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Applications: Background: The Duty to Maintain and Case Roles

1991/48 Section 1 of the Child Support Act 1991

1991/2628 Article 5 of the Child Support (Northern Ireland) Order 1991

The statutory child maintenance scheme is based on the principle that each parent is responsible for maintaining their children.

- **Non-resident parents (paying parents)**: must demonstrate they are meeting their duty to maintain any qualifying child/ren by paying child maintenance as calculated by the Child Maintenance Group (CMG);
- **Parents / persons with care (receiving parents):** are not required to demonstrate they are meeting this duty. They are assumed to be doing so through their day to day care of the qualifying child/ren and are entitled to receive maintenance payments to help them do this.

Who is liable to pay / receive child maintenance therefore depends on their role in relation to a qualifying child, as defined by child support legislation.

The amount of maintenance a non-resident parent is liable to pay depends on a range of factors, including: their income or benefit status; how many qualifying

children there are; and whether they are responsible for supporting other children, who are not included in the maintenance calculation.

When you are dealing with a maintenance application, it is therefore important that you understand each of the different case roles and can: identify who is the parent with care and who should be treated as the non-resident parent; confirm how many qualifying children there are; and check whether there are other children that must be taken into account.

Use the following drop-downs for a brief description of each case-role.

Parent

A person does not have to be a parent to be a person / parent with care to receive child maintenance. However, only parents have a statutory duty to support their children and are potentially liable to pay child maintenance. You may therefore need to consider who is a parent for child support purposes, if parentage is disputed. This will normally be where a non-resident parent states they are not a parent of the qualifying child and are therefore not liable to maintain them.

Being a parent is not the same thing as having parental responsibility. A person may have parental responsibility for a child under a court order, but this does not make them a parent of the child. A 'parent' for child support purposes is a person who is legally the mother or father of the child. This includes:

- a biological parent, unless the child has been adopted;
- a parent by adoption;
- a parent under a Parental Order (used in surrogacy cases).

Refer to the Decision Making Guidance for advice on cases where a child has been conceived by artificial insemination or in vitro fertilisation (IVF treatment).

Refer to the chapter on Parentage Disputes for cases where a non-resident parent states they are not a parent of the qualifying child/ren.

Person / parent with care

1991/48 Section 3(3) of the Child Support Act 1991

1991/2628 Article 4(3) of the Child Support (Northern Ireland) Order 1991

A person with care does not have to be a parent of the qualifying child, or be in receipt of child benefit for them. A person with care is the person:

- with whom the child has their home; and
- who usually provides day to day care for the child; unless

- they fall within a category of persons excluded by child maintenance legislation. (for example a local authority who has the child in its legal care).

Refer to the Decision Making Guidance for advice on the above points.

REMEMBER: a person with care does not have to be a parent of the child. They can be a relative or any other person, providing they meet the above requirements. However, the person with care will usually be a parent of the qualifying child. We will therefore normally refer to the 'person with care' as the 'parent with care' for the purposes of this guidance.

Qualifying child

1991/48 Section 3(1) of the Child Support Act 1991

1991/2628 Article 4(1) of the Child Support (Northern Ireland) Order 1991

A child will be a qualifying child for maintenance purposes if:

- one or both of their parents is a non-resident parent in relation to them;
- they are a child within the meaning set out in child support legislation; and
- an application for statutory maintenance has been made in respect of them.

Refer to the Decision Making Guidance for further advice.

Relevant other child

1991/48 Schedule 1, Paragraph 10C(2) of the Child Support Act 1991; and

2012/2677 Regulation 77 of the Child Support Maintenance Calculation Regulations 2012

1991/2628 Schedule 1, Paragraph 10C(2) of the Child Support Northern Ireland Order 1991; and

2012/427 Regulation 76 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

A child will be a Relevant other Child for maintenance purposes if they are not a qualifying child (in the case concerned) but they:

- are a child for whom the non-resident parent or their partner receives Child Benefit; or
- are a child for whom the non-resident parent or their partner would receive Child Benefit but are not doing so, solely because the child is temporarily out of the country.

NOTE: if the non-resident's partner is receiving Child Benefit, then they (the partner) must be living in the same household as the non-resident parent. The Relevant other Child will normally live in the same household as the non-resident parent, but this will not always be the case.

Refer to the chapter on Other Factors affecting the Maintenance Calculation for further advice.

Child in a family based arrangement

A child in a family based arrangement is a child who the non-resident parent supports financially, outside the statutory scheme.

Refer to the chapter on Other Factors affecting the Maintenance Calculation for further advice.

Child supported abroad

A child supported abroad is a child living outside the UK who the non-resident parent supports outside the statutory scheme, but under a UK or foreign court order, or under another country's child maintenance scheme.

Refer to the chapter on Other Factors affecting the Maintenance Calculation for further advice.

Applications: Overview

A statutory child maintenance application can only proceed if:

- it has been made by an individual who is entitled to apply for a maintenance calculation; and
- it satisfies certain minimum requirements; and
- it has been made by an accepted method; and
- the CMG has jurisdiction to make a Maintenance Calculation.

It is also necessary to determine:

- **The date an application is treated as made:** This may be important if more than one application is made for the same child. You will regard the application as made when you are satisfied that the applicant is entitled to claim maintenance for the child and has given enough details about the alleged non-resident parent to give a reasonable chance of identifying them; and

- **The date the application will take effect from:** This determines the date that the non-resident parent's liability to pay child maintenance starts. The effective date of the application will be set automatically when written notification is issued to the non-resident parent notifying them of the application.

NOTE: The date the application is made is not the same as the date when liability begins. Liability only begins when the non-resident parent has been formally notified of the application.

The following drop-downs provide basic information about each of the above points and include links to additional decision-making guidance.

Who can apply

1991/48 Sections 4 and 7 of the Child Support Act 1991

1991/2628 Article 7 of the Child Support (Northern Ireland) Order 1991

Applications can be made by:

- a person / parent with care;
- a non-resident parent;
- a child in Scotland, aged 12 or over

NOTE: we cannot accept applications if certain Maintenance Orders / Agreements are already in place. When you are dealing with a maintenance application, you will therefore need to establish whether such an order or agreement exists.

Refer to the Decision Making Guidance for advice about Maintenance Orders and Agreements.

What are the minimum requirements for an application

1991/48 Section 3 of the Child Support Act 1991

1991/2628 Article 4 of the Child Support (Northern Ireland) Order 1991

Minimum Requirements: All Cases

All applications for statutory child maintenance must demonstrate that:

- the child is a qualifying child;
- the qualifying child has their home with the person named as the parent with care; and
- the parent with care has day to day care of the qualifying child.

At the application stage, you can normally accept the applicant's statement that the above criteria are satisfied (subject to some basic checks to confirm identity etc.). It is only if the other party disputes that one or more of these requirements are met that you would need to investigate further.

Refer to the Decision Making Guidance on who is a qualifying child and who is a parent with care for further advice.

Minimum Requirements: Applications by a parent with care

In addition to the above, applications by the parent with care must include sufficient information for the CMG to identify the non-resident parent.

Generally speaking, the more information the applicant has about the non-resident parent, the better. But if an applicant cannot provide at least a first and surname, then the application usually cannot proceed.

NOTE: It is not a requirement for the applicant to have the NINO of the non-resident parent in order for the application to proceed.

Refer to the Decision Making Guidance for additional advice about these requirements.

How can an application for child maintenance be made

2012/2677 Regulation 9 of the Child Support Maintenance Calculation Regulations 2012

2012/427 Regulation 9 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

Applications for child maintenance can be made:

- in writing; or
- by phone

NOTE: It is intended that Self-Service (e.g. web based) applications will ultimately be able to be made, but this option will not be available from the start of this new scheme.

The CMG's preferred method is phone, but you can require an application in writing in appropriate circumstances. For example: if a client wishes to apply over the phone, but has a lot of detailed information they want to provide.

If an application is made by phone, you must ask the applicant to declare that the information they have provided is correct and complete to the best of their knowledge.

When can an application be treated as made

2012/2677 Regulation 9(2) of the Child Support Maintenance Calculation Regulations 2012

2012/427 Regulation 9(2) of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

Applications for child maintenance will be recorded as received on the day they are received by the CMG.

- For written applications this will mean the date shown on the office date stamp.
- For telephone applications this will mean the date that the telephone conversation takes place.

NOTE: if a client applies over the phone, but you need to request the full application is made in writing, the application should be treated as received on the date of the original phone call.

