Volume 2 - Maintenance Calculations (Chapters 17-26)

Subpages

- Chapter 17 - Maintenance calculation overview
- Chapter 18 - Historic income
- Chapter 19 - Current income - Employed
- Chapter 20 - Current income - Self-employed
- Chapter 21 - Universal Credit
- Chapter 22 - Umbrella Companies
- Chapter 23 - Other factors affecting the maintenance calculation
- Chapter 24 - Estimating current income
- Chapter 25 - Rates and rules
- Chapter 26 - Default maintenance decisions (DMDs)

Chapter 17 - Maintenance calculation overview

Introduction

17001 The statutory child maintenance calculation determines how much child maintenance a NRP has to pay to help support their children. This amount is referred to as the NRP's child maintenance liability.

17002 The rate of the NRP's liability depends on their gross weekly income, which may be based on either their historic income or current income (see below), and whether they are in receipt of a benefit prescribed by legislation. However, there are other factors that may affect the amount the NRP has to pay.

This guidance explains

What happens when a child maintenance application is received 17003 - 17009

HMRC information provided after the NRP has been asked to provide current income information 17010 - 17011

NRP fails to respond to a request for current income 17012 - 17013

Provisional calculation 17014 - 17015

Initial maintenance calculation 17016 – 17017

Other factors affecting the maintenance calculation 17018

What happens when a child maintenance application is received

17003 When an application for a maintenance calculation is made, the CMS checks CIS Searchlight to see whether the NRP is in receipt of a prescribed benefit. See Chapter 25 - Rates and rules for further guidance on prescribed benefits.

17004 The CMS then makes a request to HMRC to obtain the NRP's historic income information for the latest available tax year. The next action depends on the NRP's circumstances. See Chapter 18 - Historic income for further guidance.

NRP receiving benefits - HMRC provide historic income figure

17005 If the NRP is in receipt of a prescribed benefit, the CMS override any historic income information obtained from HMRC and will produce a flat rate provisional calculation, unless they are a specified person who qualifies for the nil rate. See Chapter 25 - Rates and Rules for further guidance on specified persons.

17006 A provisional calculation will be issued to the NRP only, with a notice that an application for maintenance has been made. Details of any historic income figures will be retained on the CMS computer system. See paragraphs **17014** to **17015** for further information on what a provisional calculation is.

NRP not receiving benefits - HMRC provide positive historic income figure

17007 If the NRP is not in receipt of a prescribed benefit and HMRC provide a positive historic income figure then the CMS will produce a provisional calculation based on that historic income figure. This is issued to the NRP only, along with a notice that an application for maintenance has been made. For further information on provisional calculations see paragraphs **17014** to **17015**. For further advice on the child maintenance rates, see Chapter 25 - Rates and rules.

NRP not receiving benefits - HMRC provide nil income figure

17008 If the NRP is not in receipt of a prescribed benefit and HMRC provide a nil income figure then the CMS will produce a provisional calculation based on the nil rate. For further information on provisional calculations see paragraphs **17014** to **17015**. For further information on current income see Chapter 19 - Current income employed and Chapter 20 - Current income self-employed.

NRP not receiving benefits - HMRC provide no income details

17009 If the NRP is not in receipt of a prescribed benefit and HMRC provide no income details then the CMS will not produce a provisional calculation. The NRP should still receive a notice that an application for maintenance has been made and this should be accompanied by a request for details of their current income.

HMRC information provided after the NRP has been asked to provide current income information

Pre- calculation

17010 If HMRC historic income information[1] becomes available prior to the initial maintenance calculation being made, the NRP's child maintenance liability must be based on the HMRC historic income figure provided by HMRC, unless

1. current income differs by at least 25%

2. the historic income was nil, or

3. the DM is unable, for whatever reason, to obtain the required information from HMRC.

1 CSMC Regs 2012, reg 36

Post-calculation

17011 Where the historic income figure from HMRC becomes available after the initial maintenance calculation has been made, it can only be used as the basis of a new calculation if the grounds for a supersession or revision are satisfied, or at annual review. For more information, see Chapter 42 - Revisions, Chapter 43 -Supersessions and Chapter 44 -Income Reviews.

NRP fails to respond to a request for current income

17012 Where a NRP fails to respond to a request for current income, DMs will need to consider estimating the NRP's current income. For further guidance refer to Chapter 24 - Estimating current income.

17013 Where the PWC does not know the NRP's type of work and whether they are employed or self-employed, DMs may need to impose a DMD. It may also be appropriate to consider a referral to an investigation officer. See Chapter 26 - Default maintenance decisions for further guidance.

Provisional calculation

17014 If someone other than the NRP applies for a statutory maintenance calculation, a provisional calculation will be issued to the NRP. As the CMS will not at that point have had a discussion regarding obtaining further information with the NRP, the provisional calculation will be based solely on HMRC information. The NRP will be asked to contact the CMS to gather additional information such as shared care or current income details. Whether or not the NRP makes contact, the CMS will perform the initial calculation.

17015 If the NRP is the applicant, the information gathering discussion can be held at the point the application is made. Therefore, a provisional calculation does not need to be issued and an initial calculation can be completed.

Initial maintenance calculation

17016 The initial maintenance calculation will be based on either

1. historic income information provided by HMRC
2. current income information provided by the NRP, or their employer
3. an estimate of the NRPs current income, or
4. a default maintenance decision.

17017 A notification must be issued to both parties when the first maintenance calculation on an individual case is made. See Annex C: Notifications, for further guidance.

Other factors affecting the maintenance calculation

17018 A number of other factors can have an effect on the amount of child maintenance a NRP may be

required to pay. For more information on these factors and the affect they have on a maintenance calculation see

1. Chapter 6: Relevant other child (ROC)
2. Chapter 8: Child of the family or child abroad
3. Chapter 9: Child supported under a family based arrangement (CiFBA)
4. Chapter 11: Shared care
5. Chapters 27 – 36: Variations.

Chapter 18 - Historic income

Introduction

18001 For the purposes of calculating child maintenance liability, an NRP's gross weekly income is determined on the basis of historic income or current income. The preference is to use historic income, which is derived from figures held by HMRC. The historic income data must be used unless

1. current income differs from historic income by at least 25%[1]

2. no historic income is available[2], or

3. CMS has been unable to request or obtain the required information[3].

1 CSMC Regs 2012, reg 34(2)(a); 2 reg 34(2)(b); 3 reg 34(2)(c)

Note: For further information on Current Income see Chapters 19 & 20.

This guidance explains

What is historic income **18002 - 18007**

The HMRC figure **18008 - 18012**

What happens when historic income is requested **18013 - 18014**

What happens when historic income is unavailable **18015**

Historic Income figure disputes **18016 - 18023**

Adjusting the historic income figure **18024 - 18026**

The effect of pension contributions on historic income **18027**

Relief at source pension arrangements **18028 - 18045**

Net pay pension contributions **18046 - 18052**

What is historic income

18002 Historic Income is based on information supplied by HMRC. HMRC will provide details about the NRP's income for the latest available tax year. This information is referred to as "Historic" because it is collated and supplied by HMRC after the end of the tax year that it refers to. Tax years run from 6 April to 5 April. If HMRC return a nil figure for historic income, and current income is greater than nil, then current income is treated as differing from historic income by at least 25% and the current income approach to calculating gross weekly income should be used instead[1]. Refer to Chapter 19 for more information on

calculating gross weekly income.

1 CSMC Regs 2012, reg 34(2A)

What is the latest available tax year

18003 Latest available tax year means the tax year which, on the date the DM requests information from HMRC, for the purpose of making a child maintenance calculation, is the most recent relevant tax year for which HMRC have received information in respect of the NRP[1].

1 CSMC Regs, reg 4(1)

What is a relevant tax year

18004 Relevant tax year means any one of the six tax years immediately preceding the date on which the DM made the request for the information referred to in paragraph **18003**[1].

1 CSMC Regs 2012, reg 4(2)

18005 The latest available tax year may not be the actual most recent tax year, as HMRC may not have all of the information for this year. In these circumstances HMRC provide a figure (which may be nil) for the most recent tax year that they have the full details for.

18006 If HMRC hold income information for any of the last six years, they will provide the CMS with:

1.a single historic income figure, including a nil figure (if applicable), for the latest available tax year;

2. confirmation of the tax year that the figure relates to; and

3. confirmation of whether the figure came from a PAYE or Self-Assessment return.

18007 If HMRC has no details for any of the last six years, they will report that there are "no income details held". Income is defined as

1. after deductions for relievable pension contributions under net pay arrangements

2. exclusive of social security pensions, and

3. taken after deductions of relief against trade loss profits[1].

1 CSMC Regs 2012, reg 36(2) - (4)

The HMRC figure

18008 The HMRC figure is the amount identified by HMRC from information provided in a self-assessment return or under PAYE regulations as the sum of the income on which the NRP was charged

to tax for the latest available tax year. It can be comprised of:

1.employment income[1];

2.pension income (not including a UK social security pension[2];

3. trading income (after deduction of any trade loss carried forward and offset against trade profits)[3]; **and**

4. income comprised of certain taxable UK social security benefits including incapacity benefit; contributory employment and support allowance; jobseekers allowance and income support[4].

1 CSMC Regs 2012, reg 36(1)(a), 2 reg 36(1)(b) and 36(3), 3 reg 36(1)(d) and 36(4), 4 reg 36(1)(c)

18009 The above types of income can be broadly classified as "earned "income. "Unearned" income (for example: income from property and savings or dividend income) although taxable, is not included in the main calculation and will not be included in the historic income figure. Unearned income can be considered under a variation, if requested by the PWC or NRP. See Chapter 33: Unearned income for more information.

Note: the terms `earned` and `unearned` income are not used by HMRC, who use terms `employment income` and `trading income`.

18010 Where a NRP has income from gambling activities (for example a professional poker player), that income cannot be taken into account for the purposes of Child Support either in the main calculation or under variations. This is because this source of income is not declared to HMRC.

18011 Any employment income is to be taken

1.after any deductions for relievable pension contributions have been made by the NRP's employer, **and**

2. before income tax and national insurance deductions are made[1].

1 CSMC Regs 2012, reg 36(2)

Determining gross weekly income from historic income

18012 A NRP's gross weekly income from historic income is calculated by:

1.taking the most recent HMRC figure (the HMRC figure last requested from HMRC in relation to the NRP);

2. making pension deductions where appropriate; and

3. dividing by 365 and multiplying by 7[1].

1 CSMC Regs 2012, reg 35(1)

What happens when historic income is requested

18013 A request for the HMRC figure is to be made no more than 30 days before:

1. the initial effective date; and

2. the date of the annual review [1].

1 CSMC Regs 2012, reg 35(2)

18014 Following a request for income details, HMRC will provide a response electronically, or manually if required.

What happens when historic income is unavailable

18015 Where HMRC are unable to provide historic income details, the CMS will initiate consideration of current income[1], see Chapter 19: Current income - employed or Chapter 20: Current income - self-employed, for further guidance.

1 CSMC Regs 2012, reg 34(2)

Historic income figure disputes

18016 If the NRP queries an historic income figure, DMs must explain that the figure supplied by HMRC will have come from a self-assessment tax return (SATR) or pay as you earn (PAYE) return.

18017 For PAYE, the employer should have given the NRP a P45 or P60 showing the same taxable income figure as on the PAYE system.

18018 The CMS can request a breakdown of the income figure provided by HMRC if the NRP challenges it. HMRC will break down the figure into the following categories

1.employment income figure

2. trading income figure

3. taxable pension income figure

4. taxable benefits income figure.

18019 HMRC will not provide any further breakdown within each income category.

18020 HMRC`s breakdown can be given to the NRP, but, cannot be given to the PWC. If a PWC

challenges the HMRC figure, ask them to provide full details of why they think the figure is wrong. DMs should then only provide them with sufficient information to answer their dispute.

Example

PWC Jennifer calls DM Clare to say that she does not think that NRP David's income includes his self-employed income. Clare request's a breakdown, which confirms that self-employed income has been included. Clare calls Jennifer to advise that David's income does include self-employed income.

Note: DMs can advise a PWC that the income breakdown includes self-employed income but must not provide any additional details regarding the amount or type of self-employed income that has been included.

18021 In a minority of cases, the historic income figure may need to be adjusted by HMRC after it has been sent to the CMS. This will usually be as HMRC have spotted an error, or a taxpayer has supplied additional information.

18022 Most changes will be relatively small and HMRC and the CMS will only be aware of these if the NRP queries the HMRC amount.

18023 In these circumstances, if the HMRC figure has been amended, any calculation using the previously supplied figure for the tax year in question should be revised.

Adjusting the historic income figure

18024 In many cases the income figure given to the CMS can be used to make the maintenance calculation. However, there are other factors which may result in the income figure needing to be adjusted before it is used to calculate the NRP`s maintenance liability.

18025 Income adjustments may be required if:

1. the NRP has a relevant other child
2. the NRP is making contributions to a pension scheme
3. the NRP has costs associated with converting income paid in another currency into sterling
4. a successful application for a variation has been made
5. income evidence includes payments which are non-taxable.

18026 The income figure would not need to be adjusted to reflect shared care. In these circumstances, the maintenance liability is adjusted rather than the NRP`s income.

The effect of pension contributions on historic income

18027 Any contributions made by the NRP to a pension scheme should be excluded from the historic income figure before it is used in the maintenance calculation. Where the NRP is contributing to more than one pension scheme, the amounts will be combined and the total figure is deducted.

