

Earned Income Variations

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Earned Income: Decision Making Guidance

What is an Earned Income variation?

2012/2677 Regulation 70 of the Child Support Maintenance Calculation Regulations 2012

An earned income variation may apply where the non-resident parent is:

- in receipt of certain benefits, pensions or allowances that result in a flat rate liability, or
- liable to pay a nil rate because they are a child, a prisoner, a person receiving an allowance in respect of work-based training for young people (or Skillseekers training in Scotland) or a person resident in a care home or independent hospital etc., or
- has income that would otherwise have been taken into account in the maintenance calculation as gross weekly income (earned income) and
- that income is equal to or more than £100.

Earned Income for a Variation is calculated in the same way as Earned Income in the main calculation (i.e. taking the historic figure unless current income is 25% different) and includes:

- employment income (including benefits in kind);
- trading income (for self-employed);

- pension income;
- Social Security income (taxable benefits only): Incapacity Benefit, Contributory Employment and Support Allowance, Jobseekers Allowance, Income Support.

Universal credit- note, where a non-resident parent or their partner is receiving 'Universal Credit with NO earnings', the non-resident parent will be on a flat rate of maintenance where variations cannot be applied, similarly to other income-related benefits.

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[Earned Income: Decision Making Guidance: Application / Permitted Grounds](#)

Applicants must state a permitted ground or provide enough information for you to identify the permitted ground.

Earned Income: Permitted Ground

Some applicants may be aware of the variations scheme, and specifically ask for a variation, stating the grounds on which they wish to apply. In other cases a parent may call you to query that the maintenance calculation does not reflect the non-resident parent's actual income.

Example

'It isn't fair that they only have to pay this amount, I know they're receiving benefits, but they're still working'.

In these circumstances, you should try to establish whether the non-resident parent's income would fall within the grounds for an earned income variation. If so, you should advise the applicant of the variations scheme and explain the process to them.

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[Earned Income: Decision Making Guidance: Preliminary Consideration](#)

Once an application has been accepted, it must be given preliminary consideration.

Preliminary consideration is an initial sifting process, which allows applications with no prospect of success to be filtered out at the earliest opportunity. This is not intended to be a significant barrier to prevent parents applying.

Fact based reasons for rejection

An application should be rejected immediately if any of the following apply:

- the non-resident parent's gross weekly income is the capped amount (£3000 per week);
- the amounts claimed do not meet the threshold;
- a default maintenance decision (DMD) is in force;
- the non-resident parent is liable to pay the flat rate or nil rate because they or their partner are in receipt of certain benefits including the situation where Universal Credit with no earned income is in receipt.

Discretionary reasons for rejection: general

Applications may also be rejected if you consider that the applicant has:

- not stated a ground or provided enough information for you to identify a ground;
- stated a ground, but has not provided any facts to support that ground or justify further enquiries;
- stated a ground and provided facts, but those facts do not fit that ground or any alternative ground.

Earned Income: Discretionary Reasons for Rejection

For the ground to be identified, the parent with care must confirm:

- the type of earned income the non-resident parent receives (e.g. is it income from employment or from a pension?);
- if the earned income is obtained from employment, the non-resident parent's occupation / employer details (if known);
- how they know about the non-resident parent's earned income. This information must be provided, so you can be satisfied that the application is not spurious / speculative;
- the period the application relates to: e.g. past, present or future. This will be helpful if caseworkers decide to take an application forward where there is no HMRC data.

However, remember that earned income applications are based on the non-resident parent's income. A parent with care therefore cannot be expected to have all the evidence needed to support their application. For parent with care applications, Section 18 of the Child Maintenance and Other Payments Act 2008 places a duty on the Commission to consider any further information or evidence that is available to it, and to take steps to obtain this information, if it is satisfied that it might affect its decision on whether to agree to a variation.

Example of a satisfactory statement:

Although my ex-partner is receiving a war disablement pension, I know he is working as a full-time teacher.

Example of an unsatisfactory statement:

I think my ex-partner has other money coming in but I don't know exactly what type of income it is'.

In this situation, there are insufficient facts stated to assure you that this is not a spurious or speculative claim. You should explain this to the parent with care and clarify what type of information is needed.

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[Earned Income: Decision Making Guidance: Gathering Information and Evidence](#)

If the application is not rejected at preliminary consideration, you need to obtain information and evidence in order to progress.