The application will be treated as an enquiry until the non-resident parent has been successfully identified through CIS. At this stage, the application will be treated as made. This will normally be the same date as the day the application is received, but may be different. For example: in cases where the parent with care does not initially provide sufficient information for the non-resident parent to be identified. The application will only be treated as made when they do this.

If the non-resident parent cannot be identified through CIS, then the application will have two 3 month reviews. If, at the end of the two reviews, the non-resident parent has still not been identified, then the case will be closed.

What date does an application take effect from (Notice of applications)

2012/2677 Regulations 7, 11 and 12 of the Child Support Maintenance Calculation Regulations 2012

2012/427 Regulation 7, 11 and 12 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

When an application for child maintenance has been made, the non-resident parent must be 'notified' of the application in writing as soon as possible. This requirement applies even if it is the non-resident parent that has made the application.

The manner in which an initial effective date is set in a 2012 scheme case in Phase 2 which took effect from 30th June 2014 varies depending on whether that case is the result of a brand new application or an application arising as the result of either the proactive or reactive case closure process. Full guidance can be found here http://np-cmg-sharepoint.link2.gpn.gov.uk/sites/policy-law-and-decision-making-guidance/Pages/Initial-Effective-Dates.aspx

For cases in Phase 1 pre 30th June 2014 effective dates were set differently and full guidance on this can be found here http://np-cmg-sharepoint.link2.gpn.gov.uk/sites/policy-law-and-decision-making-guidance/Pages/Effective%20Dates/Effective-Dates.aspx

In most cases, notice of the application will include a Provisional Calculation, which will be based on Historic Income information from HMRC. However, this will not be possible if there is no income information available. In these cases, the non-resident parent will be asked for details of their current income. The notice of application must inform the non-resident parent of the CMG's power to estimate income or apply a Default Maintenance Decision if they fail to provide the information needed.

What happens if more than one application is made for the same child?

1991/48 Section 5 of the Child Support Act 1991; and

2012/2677 Regulation 10 of the Child Support Maintenance Calculation Regulations 2012

1991/628 Article 8 of the Child Support (Northern Ireland) Order 1991; and

2012/427 Regulation 10 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

If the CMG receives more than one application for the same qualifying child/ren, then only one of the applications can proceed.

In these circumstances, you must decide which application to proceed with.

Refer to the Applications Decision Making Guidance for further advice.

NOTE: If a person with care who is not a parent (for example, a grandparent applies for maintenance from both of the qualifying child's parents, they will usually do this in a single application. But if they make these applications separately, both applications should proceed.

When does the CMG have jurisdiction?

1991/48 Section 44 of the Child Support Act 1991

1992/2645 Regulation 7A of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992

1991/2628 Articles 41 and 41(2A) of the Child Support (Northern Ireland) Order 1991; and

Regulation 7A of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992

The CMG only has jurisdiction to make a maintenance calculation if the non-resident parent, parent with care and qualifying child are all habitually resident in the UK.

NOTE: Remember that there may very exceptionally be cases where there is no parent with care of a child, because the main carer is a foster parent or a local authority. Refer to the guidance on Parent with Care Excluded Categories for further advice.

In such cases, which will only arise if the application has been made by the non-resident parent or a child in Scotland, the habitual residence requirement only applies to the child and the non-resident parent.

There is an exception for non-resident parents who are not habitually resident, but are employed abroad by:

- the armed forces; or
- the civil service; or
- a company registered in the UK, whose payroll is UK based; or
- employed by the NHS or a Local Authority

In these cases, the CMG has jurisdiction to make a Maintenance Calculation Section 44(2A) of the Child Support Act 1991 and regulation 7A, Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992 / Article 41(2A) of the Child Support (Northern Ireland) Order 1991 and regulation 7A of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992.

Refer to the Decision Making Guidance for further information about Habitual Residence

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Decision Making Guidance: Who is a Parent?

1991/48 Section 54 of the Child Support Act 1991

1991/2628 Article 2 of the Child Support (Northern Ireland) Order 1991

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

You may therefore need to be able to identify who can be treated as a parent, if parentage is disputed.

Note: For **NRP applications** where the NRP disputes parentage pre-initial MC, DNA testing should not automatically be offered. Only if the NRP raises a particularly novel reason (e.g. since applying, the PWC has told him he's not the father) should an offer be considered, and only after discussion with Advice and Guidance.

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

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

- a biological parent (unless the child has been adopted;
- a parent by adoption;
- a parent under a parental order (used in surrogacy cases).

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

1991/48 Section 26(2) of the Child Support Act 1991

1991/2628 Article 27(2) of the Child Support (Northern Ireland) Order 1991

1990/37 Section 27, Section 28 of the Human Fertilisation and Embryology Act 1990; or

2008/22 Sections 33-46 of the Human Fertilisation and Embryology Act 2008 (which relate to children conceived by assisted conception)

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

- the mother is the woman who gave birth to the child, unless an adoption or parental order is subsequently made;
- the father is the man who provided the sperm;
- since April 2009, a female partner of the child's mother will be treated as a parent if they have, or are treated as having, consented to the relevant treatment.

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

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

- If the mother is married, the father is the mother's husband, unless:
- He did not consent to, or died before, insemination.
- In these situations, the mother's husband cannot be treated as the father of the child.

OR

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

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

From 6 April 2009

- If the mother is married, the father is the mother's husband; unless
- He did not consent to the treatment. In this situation, the mother's husband cannot be treated as the father of the child.
- If a man and a woman are not married and the woman has a child as the result of licensed treatment, the man is the father if there is a notice of consent between them.
- Female civil partners are treated the same way as married couples. If one partner gives birth to a child as a result of donor insemination (anywhere in the world), she is the mother of the child and her civil partner is automatically the other parent; unless

She did not consent to the mother's treatment.

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Decision Making Guidance: Who is a Non-resident Parent?

1991/48 Section 3(2) of the Child Support Act 1991

2012/2677 Regulation 50 of the Child Support Maintenance Calculation Regulations 2012

1991/2628 Article 4(2) of the Child Support (Northern Ireland) Order 1991

2012/427 Regulation 49 of the Child Support Maintenance Calculations Regulations (Northern Ireland) 2012

A parent of a qualifying child will be a non-resident parent if:

- they do not live in the same household as the child; and
- the child has their home with a parent with care.

If the application is made by a non-resident parent, and they state they **are** a non-resident parent in relation to the child, you can accept this statement.

If the application is made by the parent with care, the person named as the non-resident parent may dispute that they are this on the basis that:

- they are not a parent of the qualifying child/ren; or
- they live in the same household as the qualifying child; or
- they provide equal / greater day to day care for the qualifying child/ren; or
- they provide night time care for the qualifying children.

Refer to the appropriate section below for further advice.

Non-resident parent claims they are not the parent

Refer to the guidance on Parentage Disputes if the person named as the non-resident parent states they are not a parent of the qualifying child.

Non-resident parent claims they live in the same household

If the non-resident parent claims that they live in the same household as the qualifying child/ren, you will need to ask them to provide a range of evidence concerning their living arrangements. You should also request comments from the parent with care. The sections below provide advice on the type of information you will need.

When the non-resident parent and parent with care have both had the opportunity to provide information / evidence, you will need to decide on the balance of probabilities whether the non-resident parent does live in the same household as the qualifying child/ren.

Household Examples

Example of a non-resident parent living in the same household as the qualifying child/ren

The non-resident parent shares the same address as the parent with care and qualifying child. The house is a 3-bedroom semi-detached. The non-resident parent has their own bedroom, but shares the same bathroom, kitchen, living and dining room. They sometimes sit and eat dinner together with the qualifying child and they sometimes prepare and cook the child's dinner. They share the household bills with the parent with care, although the parent with care does pay out more on these bills because they earn more money than the non-resident parent.

Example of a non-resident parent not living in the same household as the qualifying child/ren

The non-resident parent shares the same address as the parent with care and qualifying child. The house is a 3 bedroom semi-detached. The non-resident parent

has their own bedroom, but shares the same bathroom and kitchen. The non-resident parent always buys, prepares and cooks their own dinner and always eats in their bedroom. They never prepare or cook food for the qualifying child. They do not use the living or dining room and do not share the household bills.

Non-resident parent claims they have equal / greater day to day care

Refer to the guidance on Who is the Parent with Care for advice on cases where a person named as the non-resident parent states that they are doing this.

Non-resident parent claims they provide overnight care

If the person named as the non-resident parent states they are providing night time care for the qualifying child/ren, you should advise them that this does not mean they can be treated as the parent with care, as this is based on day to day care, that is, the overall care of the child. However, they may be entitled to a reduction in their child maintenance liability. Refer to the guidance on Shared Care for additional information.

