if the PWC does not have a bank, building society or post office account that payments can be made to and does not wish to nominate anyone else's account for these purposes.

15056 This MOP allows the CMS to make payments onto a cash card, which the PWC can use to withdraw money at PayPoints (found in many shops and newsagents).

Direct Pay MOPs for PWC who have experienced domestic abuse

15057 Where a request to move to direct pay is made and there is no evidence to suggest that the NRP will be unlikely to pay, if the PWC does not wish to provide bank details because they have either experienced or fear domestic abuse (including financial abuse), there are alternative direct payment options available, which the PWC may not be aware of and which must be brought to their attention.

15058 For example, payment to an alternative bank account, such as one with a non-geographic sort code (a non-geographic account is one that cannot be traced and will help protect a person's identity and location.). Most banks are able to offer accounts where the customer's branch location cannot be identified through the sort-code.

15059 Where a PWC considers such alternatives to be unsuitable, DM's may agree to arrange payment to another party's bank account, such as a grandparent, if the PWC and the other party are in agreement.

Note: DMs should make it clear that CMG are not able to engage or become an intermediatory with that third party if there are any issues with money the third party has received on behalf of the PWC from the NRP. For example, if the third party is over-drawn and the maintenance paid is diverted to the payment of the third parties' fees or bills.

15060 Where a conditional bail order or similar court order is in place that prevents direct contact between the PWC and NRP a PWC may have concerns that entering into a direct pay arrangement with the NRP may constitute direct contact. DMs should reassure the customer that HMCTS would generally not see a direct pay, child maintenance arrangement as direct contact unless it was specifically stipulated in the order or a court subsequently rules that such an arrangement would in fact violate the terms of the order.

For further information on dealing with this type of situation see CMS instructions: Change service type to collect and pay and the CMS DA plan.

Chapter 16 - Charging and Application fees

Introduction

16001 Application fees[1] and collection charges[2] are intended to encourage parents to collaborate wherever possible, providing the best outcome for children and parents.

NOTE: The £20 application fee no longer applied to applications after 26.02.24[3]. The guidance at paragraphs 16002-16021 are for applications or awards made before 26.02.24.

1 CSF Regs 2014, reg 3; 2 CMOP Act 2008, s6; 3 CSF Regs 2014, reg 3(1)

This guidance explains

The application fee **16002 - 16021**

Collection charges **16022 - 16030**

Enforcement charges **16031 - 16043**

Right of appeal on refusal to waive charge **16044 - 16045**

The application fee

16002 Any person applying to the CMS (for applications before 26.02.24) must pay the £20 application fee[1] before their application can be processed, unless an exception applies – see para **16006**. It is believed that charging this fee will make applicants consider if a family-based arrangement may be a better option.

1 CSF Regs 2014, reg 3(1)

16003 The application fee is purely for access to the statutory scheme and does not offer any guarantee that payments will be collected from the NRP. In circumstances when it has been paid and the CMS is unable to collect any maintenance payments no refund will be given.

16004 The fee is per case, so should an applicant wish to open multiple cases, the fee must be paid for each individual case.

16005 Payment of the fee can be made by manual cheque and credit or debit card. Where the payment is made by credit or debit card it is deemed as being made as soon as the system approves it, allowing the application to progress. Where an applicant chooses to pay by cheque the application is placed on hold until the cheque has cleared.

Exceptions

16006 To ensure provision is made for vulnerable clients, the application fee is waived if the applicant

1. is under the age of 19 at the time of making the application **or**

2. has declared they are victim of domestic violence or abuse and reported it to an appropriate person[1] - see para **16007 - 16013**.

1 CSF Regs 2014, reg 4

Domestic violence and abuse waiver

16007 In order to qualify for an application fee waiver as a victim of domestic violence or abuse the applicant must

1. be considered a victim of domestic violence or abuse, **and**

2. have reported the domestic violence or abuse to an appropriate person, **and**

3. have informed the CMS at the time of making their application, **and**

4. state the appropriate person to whom this has been reported at the time of making the application.