Note: Where the non-resident parent has unearned income and makes relievable pension contributions, which have not been otherwise taken into account for the purposes of the maintenance calculation a deduction must be made from the unearned income figure See Chapter 98.

Relief at source (RAS) pension arrangements

Contributions

18028 A NRP may choose to make pension contributions to a personal pension provider after having paid tax on their full salary. This is known as Relief at Source (RAS) pension arrangements.

18029 In some instances, a NRP's employer may take pension contributions after taking tax and National Insurance from their pay.

18030 With RAS pension arrangements, the pension provider adds tax relief to the NRP's pension pot at the basic rate. NRP's who pay higher or additional rate income tax (or higher and top rate income tax in Scotland) can also claim for additional relief.

18031 In all these circumstances the amount of the pension contribution and any tax relief must be deducted from the income figure provided.

18032 The NRP must be asked to provide evidence of their contributions for the relevant tax year.

Evidence

18033 The preferred evidence for these purposes will be a copy of the annual statement that pension providers are legally obliged to provide for each tax year.

Note: the onus is on the NRP to provide a copy of the annual statement.

18034 Copies of bank statements showing the payments made over an annual period can be accepted in exceptional circumstances, for example where the NRP has confirmed that they no longer have a copy of the annual statement and their pension provider is unable to provide a duplicate. Bank statements must cover the annual period to allow a weekly average of the pension contributions to be calculated.

Note: for more information on obtaining evidence of pension contributions, See Chapter 97: Evidence of Income.

Post maintenance calculation

18035 Where RAS contributions are reported after the maintenance calculation has been completed

1. and these were made for the same tax year as the historic income tax year

2. and not included in the historic income figure,

the calculation will be revised using the adjusted historic income figure. No time limit will apply and mandatory reconsideration (MR) will not be required. See Chapter 42: Revisions for further guidance.

Calculating the gross amount from bank statements

18036 Where evidence of pension payments are taken from bank statements rather than an annual pension statement, see paragraphs **18035** to **18043** to calculate the gross amount.

18037 DMs will need to ask the NRP if they were a basic or higher rate taxpayer in the relevant tax year, as, this will affect the evidence required

1. basic rate taxpayer during the relevant tax year - the gross amount of their pension contributions will be
£ amount of contributions X 100/80 (this reflects the current basic income tax rate of 20%)

2. higher and additional rate taxpayer during the relevant tax year - tax relief is only given by the pension provider at the basic rate of income tax. The remainder must be claimed by the taxpayer from HMRC. The gross amount of the pension contributions that are to be deducted from the NRP`s income will be the total of

2.1 £ amount of contributions X 100/80 (this reflects the current basic income tax rate of 20%), **and**

2.2 £ amount of additional tax relief allowed by HMRC.

18038 Higher and additional rate taxpayers who want pension contributions to be deducted from their income must submit the normal evidence required PLUS a copy of their HMRC calculation notice, this will provide the amount of additional tax relief allowed.

18039 If the NRP fails to provide this evidence, only allow tax relief at the basic rate.

18040 Any contributions made by the NRP to a pension scheme should be deducted from the historic income figure before it is used in the maintenance calculation.

18041 There is no limit on the amount of pension contributions that can be deducted from income in the main calculation. If a PWC thinks the amount allowed is excessive, they can apply for a diversion of income variation, see Chapter 36: Diversion of income.

18042 Generally, where the NRP makes payments to an employee pension scheme, the adjustment will have been made to the historic income figure provided. Where this applies, no further adjustment should be made for these contributions.

18043 Generally, where the NRP is making payments to a private pension scheme, the NRP will make the payments directly to the pension provider. Therefore, it may be appropriate to make an adjustment for these contributions.

18044 If the NRP states they have made pension contributions that have not been deducted from the historic income figure, check that the contributions they want to be taken into account were made during the same tax year as the historic income figure that is being used for the maintenance calculation. If not, explain to the NRP that only pension contributions made for the same tax year can be taken into account.

18045 If the NRP reports that they are a self-employed general practitioner (GP) and making pension contributions to the National Health Service (NHS) superannuation scheme as both an employee and an employer, the total amount of contribution made by the NRP can be deducted from their historic income.

Net pay pension contributions

Contributions

18046 Where a NRP's employer takes workplace pension contributions out of their pay before deducting Income Tax, this is known as "Net pay" pension contributions. The NRP will receive full tax relief regardless of the rate of tax they pay.

18047 The NRP's current income will be based on the amount received after the pension contribution is made.

18048 Where the NRP queries their pension contributions, explain that their employer will normally have already made an adjustment for these contributions before submitting details of their gross taxable pay to HMRC.

18049 If the NRP states this has not happened, the onus is on them to provide evidence confirming this.

Note: the NRP will need to provide confirmation from their employer that no adjustment has been made to their taxable earnings for these amounts.

Example

NRP John's annual gross pay is £29,000. During the year he pays £2000 into his employer's pension scheme. At the end of the tax year, the employer advises HMRC that John's gross taxable pay is £29,000 - £2,000 = £27,000. This is the figure that will be passed on to the CMS.

Evidence

18050 The NRP should ask for written confirmation from their employer or former employer and should be advised that we cannot make a deduction for pension contributions without this. DMs will need

1. the amount of the contributions made during the tax year, and

2. confirmation no adjustment was made against the taxable income information provided by the employer in their end of year return to HMRC, and

3. the reason why this was not done.

18051 In exceptional circumstances the NRP may be unable to obtain this information from their employer. For example: the company is no longer trading and the pension scheme has been wound up. In these circumstances, the NRP will need to provide the information detailed in paragraph **18048**.

Deceased partner`s pension

18052 Where the NRP receives an occupational pension from their deceased partner's former employers, as this income is taxable, it is included as income when calculating child maintenance.

Chapter 19 - Current income - Employed

Introduction

19001 The amount of child support payable is based on the NRP's gross weekly income. This can be calculated using historic income (for which see Chapter 18). When historic income cannot be used, current income is used. This is income as an employee, office holder, self-employment or pensions. This chapter gives guidance on calculating gross weekly income from current income for employed earners. Chapter 20 gives guidance as to current income for self-employed earners.

This guidance explains

When current income should be considered **19002 - 19004**

What is current income **19005 - 19008**

Current income as an employee or office holder **19009 – 19038**

Calculating the annual current income figure **19039**

Changes to current income an NRP must report **19040 – 19041**

NRP reports a change to income from employment **19042 - 19052**

PWC reports that the maintenance calculation is not reflective of the NRP's current income **19053 - 19058**

NRP reports employment has ceased **19059 - 19074**

Income from a pension **19075 - 19076**

When current income should be considered

19002 The CMS will aim to use historic income data obtained directly from HMRC to carry out a maintenance calculation, as this provides a reliable and efficient source of income information.

Note: refer to Chapter 18: Historic Income for more information on historic income.

19003 The NRP's gross weekly income is to be based on historic income unless

1. current income differs from historic income by an amount that is at least 25% of historic income, or

2. no historic income is available, or

3. the DM is unable, for whatever reason, to request or obtain the required information from

HMRC[1].

1 CSMC Regs 2012, reg 34(2)

19004 Where **19003.1** applies, current income is to be treated as differing from historic income by an amount that is at least 25% of historic income where

1. the amount of historic income is nil, **and**

2. the amount of current income is greater than nil[1].

1 CSMC Regs 2012, reg 34(2A)

What is current income?

19005 Current income is the sum of the NRP's income

1.as an employee or office-holder

2. from self-employment, and

3.from a pension.

19006 Current income is to be calculated or estimated as a weekly amount at the effective date of the relevant calculation decision in accordance with child support regulations[1].

Note: see Chapter 14 for guidance on effective dates and Chapter 20 for guidance on current income from self-employment.

1 CSMC Regs 2012, reg 37(1)

19007 The DM may take information from any credible source and may estimate current income using assumptions of fact. The highest amount of gross weekly income that CMS may take into account is £3,000[1].

1 CSA 1991, schedule 1, para 10

19008 Where payment is made in a currency other than sterling, an amount equal to any banking charges payable for converting the payment to sterling should be disregarded in calculating the current income of a NRP[1].

1 CSMC Regs 2012, reg 37(2)

Current income as an employee or office holder

19009 The NRP's current income as an employee or office holder is income that would be taxable

earnings[1]. These earnings exclude redundancy pay and gambling gains. The DM is to assess the NRP's income in accordance with the Regulation.

1 CSMC Regs 2012, reg 38(1)

Note: Payments from medical insurance policies as a result of being unable to work would only be classed as current income if these payments are subject to PAYE tax and national insurance deductions.

19010 The following table shows some of the most common types of taxable and non-taxable income from employment.

Taxable Employment Income	**Non Taxable Employment Income**
Basic salary or wages	Direct reimbursement for work related expenses
Bonus or commission payments	Pension contributions
Holiday pay	Subsistence payments (unless significantly in excess of what the employee would be likely to pay)
Medical expenses paid directly to the employee	Tax credits
Overtime or shift payments	Work related training costs
Sick, maternity pay, or paternity pay (including statutory sick pay and statutory maternity or paternity pay)	
Taxable benefits in kind	
Tips	

19011 If any part of the NRP's current income comprises salary, wages or other amounts paid periodically then if it appears to the DM that the NRP

1. is (or is to be) paid a regular amount
2. according to a settled pattern
3. that is likely to continue for the foreseeable future,

that part of the NRP's current income is to be calculated as the weekly equivalent of that amount[1].

1 CSMC Regs 2012, reg 38(2)(a)

Note: The table below sets out how many income figures the DM should refer to when calculating the weekly amount.

Frequency of Payment	Number of income figures
Weekly	5
Fortnightly	3
4 Weekly	2
Monthly	2

Note: Once a weekly amount has been calculated, an annual gross taxable income figure must be established in order to complete the maintenance calculation. See paragraph **19039**.

19012 This regulation is intended for NRPs who have regular earnings (the level of earnings is broadly consistent in each pay period) and who are receiving this amount on a regular basis (for example, the client is paid weekly/fortnightly etc. as opposed to on a fluctuating basis). The DM must be satisfied that this arrangement is likely to continue for the foreseeable future.

Note: there is no minimum period of time which should be used to define the "foreseeable future". Instead DMs should consider the information available to determine whether the NRP's employment is reflective of the legislative intent.

Example 1: Income is consistent - regular settled pattern

Emma makes an application for child maintenance against Paul in respect of qualifying child Lucy. The initial maintenance calculation is effective from 21 September 2018 using an historic income amount of £21,000 (£403.85 per week) for the latest available tax year 2016 – 2017.

On 13 May 2019 Paul calls the CMS to advise of a change to his circumstances. He explains that he lost his job in April but started working for a new employer from ^ May 2019. Paul explains that his new job is a permanent job on a long term contract and that he will receive a regular monthly salary.

Paul provides a signed declaration that his new gross monthly income is £750.

As the earnings are more than 25% lower than the historic income information already held and as they are expected to continue for the foreseeable future, Regulation 38 2(a) should be applied and the gross weekly income should be based on the weekly equivalent of the NRP's monthly salary.

Note: the effective date of the change will be the date the change was notified to the CMS, irrespective of when the NRP started the new employment or when they started to receive income at the new rate.

Example 2: Income is broadly consistent – regular settled pattern

PWC Saira contacts the CMS and requests a change to current income (from historic income) on the 23 November 2018 and provides reasonable grounds to support the request. RTI is checked and shows a 25% increase in income has occurred. There has been no verbal contact with the NRP to understand the nature of their employment, no bonus payments are reported. The following RTI is held covering the increased period:

23 November £519
30 November £505
7 December £519
15 December £510
22 December £519

As the amount the NRP receives each week is broadly consistent it is considered as regular according to a settled pattern. The NRP's gross weekly income should be determined as the weekly equivalent of the amounts paid.

No further verification with the employer or non-resident parent is required unless commission / bonus payments are reported that are paid with a different frequency from regular earnings.

Example 3: Income fluctuates but has a regular settled pattern

PWC Jack requests a change to current income (from historic income) on the 24 October 2018 and provides reasonable grounds to support the request. RTI is checked and shows a 25% increase in the NRP's income has occurred. There has been no verbal contact with the NRP to understand the nature of their employment and no bonus payments are reported. The following RTI is held covering the increased period:

23 October £430
30 October £500
6 November £435
14 November £500
21 November £429
28 November £505

The amounts the NRP receives fluctuate but those fluctuations and levels follow a regular settled pattern that are broadly consistent. The NRP's gross weekly income should be determined as the weekly equivalent of the amounts paid.

19013 Where the nature of the NRP's employment is such that the conditions detailed in paragraph **19011** do not apply, any part of the NRP's income that comprises salary, wages or other amounts paid periodically is calculated as the weekly average of the amounts paid over such period preceding the effective date of the relevant calculation decision, as appears to the DM to be appropriate. For example,

where the NRP is a seasonal worker or has an irregular working pattern[1].