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Decision Making Guidance: Who is a Parent / Person with Care?

1991/48 Section 3(3) and Section 42 of the Child Support Act 1991

1991/2628 Article 4(3) and Article 39 of the Child Support (Northern Ireland) Order 1991

Regulation 8 (4) Child Support (Miscellaneous Amendment) Regulations

Child support legislation states the person with care is the person:

- with whom the child has their home;
- who usually provides day to day care of the child (exclusively or with another person); and
- who does not fall into a category excluded by child maintenance legislation (see the specific section below for details).

The Child Benefit Presumption

It is not necessary for a person to be receiving Child Benefit for them to be treated as a parent with care. However, entitlement to Child Benefit is based on an overall care test which is broadly similar to the CMG's policy on day to day care. Payment of Child Benefit is therefore a very good indicator of who should be treated as the parent with care.

Note: If a person applies for child benefit but elects NOT to receive any payments, we can regard that person as though they ***were in receipt*** of child benefit (i.e. **as though child benefit is in payment**).

Because of this, and the administrative burden it would place on the CMG if every application had to be checked to ensure the parent with care requirements are satisfied, we apply a Child Benefit presumption.

This means that at the application stage, we will initially just check (via automated system check) if Child Benefit is in payment, or an election not to receive child benefit payments has been made in respect of the qualifying child to the person named as the parent with care. If so, we can **presume** that they are providing day to day care for the qualifying child and should be treated as the parent with care.

You will therefore only need to consider whether the parent with care requirements are satisfied if:

- Child Benefit is in payment, or an election made not to receive child benefit payments has been made by to the parent with care, but the other party says they should not be treated as the parent with care. For example: because the child no longer has their home with them; or
- Child Benefit is not in payment for the qualifying child/ren; or
- Child Benefit is in payment but to someone other than the party named as the parent with care; or
- an election not to receive.

The following sections provide advice on each of these scenarios:

Child Benefit is in payment, but parent with care status is disputed

Remember: where the person elects not to receive child benefit payments that person is to be treated as receiving child benefit

If who should be treated as the parent with care is disputed, you should:

- presume that whoever is receiving Child Benefit for the qualifying child/ren is providing the greatest level of day to day care for them; and
- treat that person as the parent with care unless evidence is received to prove that this is not the case;
- the onus will be on the party disputing who should be treated as the parent with care to provide this evidence;refer to the meaning of home and the meaning of day to day care for further advice.

- refer to the meaning of home and the meaning of day to day care (below) for further advice.

The other party should be given the opportunity to comment on any evidence submitted and to provide evidence of their own.

NOTe: if the evidence shows that both parties are effectively providing equeal day to day care of the qualifying child/ren. then neither parent can be treated as the non-resident parent. In that event, you would need to close the case or reject the application.

Child Benefit is not in payment

Remember: where the person elects not to receive child benefit payments that person is to be treated as receiving child benefit.

If Child Benefit is not in payment for the qualifying child at all, you should ask the parent with care why this is the case. It may simply be that they don't want to receive Child Benefit. However, it could be because they are no longer considered to be a child. It is therefore important in these circumstances to ensure they can be treated as a child for maintenance purposes. Refer to the guidance on "The Definition of a Child" for additional information.

- If you are satisfied that they can be treated as a child then you should proceed with the Maintenance Calculation.
- If you are satisfied that they cannot be treated as a child then you should close the case.

Child Benefit is in payment but to someone else

Remember: where the person elects not to receive child benefit payments that person is to be treated as receiving child benefit.

If Child Benefit is in payment for the qualifying child/ren, but to someone other than the person named as the parent with care, or an election not to receive child benefit payments has been made by someone other than the parent with care, you should advise them that we cannot treat them as the parent with care, unless the provide evidence confirming that they are the person with whom the child has their home and who provides greater day to day care for the qualifying child.

Refer to the individual sections on the meaning of home and day to day care (below) for further guidance.

- If you are satisfied that the qualifying child does not have their home with the person being treated as the parent with care, or that they do not provide the greatest level of day to day care then you should close the case.

If you are satisfied that the qualifying child does have their home with the parent with care and that they do provide the greatest level of day to day care then you should proceed with the Maintenance Calculation.

Home and Day to Day Care

The following sections provide guidance on the points you will need to consider and the evidence you will need to obtain where the Child Benefit presumption:

- does not apply (because Child Benefit is not in payment / is not in payment to the party claiming to be the parent with care / election not to receive payments was not made by the parent with care): or
- is disputed (because Child Benefit is in payment to the party claiming to be the parent with care, but the other party disputes that they are the parent with care);

and you need to confirm who the parent with care is.

REMEMBER: Child support legislation states the person with care is the person:

- with whom the child has their **home**; and
- who usually provides **day to day care** of the child (exclusively or with another person); and
- who does not fall into a category excluded by child maintenance legislation (see the specific section below for details)

Who does the child have their home with

The child's home must be with the parent with care, however, there is no legal definition of home for these purposes. When deciding whether a child has their home with a particular person, you should take the following guidance into account, which is based on Social Security Commissioner / Upper Tribunal decisions.

- You should concentrate on the nature and extent of the child's association with the person alleged to be the parent with care, rather than on the child's association with particular premises;
- It is possible for a child to have their home with a particular person, despite considerable absences from them. Regulations make it clear that a child's home can be with a particular person, even though they live elsewhere for part of the year. The fact a child is separated from a person for lengthy periods therefore does not, of itself, prevent the child's home from being with that person;
- If a child is absent from home because they are attending boarding school or are in hospital, it will usually be obvious who they would otherwise be living

with. Usually the person who would otherwise have provided day to day care but for the absence should be treated as continuing to do so. However, there may be exceptional cases in which there is no clear answer and which will require a careful analysis of all the circumstances of the case.

If a non-resident parent and parent with care do not agree on who the child has their home with and you are unable to reach a decision on the information provide, you should contact the Advice and Guidance Team for advice.

Who usually provides day to day care

REMEMBER: day to day care is not the same as the "nights of care" test, which is used to determine whether a Shared Care reduction should apply.

There is no statutory definition of day to day care for these purposes. What it broadly means are the general things that go on, whether regularly or less frequently, which together would give a picture of how a child is cared for.

When deciding whether a person provides day to day care, you should consider the following questions:

- who does the child spend most of their time with when they are not at school / nursery / childcare
- who pays for most of the child's clothes and meals?
- who arranges and pays for any childcare costs?
- who is the usual contact for the child's school / child-minder etc.?
- whose GP / dentist is the child registered with and who arranges appointments / accompanies the child?
- who has the greatest involvement with the child's recreational activities and is responsible for paying for them?
- who already receives financial support (if any) such as benefits or local authority assistance for the child?

The aim of these questions is to try and determine who is taking responsibility for a child's care and whether, where more than one person has care, one of them can be viewed as having primary responsibility. In many cases, the need for this action won't arise, as many parents will accept our presumption that the person receiving Child Benefit for the child is the one with primary responsibility for day to day care.

In cases where the Child Benefit presumption is challenged, the onus is on the person making the challenge to support their claim. Any party disputing who should be treated as the parent with care should be required to submit evidence on the above points and any other factors that they wish to be considered. The other party

should be given the opportunity to comment on any evidence provided and to submit their own information.

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

- schools, GPs, dentists: evidence from these showing that they are the main contact, or an equal contact with the parent with care;
- child care: written evidence from the care provider showing they are the main or equal contact or had a main or equal part in the drawing up of any childcare contract;
- evidence from bank statements, receipts, contracts etc. which shows they have a main or equal involvement in major spending decisions on the child.

You should use the information provided by both parties to decide who, on the balance of probabilities, is providing the greatest level of day to day care for the qualifying child/ren. This person should be treated as the parent with care.

What if there are Temporary Absences from the home?

2012/2677 Regulation 55 of the Child Support Maintenance Calculation Regulations 2012

2012/427 Regulation 54 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

If a qualifying child is temporarily living away from the home because they are at a boarding school or have been admitted to hospital, the person with care should be regarded as continuing to have day to day care of the child.

If the non-resident parent does dispute that the liability should be continuing, you will need evidence that the absence is one which does entitle the parent with care to continue receiving maintenance. The parent with care should be asked for the following:

- *qualifying child is in hospital: written evidence from the hospital to the parent that their child has been admitted;*
- *qualifying child is at boarding school: evidence from the school that the child is registered with them as a boarder and the school's term dates. NOTE: if the non-resident parent already receives a special expense variation for boarding school fees for the child in question, no further evidence is needed. If the non-resident parent continues his dispute, you should ask them if that variation ground still applies.*

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

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

Parent with care: excluded categories

2012/2677 Regulation 78 of the Child Support Maintenance Calculation Regulations 2012

2012/427 Regulation 77 of the Child Support Maintenance Calculation Regulations 2012

The following categories of person cannot be treated as a person with care:

- Local Authorities;
- A foster parent with whom the child has been placed by a Local Authority (except where that person is a parent of the child and the Local Authority allows the child to live with that parent under *S.23(5) of the Children Act 1989*;

In Scotland, a family or relative with whom a child is placed by a Local Authority.