Remember: you need to use the information sources available to you to try and obtain the details needed for an earned income variation

The first step for an Earned Income Variation will be to check whether there is a positive Historic Income figure recorded on SIEBEL. Depending on the outcome, you may need to ask the non-resident parent for evidence of their Current Income. If so, you should do this as part of the Representations process.

Positive figure for the latest available tax year

If the income figure obtained exceeds £100 per week or more, you should proceed with the application. The next action depends on who made the application.

Parent with care applied: you should proceed to the Representations stage.

Non-resident parent applied: you should inform them of the figure obtained and ask if they agree with it. If the non-resident parent agrees with the Historic Income figure you can proceed to the Representations stage.

If the non-resident parent does not agree with the Historic Income figure you should:

- ask them to submit evidence of their Current Income;
- refer to the guidance on evidence of Current Income for advice about the information / evidence you will need;
- non-resident parents should be allowed 14 days to submit their evidence, but additional time can be allowed if you consider that it is appropriate.
- When the information / evidence has been received, you can proceed to the Representations stage.
- If the non-resident parent fails to submit evidence of their Current Income within the time allowed, you should proceed with the application on the basis of the information held, and proceed to the Representations stage.

No HMRC data or figure is less than £100 per week

If the response from HMRC states that:

- the earned income figure is nil; or
- the earned income figure is below £100 (the threshold for an Earned Income Variation); or
- no earned income details are held / there is no match for the non-resident parent.

The next action will depend on who made the application.

Non-resident parent applied

- Inform the non-resident parent of the information provided by HMRC and ask them to provide evidence of their Current Earned Income. (refer to the guidance on evidence of Current Income for advice about the information / evidence you will need).
- Non-resident parents should be allowed 14 days to submit their evidence, but additional time can be allowed if you consider that it is appropriate.
- When the information has been obtained you should check whether the income threshold is satisfied. If so, you can proceed to the Representations stage. If not, you should reject the application.

Parent with care applied

You need to consider whether it is appropriate to obtain evidence of Current Earned Income from the non-resident parent. If so, a request can be made as part of the Representations process under the Child Support Information Regulations 2008 and

the normal evidence requirements will apply. Refer to the section on Current Income Evidence for further advice.

However, before taking this action you must be satisfied that the non-resident parent has earnings of at least £100 per week from either employment/self employment or from a pension. Remember you can ask the parent with care to provide further information if this is needed to take the application forward.

2012/2677 Regulation 58 of the Child Support Maintenance Calculation Regulations 2012

Example

If the parent with care claims that the non-resident parent is self-employed then you would need to know if the non-resident parent has a business name or at least details of their trade and / or any advertisement details. Likewise, if the parent with care is claiming for pension income then you would need to know who the pension provider is.

If you are not satisfied that the facts justify further enquiries, you can reject the application.

Otherwise the non-resident parent should be asked to provide evidence of their Current Earned Income as part of the Representations process.

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[Earned Income: Decision Making Guidance: Representations](#)

This part of the process gives the other parties notice of the application and the opportunity to comment on it.

Representations do not need to be invited if:

- it is clear from information provided by the applicant / other available sources that the variation will not be successful; or
- HMRC have provided a nil income figure; a figure below the financial threshold; or 'no income details held' and you are not satisfied that it is appropriate to take the application forward on the basis of establishing current income (see below). Regulation 59(2)(b) of the Child Support Maintenance Calculation Regulations 2012

It will not be appropriate to proceed on the basis of establishing current income if:

- HMRC do not hold any income data for the non-resident parent; and

- the parent with care is unable to provide basic, factual information about the non-resident parent's circumstances (e.g. their employer / name of business)

In these circumstances, you do not have sufficient factual information to justify seeking comments from the non-resident parent.

If you need to invite Representations, the process required will depend on who has made the application. The sections below provide further advice for each type of application.

Representations: Application made by parent with care

If the application has been made by the parent with care, the non-resident parent must be:

- notified that an application has been made; and
- informed of the grounds that the application has been made on, including details of the figure / information obtained from HMRC and any information / evidence provided by the parent with care; and
- asked to submit any information / evidence that is needed for a decision to be made (refer to the section on Gathering Information and Evidence for details of the information you may need).