16008 The applicant does not need to provide this information verbally, it can be provided on a written declaration within 14 days, during which time the application will be placed on hold. Failure to provide this information will result in the application being closed.

16009 The DM should not assume that the applicant is aware of the waiver and must ask a client if they have ever experienced domestic abuse. DMs should not knowingly allow a potential victim of domestic violence or abuse to continue to pay an application fee without being confident that sufficient opportunity has been given for this declaration to be made.

16010 A third party, unless they have Power of Attorney and all of the above criteria are met, cannot report an instance of domestic violence to CMS, on the applicant's behalf.

16011 The definition of domestic violence and abuse and the list of bodies to which this must have been reported to is not laid down in regulations, but is set out in two sets of guidance to which the regulations refer

1. Guidance on how DMs will determine if a person is a victim of domestic violence or abuse is available at this gov.uk link

2. Guidance on the list of persons to whom an applicant must have reported domestic violence or abuse was published by the S of S in December 2013 and is available at this gov.uk link

16012 For child maintenance purposes the application fee is to be waived if the applicant states that any

instance of domestic violence or abuse (falling within the definition given in the above guidance) has been reported to an appropriate person. This includes the applicant witnessing child abuse carried out by

1. a current or former partner

2. a member of their family, **or**

3. a member of their current or former partner's family

16013 This exemption should remove what could otherwise be a practical barrier for parents fleeing a violent situation, such as having lost access to a joint bank account or otherwise finding themselves in particularly stressful financial circumstances.

Waiver is requested post application

16014 If a client, after their application has been completed and fee processed, believes that at the time of application they provided enough information to qualify for the application fee waiver, but this was not granted, the DM should review the information provided during the application.

16015 If, on reviewing the information provided at the time of the application, the DM confirms that the client did declare themselves a victim of domestic violence or abuse and stated the person to whom this violence or abuse was reported, the DM can make an ex gratia payment to the applicant of the value of the application fee.

16016 If the applicant made comments or supplied evidence at the time of making the application that would suggest that domestic violence or abuse had occurred, but the DM did not make every effort to facilitate the applicant making a declaration, then an ex gratia payment may be made.

16017 No ex gratia payment should be made if this information was provided at a later date and not at the time of making the application.

Refunds

16018 There are two circumstances in which the application fee can be refunded to clients[1]

1. if a QC dies following the payment of an application fee but before a maintenance calculation has been made, and as a result the calculation shall not be made, **or**

2. where CMS withdraws a case closure notice. See Chapter 63: Arrears write off for more information.

1 CSF Regs 2014, reg 5

Duplicate applications

16019 A duplicate application can be made by both the NRP and PWC on the same day for the same QC,

in this scenario an application fee will be taken from both applicants.

16020 Should this happen the second application will be closed. However, as the application fees were taken lawfully the application fee for the second case will not be refunded.

Jurisdiction

16021 Before taking an application fee, DMs are required to confirm that the NRP lives in the UK, is employed by a British company or is a serving member of the Armed Forces. Because if it is later established that a case is not within the jurisdiction of the CMS, the application fee cannot be refunded.

Collection charges

16022 A collection charge[1] is a percentage-based fee for any collections and payments handled by CMS. A charge is added to the NRP's liability and deducted from the amount paid to the PWC as follows

1. 20% of the assessed daily maintenance liability for the NRP[2]

2. 4% of the assessed daily maintenance payable to the PWC[3]

1 CMOP Act 2008, s6; 2 CSF Regs 2014, reg 7(2); 3, reg 7(3)

16023 These charges are designed to encourage clients to use Direct Pay wherever possible to avoid the ongoing charges.

Example 1

NRP Billy has a child maintenance liability of £20 per week. This equates to a daily liability of £2.86. A daily surcharge of 20% (£0.57) is applied on top of this, giving a total daily figure of £3.43. the daily rate that the NRP is obliged to pay is then multiplied by 7 to give a weekly rate of £24.01.

