

Maintenance for children

Parents who are separated each have a legal duty to maintain their child, which means that a child remains the financial responsibility of both parents until he or she reaches the age of 16 or, if he or she remains in full-time secondary education, the age of 19. Beyond this, parents may be required, at the discretion of the court, to continue to maintain older children, if they remain in formal education or are receiving vocational training, or in some other special circumstances.

The financial responsibility of parents for their children exists whether the parents are married or unmarried, and whether the child was planned or not. It is not possible for one parent to make a one-off payment to end any future responsibility for their child. Whatever a parent has paid in the past, and no matter what has been agreed between the parents, a parent may always be called upon to support their child.

The Child Support Agency has now taken over almost all responsibility for child maintenance.

The child support scheme applies only if all those concerned, the child, the resident parent and the non-resident parent, are habitually resident in the UK (or, in the case of a non-resident parent, living abroad as a member of the armed forces, on government services, or employed by a UK registered company). A child is the natural child of a parent (step-children are not included) under the age of 16, or under the age of 19 in certain circumstances, including continuing in full-time, but not advanced, education.

The basic formula

Under the new scheme, for one child the non-resident parent will usually pay 15% of his or her income, net of income tax, national insurance and pension contributions, for two children, 20%, and for three or more children, 25%. There is a limit on the total amount payable, because the percentage formula is capped at £2,000 per week.

Formula reductions

This standard formula amount may be reduced in certain circumstances. If the non-resident parent has a second family, the children of that family, including step-children, will be taken into account, and he or she will pay less. People with incomes of less than £200 per week will also pay less. In those cases where parents share the care of the child, and the child stays with the non-resident parent for 52 nights a year or more, again, the amount will be reduced accordingly.

Court orders and Child Support Agency Assessments

Parents who are getting divorced can either agree a figure for each child and have that figure included in a court order or apply for an assessment to the Child Support Agency. Any Court order made after 3 March 2003 is only binding on the parents for one year after which time either parent can make an application to the CSA. The Order remains binding until a CSA assessment has been completed.

Court orders – child maintenance

Only in a limited range of cases does the court retain any jurisdiction to order a parent to provide a child with maintenance. In such cases, the court is to exercise its discretion as to an appropriate sum, looking at all the circumstances of the case, and paying particular attention to the financial needs of the child, any financial resources available to the child, any disability of the child, the past education of the child, the financial resources and needs of the parents, the family's standard of living, and any parental disabilities.

Step-children

The courts may make maintenance or other orders for a step-child who is a 'child of the family', that is a child whom the step-parent has treated as their own child.

Habitual residence overseas

The courts may make maintenance or other orders if one of the parents, or the child, is habitually resident overseas.

School fees

The courts have retained the power to order a parent to make or to vary payments to meet the expenses of education or training; crucially this means that the court can order a parent to pay private school fees.

Over age children

The courts may order a parent to make payments for children who are over the relevant child support ages. This provision most commonly applies to children over the age of 18 who have moved on to 'advanced education', but covers any child who is not eligible for child support because of their age but who is continuing with formal education or training. The court may also order payments to over age children if there are 'special circumstances', for example if the child has special needs of some kind, including disability or illness. The court will not, however, require a parent to continue to make payments to an adult child without special needs, whose education is complete, no matter how wealthy the parent might be.

Non-resident parent earning more than the maximum

The courts may make a 'top up' order, requiring a parent to make additional maintenance payments for the child's benefit, if the non-resident parent is earning more than the Child Support Agency's maximum, currently £104,000 per year, and the court considers that the parent with care reasonably needs more money in order to maintain the lifestyle which the child has been enjoying.

Disability

The courts have retained the power to make a maintenance order to cover the expenses attributable to a child's disability, and take a broad view when doing so, including costs associated with a larger house, additional help, respite care etc.