The non-resident parent should be given 14 days to respond. Additional time can be allowed if you are satisfied it is reasonable in the circumstances of the case.

The next action will depend on the non-resident parent's response. Refer to the drop downs below for further advice.

Non-resident parent agrees the application: positive HMRC figure

If the non-resident parent agrees the figure supplied by HMRC, then you do not need to obtain any further information. In these circumstances you should notify the parent with care of the income figure obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

Non-resident parent agrees the application: no HMRC figure / less than £100

If the response from HMRC stated that:

- the earned income figure is nil; or
- the earned income figure is below £100 (the threshold for an Earned Income Variation); or
- no earned income details are held / there is no match for the non-resident parent

but the non-resident parent agrees that they have:

- Current Earned Income of £100 or more; and
- provides evidence confirming what this is

you should notify the parent with care of the income figure obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

Non-resident parent fails to respond : positive HMRC figure

If the non-resident parent fails to respond, but you have obtained a positive income figure from HMRC, you should:

- notify the parent with care of the income figure obtained from HMRC. Refer to the section on notifying the applicant about Representations for further advice and then;
- decide the application on the basis of this figure and any information / evidence provided by the parent with care.

Non-resident parent fails to respond : no HMRC figure / less than £100

If the response from HMRC stated that:

- the earned income figure is nil; or
- the earned income figure is below £100 (the threshold for an Earned Income Variation); or
- no earned income details are held / there is no match for the non-resident parent;

and the non-resident parent fails to respond, you should refuse the variation (as the onus is on the applicant to provide sufficient information to enable an application to be progressed).

If the non-resident parent contests the application on the basis that the figure obtained from HMRC does not reflect their current Earned Income, they will be required to provide evidence confirming this.

The evidence required will depend on whether:

- the non-resident parent states their current Earned Income is a different amount; or
- the non-resident parent states they no longer have Earned Income e.g. because they are no longer working.

Refer to the guidance on Current Income evidence for further advice about the evidence you would need in each of these situations.

If the non-resident parent does not provide the necessary evidence within 14 days, you should proceed on the basis of the information held.

If the non-resident parent provides the necessary evidence, notify the parent with care of the income figure / information obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

REMEMBER: the Tolerance Rule applies to Earned Income Variations. The non-resident parent must show that their Current Earned Income is at least 25% different to the income figure provided by HMRC before it can be considered.

Non-resident parent contests the application: positive HMRC figure

If the non-resident parent contests the application on the basis that the figure obtained from HMRC does not reflect their current Earned Income, they will be required to provide evidence confirming this.

The evidence required will depend on whether:

- the non-resident parent states their current Earned Income is a different amount; or
- the non-resident parent states they no longer have Earned Income e.g. because they are no longer working.

Refer to the guidance on Current Income evidence for further advice about the evidence you would need in each of these situations.

If the non-resident parent does not provide the necessary evidence within 14 days, you should proceed on the basis of the information held.

If the non-resident parent provides the necessary evidence, notify the parent with care of the income figure / information obtained before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

REMEMBER: the Tolerance Rule applies to Earned Income Variations. The non-resident parent must show that their Current Earned Income is at least 25% different to the income figure provided by HMRC before it can be considered.

Non-resident parent contests: no HMRC figure / less than £100

If the response from HMRC stated that:

- the earned income figure is nil; or
- the earned income figure is below £100 (the threshold for an Earned Income Variation); or

- no earned income details are held / there is no match for the non-resident parent

And the non-resident parent responds to your request for information stating that they do not have any Current Earned Income, you will need to notify the parent with care of this before deciding the Variation. Refer to the section on notifying the applicant about Representations for further advice.

When you are deciding whether to accept the non-resident parent's statement that they do not have any Earned Income, you should take into account all the information / evidence provided by both parties.

If you are not satisfied that the non-resident parent does not have any Current Earned Income, you should consider a referral to Criminal Compliance.

Notifying the applicant about representations (parent with care applied)

Where the application has been made by the parent with care, they should always be notified about the income figure identified and any representations made by the non-resident parent before you make a decision. They should be given fourteen days to respond. You may allow additional time if you are satisfied it is reasonable in the circumstances of the case. The next action will depend on the parent with care's response.

NOTE: any information from the non-resident parent that falls within the excluded categories should not be disclosed to the parent with care.