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Decision Making Guidance: Who is a Child?

1991/48 Section 55 of the Child Support Act 1991

2012/2677 Regulation 76 of the Child Support (Maintenance Calculation) Regulations 2012

1991/2628 Article 3 of the Child Support (Northern Ireland) Order 1991

2012/427 Regulation 75 of the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

1992/7 Section 138(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992

1992/4 Section 142(2) of the Social Security Contributions and Benefits Act 1992

2006/223 Part 2 Child Benefit (General) Regulations 2006

The Definition of a Child -

1991/48 Section 55 of the Child Support Act 1991

1991/2628 Article 3 of the Child Support (Northern Ireland) Order 1991

Note: please also refer to the Determining 'child' status and Can the 'child' be a Relevant Other Child flowcharts

A person is considered a “child” for child maintenance purposes if:

- they are under the age of 16; or
- they are under the age of 20 and a Qualifying Young Person.

NOTE: A person is not considered a “child” if they are, or have been a party to a marriage or civil partnership, even if that marriage / civil partnership was void or has been nullified.

Who needs to satisfy the definition of a child?

Legislation defines who is a “child” for Child Support purposes. For any “child” role in a statutory case, that person must firstly fulfil the definition of a “child” before it can then be considered if they also fulfil any additional requirements of the particular child role. The role could be:

- a Qualifying Child (QC);
- a Relevant Other Child (ROC – see note below too);
- a Child supported abroad;
- a Child supported under a Family Based Arrangement; or
- a child that the CMG is required to consider when making any discretionary decision (Welfare of Child consideration).

Note: For a person to be a Relevant Other Child(ROC), unlike other child roles, Child Benefit must be in payment to the NRP or the NRPs current partner (or they must be entitled to receive Child Benefit but have made an election not to because of High Income Child Benefit Charge). Even if they fulfil the other “child” criteria (e.g. under 16 or under 19 and in full-time non-advanced education), they cannot be a ROC without someone receiving (or being entitled to receive it, as per the previous line) Child Benefit in respect of them. So, in the case of ROCs specifically, decisions should be made on the basis of the Child Benefit award. Please see Relevant Other Child guidance for more information. For other child roles please see following guidance below.

Note: Child In Scotland (CIS) status relates to whether or not a person aged 12 or older, who is habitually resident in Scotland, can apply for maintenance. Within a maintenance calculation however, “Child In Scotland” is not a distinct child role (e.g. an 11 year old resident in Scotland will fulfil the definition of a “child” for Child Maintenance because of being under 16 years old. However, they would not be a

Child In Scotland. A child over the age of 16 will need to satisfy the definition of a child to make a child in Scotland application).

Where the child role is:

- a Qualifying Child;
- a child supported abroad;
- a child supported under a Family Based Arrangement; or
- a child aged over 16 wishing to make a child in Scotland application

The fact that Child Benefit is in payment in respect of any particular child is not a qualifying condition for us to treat them as a child (unlike in the 1993/2003 maintenance schemes).

Note: There is nonetheless a relationship between the statutory definition of a child for Child Support purposes, and entitlement to Child Benefit, and in view of this, if Child Benefit is in payment for the child then they are likely to satisfy the definition of a child.

You will only need to make further investigations / enquiries if, following a check of Child Benefit systems:

- Child Benefit is not in payment (and an election not receive payments has not been made); or
- Child Benefit is in payment, but a party subsequently states the child should still not be treated as a child (for example: because the child has left school and started full time work).

In these circumstances, you will need to consider whether the child satisfies the statutory definition or not and may need to obtain evidence to confirm this.

Remember: where the person elects not to receive child benefit payments that person is still treated as receiving child benefit.

If Child Benefit is not in payment for the child, this does not automatically mean that they cannot be treated as a child. However, you would need to ask the applicant for further information and / or evidence to confirm that the child can be treated as a child for our purposes.

<u>Child Benefit in Payment but treatment as child disputed</u>

For cases where a non-resident parent disputes that statutory maintenance should be paid in respect of their child, the fact that Child Benefit is still being paid could mean that their child is still in relevant education or training, and therefore a “child” for child maintenance purposes. You should put this to the non-resident parent, and

ask them if they think this is not correct. If they have reasonable grounds for disputing this (for example, “my child left school 9 months ago”) consider taking further action and asking the parent with care for evidence confirming whether the child is a Qualifying Young Person.

When ending a child role it is important to remember the effective date will be the date conditions detailed below are no longer met rather than the date that Child Benefit is paid until. This is because Child Benefit is a weekly benefit and maintenance is calculated on a daily basis.

HMRC and confirmation of Child Benefit awards ending

CMS2012 will make automated monthly requests to HMRC asking, for all children aged 16-19 who are included in its caseload and establish whether Child Benefit is still in payment.

If Child Benefit for a child has ceased, HMRC will provide the award end date and the reason why the award ended (HMRC describes it as the “Exclusion Reason”). This will be one of the following:

- death of child;
- abroad;
- child not Living with responsible person;
- no longer in Full Time Education (FTE);
- miscellaneous.

Child aged under 16

Any child under the age of 16 is a child for the purposes of Child Support law. If there is doubt over the existence of a child or treatment as a child is disputed you should check CIS to see if the child’s full name, date of birth and address (with the parent with care) can be confirmed.

- If so, this can be accepted as good evidence of the child's age / identity. Providing they are under 16, you can treat them as a child. See the section below if the CIS check indicates they are aged 16 or over.
- If not, you should ask the client to supply evidence of the child’s age and identity. The ideal evidence is a birth certificate or passport, but other evidence can be accepted if it enables the child to be identified and their age to be confirmed. For example: a record provided by the child’s school, GP or dentist, or from the NHS or a local authority if the child receives specific services from them (for example, because they are disabled).

If the Parent With Care / Non-Resident Parent is unable to supply any evidence to confirm the child's age and identity, you should explain that we cannot accept them as a child, until such evidence is provided or they start to receive Child Benefit.

Note: Remember that for a ROC, even if the above conditions are fulfilled, Child Benefit must still be in payment for them to fulfil that role.

Child over 16 but under 20: (A Qualifying Young Person)

In accordance with Reg 76 CSMC Regs 2012 (and Reg 75 CSMC Regs (NI) 2012), a person aged over 16 but under 20 must satisfy certain conditions under the Child Benefit legislation in order for them to be a child for the purpose of Child Support law (i.e. that they must be a Qualifying Young Person).

This does not mean that Child Benefit actually has to be in payment for them. Similarly, if Child Benefit is in payment it does not automatically mean they will cease to be a child for Child Support purposes when Child Benefit ceases. Rather, they will cease to be a child for Child Support purposes when the conditions are no longer met.

Put simply, we must apply the Child Benefit rules for determining Qualifying Young Person status ourselves, regardless of what HMRC has done in respect of any actual award of Child Benefit. The relevant conditions are set out below.

A child will be classed as a Qualifying Young Person if they satisfy one of the following conditions. Definitions of the terms used can be found at the end or use the links provided.

A person continues to be a child if:

1. They are:

- **aged 16 and**
- **have left full-time non-advanced education / approved training, and**
- **31 August following their sixteenth birthday has not yet been passed.**

Example

A non-resident parent reports that their 16 year old son left school on 20 June after finishing their GCSE exams.

The non-resident parent should be told that their son will continue to be treated as a child for child maintenance purposes until 1 September, the day following the terminal date.

Note: If the child commenced remunerative work (of not less than 24 hours each week) before their terminal date they cease to be a child on the day work commences.

2. They are aged:

- **over 16 but under 20 and**
- **are in full time non-advanced education or approved training.**

A person will be a Qualifying Young Person (and therefore a "child" for child maintenance purposes) for as long as they continue to undertake full-time non-advanced education or approved training.

Examples:

- **Studying both non advanced and advanced education**. A young person undertaking both a non advanced and advanced educational course may continue to meet the qualifying conditions providing they meet the above conditions.

E.g. A young person undertakes an educational course which includes both advanced and non-advanced education. Provided the time spent on non advanced education meets the full-time condition they can continue to be classed as a Qualifying Young Person.