This charge is levied only against the amount of ongoing child maintenance liability and is not based on the net amount an NRP is obliged to pay, i.e. the 20% applies only to liability not to arrears amounts that may be scheduled alongside this.

Example 2

PWC Joan is entitled to £100 per week child maintenance and no arrears are due. NRP Tom makes a payment of £100 for child maintenance plus his 20% collection charge, the collection charge is assigned to the CMS along with 4% of the £100 owed to Joan. The daily rate is calculated as £14.29, 4% of this is £0.57 meaning that a weekly charge of £3.99 is due. This means that of the £100 maintenance payment, Joan is paid £96.01.

Note: where a calculation is made to determine the amount charged as a collection charge and the amount included a fraction of one penny, i.e. is not a whole penny, the amount charged will be rounded to

the nearest penny.

Payment of collection charges

16024 The NRP's collection charge is automatically deducted on receipt of payment and where they fail to pay the full amount, the amount received will be split proportionality between charges and child maintenance.

Example 1

NRP Rob is assessed to pay £100 per week in child maintenance plus a £20.02 per week collection charge via a DEO. Due to protected income regulations Rob's employer is only able to deduct £50.

In this circumstance the £120.02 that Rob should have paid is treated as 100% of the obliged total, of which the £20.02 collection charge accounts for 16.68% of this and the £100 liability payment equates to 83.32%.

These percentages are then applied to the amount that has been received. Of the £50 that has been paid, 16.68% (£8.34) is retained as a collection charge, leaving £11.68 of the scheduled collection charge of £20.02 unpaid, which becomes arrears owed to the CMS.

PWC Brenda's collection charge is deducted automatically from any amounts that are assigned to Brenda for which a collection charge has previously been associated i.e. amounts charged since the introduction of collection charges.

The charge will be deducted as a flat rate of 4% of the net balance of all amounts assigned to Brenda which meet this criterion.

Example 2

NRP Bruce is assessed to pay £30 per week in child maintenance and also makes payments of £20 per week towards a balance of arrears accrued after 30 June 2014.

This net payment of £50 is assigned to PWC Kat and 4% is deducted automatically. The PWC receives £48 and the remaining £2.00 is retained as the collection charge.

Example 3

NRP James is assessed to pay £10 per week in child maintenance and £30 per week towards a balance of arrears accumulated before collection charges were introduced.

This net payment of £40 is allocated to PWC Sheila, however only the £10 regular maintenance liability has an associated collection charge (having been accrued after the introduction of collection charges).

A collection fee of 4% is deducted from the liability amount meaning that Sheila receives £9.60 in regular child maintenance plus the full £30 arrears payment (having been accrued prior to 30 June 2014

the date of the introduction of collection fees). The collection fee deducted is £0.40.

Example 4

NRP Neil is assessed to pay £30 per week in child maintenance and also makes a lump sum payment of £500 to clear their full arrears balance which comprises amounts accumulated before and after 30 June 2014 the date of the introduction of the collection charges.

The receipt for £530 is assigned to PWC Peta and the £30 regular maintenance liability is satisfied first.

Because the regular maintenance has accumulated after the introduction of collection charges 4% of this payment will be retained as a collection charge.

The remaining £500 is used to satisfy all outstanding arrears. The system will automatically determine which of these arrears have an associated collection charge i.e. were charged after the introduction of collection fees.

It is determined that of the £500 that has been paid £300 is for arrears accrued prior to the introduction of collection charges, this means that a collection charge is appropriate for the remaining £200.

Peta will be paid the full £300 due for their arrears accumulated prior to the introduction collection charges, the remaining £230 is liable for collection charges and therefore 4% of this balance will be deducted for the charges. In total Peta receives £520.80 of the received £530; the remaining £9.20 is retained as the collection charge.

Exceptions

16025 There are no exceptions from collection charges, any client using the collect and pay service must pay the collection charge. To avoid charges, clients can make a direct pay arrangement. See Chapter 15: Service types and methods of payment

16026 Vulnerable clients, including those who have declared themselves victims of domestic abuse, will be helped to set up their direct pay arrangement, such as facilitating the exchange of bank details with a central or national sort code not linked to any particular location or branch. This offers sufficient protection for clients who do not wish to have contact with or disclose their location to the other client.