Parent with care: Response to Representations

If the parent with care agrees with the facts provided and does not want to make further comments, you can proceed with the application and decide whether to allow the variation.

If they disagree with the facts provided then they should provide further supporting information / evidence.

On receipt of the parent with care's response, you may need to request further information / evidence from the non-resident parent. This will only be necessary if you are unable to make a decision on the basis of the information / evidence provided.

Excluded information

Regulation 59(5) of the Child Support Maintenance Calculation Regulations 2012

1. Medical evidence / advice that has not been disclosed to the applicant or the other party and that you consider could be harmful to the health of the applicant or the other party if disclosed.

2. The address of the other party or qualifying child and any other information that could lead to that person / child being located

Representations: Application made by the non-resident parent

If the application has been made by the non-resident parent, the parent with care must be:

- notified that an application has been made; and
- informed of the grounds that the application has been made on, including any information / obtained from HMRC or provided by the non-resident parent (unless it falls within the excluded information category); and
- asked to submit any relevant information / evidence that they would like to be considered.

REMEMBER: if there is more than one parent / person with care then you should invite representations from all of them.

The parent with care should be given 14 days to respond. You may allow additional time if you are satisfied it is reasonable in the circumstances. The next action will depend on the parent with care's response.

Parent with care agrees the application

If the parent with care agrees with the facts provided and does not want to make further comments, you can proceed with the application and decide whether to allow the variation.

Parent with care contests the application

If the parent with care contests the application then they should provide further supporting information / evidence to support their case.

On receipt of the parent with care's representations, you may need to request further information / evidence from the non-resident parent. This will only be necessary if you are unable to make a decision on the basis of the information / evidence provided.

Parent with care fails to respond

If the parent with care fails to respond then you should proceed on the basis of the information held and decide whether to allow the variation.

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[Earned Income: Decision Making Guidance: Deciding whether to allow the variation](#)

When you are deciding whether to allow an earned income variation, you will need to consider:

- **Is the financial threshold satisfied?**

An application for earned income can only be agreed if the income is equal to or exceeds £100 per week.

If the financial threshold is satisfied, the whole amount of the income can be considered. You do not have to deduct an amount equivalent to the financial threshold.

- Is it [just and equitable](#) to allow the variation

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[Earned Income: Decision Making Guidance: Effect of a variation](#)

There is no ground specific guidance for the effect of a variation. Please refer to the [overview](#).

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[Earned Income: Decision Making Guidance: Changes to an Earned Income variation](#)

If an Earned Income Variation is already in place, there are 2 types of changes that can affect it:

- the earned income amount increases / decreases; or
- the earned income ceases.

The following guidance provides advice on the action you should take if these types of changes are reported.

NOTE: if a parent reports within 30 days from the date of the decision that a variation decision is incorrect, then this may be treated as an application for a Revision. Refer to the guidance on Revisions for further advice.

[Earned Income Amount Increases / Decreases](#)

Notification of changes to Earned Income amounts will normally be received from:

- the non-resident parent; or
- the parent with care.

The action you need to take will depend on who has reported the change. Use the drop downs below for further information.

Parent with care reports change

Parents with care are unlikely to have full evidence of changes to a non-resident parent's income. However, you should not ask the non-resident parent for evidence of their income unless the parent with care provides a valid reason to support their case. It would be unfair to non-resident parents and impose an undue administrative burden on the CMG if we investigated income details solely on the basis of speculative assertions.

If a parent with care reports that the non-resident parent's income has changed, they should be:

- Reminded that we will only consider a change in income if there is at least a 25% difference to the existing figure and it is expected to be a long term change; and
- Asked to explain why they believe the non-resident parent's income has changed.

Example of a Valid Reason:

- My ex partner has been promoted to director and I believe their income has increased by at least 25%.

Example of an Invalid Reason:

- I think my ex partner's income has increased because my friend told me.

If the parent with care cannot provide a valid reason, then you should refuse to accept the request for supersession and notify them of this outcome.

If they can provide a valid reason, then you should contact the non-resident parent for confirmation.

Use the drop downs below for further advice on the next appropriate action.

Non-resident parent agrees the reported change has occurred

If the non-resident parent agrees to the change then you should ask them to provide evidence of their current earned income. Refer to the guidance on Current Income: evidence for further advice.

When you have received the evidence, you should consider if the new income figure is at least 25% different to the existing income figure in place.