1 CSMC Regs 2012, reg 38(2)(b)

Example 1 – Income fluctuates and has an irregular pattern – evidence of income for the period preceding the effective date

PWC Joanne requests a change to current income (from historic income) on 27 November 2018 and provides reasonable grounds to support the change. RTI is checked and shows a 25% increase in the NRP's income has occurred. There has been no verbal contact with the NRP to understand the nature of their employment, no bonus payments are reported. The following RTI is held covering the increased period:

23 October £430
30 October £750
6 November £535
14 November £400
21 November £385
28 November £700
5 December £555

As the NRP's earnings fluctuate and the earnings are unsettled in nature the DM must establish the weekly average of the amounts paid during the period preceding the effective date of the change to calculate the NRP's current income from employment.

The appropriate period of time preceding the effective date in this case is 23 October to 21 November 2018 and the five weeks' earnings for this period should be aggregated to determine a gross weekly average.

Example 2 – Income fluctuates and has an irregular pattern – no evidence of income for the period preceding the effective date

PWC Habib requests a change to current income (from historic income) on 23 October 2018 and provides reasonable grounds to support the change. RTI is checked and shows a 25% increase in the NRP's income has occurred. There has been no verbal contact with the NRP to understand the nature of their employment, no bonus payments are reported. The following RTI is held covering the increased period:

23 October £430
30 October £450
6 November £0.00
14 November £600
21 November £450

28 November £430

The NRP's earnings fluctuate, no reason has been established for the fluctuations on 6 November and 14 November. A pattern has not been established and the DM must establish the weekly average of the amounts paid during the period preceding the effective date of the change. As none of the payments identified are before the effective date RTI is checked again and a reflective period is established for an earlier employer.

12 January 2018 £430
19 January 2018 £0.00
26 January 2018 £410
02 February 2018 £600
09 February 2018 £480

The five weeks' earnings for this period are aggregated to determine a gross weekly average as this is reflective of the income the non-resident parent has at the effective date.

Note: if there is no evidence of an appropriate period of income paid prior to the effective date consider the following steps:-

1. Ensure additional evidence has been requested from the non-resident parent and their employer e.g. payslips from the NRP or a written/verbal statement from their employer that details the amounts of the irregular pay, overtime or bonus. This is to ascertain if they are paid with each pay period (paid in every weekly/monthly payment) or are intermittent (are not paid for some weekly/monthly payments). If they are paid with the same frequency as regular pay, in every weekly/monthly payment then you cannot consider them intermittent and must consider the overall income under Regulation 38(2)(b). If they are intermittent then the overtime/bonus payments can be calculated separately as per paras 19021 – 19027 and allow you to then consider if the remaining basic wage now meets Regulation 38(2)(a).

2. Ask the non-resident parent if they can provide evidence for a prior period of income that is reflective of the irregular pattern.

3. If historic income is nil or not available consider an estimation of current income, see chapter 24.

If all steps are exhausted and no prior period is identified the change must be rejected as there is no evidence to support the change. Advise the NRP/PWC that a new supersession can be considered once a period of income can be established.

Salary sacrifice

19014 Salary sacrifice happens when an employee takes a reduction in their contracted pay in return for

a non-cash benefit from their employer, such as child care vouchers, the purchase of a bicycle etc. In many cases salary sacrifices don't show on an NRP's pay slip because the employer has already made the adjustment to their initial gross salary.

19015 On some pay slips however this will be shown as a deduction from their gross salary, making it appear to be a deduction from their gross earnings. When calculating the NRP's gross income where a NRP declares a salary sacrifice that is not shown on the pay slip, DMs should assume that the sacrifice has already been taken into account by the employer when calculating the initial gross income figure. If the salary sacrifice is shown as a deduction on a pay slip, DMs should use the reduced gross income figure.

Example

Lorraine is contracted to be paid £2000 per month. She opts for a salary sacrifice of £300 per month. Their contract of employment is amended to reflect that they are only due to receive £1700 per month and this is reflected in the wage slips submitted as evidence of her income.

Current income and short term changes

19016 The DM may consider not reflecting short term changes to a NRP's income. This helps ensure a more regular and stable flow of maintenance to children.

Examples of short term changes include

1. temporary promotions

2. temporary sickness

3. non-permanent changes to working patterns (such as short time working or moving from daytime to night-time working)

4. seasonal work.

Evidence of current income of an employee or office holder

19017 Where the use of current income is being considered for a decrease to current income, the DM should use income from RTI if possible. If there is insufficient or no evidence on RTI the NRP must be asked to supply evidence from their employer of their current gross taxable income. Such evidence may include wage slips or a statement from their employer. For further information, refer to Chapter 97: Evidence – Income.

19018 If the NRP fails to provide sufficient evidence of their current income and if contact details for the NRP's employer are held, they can be contacted directly for details of the current income.

19019 If the NRP's employer details are not known the DM can consider whether it is possible to

estimate the current income. (See paragraph **19036** for more information on estimating current income).

Identifying gross taxable income

19020 Where evidence of the NRP's income has been obtained, the DM will need to identify the gross taxable income figure. Adjustments to the income figure provided may be required where

1. the evidence shows specific amounts that fall within non-taxable categories

2. the NRP reports that the gross amount shown in the evidence includes non-taxable amounts and can provide additional supporting information, **or**

3. there is evidence that pension contributions made by the NRP have not been taken into account. For more information on current income and pension contributions see paras **19030 – 19035**.

Bonus, commission or other amounts

19021 Bonus or commission or other amounts paid in the past 12 months are taxable and should be included in current income. They may either be paid together with regular pay or at different less frequent intervals. For example, a NRP may receive their regular earnings monthly, but may also be paid a quarterly commission payment or annual bonus payment.

19022 Where the NRP's income from their present employment or office has, over the past 12 months, included bonus, commission or other amounts paid separately from, or in relation to a longer period than the amounts referred to in paragraphs **19011** and **19013**, the amount of that income is to be calculated by aggregating those payments, dividing by 365 and multiplying by 7[1].

1 CSMC Regs 2012, reg 38(3)

Note: Once a weekly figure has been calculated, and annual gross taxable income figure must be established in order to complete the maintenance calculation. See paragraph **19039**.

19023 Other amounts are any other taxable payments which are likely to be paid at different intervals to regular pay, but are not expected to be "one-off" payments. They may include

1. profit-related pay

2. intermittent overtime payments

3. royalty payments, and

4. other taxable payments such as "Training" day payments to armed forces reservists, part-time fire-fighters, lifeboat crews and those engaged in similar activities.

19024 If payments are made with the same frequency as regular earnings, payments will usually be

shown on wage slips or a statement as a component of gross pay. That gross pay figure can be treated as the current income figure (subject to any conversion to a weekly amount).

Example

NRP Peter reports a 25% decrease to current income on 15 January 2022. RTI is checked which confirms the change, however the weekly income on RTI fluctuates each week. RTI shows the following weekly information:

21st January £450
28th January £590
4th February £700
11th February £500
18th February £750

The NRP confirms they work overtime every week but the number of hours fluctuates each week, they provide wage slips which confirms that each weekly payment contains overtime which varies in hours each week. As the payments are made with each pay period the gross amounts are used for the maintenance calculation. As the gross amounts are not a settled pattern, the income prior to the effective dates are considered as detailed in para 19013.

19025 If payments are made with a different frequency from regular earnings, evidence will be needed of any payments made in the past 12-month period. If the NRP has been in their existing employment for less than 12 months, the required evidence is of any bonus or commission payments made since the employment began.

Example

PWC Ella requests a change to current income on 1st February 2022 as the NRP's income has increased by 25%. RTI is checked which confirms the change, however the weekly income on RTI fluctuates each week. RTI shows the following weekly information:

4th February £1450
11th February £1590
18th February £1750
25th February £1450
4th March £1450

The NRP's employer confirms that the NRP's basic wage, when they do not work overtime is £1450 each week. They confirm the NRP works overtime some weeks but not every week and confirm the additional amounts above £1450 in the weeks 11 and 18 February are overtime payments. As the overtime payments are intermittent, at different less frequent intervals to regular earnings, evidence is gathered for the past 12 month period. This is added to the gross annual income figure for the basic regular wage as detailed in 19012.

19026 Any payments made over the last 12 months should be added together, and then divided by 365 and multiplied by 7 to arrive at a weekly equivalent amount. This calculation should apply even if the NRP has been in their present employment for less than 12 months.

19027 Although bonus and commission payments will be the most common examples of such payments, the relevant Regulations refer to "other payments" made separately from or at longer intervals to regular earnings. DMs must be aware of other payments, such as profit-sharing or irregular overtime payments that may be paid in this way.

Note: regulations only refer to the "past 12 months" - this should generally be taken to mean the 12 months ending on the effective date of the resulting calculation decision.

Income treated as earnings under "the benefits code"

19028 The NRP may have received certain amounts, during the last 12 months, which are treated as earnings under HMRC legislation known as "the benefits code", for example expenses and company cars. The amount of any such payments as last obtained by HMRC should be considered to be current income for the purposes of making a current income maintenance calculation (in relation to an NRP's current income as an employee or office holder).

19029 The total amount of such payments last obtained by HMRC (i.e. a P11D or HMRC interface amount) should be divided by 365 and multiplied by 7 to arrive at a weekly equivalent[1].

1 CSMC Regs 2012, reg 38(4)

Note: Where the NRP has started a new employment and HMRC have not yet obtained such amounts for that employment then no amount should be included within the maintenance calculation. Such earnings will be captured at the periodic current income check or other later calculations providing HMRC have subsequently obtained amounts. Earnings under the benefits code would not usually constitute a current income change that the NRP is liable to report.

Current income and pension contributions

19030 Current income as an employee or office holder that is income mentioned in paragraphs **19011**, **19013** and**19028** is to be calculated after any deductions for relievable pension contributions have been made by the NRP's employer[1].

1 CSMC Regs 2012, reg 38(5)

19031 This covers the majority of NRPs who make pension contributions through a workplace "Net pay" pension scheme. The NRP's employer will take pension contributions out of their pay before deducting Income Tax from the net income figure. In these cases, the NRP will receive full tax relief and their current income will be based on the amount received after the pension contribution is made. For more information on net pay pension contributions see Chapter 18 Historic Income.

Example

John's gross weekly salary is £500. He makes pension contributions through a workplace net pay pension scheme of £10 per week. His employer deducts the pension contribution before paying tax and so John only pays tax on £490 per week. John's wage slips reflect the deductions made by his employer and so the DM makes a maintenance calculation based on John's gross weekly income of £490.

19032 Where the NRP makes pension contributions which are not taken into account under paragraph **19031**, but are taken into account under a "Relief at Source" (RAS) arrangement an amount equal to the weekly average of the contributions should be deducted from the weekly income figure[1].

1 CSMC Regs 2012, reg 40

19033 This regulation applies for a lesser number of workplace pension schemes and in cases where a NRP makes contributions through a personal pension scheme.

19034 Where the NRP makes pension contributions under a RAS arrangement, these contributions will be made after having paid tax on the full salary. The pension provider will add tax relief to the pension pot at the basic rate. The amount of the pension contribution and any additional tax relief must be deducted from the income figure provided. For more information on relief at source pension contributions see Chapter 18: Historic Income.

Example

Jane's gross weekly salary is £500. She has opted out of her workplace pension scheme and makes contributions to a personal pension provider of £20 per week. Jane pays tax on her gross weekly income of £500 per week and the pension provider claims tax relief putting another £5 into the pension pot.

Jane's wage slips do not reflect the pension contributions she makes and the DM makes a maintenance calculation based on Jane's gross weekly income of £500.

Jane contacts the CMS and explains about the personal pension contributions and provides evidence of the payments she makes in the form of a statement from the pension provider. The DM can revise the original maintenance calculation making a new calculation based on Jane's adjusted gross weekly income of £475.

19035 In instances where the NRP's employer makes deductions for pension contributions after deducting tax, the amount of the pension contribution and any additional tax relief must be deducted from the income figure provided when establishing the maintenance calculation.

Example

Jim's gross weekly income is £500. He makes pension contributions to a work place pension scheme of £10 per week. The employer makes the pension deductions under a RAS arrangement and therefore after paying tax. Jim pays tax on his gross weekly income of £500 and pays £8 into the pension scheme.

The pension provider claims tax relief, putting another £2 into the pension pot.

Jim's wage slips do not reflect the pension contributions made by his employer and so the DM makes a maintenance calculation based on Jim's gross weekly income of £500.

Jim contacts the CMS and explains about the relief at source pension contributions and provides evidence of the payments he makes in the form of a statement from the pension provider. The DM can revise the original maintenance calculation making a new calculation based on Jim's adjusted gross weekly income of £490.

Estimating current income

19036 An NRP's income can be estimated where current income is to be considered because

1. historic income is nil or not available or the DM is unable, for whatever reason, to request information from HMRC, **and**

2. the information available in relation to current income is either insufficient or unreliable.

Note: in estimating current income the DM may make any assumption about any fact. For instance, if the DM is satisfied that the NRP is engaged in a particular occupation the assumption that the NRP has an average weekly income of a person engaged in that occupation in any part of the UK[1].

1 CSMC Regs 2012, reg 42

Refer to Chapter 24 for further guidance on estimating current income.

Default maintenance decisions

19037 If it is not possible to estimate the NRP's current income, DMs may need to consider imposing a default maintenance decision (DMD).

19038 A DMD should be imposed where

1. the NRP is not in receipt of a prescribed benefit

2. HMRC have been unable to provide an historic income figure

3. the NRP has failed to provide sufficient evidence of their current income

4. it has not been possible to obtain current income information from the NRP's employer, **and**

5. it is not possible for current income to be estimated.

