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Family maintenance

Northern Ireland

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European Judicial Network
(in civil and commercial
matters)

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

Maintenance can be paid by a parent for their children or any child of the family to any person who is taking care of the child. Maintenance can also be paid to either party to a marriage or civil partnership by the other party.

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 Northern Ireland).

The statutory child maintenance system is made up of two organisations, the Child Maintenance Service (CMS), which is part of the Department of Communities, and Child Maintenance Choices. To use the child maintenance system, the people involved (parents or person with care and children) must be habitually resident in the United Kingdom.

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 advanced 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 parent or the person with care. Either parent or the person with care can apply to the CMS. The amount is calculated by the CMS. The weekly payment is made by the non-resident parent, either directly to the parent or person with care (known as Direct Pay) or using the CMS "Collect and Pay" service, for which a fee must be paid (see below).

Under the [Domestic Proceedings \(Northern Ireland\) Order 1980](#), a party to a marriage may apply to the court for an order for financial provision and under the [Matrimonial Causes \(Northern Ireland\) Order 1978](#), a spouse can apply for financial provision during proceedings for divorce or judicial separation. The Court can order periodical payments to be made, either to the petitioner or for the benefit of a child. Alternatively, the Court may order that a lump sum is paid.

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

Under the Child Support (Northern Ireland) Order 1991 a child can benefit from child support maintenance if they are under 16, or is under 20 and attends a course of full-time education which is not advanced education (still at school or an equivalent educational establishment).

Under the Domestic Proceedings (Northern Ireland) Order 1980, the court will not make a financial provision

order in favour of a child who has attained the age of 18. However, in some circumstances, provision can be made if there are "special circumstances" or if the child is receiving instructions at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also or will also be in gainful employment.

Under the Matrimonial Causes (Northern Ireland) Order 1978, maintenance is available for a child until he or she attains the age of 16 (or 18 if the child remains in full time education). The Court can extend the payment of maintenance if education is continued beyond the age of 18 or if certain special circumstances exist which require maintenance to be ongoing.

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 Northern Ireland, before they can apply to the CMS they are required to contact Child Maintenance Choices 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 Choices.

If a parent decides they cannot make a family-based arrangement, the parent can ask the CMS to work out the calculation of payments. The calculation of the maintenance to be paid is based on a percentage of the paying non-resident parent's income according to the number of children to be paid for.

If the parent then wishes the CMS to collect and pass on maintenance payments, they must pay a fee. If parents agree to pay each other directly (Direct Pay) there is no fee. Users of the CMS who want them to make the payment using the Collect and Pay service must pay collection fees. For the non-resident parent this is an additional 20% on top of their usual child maintenance payment. The parent with care 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 paying by Direct Pay.

The non-resident parent must also pay a fee to the CMS for enforcement actions by them, these are orders made by the court against the non-resident parent who has not paid the maintenance due.

You can apply through the Northern Ireland Central Authority to the court to obtain maintenance if you or your children have an order for maintenance against a person who lives in Northern Ireland or another country or territory that has a reciprocal arrangement with the United Kingdom for maintenance obligations; or wish to commence court proceedings for maintenance in another country or territory that has a reciprocal maintenance arrangement with the United Kingdom.

If you are making your application for enforcement of an existing maintenance order under Regulation (EU) No. 4/2009 you can also make your application directly to the magistrates' court in Northern Ireland.

The main elements of the procedure provide, where applicable, a process to:

- register an order in Northern Ireland and enforce it,
- register a Northern Ireland Order elsewhere and enforce it,
- commence proceedings in Northern Ireland (including applying for a provisional order),
- commence proceedings or register an order outside Northern Ireland (including applying for a provisional order).

If you have an existing CMS assessment in Northern Ireland you should first contact CMS to confirm if they can take enforcement proceedings on your behalf in this jurisdiction.

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

For child support maintenance, anyone such as a friend, relative or a solicitor can make an application on behalf

of a parent or person with care of a child. The parent or person with care will need to authorise them to do so, unless they already have authority such as a power of attorney etc.

In Northern Ireland an application cannot be made on behalf of a child as children cannot apply for child support maintenance in their own right.

A request in Northern Ireland for reciprocal enforcement of maintenance can be made on behalf of another person where the relevant international convention 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?

The relevant court area for bringing cases is determined by reference to three Administrative Court Divisions in Northern Ireland. Cases can be brought in any Administrative Court Division although generally, they are brought in the Division where either party is domiciled. The Central Authority for Northern Ireland can help establish the appropriate Division.

Contact details for local court offices in Northern Ireland are available on the website of the Northern Ireland Courts and Tribunals Service.

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 within Northern Ireland and the wider United Kingdom.

Applicants for the reciprocal enforcement of a maintenance order are not required to have a solicitor to apply to the court for recovery of maintenance under the various international conventions and arrangements. The application received from another country will be sent to the location of the family court in the area in which the respondent resides or to the originating court by the Central Authority for Northern Ireland.

Court staff can assist with completing the forms required but cannot offer any legal advice therefore it may be advisable for an applicant to secure the services of a lawyer experienced in family law. The Law Society of Northern Ireland (telephone +44 28 9023 1614) can provide individuals with the names of solicitors who can provide advice and assistance in child support/maintenance cases.

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?

The administrative process in enforcing or obtaining reciprocal maintenance orders is provided free of charge in Northern Ireland.