- **Working while undertaking relevant education or training**. A young person may work and undertake relevant education or training providing they meet the above conditions.

E.g. A young person works 25 hours a week during the evenings. Provided they are continuing their full-time non-advanced education and that education is **not** being provided by an employer, or because of any office / position they hold, they can continue to meet the qualifying conditions.

3. They are:

- **over 16 but under 20 and**
- **have finished a course of full-time non-advanced education, and**
- **are enrolled on another such course, that is not provided as a result of employment.**

If a person has completed or left a course of full-time non-advanced education or approved training, and has passed their terminal date or the end of their extension period, they will continue be a Qualifying Young Person (and therefore a child for

child maintenance purposes) if they are enrolled on another course of qualifying education or training.

Example

On 10 September, a parent with care reports that their 18 year old son, who left school in June having completed his A levels, will begin a further course of A levels at a local college on 15 September.

Their son, will continue to be treated as a child until the terminal date following them completing or leaving the new course or, if sooner, their 20th birthday.

4. They are:

- **over 16 but under20, and**
- **have left full-time non-advanced education and**
- **their terminal date has not been passed**

A person who has left full time non-advanced education is treated as a child up to and including the terminal date unless they attain the age of 20 before the terminal date or if they commence remunerative work (of not less than 24 hours each week) before their terminal date.

About Terminal dates:

A person, who has left full-time non-advanced education or approved training, will continue to be a child until the day after the earliest of these dates which are known as “terminal dates”:

- the last day of February;
- 31 May;
- 31 August;
- 30 November.

Example

QC Jane is 18 and she left school on 1st April. Her terminal date will be 31st May. She ceases to be a child for the purposes of Child Support on 1st June.

5. They are:

- **aged 16 or 17; and**
- **have left full-time education/approved training and**
- **their extension period has not expired**

A person aged 16 or 17, who has left full-time non-advanced education or approved training, will continue to be a child until the day after the earliest of these dates (which are known as “terminal dates”):

- the last day of February
- 31 May
- 31 August
- 30 November

The person may continue to be treated as a child for up to a further 20 weeks from the date a young person leaves full-time non-advanced education. This is known as “the extension period” and applies if:

Within 20 weeks of leaving full-time non-advanced education or approved training they have registered for further education, work or training with a careers service, Connexions, local authority support service or similar organisations (in Northern Ireland, the Department for Employment and Learning or an Education and Library Board) or they have been accepted to join the armed forces and are waiting for a placement.

The extension period ends when the young person:

- reaches age 18 (but consider if the terminal date applies, if it does and the terminal date is a later date then the terminal date will be used to end the child role)
- starts in remunerative work (i.e. not less than 24 hours per week), for which payment is received or expected.
- starts getting Income Support, income-based Jobseeker’s Allowance, Employment Support Allowance, Incapacity Benefit or a tax credit in their own right
- stops being registered with a careers service, Connexions, local authority support service or similar organisation (in Northern Ireland, the Department for Employment and Learning or an Education and Library Board), or
- the day after the end of the 20 week extension period where it has not ended sooner as a result of the above circumstances

The child may satisfy the conditions again if:

- their paid work stops or reduces to less than 24 hours per week or,

- they stop getting Income Support, income-based Jobseeker's Allowance, Employment Support Allowance, Incapacity Benefit or a tax credit in their own right

Example 1:

John is 17 in May 2014. He left school on 25th June 2014 and he has registered with Connexions. His extension period starts on 30/6 (the Monday after education ceases) and ends on 10 November (20 weeks after it started).

Example 2

Henry is 17 in April 2014. He left school on 25th June. His extension period starts 30/6 (the Monday after education ceases) however he did not register for connexions until 7th September. Since he registered within 20 weeks of leaving full-time non-advanced education he will continue to be a child until the end of the extension period on 10 November. There is no break in his status as a child because he registered within 20 weeks.

Child Ceases to be a child

A Relevant other Child ceases to be a child when the NRP or his partner cease to receive Child Benefit in respect of the child (unless they get married or turn 20 before then). Refer to guidance on ROC for further information and the Determining 'child' status flowchart.

For all other child roles a child will cease to be a child when all of the conditions detailed above are not met. This will be on the date that any of the following occurs and no other qualifying conditions apply:

- for a 16 year old who has left full-time non-advanced education or approved training, the 1st September on or after their 16th birthday.
- for a 17, 18 or 19 year old, who has left full-time non-advanced education or approved training, the day following the terminal date.
- for a 16 or 17 year old, the day after the end of the extension period. The extension period ends either 20 weeks after the person left full-time education or, if earlier, their 18th birthday.
- the child starts remunerative work of not less than 24 hours a week. They cease to be a child when they commence work so long as they do not remain in full-time non-advanced education.
- the child starts to receive Income Support, Incapacity Benefit, Jobseeker's Allowance or a tax credit in their own right.
  Note: Where a person who was a child makes a claim to a prescribed benefit in their own right, the Child Benefit will cease only once the benefit begins in

payment, so they remain a child until that point (i.e. not from the date of the benefit claim itself).

- the child reaches their 20th birthday.

Examples

Example 1:

On 1 July, a non-resident parent reports that their daughter left school on 20 June. The parent with care applied on 21 June for an extension of Child Benefit. The daughter is 18 on 6 August. The extension period would run up to 7 November, but the child will turn 18 before then. However, even though the extension period would expire when the child turns 18, the next terminal date will not have been reached.

Their daughter will therefore continue to be a child until **1 September** which is the first day beyond the terminal date of 31 August, after they left full-time education, because this is after their 18th birthday.

Example 2:

On 1 August the non-resident parent reported that their 16 year old son left school on 24 June.

Their son will cease to be a child on **1 September**.

Example 3:

On 1 April a non-resident parent reports that their 18 year old son (QC) has left school in the middle of March to start work. The Child Benefit check shows it still to be in payment. When the parent with care is contacted, they confirm that their son started a full time job on 12 March.

Maintenance liability for the son ceases from **12 March**.

Remember: Child Benefit could still be in payment even though the child is no longer entitled to it.

It is the individual's circumstances, rather than whether or not Child Benefit is paid in respect of them which is critical to deciding if they are a child.

Child Role Disputed

Child Benefit not in payment / treatment as child disputed: child 16 or over

If the "child" is aged 16 or over; and

- Child Benefit is not in payment; or

- Child Benefit is in payment, but a party states the individual should not be treated as a child

You will need to confirm whether the “child” meets the definition of a Qualifying Young Person.

Child Benefit in Payment but treatment as a “child” disputed

For cases where a non-resident parent disputes that their child should receive statutory maintenance, the fact that Child Benefit is still being paid will usually mean that their child is still in relevant education or training, and therefore a “child” for child maintenance purposes.

You should put this to the non-resident parent, and ask them if they think this is incorrect. Only if they persist with the dispute with what appears to be reasonable grounds (for example, “my child left school 9 months ago”) should you consider taking further action and asking the Parent With Care for evidence confirming whether the child in question remains a Qualifying Young Person.

Evidence Requirements:

- Check Child Benefit. If it has ceased, note the end date and reason.
- If Child Benefit does not confirm the reported change, contact the Parent with Care. Action can be taken on the case if the Parent with Care's verbal evidence agrees with what the Non-resident Parent has said.
- If parents do not agree verbally, ask the parents if they have any evidence (for example a letter from the school or college or, starting work, their employer) which might confirm the change. If the evidence cannot be supplied, the calculation should not be superseded.

Note: You are not legally entitled to contact a child’s employer or school/college for information. If the Non-Resident Parent asks you to do that, you should explain that you do not have the legal authority to request that information.

Process for Non-Resident Parent reporting Child Benefit should not be in payment to Child Benefit Centre

At any time if the Non-Resident Parent does not believe that the child should be classed as a Child for Child Maintenance, purposes they should provide evidence to support a change in the Child Benefit circumstances directly to the HMRC Child Benefit team on: 0300 200 3100.

Tell the PP that HMRC will ask for the following information:

- The name of the parent with care (and their address - if known. You must not disclose the parent with care's address to the non-resident parent)
- The QC's name and date of birth - if known
- Details of the change - such as the date the child stopped education and/or the date they started work
- The non-resident parent should also mention that child support may be affected as a result of the QC stopping education or starting work (this will let HMRC know that our Service Level Agreement is applicable to return an answer within six weeks applies to this case).
- Explain to the PP that HMRC will aim to complete their investigations within six weeks of their call, and HMRC will automatically update the Child Benefit system with the outcome.
- It should be stressed to the non-resident parent that HMRC will not advise them of the outcome directly, so they should contact us again after this six week period has expired. Only then will we be able to check the Child Benefit system for any updated information.
- You should make sure that the 2012 system is updated with the details of this call to assist the caseworker who receives the non-resident parents return call.