Refer to Chapter 26: Default maintenance decisions, for further guidance.

Calculating the annual current income figure

19039 An annual gross taxable income figure must be established for the purpose of making the maintenance calculation. Where the NRP's evidence confirms gross taxable income for a lesser period (for example weekly or monthly) the DM will need to convert the amount to an annual figure, following the relevant example.

Note: When calculating the current income figure any 'rounding' should only be carried out at the end of the calculation and not while establishing the income figure for a lesser period. For more information on 'rounding' see Chapter 25: Rates and Rules.

Example 1 – weekly gross taxable income

Multiply the weekly amount by 365 then divide by 7.

Rob provides evidence of his weekly gross taxable income = £220. £220 x 365 / 7 = £11, 471.428. Annual gross taxable income = £11,471.43

Example 2 – fortnightly gross taxable income

Multiply the fortnightly amount by 365 then divide by 14.

Susan provides evidence of her fortnightly gross taxable income = £500. £500 x 365 / 14 = £13,035.714. Annual gross taxable income = £ 13,035.71

Example 3 - four weekly gross taxable income

Multiply the four weekly amount by 365 then divide by 28

Gary provides evidence of his four weekly gross taxable income = £970. £970 x 365 / 28 = £12,644.643. Annual gross taxable income = £12,644.64

Example 4 – calendar monthly gross taxable income

Multiply the monthly gross figure amount by 12

Debbie provides evidence of her monthly gross taxable income = £1400. £1400 x 12 = £16,800. Annual gross taxable income = £16,800.

Changes to current income an NRP must report

19040 Where a NRP's maintenance calculation is based on current income from employment, they must inform the CMS if they

1. start a new job

2. receive a new rate of pay for their existing job, **or**

3 change their working pattern in their existing job, **and**

4. could reasonably be expected to know that the change might lead to an increased amount of child maintenance being due[1].

1 CSI Regs 2008, reg 9A(2) and reg 9A(6)(a)

19041 Where a NRP's maintenance calculation is the nil rate based on their current income, the NRP must inform CMS if their gross weekly income increases to £7 per week or more[1].

1 CSI Regs 2008, reg 9A(3) and reg 9A(9)

Note: the legal requirement to notify CMS when a NRP's income increases to £7 or more also applies to those cases where the maintenance calculation is based on current income from self-employment or pension.

NRP reports a change to income from employment

19042 If a NRP reports that their gross taxable income has changed by at least 25%, this may be a change to historic income information provided by HMRC or a change to the existing current income figure previously reported by the NRP.

Note: The NRP request should be treated as an application for a supersession of the maintenance calculation. Refer to the Chapter 43 - Supersessions for further information.

19043 When dealing with a reported change to income from employment, DMs will need to consider whether the NRP is reporting an increase or a decrease in their income.

NRP reports a 25% decrease in income

19044 Where a NRP reports that their current income has decreased by 25% or more the DM should use income on RTI if possible. If there is insufficient or no evidence on RTI the DM must ask the NRP to supply evidence from their employer confirming the gross taxable income. See Chapter 97: Evidence – Income, for more information.

19045 If the required evidence is not provided the DM should refuse to supersede the maintenance calculation.

19046 If the required evidence is provided, the DM must check whether the new gross taxable income is more than 25% different to the income figure used in the existing maintenance calculation.

19047 Where the NRP's current income is at least 25% different to the income figure being used, a supersession decision should be completed using the new income figure[1]. If not, a decision should be made to refuse to supersede the maintenance calculation.

NRP reports a 25% increase in income

19048 If a NRP reports an increase in their income, whether the increase is declared at the provisional maintenance calculation stage or after the initial maintenance calculation, verbal evidence can be accepted. This applies irrespective of whether the last maintenance calculation was based on historic or current income.

19049 DMs must exercise judgment as to whether verbal or written evidence is most appropriate for the specific case scenario being considered, as well as using all the available evidence to make an accurate decision.

19050 NRPs whose maintenance calculations are based on current income are under a duty to report increases of 25% or more within 14 days of the change occurring. The ability to accept verbal evidence, where appropriate, enables the process of reporting of and dealing with a change to be as straightforward as possible, encouraging the NRP to comply with their legal obligation.

19051 Where a decision was previously calculated on historic income, the NRP is under no legal obligation to report to the CMS if their current income increases by 25% or more. Therefore, if a NRP reports an increase in their income, verbal evidence of the new income should be sufficient for DMs to complete the change. For more information on verbal evidence in these circumstances, see the Chapter 97: Evidence - Income.

19052 If the NRP's current income is at least 25% different to the income figure being used in the present maintenance calculation, the DM should complete a supersession decision using the new income figure[1]. If not, they should refuse to supersede the maintenance calculation and notify the NRP of this.

1 CSMC Regs 2012, reg 23

PWC reports that the maintenance calculation is not reflective of the NRP's current income

19053 A PWC may ask for current income to be considered after a maintenance calculation has been completed, if they believe the NRP's income is more than 25% different to the income figure used.

19054 Spare

19055 If a PWC asks for current income to be considered they should be

1.reminded that the CMS will only consider using current income if the NRP's income is now at least 25% different to the figure used in the present maintenance calculation, **and**

2. advised that any changes must be expected to last for the foreseeable future.

Request evidence of current income

19056 If the DM is satisfied that the PWC has reasonable grounds to believe that the NRP's income is at least 25% different to the figure used in the maintenance calculation the DM should use income on RTI. If there is insufficient or no evidence on RTI they should ask the NRP for evidence of their current gross taxable income. Refer to the Chapter 97: Evidence – Income, for further information.

19057 If relevant evidence is provided which confirms a 25% difference to the income figure currently being used, a revision or supersession decision should be completed. If evidence confirms that there is not a 25% difference the DM should refuse to revise or supersede the existing decision.

19058 If the NRP fails to respond to a request for evidence of their current income the DM can consider making an estimate of the NRP's current income or imposing a DMD.

NRP reports employment has ceased

19059 When determining the level of income for a maintenance calculation, verbal evidence can be accepted from a NRP where there is an existing maintenance calculation in place, if they are reporting a change to their employment status.

19060 If the DM is informed that the NRP is no longer employed and has no income, there is no requirement for a written declaration to be issued. The DM should accept the information provided if the change can be confirmed with the NRP's former employer.

19061 If verbal evidence of nil income is not appropriate or cannot be obtained, the DM should ask the NRP to submit appropriate evidence that their employment has terminated. See Chapter 97: Evidence - Income, for more information.

19062 Where the NRP is unable to provide written evidence the CMS can contact the former employer directly.

19063 If the DM receives information that a NRP has left employment, full details of the NRP's current circumstances will need to be obtained. DMs will need to consider if the NRP

1. has gross taxable income from any other employment (for example: a second or new job)

2. (or their partner) have claimed any social security benefits, or intend to make a claim in the near future, **or**

3. states they have no income from employment and do not intend to claim social security benefits, how they will support themselves.

19064 Where NRP's employment has ceased and they are starting another job DMs will be considering a supersession and must consider

1. whether historic income can be used, **or**

2. if historic income is not applicable can details of current income be obtained either from the NRP or their new employer.

19065 If the DM is informed that the NRP is no longer employed and that they have no income, there is no requirement for a written declaration to be obtained.

19066 The requirement to obtain a written declaration from the NRP, confirming that they have no income and how they are being supported, exists if during the initial information gathering process, the NRP states they are unemployed with no income.

19067 A written declaration is also required where the NRP's benefit entitlement has ended and no historic or current income is available. If neither of these applies and the DM is satisfied that the NRP has nil income, the maintenance calculation can be superseded on this basis. See Chapter 43: Supersessions for more information.

Payment in lieu of notice (PILON)

19068 A payment in lieu of notice may be made to an employee on the termination of their employment instead of the individual working their notice period. The amount of the payment is commonly determined by the length of the notice period in the individual's contract of employment. While it may be subject to income tax, a payment in lieu of notice cannot be treated as current income from employment where the employment ends before the effective date. When a NRP receives payment in lieu of notice but starts work with a new employer before the notice period covered by that payment has expired, the new employer and wage details supersede the payment lieu of notice.

NRP has income from a second job

19069 If a NRP has income from a second job which is already included in the maintenance calculation DMs will need to aggregate the current income from each source.

19070 As the NRP's current income is the sum of all earnings, the child maintenance calculation needs to take account of all taxable earnings provided there is some indication that the NRP's income is likely to remain at the current income amount for the foreseeable future.

NRP is both employed and self–employed

19071 A NRP may be both employed and self-employed at the same time. If details of the NRP's historic income have been provided by HMRC, a second interface request to HMRC will provide a breakdown of each income.

Employment ceases

19072 If the NRP is both self-employed and employed and only their employment ceases, the self-employed income from the last available HMRC tax year will be the basis of the NRP's current income, unless the NRP provides a more recent SAR or has income from another source, for example income

from a pension.

NRP or their partner is or will be claiming benefits

19073 Where a NRP has reported their employment has ceased and their income now comprises of benefits of a prescribed kind, DMs should obtain evidence that employment has ceased and confirmation of benefit entitlement.

Note: in most cases the CMS will automatically be notified when a NRP starts to receive benefit, in which case NRP will not be required to provide further evidence.

19074 Where there is evidence that the NRP has made a claim for benefits for which a decision is yet to be made, DMs can put the maintenance calculation on hold until confirmation of benefit payment is received.

For more information on NRPs in receipt of prescribed benefits, see Chapter 25: Rates and Rules and for more information on Supersessions see Chapter 43: Supersessions.

Income from a pension

19075 Periodical payments from an occupational or personal pension scheme are included in an NRP's gross weekly income.[1] In any circumstances where current income is being considered, DMs must establish whether the NRP is in receipt of payments from such a scheme.

1 CSMC 2012 Regs, reg 37(1)(c)

19076 Where details of income from a pension are established, the NRP's current income from pension is calculated as the weekly average of any payments received over such a period as the DM considers appropriate.[1]

1 CSMC 2012 Regs, reg 41

For information on the type of evidence required when considering income from a pension see Chapter 97: Evidence - Income.

Chapter 20 - Current income - Self-employed

Introduction

20001 The amount of child support payable is based on the NRP's gross weekly income. This chapter gives guidance on calculating gross weekly income for self-employed earners where the maintenance calculation is based on current income. See also Chapter 18, which explains when historic income should be used and see Chapter 19 for when current income is calculated for an employed NRP.

This guidance explains

When current income from self-employment should be considered **20002**

Current income from self-employment **20003 - 20022**

Pre-initial calculation – NRP requests current self-employed income **20023 - 20028**

Post-initial calculation – NRP reports self-employed income is different to that used in the maintenance calculation **20029 - 20032**

PWC requests current income **20033 - 20036**

Current Income self-employed changes initiated by CMS **20037 - 20038**

Identifying the annual taxable profits figure **20039 - 20045**

Deductions from current self-employed income **20046 - 20056**

Calculating an annual income figure when the NRP newly self-employed **20057**

When current income from self-employment should be considered

20002 It will be necessary to consider current income from self-employment when

1.CMS is unable to request or obtain the required historic income information from HMRC[1]

2. the NRP requests that a supersession be made to take into account current income and has documentation covering a tax year or annual accounting period which is later than the HMRC data obtained and shows a difference of 25%[1]

3. the NRP reports that they are self-employed, **or**

4. the NRP reports that they have ceased trading.

Note: if a maintenance calculation is based on self-employed current income, there is no duty upon the NRP to report a 25% increase in their income. However, where they do, CMS policy is to accept verbal evidence where the result of a reported change wouldn't materially benefit the person reporting it.

1 CSMC Regs 2012, reg 34(2)

Current Income from self employment

20003 Current income is the sum of the NRP's income

1. as an employee or office holder
2. from self-employment, **and**
3. from a pension.

20004 Current income from self-employment is to be determined from the NRPs profits at the effective date of the maintenance calculation and is to be calculated or estimated as a weekly amount in accordance with this guidance[1].

1 CSMC Regs 2012, reg 37(1)

20005 Where payment is made in a currency other than sterling, DMs must disregard any banking charges payable for converting the payment to sterling[1] when calculating the current income of the NRP.

1 CSMC Regs 2012, reg 37(2)

Taxable profits

20006 Taxable profits are used to determine current income for NRPs who are self-employed. In this chapter "profits"[1] means the profits of the NRP's trade, profession or vocation as determined by HMRC for the most recently completed relevant period, or if no such period has been completed, the estimated profits[2].

1 CSMC Regs 2012, reg 39(1); 2 reg 39(2)

20007 Where there is no completed relevant period, for example where an NRP is in their first year of trading, an estimation of the profits for the current relevant period is to be used.

Note: Taxable profits are determined in accordance with HMRC legislation[1] and may be reduced to take account of business expenses and suitable allowances for losses, depreciation etc. DMs will not be required to calculate the taxable profit figure but it will be necessary for the NRP to supply suitable evidence of their taxable profits. See Chapter 97 for more information on evidence of income from self-employment.

The relevant period

20008 In this chapter "relevant period"[1] means a tax year or other period in respect of which the NRP should have reported their profits or losses to HMRC in a self-assessment return (SAR).

1 CSMC Regs 2012, reg 39(4)

Note: explanations of other key terms used in this guidance can be found in Chapter 18: Historic Income. Chapter 19: Current Income Employed, also includes general information on the application of Current income in the maintenance calculation.

