En el ámbito de la justicia civil, los procesos y procedimientos pendientes iniciados antes del final del período transitorio proseguirán con arreglo a la legislación de la UE. El Portal de e-Justicia mantendrá la información relativa al Reino Unido, sobre la base de un acuerdo mutuo con este país, hasta el final de 2024.

Family maintenance

Inglaterra y Gales

1 What do the concepts "maintenance" and "maintenance obligation" mean in practical terms? Which persons have to pay a maintenance allowance to another person?

Parents can pay maintenance for their children or any child of the family to the parent or person with care, either through the court or by using the statutory Child Maintenance system (the administrative system set up by law for England and Wales and Scotland). The statutory Child Maintenance system is made up of three organisations, the Child Maintenance Service (CMS), Child Maintenance Options and the Child Support Agency (CSA). To use the Child Maintenance system, the people involved (parents or person with care and children) must be habitually resident in the United Kingdom.

All applications to the statutory scheme have been managed by the CMS, with parents accessing the Service through Child Maintenance Options. The CSA is being closed down and all cases with an ongoing liability have now ended. Parents with arrears only cases are being contacted to ask if they still want the debt collected, where it may be transferred to the CMS.

Parents can pay maintenance to their children under the age of 18. Upon application a "child" over the age of 18 can receive maintenance from the parent for further education, where they are undergoing training for a trade, vocation or profession or where there are special circumstances (Children Act 1989 Schedule 1).

Child maintenance can also be paid by parents who live apart from their children using the CMS. The CMS determines maintenance through an administrative rather than a judicial process – if the child is under 16, or is under 20 in full-time education which is not advance education (at school or an equivalent educational establishment), or is under 20 and living with a parent who has registered for Child Benefit for them. It is paid to the receiving parent. Either parent or the person with care of the child can apply to the CMS. The amount is calculated by the CMS. The weekly payment is made by the paying parent, either directly to the receiving parent (known as Direct Pay) or using the CMS "Collect and Pay" service, for which a fee must be paid (see below).

A divorced spouse can pay maintenance to the other spouse. Maintenance can be paid to either party to the marriage. An ex-civil partner may also have to pay maintenance to the other ex civil partner and to any children of the family.

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

See the answer above. No age limit is specified in the Children Act 1989 Schedule 1.

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

When parents separate in England and Wales, before they can apply to the CMS they are required to contact Child Maintenance Options for advice and information to help them make an effective arrangement about maintenance for their family. This can either be what is called a "family-based arrangement", which is an arrangement between themselves, or an application to the CMS. Parents cannot access the CMS unless they have first spoken to Child Maintenance Options.

If a parent decides they cannot make a family-based arrangement, they must pay a fee to apply to the CMS. The current fee information is available on the Government website. You may not have to pay a fee if, as the applicant, you are under 19 years of age, a resident of Northern Ireland, or have made a declaration of domestic violence which has been reported to an authority recognised by the CMS. Payment of the fee should provide the applicant with services: a CMS calculation of payments based on the paying parent's income, tracing of the paying parent and managing any variations in the liability. The calculation of the maintenance to be paid is based on a percentage of the paying parent's gross income according to the number of children to be paid for and the liability can either increase or decrease if other factors are taken into account such as paying parents additional income or recognising a shared care arrangement. The CMS does not guarantee that any payments will result from their work.

Once a maintenance assessment has been made, and if both parents agree to pay each other directly through the Direct Pay Service then only the application fee is required. Users of the CMS who want the CMS to make the payment using the Collect and Pay service must pay collection fees. For the paying parent this is an additional 20% on top of their usual child maintenance payment. The receiving parent will have 4% deducted from the amount of child maintenance they receive. The collection fees can be avoided by having a family-based arrangement or using Direct Pay.

The paying parent must also pay a fee to the CMS for enforcement actions by the CMS, which are orders made by the court against the paying parent who has not paid the maintenance due.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

For child maintenance, anyone such as a friend, relative or a legal adviser (e.g. a lawyer in England and Wales) can make an application on behalf of a paying or receiving parent with care of a child. They will need to authorise the person making the application to do so, unless they already have authority, for example a power of attorney. In England and Wales an application cannot be made on behalf of a child as children cannot apply for child maintenance in their own right.

A request in England and Wales for reciprocal enforcement of maintenance can be made on behalf of a child or of a divorced spouse or ex civil partner or on behalf of other persons where the relevant international convention or agreement on the reciprocal enforcement of maintenance so provides.