When the non-resident parent contacts us six weeks after they contacted HMRC to report a potential change in Child Benefit, you should check the personal details screen on the Child Benefit System if you have access (or request this information through your normal processes).

Child Benefit no longer in payment

If the QC is no longer part of the Child Benefit claim and there is no further information to indicate that the QC is still in full-time, non-advanced education, the case should be re-assessed or closed using current guidance as appropriate.

Child Benefit still in payment

If Child Benefit is still showing as being in payment and a PA (put away) date is held on the system (showing that HMRC have investigated the allegation, but did not make a change) you should advise the non-resident parent that the child maintenance claim is valid, but that they can contact HMRC again if further evidence becomes available. Any request for a supersession (to remove the 'QC' status) should be refused.

However, if the Child Benefit System information indicates the Child Benefit is still in payment and there is **no PA** date recorded on the system (indicating that HMRC

have not yet investigated) you should email the SLA.TEAM@DWP.GSI.GOV.UK with a brief outline of the case. If appropriate, the Service Level Agreement team will send you a form to complete and they will then contact HMRC on your behalf to confirm the NRP has reported the allegation of Child Benefit fraud and escalate the query accordingly.

Contacting the Financial Investigations Unit (FIU)

At any point during the above discussions, if you think there is sufficient evidence to merit investigating whether any fraud has occurred as a result of the Child Benefit claim currently in payment you may consider referring the case to the Financial Investigations Unit (FIU).

If FIU tell you that there isn't enough evidence with which to proceed, make a note of this on the 2012 system and explain this to the non-resident parent. Advise the non-resident parent that if any further evidence becomes available in the future, they're welcome to contact us again at any time.

Please note that FIU will not investigate the Child Benefit status for you - this remains the responsibility of the case owning caseworker.

Meaning of Terms in the Qualifying Young Person Conditions

Full-time education: Definition

2006/223 Regulations 1 & 3 of the Child Benefit (General) Regulations 2006

Full-time education means —

Education undertaken in pursuit of a course, where the average time spent during term time in receiving tuition, engaging in practical work, or supervised study, or taking examinations exceeds 12 hours per week.

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

Note: We can ignore temporary interruptions in education / training, if they are not expected to be permanent and can be considered reasonable. For example: absences due to ill health / disability.

The absence must be due to circumstances beyond the person's control and should not normally last for more than 6 months, although longer periods can be considered if the interruption is due to health reasons.

Advanced education: Definition

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

Note: **Non-advanced education** is education not to the level of advanced education, which is defined below.

Advanced education means full-time education means —

- A course in preparation for a degree, a diploma of higher education, a higher national diploma, or a teaching qualification; or
- any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel, a general certificate of education (advanced level), or Scottish national qualifications at higher or advanced higher level;

Approved Training: Definition

2006/223 Regulation 1 of the Child Benefit (General) Regulations 2006

Approved training" means arrangements made by the Government—

Her Majesties Revenue and Customs (HMRC) lists 'Full-time non-advanced education and approved training'. These can be viewed by clicking here.

Extension Periods

2006/223 Regulation 5 of the Child Benefit (General) Regulations 2006

Extension periods may "extend" the time that an individual can be treated as a Qualifying Young Person" after they leave full-time, non-advanced education or approved training. The extension period must be applied for within 3 months of the date of leaving full-time, non-advanced education or approved training. If no application is made, the child is treated as a child until the next terminal date after leaving full-time, non-advanced education or approved training.

An extension period will apply if the qualifying person is under the age of 18 and they are:

- Registered for work, training or education with a qualified body; and
- Not in remunerative work (i.e. less than 24 hours a week); and
- Not in education or training; and
- Child Benefit was in payment / payable for them immediately before the extension period began; and
- The applicable extension period has not expired; and

- The individual responsible for the qualifying person has made a request for payment of Child Benefit during the extension period and within three months of the education / training ceasing.

The extension period starts from the Monday after the education / training ends and continues for up to 20 weeks or until:

- the Qualifying Young Person's turns 18; or,
- he Qualifying Young Person starts to claim a benefit or tax credit in their own right.

Terminal Dates

2006/223 Regulation 7 of the Child Benefit (General) Regulations 2006

Terminal dates are the first of these dates that arise after a child/Qualifying Young Person leaves education / training:

- 31 August;
- 30 November;
- The last day in February;
- 31 May.

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Decision Making Guidance: Maintenance Orders and Agreements

Background

We cannot accept an application for child maintenance if any of the following apply:

- a written maintenance **agreement** made before 5 April 1993 is still in force;
- a maintenance **order** made **before** 3 March 2003 is still in force;
- a maintenance order has been made **after** 3 March 2003, and has not yet been in force for one year. Refer to the specific section on this type of order for additional guidance.

NOTE: This exclusion does not apply to Court Orders:

1991/48 The Child Support Act 1991

1991/2628 The Child Support (Northern Ireland) Order 1991

- For ‘top up’ maintenance (where the non-resident parent’s gross weekly income exceeds £3000) Section 8(6) Child Support Act 1991; Article 10(6) Child Support (Northern Ireland) Order 1991
- That provide specifically for costs associated with a child’s educational or training needs Section 8(7) Child Support Act 1991; Article 10(7) Child Support (Northern Ireland) Order 1991
- That provide specifically for costs associated with a child’s disability Section 8(8) Child Support Act 1991; Article 10(8) Child Support (Northern Ireland) Order 1991
- That provide for periodic payments of maintenance against the Parent with Care Section 8(10) Child Support Act 1991; Article 10(10) Child Support (Northern Ireland) Order 1991

What are Maintenance Orders and Agreements?

Maintenance Orders

Maintenance Orders (England and Wales)

1991/48 Sections 8(11) and 54 of the Child Support Act 1991

1992/2645 Regulations 2 and 3 of the Maintenance Arrangements and Jurisdiction Regulations 1992

A Maintenance Order is an order that requires a person to make or secure periodical payments to, or for the benefit of, a child. Maintenance Orders differ from written maintenance agreements in that they are decisions of a court, and will have been made under one of the following items of legislation:

- 1973/18 Part II of the Matrimonial Causes Act 1973;
- 1978/22 The Domestic Proceedings and Magistrates Court Act 1978;
- 1984/42 Part III of the Matrimonial and Family Proceedings Act 1984;
- 1985/37 The Family Law (Scotland) Act 1985;
- 1989/41 Schedule 1 to the Children Act 1989;
- 2004/33 Section 5, 6 or 7 of the Civil Partnership Act 2004;
- 1861/86 The Conjugal Rights (Scotland) Amendment Act 1861;
- 1907/51 The Sheriff Courts (Scotland) Act 1907;
- 1948/29 The National Assistance Act 1948;

- 1958/40 The Matrimonial Proceedings (Children) Act 1958;
- 1975/72 The Children Act 1975;
- 1976/71 The Supplementary Benefits Act 1976;
- 1986/50 The Social Security Act 1986;
- 1992/5 The Social Security Administration Act 1992

Maintenance Orders (Northern Ireland)

1991/2628 Article 10(1) and 2 Child Support (Northern Ireland) Order 1991

Regulations 2 and 3 Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992

The following legislation applies to Maintenance Orders or Agreements made in Northern Ireland:

- The Matrimonial Causes Act (Northern Ireland) 1939;
- The Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945;
- Section 4 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland 1951;
- The Health and Personal Social Services (Northern Ireland) Order 1977;
- The Supplementary Benefits (Northern Ireland) Order 1977;
- Section 27 of the Judicature (Northern Ireland) Act 1978;
- Part III of the Matrimonial Causes (Northern Ireland) Order 1978;
- The Domestic Proceedings (Northern Ireland) Order 1980;
- The Social Security (Northern Ireland) Order 1986;
- Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order1989;
- The Social Security Administration (Northern Ireland) Act 1992;
- Schedule 1 to the Children (Northern Ireland) Order 1995;
- Schedule 15, 16 or 17 to the Civil Partnership Act 2004.

Maintenance Orders / Agreements (Scotland)

Commissioner's Decision R(CS 3/99)

For child support purposes in Scotland, the CMG treats written maintenance agreements in the same way as maintenance orders, providing they are registered for preservation and execution in the Books of Council and Session.

If they are registered for preservation only, and the registration occurred after 5 April 1993, the minute of agreement does not constitute a court order and there is no issue with us having jurisdiction. The application should be handled the same as any other application that doesn't involve a court order.