20009 Child support law requires current self-employed income to be calculated by reference to the most recently completed relevant period. This is usually a tax year in respect of which the NRP should report the profits or losses to HMRC in a SAR[1].

1 CSMC Regs 2012, reg 39(4)

20010 A tax year runs from 6 April one year to 5 April the following year. SARs need to be submitted to HMRC by 31 October following the end of the tax year if they are in paper format or 31 January following the end of the tax year if they are completed online.

20011 In some cases a NRP may not have been trading for a sufficient period to meet this requirement and may not yet have been required to submit a SAR declaring their self-employed trading income to HMRC. For more information on newly self-employed NRPs who have not yet been required to report their trading profits to HMRC, see paragraphs **20015 - 20018**.

20012 A self-employed person must complete a SAR for any tax year during which they were self-employed, even if they were only self-employed for part of the year. In such circumstances the relevant period may not be for a full 12 months.

20013 Where a submitted SAR covers a relevant period that is less than 12 months, DMs do not need to convert the profits for that period to an annual figure. The CM system will calculate the gross weekly income based on the total profits reported to HMRC for the most recent relevant period.

20014 Where the NRP's trade, profession or vocation is carried out in partnership, the profits referred to in this guidance are only those attributable to the NRPs share of the partnership[1].

1 CSMC Regs 2012, reg 39(5)

Example

NRP Joe is a partner in the building firm JDS Builders. His partners are Darren and Steve. Joe owns a 50% share of the business while Darren and Steve each have a 25% share. They report to HMRC profits

totalling £20,000 for the most recently completed tax year. For the purpose of the maintenance calculation, Joe's share of the profit for the relevant period totals £10,000.

Newly self-employed NRPs

20015 An NRP is considered to be newly self-employed if they commenced trading after the start of the latest tax year and have not yet completed a relevant period. See para 20008 for an explanation of the relevant period. For CM purposes an NRP is no longer considered to be newly self-employed once their first SAR has been submitted to HMRC.

20016 Where an NRP who is newly self-employed has requested a maintenance calculation based on their current income, they will be required to provide an estimation or projection of their taxable profits up to the end of the current relevant period. See Chapter 97 for more information on evidence of income from self-employment and para **20057** for information on calculating an annual income figure for newly employed NRPs.

20017 If the NRP fails to provide sufficient evidence or information to support their estimate of current self-employed income then the historic income figure will continue to be used for the purposes of the maintenance calculation.

20018 Where there is no historic income, DMs should consider making an estimate of current income. If there is insufficient information available for the DM to estimate current earnings, for example because the NRP's occupation is not known, a default maintenance decision (DMD) must be considered. Refer to Chapter 24: Estimating current income and Chapter 26: Default maintenance decisions.

NRP ceases self-employment

20019 If an NRP requests for their current income to be assessed on the basis that their business has ceased trading, they will need to provide a declaration to confirm this. If the NRP provides the required declaration that they have ceased trading at the effective date of the relevant calculation the profits from that business will be taken as nil for the purposes of calculating current (self-employed) income.

Note: income from this business may be included in the historic figure and the current income figure will still need to exceed the historic figure by 25% if current income is to continue to be used.

20020 Where evidence provided by the NRP confirms that the business has ceased trading and it is accepted that the income from that business is nil, DMs will need to establish whether the NRP has income from another source. If not, DMs should consider whether the NRP is in receipt of a prescribed benefit, in which case a supersession based on the flat or nil rate should be considered. See Chapter 25, Rates and Rules, for further guidance.

NRP is both employed and self-employed

20021 An NRP may report that they have income both from employment and self-employment. If details of the NRP's income have been provided by HMRC, a second request to HMRC will be made to provide a

breakdown of the NRP's income from each source.

20022 If the NRP has both employed and self-employed income and reports that their self-employment status has ceased but their employed income is to continue, the DM will need to gather details of the current employed income in order to determine whether there is a 25% change in the total level of income. For more information on reported changes to current income see Chapter 19: Current Income Employed.

Pre-initial calculation – NRP requests current self-employed income

20023 Where there has been an application from a PWC or child in Scotland and HMRC have provided a historic income figure, the NRP will be sent a provisional calculation before the full maintenance calculation is completed. The provisional calculation is an informal notification that tells the NRP what their maintenance liability is likely to be, based on historic income obtained from HMRC and subject to any additional relevant information (for example the number of relevant other children) that the NRP may provide. It also provides the NRP with an opportunity to notify if their current income is at least 25% different to their historic income figure.

NRP requests current income and self-employment is continuing

20024 If the NRP reports that their current income from self-employment is at least 25% lower than the historic income figure provided in the provisional calculation, the DM will need to consider the figure supplied by HMRC for the most recent complete tax year against the reported current income.

20025 If HMRC have supplied information in relation to the most recent complete tax year and the NRP cannot provide a more recent SAR, the DM should complete the initial maintenance calculation using the HMRC historic income information.

20026 If HMRC have supplied income information which is older than the most recent complete tax year and the NRP has completed a SAR for the most recent tax year, a change to current income based on the SAR may be considered.

NRP requests current income and is newly self-employed

20027 Where the NRP reports that their current income from new self-employment is at least 25% different to the historic income figure provided in the provisional calculation refer to paragraphs **20015** to **20018**.

NRP requests current income because self- employment has ceased

20028 Where the NRP reports that their current income is at least 25% different to the historic income figure provided in the provisional calculation, because self-employment has ceased refer to paragraphs **20019** to **20020**.

Post-initial calculation – NRP reports self-employed income is different to that used in the

maintenance calculation

20029 An NRP may report that their self-employed income is different to that used in the maintenance calculation and request that a supersession be completed. The request may apply whether the existing maintenance calculation is based on historic OR current income.

Note: self-employed NRPs are only required by law to report a change to their current income if the existing liability is nil because their gross weekly income is below £7 and where a change has occurred which would result in the nil rate no longer applying.

20030 Where the request is based on a change of circumstances since the effective date of the calculation, the NRP's request should be treated as an application for a supersession of the maintenance calculation. If the request is based on circumstances which existed at the effective date of the calculation, and is made within 30 + 2 days of the notification of the maintenance calculation, it should be treated as an application for a revision. The time-limit for making an application for a revision may be extended. Refer to Chapter 42: Revision and Chapter 43: Supersessions as appropriate.

NRP does not provide evidence

20031 If the NRP does not provide evidence of their current income for a more recent relevant period than the period currently used to complete the maintenance calculation, the DM should make a decision to refuse to supersede the calculation.

NRP provides evidence

20032 If the NRP is able to provide evidence of a more recent relevant period than the one used to complete the maintenance calculation and that evidence confirms that their current income is at least 25% different to the historic income figure, the DM should make a decision to supersede the maintenance calculation.

PWC requests current income

20033 A PWC may ask for current income to be considered after the maintenance calculation has been completed, if they believe the NRP's income from self-employment has changed by 25% or more from the income used in the current maintenance calculation. They may also apply for the decision to be revised on the basis that the original decision failed to take current income information into account.

20034 PWCs may not have full evidence of changes to a NRP's income. DMs should not ask the NRP for evidence of their current income unless the PWC provides reasonable grounds to believe that

1. the change is likely to be at least 25%, **and**

2. the NRP will have evidence that relates to a more recent relevant period.

20035 If the DM is satisfied there are no reasonable grounds as described above, the PWC's request

should be refused.

Note: This is not a decision that carries appeal rights, as it is not a refusal to revise or supersede the maintenance calculation. The PWC has made an application which has been deemed unsuccessful due to insufficient information. The NRP will not need to be notified of the decision in these circumstances. For more information, refer to Chapter 42: Revisions and Chapter 43: Supersessions.

20036 If the DM is satisfied that the PWC has reasonable grounds, evidence of the NRP's self-employed income for the most recent tax year should be obtained. See Chapter 97 for more information on evidence of current income.

Current Income self-employed changes initiated by CMS

20037 DMs must initiate consideration of a NRP's current income if HMRC have no historic income details or have been unable to accept or respond to a request for historic income.

20038 HMRC may be unable to respond to a request for historic income because

1. a major IT failure has resulted in the historic income information being unavailable, or
2. the case is being managed under exceptional case handling procedures, **or**
3. the NRP is in receipt of a prescribed benefit which would result in a flat rate liability.

Identifying the annual taxable profits figure

20039 The types of income taken into account as current income should mirror the types of income used for historic income as far as possible, to make the assessment as to whether there has been a change in income of at least 25% meaningful. This means that current income should be based on the most recent total taxable profits for the relevant period from self-employment.

20040 Taxable profits are the result of applying allowable business expenses to the gross receipts of a business, and after allowing other offsets, for example for capital allowances and loss relief. DMs will not have to perform these calculations. The NRP should be asked to submit a completed SAR for the most recently completed tax year which must be for a period later than the one used for the current maintenance calculation.

20041 The SAR should apply to the accounting period of the business which ends in the tax year in question.

Example

NRP Lynsey, whose business accounting period runs from 01 January to 31 December 2017 will include taxable profits for that period in the SAR for the 2017 to 2018 tax year. This return would have to be with HMRC by 31 January 2019 at the latest if it is made online.

20042 The SAR should show the receipts of the business and all the expenses incurred in running that business in the relevant period, and which are allowed by HMRC. The return will give the taxable profits which is calculated by deducting those expenses from the receipts. If the business has made a loss, the taxpayer should enter a "nil" amount for taxable profits on their SAR.

NRP does not have a self-assessment tax return (SAR)

20043 Evidence of self-employed current income should be in the form of a completed, submitted SAR. There may be occasions where a NRP does not have this and only has a full set of business accounts for a 12-month period later than the one used for the current maintenance calculation. In such circumstances the NRP should be advised that CMS can only consider the profits figure in the accounts once it is submitted to HMRC.

20044 Once the DM has determined the NRP's current income, they will need to confirm whether it is at least 25% different to the existing income figure. If the NRP pays relievable pension contributions, an amount determined by the DM as representing the weekly average of those contributions must be deducted from the income figure before making the comparison. For more information, see deductions for pension contributions, refer to paragraphs **20049** to **20056**.

NRP has more than one business

20045 Taxpayers with more than one business are required to complete a supplementary SAR for each business. The taxable profits from each business should be added together.

Note: a loss can be offset against other income, including taxable profits for another business for the same tax year.

Example

NRP Sandra has 2 businesses and has completed a self-assessment supplementary return for each of them for the latest tax year:

1. the return for business 1 (Sandra's Hair and Beauty) gives a profit of £35,000

2. the return for business 2 (Sandra's Home and Gift's) gives a loss of £10,000.

Sandra's total taxable profits for that tax year are £35,000 less £10,000 = £25,000.

Deductions from current self-employed income

20046 Where the NRP has made relievable pension contributions from their self-employed income during the relevant period, an amount representing the weekly average of those contributions should be deducted from the current income figure calculated[1].

1 CSMC Regs 2012, reg 40

20047 If evidence of the relievable pension contributions is not included within the income evidence provided, the NRP must be asked to provide additional evidence. For more information, see Chapter 97: Evidence – Income.

20048 If a NRP reports that they are a self-employed GP and making relievable pension contributions to the NHS Superannuation Scheme as both an employee and an employer, the total amount of contributions made by the NRP should be deducted from their total current income.

Deductions in respect of private pension contributions

20049 Where the NRP has made relievable contributions to a private pension scheme, the amount to be deducted from any self-employed profits is the 'gross' amount. This means the amount of the contributions, plus any income tax relief due on them. These amounts will normally be shown separately on the pension provider's annual statement.

20050 If the pension provider's annual statement shows a single amount, DMs should assume that this is the gross amount. If a NRP disputes this, they must provide confirmation from their pension provider.

20051 Where evidence of pension payments is taken from bank statements, rather than an annual pension statement, the following factors must be considered.

NRP was a basic rate taxpayer during the relevant tax year

20052 In this case, the gross amount of their pension contributions will be

£ Amount of contributions x 100 / 80 (this reflects the current basic income tax rate of 20%).

NRP was a higher or additional rate tax payer during the relevant tax year

20053 In this case, Tax relief is only given by the pension provider at the basic rate of income tax. The remainder must be claimed by the taxpayer from HMRC.

20054 The 'grossed up' amount of the pension contributions that should be deducted from the NRP's income will be the total of

1. £ Amount of contributions x 100 / 80 (this reflects the current basic income tax rate of 20%), **and**

2. £ Amount of additional tax relief allowed by HMRC.

20055 Higher or additional rate tax payers who want pension contributions to be deducted from their income must submit the normal evidence required PLUS a copy of the HMRC tax calculation notice, which will provide the amount of additional tax relief allowed.

20056 If the NRP fails to provide this evidence, DMs should only allow tax relief at the basic rate.

Example

NRP Luke is required to support one qualifying child Emily. HMRC confirm an income figure of £60,000 for the tax year 2010 to 2011. Luke claims he paid £3,000 to his personal pension scheme during that tax year. Luke submitted an annual statement from his pension provider, confirming they received £3,000 in payments from Luke and that they have added £750 in income tax relief at the basic rate of 20%.

Luke also submits a tax calculation notice from HMRC, which shows additional relief of £750 for the balance of tax relief at the higher income tax rate (40% higher income tax rate – 20% basic income tax rate already covered by the pension provider).