If the new amount is not at least 25% different then you should reject the application for supersession. A notification confirming the refusal to supersede will be issued to all the relevant parties.

If the new amount is at least 25% different, then you will need to decide whether the new effect on the liability is Just and Equitable. Refer to the guidance on Just and Equitable decisions for further advice. You do not need to invite the parent with care to make representations if you are satisfied with the evidence provided.

If you decide it is Just and Equitable, you should complete a supersession to reflect this change and update the Maintenance Calculation.

The effective date of this decision depends on whether the non-resident parent was required to report the change (e.g. their existing calculation was based on current income). In these circumstances, the effective date will be the date the change occurred. Regulation 18(4) of the Child Support Maintenance Calculation Regulations 2012.

If the existing calculation was based on historic income and they were not required to report the change then the effective date will be the date the change was reported. Regulation 18(6)(a) of the Child Support Maintenance Calculation Regulations 2012.

If you decide it is not Just and Equitable, you may reject the supersession or allow the supersession but for a lesser variation amount. A notification confirming the refusal to supersede will be issued to all relevant parties.

Non-resident parent does not agree the reported change has occurred

If the non-resident parent does not agree that a change has occurred, they must provide evidence to confirm their current earned income. Refer to the guidance on Current Income: Evidence for further advice.

When you have received the non-resident parent's evidence, you need to decide whether a change has occurred.

If not, you should reject the supersession. A notification confirming the refusal to supersede will be issued to all the relevant parties.

If you decide there has been a change, you need to consider whether the new income amount is at least 25% different to the existing income figure in place.

If it isn't, then you should reject the application for supersession. A notification confirming the refusal to supersede will be issued to all relevant parties.

If it is, then you will need to decide whether the new effect on the liability is Just and equitable. Refer to the guidance on Just and equitable decisions for further advice. You do not need to invite the parent with care to make Representations if you are satisfied with the evidence provided.

If you decide it is Just and Equitable, you should complete a supersession to reflect this change and update the Maintenance Calculation.

The effective date of this decision depends on whether the non-resident parent was required to report the change. (e.g. their existing calculation was based on current income). In these circumstances, the effective date will be the date the change occurred. Regulation 18(4) of the Child Support Maintenance Calculation Regulations 2012.

If the existing calculation was based on historic income and they were not required to report the change, then the effective date will be the date the change was reported Regulation 18(6)(a) of the Child Support Maintenance Calculation Regulations 2012.

If you decide it is not Just and Equitable, you may reject the supersession or allow the supersession but for a lesser variation amount. A notification confirming the outcome will be issued to all relevant parties.

Non-resident parent fails to respond

Refer to the guidance on Current Income if the non-resident parent fails to respond to a request for income information.

Non-resident parent reports change

If a non-resident parent reports a change in their income, you should:

- remind them that we will only consider a change in income if there is at least a 25% change and if it is expected to be a long term change; and
- ask them to provide sufficient evidence.

Refer to the guidance on evidence of Current Income for further advice.

When you have received the evidence, you should consider if the new income figure is at least 25% different to the existing income figure in place.

If the new amount is not at least 25% different, then you should reject the application for supersession. A notification confirming the refusal to supersede will be issued to all relevant parties.

If the new amount is at least 25% different, then you will need to decide if the new effect on the liability is Just and Equitable. Refer to the guidance on Just and Equitable decisions for further advice. You do not need to invite the parent with care to make representations if you are satisfied with the evidence provided.

If you decide it is just and equitable, you should complete a supersession and update the Maintenance Calculation.

The effective date of this decision depends on whether the non-resident parent was required to report the change. (e.g. their existing calculation was based on current income). In these circumstances, the effective date will be the date the change occurred. Regulation 18(4) of the Child Support Maintenance Calculation Regulations 2012.

If the existing calculation was based on historic income and they were not required to report the change, then the effective date will be the date the change was reported. Regulation 18(6)(a) of the Child Support Maintenance Calculation Regulations 2012.

If you decide it is not Just and equitable, you may reject the supersession or allow the supersession but for a lesser variation amount. A notification confirming the outcome will be issued to all the relevant parties.

Variation ceases or to be reinstated

Earned Income Ceases

If the non-resident parent reports that they no longer have earned income then you should determine how they are supporting themselves. Refer to the Current Income Guidance for further advice.

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