5 If I plan to bring the case to court, how do I know which court has jurisdiction?

For applicants in England and Wales, applications can be made to one of three Maintenance Enforcement Centres, depending on locations, for England (excluding London), London and Wales.

The administrative staff at the court will provide information if a different court needs to be addressed.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

An application for child support maintenance is an administrative process handled by the CMS.

Applicants for the reciprocal enforcement of a maintenance order are not required to have a lawyer to apply to the court for recovery of maintenance under the various international conventions and agreements. The application received from another country will be sent to the Maintenance Enforcement Business Centre for the area in which the respondent resides.

Applicants under the Children Act 1989 Schedule 1 are not required to have a lawyer to apply to the court.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

For recovery of maintenance, legal representation is not usually required and fees are not required in the majority of cases. Where legal representation is required legal help and assistance is available, but is subject to a means and merits test in some cases; the applicant may be required to pay a contribution.

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

For the recovery of maintenance, the court can grant an order for child maintenance, spousal maintenance, or child/spousal maintenance. The court can make an order for periodical payments, a lump sum, settlement payments or secured periodical payments. The court or the CMS can in appropriate cases decide that maintenance is to be backdated. Account will be taken of all the circumstances of the individual case in deciding whether to backdate and in assessing the amounts. Application can be made to the court at any time to vary an order for maintenance.

In some circumstances a pension may be used to provide spousal maintenance. Although parties are free to agree their financial arrangements themselves without the need for a court order, where there is sharing of a pension or the transfer of pension funds a court order is required before the pension provider is able to act.

9 How and to whom will the maintenance be paid?

The people eligible to receive maintenance are set out at question 1 above.

The Maintenance Payments Business Centre (MPBC), which is part of the England and Wales court service, deals with payments to individuals. The Reciprocal Enforcement of Maintenance Orders (REMO) Section does not deal with payments.

The CMS provides a calculation, collection and payment service. If paying parents are late with payments or do not pay, the CMS will intervene to get money flowing and that they pay any child maintenance arrears they owe quickly. The CMS can use various enforcement methods where necessary.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

For the recovery of maintenance, the court can order payment to be made directly to the court; the court can order a particular method of payment; the court can make an attachment of earnings order; the court can make the orders shown below when applied for by the CMS.

For child maintenance using the CMS, if a paying parent does not pay their child maintenance liability, the CMS will take the necessary action to make sure that they pay the child maintenance due. The CMS has a range of powers it can use. These include taking money direct from earnings and bank accounts and taking court action (enforcement action). If necessary in extreme cases, the court may be asked to take away the paying parent's passport, driving licence or even send them to prison.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system

None for the enforcement of maintenance orders.

The CMS must consider the welfare of any child who may be affected by any decisions of the CMS about how quickly it requires arrears to be paid and how much must be paid each time.

12 Is there an organisation or an authority which can help me to recover maintenance?

For child maintenance collected using the child maintenance system, the relevant organisation is the CMS (see above).

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

For child maintenance administered by the CMS, it can only pass on money it receives, where appropriate. It is not able to pay the maintenance, or part of it, itself or in place of the non-resident parent.

The Central Authority for England and Wales (REMO) cannot take responsibility for making payments.

14 If I am in this Member State and the debtor has his/her residence in another country:

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

Reciprocal Enforcement of Maintenance Orders (REMO) is the process by which maintenance orders made by United Kingdom courts on behalf of United Kingdom residents can be registered and enforced by courts or other authorities in other countries against people resident abroad.

This is a two-way arrangement governed by international conventions or agreed schemes, which means that foreign maintenance orders in favour of individuals abroad can likewise be registered and enforced by United Kingdom courts against United Kingdom residents.

How to apply -

A United Kingdom resident who wishes to apply to obtain maintenance from a person overseas should approach:

• the Maintenance Enforcement Business Centre responsible for the area in which they live shown at [insert hyperlink for https:www.gov.uk/child-maintenance-if-one-parent-lives-abroad/ex-partner-lives-abroad]

They may apply for their order to be enforced in the country where the payer resides. Procedures also exist to enable an applicant to ask the authorities of another country to create an order for maintenance on their behalf.

There is no need for the applicant to engage a lawyer. MEBC staff will tell the applicant what form to use and will forward the application to the relevant authority, which for England and Wales is the REMO Unit.

The REMO Unit will send it to the foreign authority for registration and enforcement against the person living there.