The total amount to be deducted for pension contributions from Luke's income for the purpose of the maintenance calculation will therefore be: £3,000 (amount of contributions) + £750 (basic rate income tax relief) + £750 (balance of higher rate income tax relief) = £4,500.

The income figure to be used in the maintenance calculation will therefore be £60,000 - £4,500 = £55,500.

Calculating an annual income figure when the NRP is newly self-employed

20057 When the NRP is newly self-employed, the DM may be required to calculate the annual income based on the information supplied by the NRP. The information may relate to a partial period and an annual figure is required.

Example

NRP Miles reported on 2 September 2018 that they have just commenced self-employment and they will operate in line with HMRC tax years. The next tax year ends on 5 April 2019. Miles provides evidence that their estimated annual profits for this period will be £12,000.

From 2 September 2018 to 5 April 2019 is 30 weeks and 6 days. This is a total of 216 days. (£12,000/216) x 7=£388.888889. This is Miles' weekly profit.

The DM will need to convert the weekly rate to a daily rate and then calculate the annual figure. (£388.888889/7) x 365 =£20,277.78. This is Miles' annual profit and the amount that the DM will use.

The same calculation should also be applied to any pension calculations that Miles makes during this period.

Note: When calculating the annual current income figure any 'rounding' should only be carried out at the end of the calculation and not while establishing the income figure for a lesser period. For more information on 'rounding' see Chapter 25: Rates and Rules.

Chapter 21 - Universal Credit

Introduction

21001 UC is a single payment for people who are out of work or on a low income. Payments taper off slowly as relevant income increases. UC is a means tested benefit.

21002 Awards of UC will be made to a household rather than individual claimants. For child maintenance purposes, UC will be categorised as either UC earned income or UC no earned income (these terms must not be used when discussing with clients, see paragraphs **21006** to **21007** Discussing UC with clients).

This guidance explains

UC entitlement 21003

The UC system interface 21004 - 21005

The UC claimant 21006

Discussing UC with clients 21007 - 21008

UC with no earned income 21009 - 21012

UC with no earned income ceases 21013 - 21015

UC with earned income 21016 - 21019

UC with earned income based on partner's income 21020

UC entitlement

21003 UC entitlement is based on monthly 'Assessment periods'. A claimant will need to qualify for UC at the date of claim and on the last day of each assessment period in order to be eligible for a payment[1].

1 UC Regs 2013, reg 21(1)

Note: UC is paid in arrears for the month just passed and where child maintenance is to be collected by deductions from UC the amount of child maintenance liability accrued during that month will be deducted from the UC award at the end of that monthly (UC) assessment period.

The UC system interface

21004 An interface with CIS Searchlight at the application stage will identify whether a NRP is in receipt of UC. Notification will also be received from CIS Searchlight when a NRP starts to receive UC post application.

21005 When notification is received from CIS Searchlight that a NRP is in receipt of UC there will be an automatic interface with Real Time Information (RTI) to determine whether the UC award includes employed earnings. RTI will return details for the latest complete assessment period.

The UC claimant

21006 UC is an income-related household benefit and therefore does not have a main claimant. Where child maintenance is to be collected by deduction from UC, there is no requirement to establish who the UC claimant is in joint claims. The maximum deduction that can be taken from any award of UC is a flat rate of £7 + a collection fee of £1.40, even if it is a joint award[1].

Note: If UC is claimed by two NRP's who are a couple (whether the claim is made as a couple or as two single claimants), and where each is liable to pay the flat rate because of their benefits status, each NRP would be liable to make a child maintenance payment of £4.20.

1 UC, PIP, JSA & ESA (CP) regs 2013, para 2, sch 7

Example

PWC Karen makes an application for child maintenance in respect of QC Lucy. She names Dave as the NRP and the case is to be managed on the Collect and Pay service.

The interface with CIS Searchlight shows that Dave and his current partner Donna are in receipt of UC and that they have no earned income.

Donna is already an NRP in a case with PWC Paul and their son Alex.

The maximum deduction that can be taken from Donna and Dave's UC is £8.40 (£7.00 flat rate plus £1.40 collection fee). Therefore £3.50 will be paid to PWC Karen in respect of Lucy and £3.50 to PWC Paul in respect of Alex. The collection fee of £1.40 will be retained by CMS).

Discussing UC with clients

21007 The terms `UC earned income` and `UC no earned income` are internal terms used for working out child maintenance. These terms must not be used externally as clients will not be familiar with them.

21008 When speaking to clients, it may be necessary to explain that the UC award will have been based on the claimant having earnings or no earnings (as determined under Universal Credit legislation).

UC with no earned income

21009 A NRP who is in receipt of UC and receives no earned income (as calculated for the purposes of their UC award set out in paragraph 21017) will usually pay child maintenance at the flat rate, except in the situations set out in paragraph 21010 below[1].

1 CSMC Regs 2012, reg 44(2)

21010 The nil rate, rather than the flat rate, will be applicable where

1. the NRP fulfils the child maintenance definition of a child

2. the amount paid in UC is less than the flat rate (this could be a result of deductions for other liabilities which take a higher priority to deductions for maintenance, **or**

3. the NRP has two cases and one has shared care. The one that does not have shared care will be assessed at less than the flat rate, (which UC consider a non-standard amount, because it's not the full £7).

21011 Where the service type is Collect & Pay, maintenance can be collected by deductions from UC. However, clients can elect to have a case on the Direct Pay service, in which case deductions from UC will not be applicable.

Nil rate

21012 The nil rate of maintenance will apply to NRPs on UC who have no earned income, who also meets prescribed criteria[1]. For further guidance refer to Chapter 25: Rates and Rules.

1 CSMC Regs 2012, reg 45

UC with no earned income ceases

21013 When a NRP, who is in receipt of UC on the basis that they have no earned income, starts receiving income from new employment, they will no longer be treated for child maintenance purposes as a benefit customer. This will have effect from the start of the assessment period in which they started receiving earnings. This may result in a gap between the start date of their new employment, and the start of the assessment period which contains earnings.

21014 Where an historic income figure is available, DMs should use this from the start of the assessment period in which the NRP started receiving earnings. Once the historic income figure is in place DMs can consider current income if the NRP or PWC ask for it and provided the general rules around current income apply. (See Chapter 19: Current Income - Employed, for more information).

21015 Where there is no historic income figure available, DMs will need to check RTI for evidence of current employment income. If there is insufficient information on RTI, further investigations into the NRP's current income will be required. Where the NRP can provide evidence of their current income, DMs should use this to work out how much child maintenance should be paid. This may result in a nil rate for the period before employment started.

Note: Just like other benefit types, where benefit entitlement ends and no historic income or current income is available, the NRP should be asked to provide a written declaration confirming that they have

no income and how they are being supported.

Example

NRP Alan's UC assessment period is 9 May 2019 to 8 June 2019. He reports that he commenced employment on 1 June 2019. His next assessment period is 9 June 2019 to 8 July 2019.

If no historic income is available, details of the current earned income should be obtained by accessing RTI or contacting Alan. If historic income is available, it will apply unless current income is requested.

Evidence shows that Alan's first salary from his new employment is paid on 28 June 2019. Alan is therefore considered not to be in receipt of a prescribed benefit from the beginning of the assessment period, 9 June 2019.

UC with earned income

21016 For child maintenance calculation purposes, a NRP who is in receipt of UC and has earned income will not be considered as being in receipt of benefit. Their liability will be calculated on historic income, just like any other NRP, unless any of the rules about when current income should be used apply.

The determination of whether a NRP has earned income for the purpose of CM is based on whether that income was considered as earned income for the purpose of UC.

CSMC Regs 2012, reg 44(5)

21017 For the purposes of UC earned income means payment or profit as a result of

1. employment under a contract of service or in an office

2. a trade, profession or vocation

3. any other paid work, **or**

4. any other income treated as earned income under UC regulations[1].

1 UC Regs 2013, reg 52

Note: Where UC have applied their Minimum Income Floor (MIF), this is treated as having earned income equal to the MIF under UC regulations and they will not be considered as being in receipt of benefit. Therefore, the automatic application of the flat rate will not be applied.

21017a Income from a pension is not considered earned income for UC purposes. If the NRP has no other income under 21017 they will be considered as being in receipt of benefit.

21018 In most cases any amount received by way of UC does not form part of the NRP's income. Unlike UC awards with no earned income which are treated as awards of benefit, there is no requirement to

make a new maintenance calculation simply because a NRP who is working starts to claim UC earned income in addition to their income (such as an income top-up).

21019 Similarly, where a NRP who is earning and having their income topped-up with UC earned income, starts to earn enough from working that their UC award ends. Such changes would only need considering if they are reported or requested by a client.

UC with earned income based on partner's income

21020 Where a NRP and their partner are in receipt of UC earned income as a joint claim and where only the partner has earned income, the child maintenance liability of the NRP will usually continue to be calculated at a flat rate. The NRP does not have any earned income, and the household is still in receipt of UC, which takes into account both the NRP's employment position and that of their partner.

Chapter 22 - Umbrella Companies

Introduction

22001 An umbrella company provides payroll services to certain workers, predominantly by administering wages. For child maintenance purposes, such workers are treated as employees of the umbrella company.

Note: umbrella companies are also known as managed service companies within HMRC legislation.

22002 All payments to workers via an umbrella company are treated as income from employment for the purposes of child maintenance calculations. Income, is paid in the form of salary and allowable expenses.

This guidance explains

Employees paid through an Umbrella Company **22003 - 22005**

NRP on current income **22006 -22008**

Expenses **22009 - 22010**

Table of non-taxable expenses definitions and examples **22011**

Employees paid through an Umbrella Company

22003 Employees who are paid through an umbrella company make payments of income tax under the PAYE (Pay As You Earn) scheme. Evidence of the employee's income will most likely be in the form of payslips generated by the umbrella company.

22004 An umbrella company completes all the invoice transactions, receives the agreed fees, deducts the tax and National Insurance contributions, deducts a pre-agreed fee or commission for the services and then pays the NRP a "wage."

22005 In some cases an umbrella company will detail both travel costs and daily or weekly subsistence on the wage slip as a "first charge" on the gross income. This effectively reduces the gross income and subsequently the amount of tax and National Insurance that is paid. The expenses are then reimbursed to the NRP as non-taxable deductions.

NRP's current income

22006 If the NRP is an employee of an umbrella company, when assessing their current income, DMs must also consider expenses payments in order to establish what the true taxable income position is.

22007 DMs must determine whether an NRP is using an umbrella company. Indicators that a NRP is using an umbrella company may be where there is evidence that the NRP's earnings includes

1. a deduction for a management fee

2. both "employee" (primary) and (secondary) "employer" Class 1 National Insurance deductions

3. reference to dividend payments

4. deductions for PAYE tax which are very low in relation to gross income

5. a net figure which is greater than the gross figure, **or**

6. regular high amounts of claims for certain expenses.

22008 If DM's consider that there is any reason to believe that a NRP is using an umbrella company as their employer, DMs should not rely solely on the information provided on forms by the NRP. DMs should also request to see payslips and if necessary, contact the employer to obtain details of the NRP's earnings.

Expenses

22009 If the NRP is using an umbrella company they may regularly claim certain expenses under benefits in kind or non-taxable expenses. Only non-taxable expenses which have actually been incurred by the employee should be deducted from their gross wage, see paragraph **22011** for a full list of non-taxable expenses, definitions and examples.

22010 For the purposes of calculating the maintenance liability, the NRP's gross earnings figure is earnings minus pension contributions and non-taxable expenses.

Table of non-taxable expenses definitions and examples

22011

Class of expense	**Definition and examples**

Travel Expenses	Expenses incurred when travelling for work, including subsistence costs. This can include: 1. public transport costs 2. hotel accommodation if you have to stay overnight 3. food and drink 4. congestion charges and tolls 5. parking fees 6. business phone calls and printing costs 7. business mileage This does not include travelling to and from work, unless travelling to a temporary place of work.
Professional Fees and subscriptions	Membership fees or journal subscriptions paid to an organisation on HMRC's list of Approved Professional Organisations and Learned Societies
Employee liabilities and indemnity insurance	Legal advice or indemnity insurance covering matters relating to a person's employment that is funded by their employer. For example: 1. Preparation for an appearance at a public committee 2. Preparation for an appearance at a professional standards hearing.

Expenses of ministers of religion	Any expenses incurred by a minister of religion as a direct result of their ministry. This can include: 1. Rent and upkeep of a vicarage 2. Travel 3. Secretarial assistance cost 4. Books used in the conduct of services or preparation of sermons 5. Work-related training
Agency fees paid by entertainers	Fees paid by those classed as being employed as an entertainer to Agents who seeks and secure employment for them.
Special rules for earnings with a foreign element	Deductions from earnings charged on remittance. Deductions for corresponding payments by non-domiciled employees with foreign employer. Rules that relate to expenses that are deductible where some or all of the duties are performed outside the UK. See EIM31750 for examples of these rules. Deductions where a non-cash voucher is provided and exchanged for goods or services. Deductions where a credit-token is provided. See EIM16000.
Deductions where amounts are treated as earnings under the benefits code.	Deductions where living accommodation is provided. See EIM31618. Deductions where certain employment-related benefits provided. See EIM21210 for examples of deductions for necessary expenses and EIM31617 for example of deduction from benefits charge.
Fixed Allowances for Employee's Expenses	Fixed sum deductions for repairing and maintaining work equipment. See EIM32700 onwards.