Written Maintenance Agreements

1991/48 Section (9)(1) and 54 of the Child Support Act 1991

1991/2628 Article 11(1) and (2) of the Child Support (Northern Ireland) Order 1991

A written maintenance agreement means any written agreement for the making or securing of periodical payments, by way of maintenance (in Scotland: aliment) to be made for the benefit of the child.

NOTE: payments do not have to be made directly to the parent with care or the child. For example: an agreement to make mortgage payments on the child's home could be included.

Maintenance Orders made on or after 3 March 2003

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

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

- If an order made on or after 3 March 2003 has been in force for less than one year, when an application is made, the application should be rejected.

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

If an order made on or after 3 March 2003 has been in force for one year or more at the date of application, it will cease to have effect on the effective date of the Maintenance Calculation; BUT

Only so far as it relates to periodical payments for any qualifying children;

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

If a Maintenance Calculation will affect a Maintenance Order in this way, you must notify the relevant parties, who are:

- The court where the order was made;
- The parent with care;
- The non-resident parent;
- The child in Scotland (if they have made the application under Section 7 of the Act).

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

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Decision Making Guidance: Application Requirements

1991/48 Section 3 of the Child Support Act 1991

1991/2628 Article 4 of the Child Support (Northern Ireland) Order 1991

Minimum Requirements: All Cases

All applications for statutory child maintenance must demonstrate that:

1. the child is a qualifying child;
2. the qualifying child has their home with the person named as the parent with care; and
3. the parent with care has day to day care of the qualifying child.

(1) At the application stage, you will check Child Benefit systems to confirm whether Child Benefit is in payment for the qualifying child. If so, you can assume that they satisfy the definition of a child for child support purposes. If not, you would need to ask the applicant for additional information / evidence to confirm that the child can be treated as a child for our purposes.

Refer to the section on 'Who is a Child' for further advice.

(2) and (3) Statements about who is the parent with care and who is the non-resident parent should be accepted at the application stage (subject to the identity check outlined below). You would only need to make further enquiries if one of the parties disputes:

- that they are a non-resident parent; or
- that the person named as the parent with care provides day to day care for the qualifying child, or has their home with them.

Refer to the sections on 'Who is a non-resident parent' and 'Who is a parent with care' for further advice.

Additional Minimum Requirements: Applications by a parent with care

In addition to the above, applications by the parent with care must include sufficient information for the CMG to identify the non-resident parent.

This means that as a minimum requirement you will need a forename and surname. However, you should also try and obtain other supporting information such as the non-resident parent's date of birth / approximate age / last known address / location etc.

If the parent with care cannot provide you with enough basic information to identify the non-resident parent, the application must be rejected. If you have been able to identify the non-resident parent, but cannot trace a confident address for them, you should still proceed with the application and continue to take appropriate trace action.

NOTE: If you are unable to find a confident address for the non-resident parent using any of our information sources (e.g. CIS, CRA) and the parent with care provides an address that they are confident is the last known address, then you should proceed with the application using this address.

Applications can only be rejected because we cannot identify the non-resident parent, not because we cannot locate them.

If, following the first six month confirm current location review period no confident address for the non-resident parent can be identified then then the case may be closed, and written notification provided to the applicant.

If you are able to locate the non-resident parent, i.e. through Credit Reference Agency but you can't identify them through CIS and therefore find a NINO then the case may need to be processed off-line.

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Decision Making Guidance: Multiple Applications

1991/48 Section 5 of the Child Support Act 1991

1991/2628 Article 8 of the Child Support (Northern Ireland) Order 1991

2012/2677 Regulation 10 of the Child Support Maintenance Calculation Regulations 2012

2012/247/10 Regulation 10 of the Child Support Maintenance Calculation (Northern Ireland) Regulations 2012

1989/41 Sections 2-6 of the Children Act 1989

1995/2702 Articles 5-7 and 159 - 161 of the Children (Northern Ireland) Order 1995

When does this guidance apply

The following guidance applies where more than one application is received for the same qualifying child **before** the Maintenance Calculation has been completed. If the calculation has been completed, you would continue with the existing case and reject the new application **unless** the new application demonstrated that the previous applicant was no longer the parent with care of the qualifying child/ren. For example: a non-resident parent might submit an application on the basis that a qualifying child had moved to live with them.

Remember: although an application made after the Maintenance Calculation has been completed will normally be rejected, you can use any information / evidence submitted with it to revise / supersede the existing application if appropriate.

Multiple Applications: the General Rule

If more than one person applies for maintenance for the same qualifying child/ren, and before the Maintenance Calculation has been completed, you must decide which application should proceed.

In most cases, the following rules will apply:

- an application by a parent with care or a non-resident parent will take priority over an application made by a Child in Scotland;
- in all other cases, the earlier application will take priority over the one made later.

Examples

Example 1

A child in Scotland submits an application for maintenance on 3 June. The parent with care submits a subsequent application on 5 June. Although the child in Scotland's application was submitted earlier, the parent with care's application takes priority and will be taken forward. The child in Scotland's application will be rejected.

Example 2

A parent with care makes an application for maintenance on 5 July. The non-resident parent makes a subsequent application on 6 July. The parent with care's application

was received first and will be taken forward. The non-resident parent's application will be rejected.

Exception

More than one parent / person with care applies for maintenance

If more than one parent / person with care applies for maintenance in respect of the same qualifying child, you would firstly need to consider whether both / all the applicants have parental responsibility (Parental Rights in Scotland) for the qualifying child/ren.

In these circumstances, you would only consider processing the application(s) made by individuals who can demonstrate that they have parental responsibility / rights. If only one of the applicants can demonstrate this, their application would proceed and the other application(s) would proceed.

If more than one of the applicants has parental responsibility / rights, the general rule will apply and the earliest application will take priority.

Demonstrating Parental Responsibility

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

- a valid Parental Responsibility agreement; or
- a court order stipulating parental responsibility; or
- a document showing the applicant is registered under the applicable Births and Deaths legislation as the child's parent;
- In cases where a person is appointed as the child's guardian, a valid will or court order.

Birth and Marriage Certificates

- the child's birth certificate will be sufficient evidence to confirm that the mother has parental responsibility;
- parents who were married to each other or in a civil partnership at the time the child was born are automatically considered to have parental responsibility;
- if an unmarried father's name appears on the birth certificate this will also be sufficient evidence of parental responsibility for births registered in England and Wales on or after 1 December 2003 or in Scotland on or after 4 May 2006;

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

NOTE: the above guidance solely applies in multiple application cases. Where only one application has been made, it is not necessary for an applicant to demonstrate that they have parental responsibility / rights.

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Decision Making Guidance: Jurisdiction / Habitual Residence

1991/48 Section 44 of the Child Support Act, 1991

1991/2628 Article 41 and 42(2A) of the Child Support (Northern Ireland) Order 1991

1992/2645 Regulation 7A of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992

Regulation 7A of the Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992

Habitual Residence

The term ‘habitual residence’ is not defined in child support legislation and so should be interpreted in accordance with existing case law, which generally conveys that habitual residence is a regular physical presence for a settled purpose which lasts for an appreciable period of time. Account should be taken of a person's intention to follow a settled way of life in a particular place. A person does not have to be present in the UK all the time to be habitually resident. They may be habitually resident in more than one country, or in none.

There are no right or wrong decisions on habitual residence. It is possible for different caseworkers to attribute different significance to an individual factor and, even when all the factors are considered as a whole, the result will often depend on the individual caseworker’s impression, with the result that different caseworkers may quite properly come to a different conclusion on the same facts.

And if any party is unhappy with a habitual residence decision, they have the legal right to ask us to look at our decision again and to appeal against it.

Section 44(1) of the Child Support Act 1991 covers the CMG’s jurisdiction and provides that:

“44.-(1) The Secretary of State shall have jurisdiction to make a maintenance calculation with respect to a person who is—

(a) a person with care;

(b) a non-resident parent; or

(c) a qualifying child, only if that person is habitually resident in the United Kingdom, except in the case of a non-resident parent
who falls within subsection (2A).”

NOTE: the provision in section 44(2A) DOES NOT extend to parents with care and/or qualifying child/ren.

What is the UK?

The UK means Great Britain (GB – England, Scotland and Wales, including islands near to the mainland such as Orkney, Shetland, the Hebrides, the Isles of Scilly, the Isle of Wight and Lundy) and Northern Ireland including UK territorial waters next to GB and Northern Ireland.