Exclusions

16027 Collection charges are applied only under specific circumstances. There are certain restrictions on the collection and enforcement of collection charges.

Retrospective liability

16028 Collection fees are applicable only for the collection and payment of child maintenance accrued on or after 11 August 2014[1]. No fee will be levied on maintenance arrears accrued before this date.

1 CSF Regs 2014, reg 1(4)

Child Support Agency Debt

16029 Collection charges are applicable only for the collection and payment of child maintenance accrued under the 2012 Child Maintenance Scheme[1]. No collection charge will be applied for child maintenance accrued under CSA legislation.

1 CSF Regs 2014, reg 6

Enforcement of collection fees

16030 The powers to commit an NRP to prison or disqualify an NRP from driving in the course of enforcement action cannot be used when the enforcement action being undertaken is solely for the collection of unpaid collection charges.[1]

1 CSF Regs 2014, reg 13(2)

Enforcement Charges

16031 Enforcement action is only taken when the CMS believes the NRP has chosen to avoid payment. The charges associated with these actions are designed to provide an incentive to NRPs to pay their maintenance in full and on time.

16032 Charges can only be levied on the specified enforcement actions[1] taken on or after 30 June 2014[2]. Enforcement charges cannot be applied retrospectively to actions taken prior to this date.

1 CSF Regs 2014, reg 1(3); 2 WR Act 2012, s137

16033 Enforcement charges are payable by an NRP where non-compliance results in certain specific enforcement actions being undertaken in order to establish compliance.

Actions attracting an enforcement charge

16034 An enforcement charge will be payable if the CMS takes any of the following actions[1]

1. make a DEO or DER. See Chapter 55: DEOs and DERs.

2. make a regular or lump sum deduction order. See Chapter 56: Deduction orders.

3. make an application for a LO or 'top up' LO. See Chapters 73: Liability orders – England and Wales & 83: Liability orders - Scotland.

1 CSF Regs 2014, reg 9

Note: a top up LO is usually obtained where the debt secured by an original LO for a specific period of

debt has increased.

Charges for enforcement action

16035 Enforcement charges[1] vary depending on what action is being taken. The charges are as follows:

Enforcement action	Charge payable
Making a DEO \ DER	£50.00
Making an RDO	£50.00
Making a LSDO	£200.00
Making an application for a LO or top up LO	£300.00
Enforcement Agent Letter to PP	£75.00
Attempted visit(s) to PP property or work place	£240.00
Registration of LO in County Court (Charging Orders)	£110.00
County Court Application Fee and Court Costs.	£44.00

1 CSF Regs 2014, reg 10

16036 The enforcement charge is not the full cost of the action being taken with the majority of the cost being met by the CMS. It has been determined that the level of the enforcement charges are proportionate to the severity of that action being taken as well as the administrative costs.

Recovery of charges

16037 The enforcement charge will become payable at the point that the action is taken and will be factored into any ongoing liability schedule.

16038 However, the priority will be to ensure PWCs receive the money they are entitled to from the NRP, so the enforcement charge will only be recovered once all regular liability and arrears have been satisfied and once all collection charges have been paid.

16039 If the enforcement charge has not been covered after any payment has been allocated, it may only be recovered by means of administrative action such as by negotiation, DEO or deduction order at a later date. This is because debt due to the CMS can only be recovered using statutory enforcement mechanisms when it is collected alongside debt owed to the PWC[1].

1 CSF Regs 2014, reg 11

Waiver of enforcement charges

16040 The Child Support Fees Regulations set out the circumstances in which an enforcement charge may be waived. An enforcement charge should normally be waived if a case falls within the circumstances set out below[1].

16041 The DM should decide on a case by case basis on how appropriate it is to waive the enforcement charge. If, after consultation with their team leader, they decide not to waive the charge, this must be justified and the reasons must be clearly recorded on the system.