	Fixed sum deductions from earnings payable out of public revenue. See EIM60720.
	Travel costs and expenses where duties performed abroad: employee's travel.
	Travel costs and expenses where duties performed abroad: visiting spouse's, civil partner's or child's travel.
Deductions for earnings representing benefits or reimbursed expenses relating to duties performed abroad and non-domiciled employees.	Non-domiciled employee's travel costs and expenses where duties performed in the UK.
	Non-domiciled employee's spouse's, civil partner's or child's travel costs and expenses where duties performed in UK.
	Foreign accommodation and subsistence costs and expenses (overseas employments).
	Cost and expenses in respect of personal security assets and services.
Deductions from seafarer's earnings.	Allowed where earnings are relevant general earnings, the duties of the employment are performed wholly or partly outside the UK and any of those duties are performed in the course of an eligible period. Guidance form EIM33000.

Chapter 23 - Other factors affecting the maintenance calculation

23001 The NRP's income and benefit status determines the rate that their maintenance calculation is based on. There are however a range of other circumstances which may affect the maintenance calculation

1. Shared care[1] – for further information refer to Chapter 11 - Shared care.

2. ROC[2] – for further information refer to Chapter 6 - Relevant other child.

3. CIFBA[3] – for further information refer to Chapter 9 - Child supported under a family based arrangement.

4. Special cases

4.1 NRP liable to maintain a child of the family or a child living abroad[4] – for further information refer to Chapter 8: Child of the family or child abroad.

4.2 Care of a QC provided in part by a local authority[5] – for further information refer to Chapter 11 - Shared care.

4.3 Care of a ROC provided in part or in full by a local authority[6] – for further information refer to Chapter 6 - Relevant other child.

5. Variations[7] – for further information refer to

Chapter 27 - Variation overview
Chapter 28 - Contact costs
Chapter 29 - Illness or disability of a relevant other child (ROC)
Chapter 30 - Prior debts
Chapter 31 - Boarding school fees
Chapter 32 - Certain payments
Chapter 33 - Unearned income
Chapter 34 - Assets exceeding a prescribed amount
Chapter 35 - Earned income
Chapter 36 - Diversion of income

6. QC in hospital or at boarding school[8] – for further information refer to Chapter 37 - Applications.

1 CSMC Regs 2012, reg 50; 2 reg 77; 3 reg 48; 4 reg 52; 5 reg 53; 6reg 54; 7 regs 56–75; 8 reg 55

Chapter 24 - Estimating current income

Introduction

24001 In certain circumstances, the CMS can estimate an NRP's current income[1].

This guidance explains

When to consider estimating current income 24002 - 24003

Points to consider when estimating current income 24004 - 24005

Tolerance 24006 - 24008

Estimating current income using income information 24009 - 24012

Estimating using previous current income details 24013 - 24017

Income details gathered by the Financial Investigations Unit (FIU) 24018

Using the Annual Survey of Hours and Earnings (ASHE) and the Estimation of Earnings Tool (EET) 24019 – 24024

1 CSMC Regs 2012, reg 42(1)

When to consider estimating current income

24002 At the initial calculation stage, annual review, when a supersession is requested or when a NRP has ceased claiming benefit, the CMS can consider estimating current income[1] where

1. historic income is nil (£0.00) or not available, and

2. the information available in relation to current income is insufficient or unreliable.

1 CSMC Regs 2012, reg 42(1)

24003 The information may be insufficient or reliable where

1. the NRP is newly self-employed and has failed to provide an estimate or projection of their annual profits for the current tax year, or

2. the PWC has demonstrated reasonable grounds for a request for current income and the NRP has not supplied all the required evidence.

Points to consider when estimating current income

24004 Where conditions specified in paragraph **24002** are satisfied, the DM may make any assumption as to any fact[1].

1 CSMC Regs 2012, reg 42(1)

24005 For example, where the DM is satisfied that the NRP is engaged in a particular occupation, whether as an employee, office-holder or self-employed person, they may assume that the NRP's weekly income is the average weekly income of a person engaged in that occupation[1].

Note: The DM should keep a careful record of the evidence that led them to be "satisfied" that the NRP was so engaged.

1 CSMC Regs 2012, reg 42(2)

Tolerance

24006 Where a maintenance calculation based on current income is in place, any estimated current income figure must be at least 25% different to the current income figure in place to allow a supersession to be made[1].

1 CSMC Regs 2012, reg 23

24007 If, however, a maintenance calculation is based on estimated income and a NRP or a third party provides evidence confirming the NRP's actual income, the 25% tolerance rule will not apply.

24008 If the original decision to apply an estimated figure is challenged within 30(+2) days and the actual income figure is provided for the period taken into account by the estimated figure, a revision should be considered from the effective date of the maintenance calculation.

Estimating current income using income information

24009 If historic income is nil or not available then DMs should refer to RTI via CIS Searchlight to obtain details of current income. If no information is available on searchlight, the DM should contact the NRP. If they fail to provide the required information and if employer details are available, the DM should seek the information directly from the NRP's employer.

24010 If the income information received is insufficient to meet the requirements of current income, for example if the NRP's earnings are not for the foreseeable future, DMs can use the income information gathered to estimate current income.

24011 This would apply, for example, where it has been established that they have employment income for a fixed short term period. This would be insufficient to meet the requirements of current income as the NRP has not been paid a regular amount which is likely to continue for the foreseeable future. In these circumstances it is clear that the income does not have an irregular earnings pattern.

24012 Current income can be estimated using the actual income details provided.

Example 1

NRP John had a flat rate liability due to being in receipt of a prescribed benefit until 21 July 2017, when his benefits cease. There is no historic income figure available from HMRC. John fails to respond to requests for current income. However, his employer, Jones and Co, confirms that John is an agency worker with no guarantee of work. Jones and Co. verbally confirm that John received four week's earnings from 21 July 2017 and provide the actual income details. John's benefits resume on 18 August 2017. As the employment was not for the foreseeable future and the period of income held is after the effective date of 21 July 2017, a current income maintenance calculation cannot be completed. An estimate of current income should be completed using the four weeks' evidence gathered to estimate John's gross weekly income.

Example 2

NRP Mark stops receiving benefits on 21 August 2017. His benefits recommence on 8 September 2017 and cease again on 26 September 2017.Benefits next commence on 14 November 2017. At no point is there a historic income figure available for him, and Mark does not respond to requests for his current income for either period. He is not in receipt of prescribed benefits between 21 August 2017 and 7 September 2017 and between 26 September 2017 and 13 November 2017. Two employers are identified and evidence is gathered on 15 December 2017 which confirms that Mark was employed by Donaldson's Carpets between 21 August 2017 and 7 September 2017 and by Neil's Newsbox between 26 September 2017 and 13 November 2017. When he was in employment, Mark was paid at a regular amount, but there is no evidence that either of his two periods of employment were expected to continue for the foreseeable future and neither employment was considered to be seasonal work. The calculation should therefore be completed based on an estimation of current income using the actual income information gathered for the periods concerned.

Estimating using previous current income details

24013 Previous current income details can be used to estimate the NRP's current income if

1. current income information is held for the NRP for any period during the 12 months preceding the effective date of the maintenance calculation being considered, and

2. the NRP's current occupation has been established.

24014 DMs must not use income information held that is older than 12 months. DMs will need to consider estimating current income using the ASHE tables.

24015 If there has been a previous maintenance calculation based upon current income, DMs must not assume that the NRP's occupation remains the same. Evidence will be needed to establish this.

24016 It may be established that the NRP's occupation remains the same on the basis of information

obtained from the PWC. For example, the PWC may have informed the DM that the NRP is still working as a plumber. If it is established that the current income information available relates to a period during the 12 months preceding the effective date of the maintenance calculation being considered, it can be used to estimate current income.

Example

On 9 June 2015 NRP Luke provides evidence of current income of £10,000, following confirmation from HMRC that no historic income details are available. The initial maintenance calculation is completed based on that current income figure of £10,000. Luke leaves that employment in September 2015 and becomes unemployed with nil income. In October 2015 Luke claims benefits, resulting in a flat rate liability. The benefits claim ends on 16 May 2016, no historic income figure is held from HMRC and Luke fails to respond to requests for current income. PWC Janice confirms Luke is working within the same profession. As a current income figure is held from June 2015 of £10,000, and there is evidence he has not changed occupation, that figure can be used to estimate current income and make a full maintenance calculation.

24017 Where there is evidence that the NRP is no longer working in the same occupation, DMs must not estimate current income. Instead, a DMD should be considered.

Income details gathered by the Financial Investigations Unit (FIU)

24018 If an income figure is identified by FIU following an investigation, but the information is insufficient to complete a normal current income calculation, that figure can be considered as an estimate of current income.

Using the Annual Survey of Hours and Earnings (ASHE) and the Estimating of Earnings Tool (EET)

Annual Survey of Hours and Earnings (ASHE)

24019 The ASHE is a sampled survey of 1% of employee jobs taken from HMRC PAYE records. ASHE data is collected by the Office for National Statistics (ONS) and is correct as of April of each year. The data is processed during the summer months and then published at the end of October each year. DMs can view the latest ASHE information on the ONS.gov.uk website.

24020 Having considered the previous 12 months from the effective date of the maintenance calculation, the DM can consider an estimate of current income based on the ASHE tables if

1. there is no income information held, or

2. it is inappropriate to use the income information held as the NRP has changed their occupation, and

3. the DM is satisfied that the NRP is currently engaged in a particular occupation,

24021 If there has been a previous maintenance calculation based upon an estimation of current income using the ASHE tables, it should not be assumed that the NRP's occupation remains the same. DMs should follow the guidance outlined in paragraph **24016 – 24017**.

Using EET

24022 The estimation of earnings tool can be used to produce an estimated income for a client. DMs must ensure that all possible sources available for gathering a NRP's income have been exhausted, before the tool is used.

24023 The tool can only be used where there is either insufficient evidence of a paying parent's income, or the evidence required is unavailable. The paying parent`s occupation must be known.

24024 Where there are multiple potential matches to the occupation, DMs must select the one that most accurately reflects the NRP's occupation, taking into account any estimated salary provided and checking the job description.

Chapter 25 - Rates and rules

Introduction

25001 All child maintenance calculations are based on one of six specific rates. Which rate applies will depend on

1. the NRP's gross weekly income
2. whether the NRP or their partner is in receipt of a prescribed benefit
3. whether the NRP meets a prescribed category, and
4. whether there is insufficient information or evidence to make a full calculation.

Note: In addition to establishing the appropriate rate, DMs must consider a range of other factors which may affect the NRP's liability. See Chapter 23 - Other factors affecting the maintenance calculation.

This guidance explains

Basic rate 25002 - 25005

Reduced rate 25006 - 25008

Rounding 25009

Flat rate 25010 - 25013

Nil rate 25014 - 25015

Default maintenance decision rate 25016

Basic rate

Basic rate: gross weekly income is £200 or more, but does not exceed £800

25002 The basic rate[1] applies if the NRP has gross weekly income of £200 of more, but does not exceed £800. The basic rate liability is based on a percentage of the NRP's gross weekly income depending on the number of QCs they are liable to maintain. If the NRP has relevant other children (ROC) living with them, their gross income is reduced by a certain percentage to reflect any ROC's before the basic rate is calculated.

Basic rate percentages:

Number of QCs	Percentage of NRP's Gross Weekly Income
1	12%
2	16%
3 or more	19%

Reduction Rate for gross income for ROC's:

Number of ROC's in Household	Reduction Percentage
1	11%
2	14%
3 or more	16%

Example 1

NRP John has gross weekly income of £350. John has 2 QCs, Ben and Jane. John's child maintenance liability will be: £350 (gross weekly income) x 16% (basic rate for 2 QCs Ben and Jane) = £56.00.

Example 2

NRP Alfie has a gross weekly income of £450. Alfie has 3 QCs, Tracey, Sara and Jon. Alfie lives with his new partner and her child, therefore has 1 ROC. Alfie's child maintenance liability will be: £450 (gross weekly income) – 11% (reduction rate for 1 ROC) = £400.50 (gross weekly income after reduction. £400.50 (reduced gross weekly income) x 19% (basic rate for 3 QCs, Tracey, Sara and Jon) = £76.10.

1 CS Act 1991, Sch 1, para 2(1)

Basic rate plus: gross weekly income between £800.01 - £3000 (inclusive)

25003 Basic rate plus is not a legal term, but is a sub-set of the basic rate.

25004 The basic rate plus[1] applies if the NRP's gross weekly income exceeds £800. The basic rate will still apply to the income up to £800, but separate percentages are applied to any income exceeding that amount. If the NRP has relevant other children living with them, their income is reduced by a certain percentage to reflect any ROC's before the basic rate plus is calculated.

25005 The basic rate plus percentages are:

Number of Qualifying Children (QCs)	Percentage of Income Exceeding £800
1 QC	9%
2 QCs	12%
3 or more QCs	15%

Note: basic rate plus percentages are lower than the percentages at the basic rate to reflect the greater differences between net and gross income amounts when a NRP is receiving income at these levels, due to higher taxation rates.