Applications from outside the United Kingdom must be sent to the REMO Unit by the foreign authority for the country in which the applicant resides. REMO will forward the application to the MEBC with the jurisdiction to deal with the case.

For child maintenance it is only possible for the CMS to make a maintenance calculation where both parents or the receiving parent and the child are habitually resident in the United Kingdom or the paying parent is working outside the UK as a British civil servant, diplomat, member of the armed forces or seconded health worker or is working outside the UK for an employer which is a registered company with its payroll based in the UK. The income from abroad subject to UK taxation of a person habitually resident in the United Kingdom can be taken into account for any child maintenance calculation.

Under the EU Maintenance Regulation 4/2009, the CMS is also able to apply to other EU countries to recover arrears of maintenance.

14.2 If so, how can that authority or private organisation be contacted?

The contact addresses for each of the MEBCs are:

For individuals living in Greater London:

The Maintenance Enforcement Business Centre – London

Central Family Court

First Avenue House

42-49 High Holborn
London
WC1V 6NP
DX 160010 Kingsway 7
e-mail: MEBC.London@justice.gov.uk

For individuals living in England outside Greater London
The Maintenance Enforcement Business Centre – Bury St Edmunds
Triton House
St Andrews Street North
Bury St Edmunds
Suffolk
IP33 1TR
e-mail: MEBC.BSE@justice.gov.uk

For individuals living in Wales
The Maintenance Enforcement Business Centre – Wales
Wales Maintenance Business Centre
Port Talbot Justice Centre
Harbourside Way
Port Talbot
SA13 1SB
Telephone: 01656 673 833
e-mail: mebc.wales@justice.gov.uk

The REMO Section can be contacted at:
Reciprocal Enforcement of Maintenance Orders (REMO)
Official Solicitor and Public Trustee
Victory House, 30-34 Kingsway
London
WC2B 6EX
Telephone: 020 3681 2757(within the UK)
+44 20 3681 2757 (international)
e-mail: remo@offsol.gsi.gov.uk
REMO Website
The MEBCs and the REMO Unit cannot give legal advice to applicants or others. However, general procedural guidance can be given. The precise nature of reciprocity available between the United Kingdom and other jurisdictions depends on the convention or agreement to which the other country is a party and the MEBCs can provide advice about how the various conventions may apply to a particular case.
New applicants must first apply to Child Maintenance Options before applying to the Child Maintenance Service . Child Maintenance Options can be contacted on telephone number 0800 0835 130 from within the United Kingdom or by visiting their website.
If you have an existing CSA or CMS case, the contact telephone number is on any letter they have sent you.

15 If I am in another country and the debtor is in this Member State:

15.1 Can I address a request directly to such an authority or private organisation in this Member State?
An application can be made through the authority or court which deals with reciprocal enforcement in the foreign jurisdiction where the applicant resides. An application can also be made from another country direct to REMO, to the court or to the MEBC.
For child support maintenance the CMS only has jurisdiction to make a maintenance calculation if the applicant and the child are resident elsewhere in the United Kingdom (that is, Scotland or Northern Ireland).

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?
The contact details for REMO, the MEBCs and the CMS are given above. The assistance provided is described above. The circumstances when the CMS can and cannot accept an application are detailed in earlier answers.

16 Is this Member State bound by the 2007 Hague Protocol?
The United Kingdom is not bound by the 2007 Hague Protocol and therefore it does not apply in England and Wales.

17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?
The law of England and Wales applies to all cases in England and Wales.

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?
For recovery of maintenance, legal representation is not usually required and fees are not required in the majority of cases. Where legal representation is required legal help and assistance is available (Chapter V), but is subject to a means and merits test in some cases; the applicant may be required to pay a contribution. As part of legal help, an assessment can be made to decide whether the nature of the case means full legal aid should be applied for.

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?
The Civil Jurisdiction and Judgments (Maintenance) Regulations 2011 (SI 1484/2011) support the operation of the Maintenance Regulation 4/2009. Regulation 3 and Schedule 1 designate the Central Authorities for the United Kingdom and set out their role in the transmission of applications. Regulation 4 and Schedule 2 set out which bodies are to provide information to the Central Authorities (including information on the debtor) and provide rules on the proper disclosure of that information by Central Authorities.
Paragraph 18 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 sets out the availability of legal aid in England and Wales in accordance with the Maintenance Regulation.

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Last update: 11/12/2020
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