The UK does not include the following:

1. Isle of Man.
2. Channel Islands.
3. Gibraltar.
4. British ships on the high seas other than Royal Navy vessels.
5. British owned aircraft flying over the high seas or another State.
6. British embassies or other diplomatic buildings abroad.
7. British military bases abroad (but see “parents with care living overseas with member of the Armed Forces … below).

The territories at 1, 2 and 3 are separate Crown dependencies. Although Gibraltar is treated as part of the UK for some EU purposes, it is not part of the UK for child support purposes.

Factors which may be taken into account when deciding on habitual residence may include:

- the length and continuity of residence in the UK;
- the length and purpose of any absence from the UK;
- their reasons for leaving the UK;

- the person's future intentions;
- the nature of the person's work;
- where the person's 'centre of interest' lies; and
- whether the person has a substantial connection with a place.

The caseworker will need to make a decision on habitual residence based on the information available to them and what they are able to obtain. Deciding whether a person is habitually resident in the UK is a decision that a caseworker must make having considered all the facts available to them. It's probably worth reiterating that there is no right or wrong decision on habitual residence even if a different caseworker or a tribunal would take a different view, what is important is that all the relevant facts are considered. A Commissioner's decision (CCS/1307/01) highlighted "that there is a margin of judgement in which different tribunals may legitimately analyse the same facts differently". Also, one adjudicating authority cannot change the decision of a person of the same level of authority unless the facts have been clearly interpreted incorrectly or new facts have come to light which were not previously available.

Points for consideration

The caseworker may need to make a decision about whether habitual residence has been lost. In a Commissioner's decision (R(CS)(5/96)), the Commissioner stated that "In determining whether a person has ceased to be habitually resident one must consider the circs and determine whether it can be inferred that there is no longer the necessary intention to regard the UK as a home (there can be more than one country regarded as a home)."

The Commissioner stated that "The important factors were the nature and degree of his past and continuing connection with the UK and his intentions as to the future. It was not enough merely to look at the length and continuity of his actual residence abroad." He goes on to state "Account must be taken of the length and continuity of the residence before the person moved, the length and purpose of his absence, the nature of the occupation in the country to which he has moved, and the intention of the person as it appears from all the circumstances."

In a more recent Commissioner's decision (CSCS/06/06), the Commissioner stated:

"While one cannot give general guidance because so much depends on the circs of each case … there must at minimum, in my view, be evidence that he has "burned his boats" with respect to continuing residence in this country; where, utilizing as analogous in reverse, the factors suggested by Lord Slynn in Nessa v CAO … the person leaving takes all his possessions, does everything necessary to establish residence in the new country before going there, seeks to take a family, already has "durable ties" to the new country of residence and severs ties with his former home,

some or all of this may suggest he has ceased to be habitually resident in the latter country. Someone who goes abroad to take up a job without these sorts of indicators, however, would not, in general, lose their habitual residence immediately".

In order to be habitually resident, a person needs to have a regular physical presence in the UK for a settled purpose which lasts for some time. The fact that a person may own or rent a property in the UK or have a bank account in the UK or be getting a UK occupational pension or a UK state benefit, pension or allowance whilst abroad would not by itself confirm a regular physical presence in the country so would not mean the person is habitually resident here. It is important to look at each case on its merits because it is the overall picture which is important. The caseworker would need to consider the person's intentions in the case and their reasons for being abroad. Consideration should be given to how often the person returns to the UK and the reasons for those returns. The more often they come back to the UK, the more likely it is that the centre of interest is here and that habitual residence continues.

Although a person's original intention is most important, the caseworker can take account of unforeseen changes of circumstances. If a person states that they intend to live and work abroad permanently the caseworker should normally accept this. A person who says they intend to go abroad temporarily, but then decides to stay away, is also likely to stop being habitually resident in the UK, but the change may be from a later date.

The caseworker should ignore temporary absences when considering habitual residence if the person concerned intends to return. Occasional presence should not be regarded as habitual.

Taking all the factors into account at the time the caseworker is ready to make their decision, the caseworker may decide that the person's intention is to sever all ties with the UK; if this is their decision then it may be reasonable to decide that the person has ceased to be habitually resident in the UK. The caseworker should fully document the reasons for their decision.

Temporary absence

A caseworker can consider temporary absence when considering habitual residence if the person concerned intends to return. Occasional presence should not be regarded as habitual. To decide whether an absence is temporary the caseworker should look at the following:

1. the length of the absence
2. if and when the absence is likely to end;
3. the purpose of the absence;

4. the intention to return.

We should not normally accept an absence of more than 12 months as temporary unless:

1. there are special circumstances, such as an accident which delays the person's return;

2. there is a reasonable prospect of the absence ending.

An absence is not necessarily temporary because it has not lasted 12 months. The caseworker may decide from the start that an absence is not temporary if the person intends to be away indefinitely or for a set period which is longer than 12 months. The person's reason for going abroad should help the caseworker to decide whether the absence is temporary. The caseworker should consider whether the person intends to return to the UK.

A temporary absence will stop being temporary if the person changes their mind and decides to stay outside the UK permanently, or other circumstances make it uncertain if or when they will come back. In line with the general principles of decision-making, a caseworker has to make a decision on the facts available and the evidence supplied at the time they are ready to make their decision, including what actually happened (if known) as well as the person's intentions. Once the caseworker has decided that an absence is not temporary, this decision will not normally be affected by any later plans the person makes for a return to the UK. An absence which has turned out to be not permanent is not temporary for child support purposes.

Parents With Care living overseas with members of HM's Armed Forces, Diplomatic Service and Overseas Civil Service

If a parent with care applies for child support maintenance and they are living overseas with their partner who is a member of the Armed Forces, the Diplomatic Service or the Overseas Civil Service, the normal habitual residence rules will apply to the applicant. It is likely in such circumstances that the partner, as a member of the Armed Forces, Diplomatic Service or the Overseas Civil Service, is habitually resident in the UK and the location of the family's main home should be considered. In addition, whether the parent with care receives child benefit for the qualifying child(ren) and their future intention as to residence should be considered.

It is essential to remember that the CMG may not always have jurisdiction to deal with an application for child support maintenance made by a parent with care living abroad with their partner who is a member of the Armed Forces, the Diplomatic Service or the Overseas Civil Service.

Deciding on habitual residence

If the caseworker determines that all parties to a maintenance calculation (the PWC, the NRP and the QC(s)) are habitually resident in the UK:

- we can proceed with an application (new case); or

an existing case should remain open and any liability ongoing.But if the caseworker decides that a party to a maintenance calculation is not habitually resident in the UK;

- we cannot proceed with an application, or
- an existing case should close

This is because if we do not have jurisdiction we do not have the legal authority to deal with a case.

There are no definitive answers, but the final decision rests with the caseworker and any decision should be based on the facts available and the evidence supplied at the time they are ready to make their decision; the decision must be fully documented

Section 44(2A) of the Act – Non-resident Parent's employment relationship with the UK falls into a specified category

If after considering a non-resident parent's circumstances, the caseworker decides that the non-resident parent is not habitually resident in the UK, the caseworker may then need to make a decision as to whether the CMG has jurisdiction in accordance with 1991/48 section 44(2A) of the Act. This subsection operates effectively to deem a non-resident parent habitually resident in the UK if the person's employment relationship with the UK falls into one of the specified categories. Section 44(2A) extends the CMG's jurisdiction to non-resident parents abroad who are employed:

- in the civil service;
- members of HM Forces;
- by a local authority or the NHS (including Trusts); or
- "by a company of a prescribed description registered under the Companies Act 2006". Regulation 7A(1) of the Child Support (Maintenance Arrangement and Jurisdiction) Regulations 1992 (made under the authority of section 44(2A)(c)) defines such companies as "companies which employ employees to work outside the United Kingdom but make calculations and payment arrangements in relation to the earnings of those employees in the United Kingdom so that a deduction from earnings order may be made.

Reciprocal Enforcement of Maintenance Orders (REMO)

If a non-resident parent is found NOT to be within our jurisdiction, the UK has arrangements with more than 100 countries and territories that allow a person living in one jurisdiction to claim maintenance from an ex-partner living in the other (a list of

those countries and territories is available at: http://www.justice.gov.uk/guidance/protecting-the-vulnerable/official-solicitor/).

So, depending upon which country a non-resident parent is in, you could direct the parent with care to contact their local magistrates' court or family proceedings court about applying for maintenance from an ex-partner living abroad. Addresses and telephone numbers for the courts are listed in the phone book. Reciprocal Enforcement of Maintenance Orders – or REMO – is the name used in the UK for international claims for family maintenance, the process by which a person may claim financial support from an ex-partner living in a different country. In the UK, REMO claims are handled by the courts.

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