Reduction Rate for gross income for ROC's:

Number of ROC's in Household	Reduction Percentage
1	11%
2	14%
3 or more	16%

Example

NRP David has gross weekly income of £1,200. David has 1 QC (Lynn). The 1st £800 of David's income is calculated at the basic rate percentage = £800 x 12% = £96. The remaining income of £400 is calculated at the basic rate plus percentage = £400 x 9% = £36. David's total basic rate plus liability = £96 + £36 = £132.

If David was also caring for 1 ROC we would also need to apply the correct reduction rate before calculating their child maintenance liability. David's Gross weekly income is £1,200, there is 1 ROC so an 11% reduction would apply. £1,200 – 11% = £1,068.

This amount is still above £800 meaning David's liability would still be calculated under basic rate plus. The 1st £800 of David's income is calculated at the basic rate percentage = £800 x 12% = £96. The remaining income of £268 is calculated at the basic rate plus percentage = £268 x 9% = £24.12. David's total basic rate plus liability = £96 + £24.12 = £120.12.

Note: the maximum amount of gross weekly income that can be taken into account is £3,000[1]. Any income above this amount is ignored. PWCs can apply to the courts for 'top up' maintenance in respect of income above this amount, but the CMS cannot take it into account in the main calculation.

1 CS Act 1991, Sch 1, para 10(3)

Reduced Rate

Reduced rate: gross weekly income more than £100, but less than £200

25006 The reduced rate applies if neither a flat rate nor the nil rate applies and the NRP's gross weekly income is more than £100, but less than £200[1]. The rate consists of two parts added together to produce the calculation

1. a flat rate of £7.00 for the first £100 of income, and

2. a percentage of any gross weekly income above £100, depending on the number of QCs and ROCs.

1 CS Act 1991, Sch 1, para 3

Reduced rate percentages

25007 The percentage rate applied to the gross weekly income above £100 will depend on

1. the number of QCs, and

2. the number of any ROCs.

25008 These percentages are detailed in the following table

		Number of QCs of the NRP		
		1	2	3
Number of ROCs of the NRP	0	17%	25%	31%
	1	14.1%	21.2%	26.4%
	2	13.2%	19.9%	24.9%
	3+	12.4%	18.9%	23.8%

Example

NRP Derek has gross weekly income of £180. Derek has 2 QCs (Mark and Chris). Derek also has 1 ROC (Karen). Derek's liability will be reduced rate element for first £100 = £7.00. Add to this the reduced rate element for gross weekly income exceeding £100 = £80 x 21.2% (the reduced rate percentage for 2 QCs and 1 ROC) = £16.96. Total reduced rate liability = £7 + gross weekly income rate £16.96 = £23.96.

1 CSMC Regs 2012, reg 43

Rounding

25009 When calculating amounts of

1. half a penny or more are rounded up[1], e.g. £1.126 will be rounded up to £1.13

2. of less than half a penny are rounded down[1], e.g. £1.124 will be rounded down to £1.12.

1 CSMC Regs 2012, reg 6

Flat Rate

Flat rate: gross weekly income between £7 - £100 (inclusive) or prescribed benefits in payment

25010 The flat rate of £7 will normally apply if

1. the NRP has gross weekly income between £7 - £100[1], or

2. the NRP receives a specified social security benefit, pension or allowance[2], (see paragraph 25012 for further guidance), or

3. the NRP or their partner receives a specified social security benefit, pension or allowance[3], (see paragraph 25013 for further guidance).

1 CS Act 1991, Sch 1, para 4; 2 CSMC Regs 2012, reg 44(1), 3 reg 44(2)

25011 The flat rate is a set rate, which is not affected by the number of QCs, ROCs or children supported under private arrangements. However, where an income related benefit is payable to the NRP or their partner[1] and a maintenance calculation is in force in respect of each of them, the flat rate of maintenance payable is half the flat rate that would otherwise apply[2].

1 CS Act 1991, Sch 1, para 4(2); 2CSMC Regs 2012, reg 44(3)).

Prescribed benefits received by the NRP

25012 The prescribed benefits, pensions or allowances if received by the NRP that qualify for the flat rate are

1. under the Social Security Contributions and Benefits Act 1992

1.1 category A retirement pension[1]

1.2 category B retirement pension[2]

1.3 category C and category D retirement pension[3]

1.4 incapacity benefit[4]

1.5 carer's allowance[5]

1.6 maternity allowance[6]

1.7 severe disablement allowance[7]

1.8 industrial injuries benefit[8]

1.9 widowed mother's allowance[9]

1.10 widowed parent's allowance[10]

1.11 widow's pension[11]

2. contribution-based jobseeker's allowance[12]

3. a social security benefit paid by a country other than the United Kingdom[13]

4. a training allowance (other than work-based training for young people or, in Scotland, Skillseekers training)[14]

5. a war disablement pension within the meaning of section 150(2) of the Social Security Contributions and Benefits Act 1992, or a pension which is analogous to such a pension paid by the government of a country outside Great Britain[15]

6. a war widow's pension, war widower's pension or surviving civil partner's war pension within the meaning of that section[16]

7. a payment under a scheme mentioned in section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004 (compensation schemes for armed and reserve forces)[17]

8. contributory employment and support allowance[18],

9. a state pension under Part 1 of the Pensions Act 2014[19], and

10. The Carer Support Payment component of Carer Support[20].

1 CSMC Regs 2012, reg 44(1)(a)(ii), 2 reg 44(1)(a)(iii), 3 reg 44(1)(a)(iv), 4 reg 44(1)(a)(v), 5 reg 44(1)(a)(vi), 6 reg 44(1)(a)(vii), 7 reg 44(1)(a)(viii), 8 reg 44(1)(a)(ix), 9 reg 44(1)(a)(x), 10 reg 44(1)(a)(xi), 11 reg 44(1)(a)(xii), 12 reg 44(1)(b), 13 reg 44(1)(c), 14 reg 44(1)(d), 15 reg 44(1)(e), 16 reg 44(1)(f), 17 reg 44(1)(g), 18 reg 44(1)(h), 19 reg 44(1)(i), 20 reg 44(1)(j).

Prescribed benefits received by the NRP or their partner

25013 The prescribed benefits, pensions or allowances if received by the NRP or their partner that qualify for the flat rate are

1. income support[1]

2. income-based jobseeker's allowance[2]

3. income-related employment and support allowance[3]

4. state pension credit[4], and

5. universal credit under Part 1 of the Welfare Reform Act 2012, where the award of universal credit is calculated on the basis that the NRP does not have any earned income[5].

1 CSMC Regs 2012, reg 44(2)(a), 2 reg 44(2)(b), 3 reg 44(2)(c), 4 reg 44(2)(d), 5 reg 44(2)(e)

Nil Rate

Nil rate: gross weekly income between £0 - £6.99 (inclusive) or the NRP is a prescribed person

25014 The nil rate[1] applies if

1. the NRP's gross weekly income is less than £7.00, or

2. the NRP is in a prescribed category (see paragraph 25015 for the prescribed categories).

Note: the nil rate will also be applicable in cases where the amount of income received from one of the benefits listed in paras **25012** and **25013** is less than £7 per week.[2] See also Chapter 43: Supersessions, for information on cases where benefit entitlement exists but the amount of benefit paid is reduced to Nil.

1 CSMC Regs 2012, reg 45; 2 reg 45(2)

Prescribed categories

25015 The prescribed categories that qualify for the nil rate are where the NRP is

1. a child[1]. In cases where the NRP is aged under sixteen, the CMS will automatically put the case on hold, and no further action will be taken until they are sixteen. If the NRP is aged between 16 – 19 (inclusive), DMs should check to confirm whether Child Benefit is in payment for the NRP. If Child Benefit is in payment the NRP can be treated as a child for these purposes. However, if Child Benefit is not in payment, the NRP may still be a child. Refer to Chapter 5 - Meaning of certain terms, Who is a Child for further guidance.

2. a prisoner or a person serving a sentence of imprisonment detained in hospital[2]

3. a person who is 16 or 17 years old[3] and

3.1 in receipt of income support, income-based jobseeker's allowance or income-related employment and support allowance[4]

3.2 a member of a couple whose partner is in receipt of income support, income-based jobseeker's allowance or income-related employment and support allowance[5]

3.3 in receipt of universal credit under Part 1 of the Welfare Reform Act 2012, where the award of universal credit is calculated on the basis that they do not have any earned income[6], or

3.4 in a case not covered by 3.3, a member of a couple where their partner is in receipt of universal credit under Part 1 of the Welfare Reform Act 2012 and the award of universal credit is calculated on the basis that the non-resident parent does not have any earned income[7]

4. a person receiving a government allowance in respect of work-based training for young people, or in Scotland, Skillseekers training[8]. The NRP should be asked to provide documentary evidence from the training provider, confirming the training they are undertaking. Alternatively, they can provide evidence of any government backed training allowances in payment.

or

5. a person who is resident in a care home or an independent hospital or is being provided with a care home service or an independent health care service who[9]

5.1 is in receipt of a pension, benefit or allowance specified in regulation 44(1) or (2) (flat rate)[10] see paragraphs 25010 to 25013, or

5.2 has the whole or part of the cost of their accommodation met by a local authority[11]. The NRP or their representative should be asked to provide documentary evidence confirming they are in the appropriate type of accommodation or receiving the appropriate care service. Evidence from the NRP's local authority would also be acceptable.

Note: in some situations NRPs who have a flat rate liability and provide the required level of shared care may have their liability reduced to nil. Please refer to Chapter 11 - Shared care, Flat rate liability for more information.

1 CSMC Regs 2012, reg 45(1)(a), 2 reg 45(1)(b), 3 reg 45(1)(c), 4 reg 45(1)(c)(i), 5 45(1)(c)(ii), 6 45(1)(c)(iii), 7 45(1)(c)(iv), 8 45(1)(d), 9 45(1)(e), 10 45(1)(e)(i), 11 45(1)(e)(ii)

Default maintenance decisions

25016 Where the CMS have insufficient information to make a maintenance calculation and makes a default maintenance decision[1] a default rate applies[2]. The weekly default rate is

1. £39 for 1 QC[3]

2. £51 for 2 QCs[4]

3. £64 for 3 or more QCs[5].

Refer to Chapter 26 - Default maintenance decisions for further guidance

1 CS Act 1991, s 12; 2 CSMC Regs 2012, reg 49(1), 3 reg 49(2)(a), 4 reg 49(2)(b), 5 reg 49(2)(c)

Chapter 26 - Default maintenance decisions (DMDs)

Introduction

26001 Where there is insufficient information to make a maintenance calculation a default maintenance decision (DMD) can be imposed [1].

1 CS Act 1991, s12 and CSMC Regs 2012, reg 49

This guidance explains

The purpose of a DMD and DMD rates 26002

When a DMD should be considered 26003 - 26004

When a DMD can be converted into a full maintenance calculation 26005

The purpose of a DMD and DMD rates

26002 DMDs are intended to act as short term decisions, that will prompt the NRP to contact the CMS to establish a decision based upon actual income. The default rates are

1. £39 where there is one qualifying child

2. £51 where there are two qualifying children, or

3. £64 where there are three or more qualifying children.

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

When a DMD should be considered

26003 A DMD should only be considered if all the following circumstances apply

1. The CMS has identified the NRP's last known address[1] using all available evidence and reasonable diligence, and are confident that, on balance of probabilities, the correct address is held for the NRP. Refer to Chapter 39 - Last known or last notified address

2. attempts to contact the NRP on at least three separate occasions have failed

3. a request for income details has been issued to the NRP and the NRP has been warned verbally or in writing that the CMS can impose a DMD if they fail to provide the information required

4. the CMS have been unable to obtain details of the NRP's income from HMRC, their employer or accountant, and

5. insufficient information is held for the NRP's income to be estimated. Refer to Chapter 24 -

Estimating current income for further guidance.

Note: after imposing a DMD, DMs should also consider whether a referral to the Financial Investigations Unit (FIU) is appropriate.

1 CSMC Regs 2012, reg 7(2); CCS/2288/2005

Example

The CMS are notified on 7 November 2018 that NRP John has ceased claiming benefit. No historic income figure is held by HMRC. John does not respond to requests for current income and has been notified that a DMD can be imposed. No previous current income is held and PWC Mary has no information regarding John's circumstances or occupation. As the CMS have insufficient information to make a historic income, current income or estimated current income calculation a DMD is imposed.

26004 Where the conditions for applying a DMD exist but before the date which would be the effective date of the DMD, the historic income figure becomes available from HMRC, a DMD is not appropriate. As historic income is available at the date of the calculation, the calculation can be made based on the historic income.

Example

The CMS are notified on 15 July 2019 that NRP Mark has ceased claiming benefit. No historic income figure is held by HMRC. Mark does not respond to requests for current income details and has been notified that a DMD can be imposed. No previous current income is held and PWC Jane has no information regarding Mark's circumstances or occupation. Prior to calculating the change, the historic income figure is requested and obtained from HMRC as part of the annual review. A DMD is no longer required as historic income is held at the date of the calculation.

When a DMD can be converted into a full maintenance calculation

26005 Where the NRP's income information becomes available and a DMD is already in force, a maintenance calculation must be completed to replace it. Refer to Chapter 43 - Supersessions for more detail about how to convert a DMD to a full maintenance calculation.

Note: Please see Chapter 14 - Effective dates (Effective date tables) | DWP Intranet for further guidance. - Default maintenance decision (DMD) in place – Income or employer information provided by the client. & Default maintenance decision (DMD) in place – NRP employer information obtained from a third party (HMRC)