

CHILD MAINTENANCE & FINANCIAL PROVISION FOR CHILDREN

Both parents are responsible for the costs of raising their children, even if they do not see them. However, if financial support cannot be agreed upon, there are options available to resolve this.

CHILD MAINTENANCE SERVICE (CMS)

If you and the child's other parent cannot agree on the appropriate level of child support, the parent who lives with the child can apply to the Child Maintenance Service (previously known as the Child Support Agency) to require a parent to pay regular maintenance. A fee is usually payable.

The CMS will look at various factors to determine how much the paying parent should pay for child support. These factors include:

- The paying parent's gross annual income as determined by HMRC
- Other factors that affect their income, for example, pension contributions or other children they support
- Whether the paying parent has the child stay overnight with them

In limited circumstances, the courts can make orders regarding maintenance, for example, where a party or the child is resident abroad or has special needs attributable to a disability, or for the payment of specific education or training costs. The courts also have the power to order "top-up" maintenance for high earners.

IF CHILD MAINTENANCE IS AGREED

In most cases, the court can make an order for child maintenance by consent (agreement). However, orders for child maintenance by consent are only binding for *one year*. After that, either parent can apply to the Child Maintenance Service for a calculation.

Your family lawyer will be able to assist you in working out suitable arrangements. You can also look at the website <https://www.gov.uk/calculate-child-maintenance> which provides a useful online calculator tool.

OTHER FINANCIAL PROVISIONS FOR CHILDREN

The courts have a wide range of powers upon divorce or dissolution of a civil partnership to provide for children. For example, the court might order you or your spouse/partner to

pay regular maintenance or school fees. Or, it might order that one of you can continue living in your shared home if you have primary care of your children. This will be considered as part of the process of reaching an overall financial settlement. The court can also make orders about any child treated as a 'child of the family'.

SCHEDULE 1 OF THE CHILDREN ACT 1989

The court also has the power to make freestanding orders for financial provision for children under Schedule 1 of the Children Act 1989, regardless of whether you are married or in a civil partnership.

The court can make a wide range of orders, including that one parent, should have the right to continue living in a shared home if caring for young children or receive a lump sum or sums to meet expenses.

The court will assess the overall financial resources following full disclosure. Any order under Schedule 1 will be made for the benefit of your child rather than the parent. So, the focus will be on the child's financial needs, particularly if there are any special needs, disabilities, or education needs they have.

An application under Schedule 1 can only be made against someone who is legally a parent or step-parent. This means that claims cannot be made against certain same-sex parents and other unmarried parents through assisted reproduction who are not recognised as legal parents.

Often, this law is used for one parent to make an application against the other when they have not been married or have civil partners.

In these circumstances, the court does not have the broader powers it has on divorce or dissolution that would enable it to make financial orders that consider the children's needs outside of day-to-day maintenance.

Our family lawyers can advise you on whether an application under this provision may be appropriate in your case.

This guide is intended to be general information and not to be relied upon as legal advice. This is a complex area, and each case is different. We would suggest you contact us to obtain complete and proper legal advice.