1 CSF Regs 2014, reg 12

16042 A DM may waive the enforcement charge in the following circumstances

1.the NRP requests to pay by DEO[1]

2. If a charge becomes payable due to concurrent or subsequent action[2] of the same type being taken against the NRP, such as

2.1 the CMS applies multiple DEOs against an NRP with more than one employer. These orders do not need to be applied for at the same time

2.2 the CMS applies for more than one RDO or LSDO simultaneously from the NRPs bank accounts.

3. a change of circumstance[3] resulting in

3.1 a DEO being reissued as a result of an NRP changing employer.

3.2 a regular deduction order reissued as a result of an NRP changing their financial provider.

3.3 the amount being collected by a DEO or regular deduction order changing.

4. where, retrospectively, actions taken by the CMS are determined unlawful or incorrect[4] such as

4.1 an application for an LO is unsuccessful and no LO is granted by the court.

4. 2 where an LO is granted but as a result of a successful Judicial Review or appeal the LO is set aside or quashed and the LO application is not to be resubmitted

4.3 a DEO, regular deduction order or lump sum deduction order has lapsed or been discharged due to error or maladministration.

5. the NRP has a DER but is a serving member of the armed forces and is committed to an operational

tour of duty[5]. An operational tour of duty includes

5.1 pre-operational training

5.2 pre-operational leave

5. 3 rest and recuperation during operations

5.4 post-operational leave.

1 CSF Regs 2014, reg 12(5); 2, reg 12(2); 3, reg 12(3); 4, reg 12(4); 5, reg 12(6)

Note: that if the original LO is set aside or quashed but the LO is resubmitted to the Magistrates' Court to be reheard then the enforcement charge should not be waived. If no LO results from the further hearing, then the enforcement charge should be waived.

16043 Where fees relating to the unsuccessful, unlawful or incorrect act have already been levied, these should be refunded. In some circumstances it may be possible to reallocate enforcement fees paid towards on-going child maintenance liability or further arrears which have accrued.

Example for concurrent action

NRP Dave, who currently pays via a DEO makes contact to advise that he has taken on a second job. A decision is made to apply a concurrent DEO against this new employment. The enforcement charge that would have been applied for taking this action is waived.

Example for change in circumstances

NRP Dave reports a change in employment and that he will now be working for a new employer. The existing DEO will no longer be effective and will be terminated and replaced by a new order issued to Dave's new employer. The enforcement charge associated with this new order is waived.

Example for retrospective changes 1

NRP Dave has a DEO in place. It is subsequently realised that the DM made an error and the DEO should not have been imposed. The order is, therefore, discharged and the charge associated with that order is waived.

Example for retrospective changes 2

NRP Dave successfully appeals against the granting of a LO, or the court finds the LO invalid and sets it aside and dismisses the LO application. A fee has already been levied but not paid. This fee should be waived as the court has effectively cancelled the LO and will not be resubmitting the LO application to the court to be reheard.

Example for retrospective changes 3

An application for a LO is made to the court, but no LO is granted because the NRP Dave pays the maintenance due in full before the hearing. In this case the fee associated with applying for the LO should be refunded.

Right of appeal on refusal to waive charge

16044 The decision not to waive an enforcement charge where a case satisfies one of the circumstances set out above is discretionary and cannot be appealed. If an NRP requests an appeal, they must be informed that the decision cannot be appealed. The decision should, however, be looked at again to ensure that the decision can be justified. The case should be considered by the team handling the case day-to-day, as part of the 'dissatisfaction stage'. If the client finds the outcome unsatisfactory, the case should be referred to the Complaints Resolution Team. If the decision is found to be correct, it will not be altered.

16045 If the client is still not happy, the next stage in the complaint handling process is the Complaints Review Team, which considers the complaint with a level of independence. A client who remains dissatisfied may escalate their complaint to the Independent Case Examiner or, in cases of maladministration, to the Parliamentary Ombudsman. They can also challenge the decision by way of Judicial Review.