However an applicant may incur legal costs if either party is using a lawyer and the case goes to court. Costs will, of course, vary and an applicant may apply for legal aid to cover legal advice and assistance, giving particulars of their resources, i.e. claimant's disposable income and disposable capital. The rules on legal aid are governed by the [Access to Justice \(Northern Ireland\) Order 2003](#). The typical costs and expenses involved could be:

- Standard legal fees.
- Any irrecoverable court costs.
- Enforcement expenses.

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 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.

9 How and to whom will the maintenance be paid?

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

Within Northern Ireland and the United Kingdom the CMS provides a calculation only Direct Pay service and Collect and Pay service. Under the first option the CMS works out the amount of maintenance to be paid, and parents arrange payment directly between themselves. Under the second option the CMS collects the correct amount from the non-resident parent. When parents pay or receive child maintenance through the Collect and Pay service, they pay a fee each time.

Under the Domestic Proceedings (Northern Ireland) Order 1980, the court can order that payments be made directly by the debtor to the creditor or to a collecting officer (normally the clerk of petty sessions).

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

For those using the Collect and Pay service, the CMS, will take the necessary action to make sure that the non-resident parents 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 non-payer non-resident parent's driving licence or impose a prison sentence.

Under the Domestic Proceedings (Northern Ireland) Order 1980 and the Matrimonial Causes (Northern Ireland) Order 1978, a party can apply to the court to enforce the payment of any arrears. The court has a range of powers it can use including taking money direct from earnings (attachment of earnings order).

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

An application for enforcement of a maintenance order made outside the jurisdiction of Northern Ireland can be made before the expiry of three years from the date of default on the payments due or before the expiry of any longer limitation period provided for under the law of the state of origin.

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

The CMS in Northern Ireland can collect money owed to parents using the statutory Collect and Pay service.

Applications for the recovery of maintenance under Regulation (EC) 4/2009 can be made directly to the magistrates' court in Northern Ireland or can be transmitted to it by the Central Authority of Northern Ireland. All other applications for the recovery of international maintenance should be sent to the Central Authority for

Northern Ireland.

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

The CMS can only pass on monies it receives in cases it administers. 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 Northern Ireland (REMO) cannot take responsibility for making payments under regulation (EC) 4/2009.

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?

The applicant can contact the REMO Unit within Northern Ireland Courts and Tribunals Service, which acts as the Central Authority in Northern Ireland under various reciprocal international arrangements concerning maintenance.

Local court offices can assist a person in completing an application but they cannot give legal advice. The court office will, where appropriate, send the application to the Central Authority for Northern Ireland for checking and onward transmission to the Central Authority in the requested Member State.

More information is available on the [REMO pages of the NI Direct website](#).

For child support maintenance it is only possible for the CMS to make a maintenance calculation where the non-resident parent is in another part of the United Kingdom (that is, England, Wales or Scotland), or is working outside the United Kingdom for an employer whose payroll is based in the United Kingdom.

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

The Central Authority for REMO can be contacted by writing to:

Department of Justice for Northern Ireland
REMO Unit at Operational Policy Branch
Northern Ireland Courts and Tribunals Service
4th Floor Laganside House
23-27 Oxford Street
Belfast BT1 3LA
Northern Ireland

Tel: 0300 200 7812 (UK)

+44 28 9049 5884 (International)

Email: reciprocalenforcement@courtsni.gov.uk

Contact details for local court offices in Northern Ireland are available on the website of the Northern Ireland Courts and Tribunals Service.

Child Maintenance Choices advice line can be contacted on: 0800 028 7439 (UK) +44 800 0287439 (International). (Note this number only operates from 9.00 - 17.00, Monday to Friday)

General enquiries can be made to: 0845 608 0022 (UK) or 0345 608 0022 (UK) and +44 845 608 0022 (International) or +44 345 608 0022 (International). Lines are open Monday to Friday 8.00 to 20.00 and Saturday 9.00 to 17.00.

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 applicant in another country should generally first contact their country's designated Central Authority to determine whether or not a reciprocal arrangement currently exists. If there is no arrangement in place, then an alternative would be for the applicant to raise an action in Northern Ireland. In these circumstances the applicant should contact the Law Society of Northern Ireland (telephone: +44 28 9023 1614) who can provide individuals with the names of solicitors who can provide advice and assistance in child support/maintenance cases.

If there is an arrangement in place, applications for the recovery of maintenance under Regulation (EC) 4/2009 can be made directly to the court or can be transmitted to it by the Central Authority for Northern Ireland. Applications under other reciprocal arrangements should be sent to the Central Authority.

In these circumstances the CMS would only have jurisdiction to make a maintenance calculation if the petitioner and the child are resident elsewhere in the United Kingdom (that is, England, Wales or Scotland). If the petitioner is outside the United Kingdom the CMS does not have jurisdiction to make a maintenance calculation.

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

If there is a reciprocal arrangement in place then, once an application has been sent to Northern Ireland, the Northern Ireland Central Authority acts as a point of contact for the applicant, solicitors and foreign authorities.

The Central Authority for Northern Ireland will also arrange, where appropriate, for a court order to be registered and for a solicitor to be appointed on behalf of the applicant subject to legal aid requirements.

The Central Authority will process your application and, if in order, will forward to the appropriate magistrates' court for action (although as noted, applications under Regulation (EU) 4/2009 can also be made directly to the magistrates' court). The contact details for the Central Authority are provided above.

The CMS may be able to make a maintenance calculation in limited circumstances. See earlier answers for circumstances where an application cannot be accepted by the CMS and relevant contact details.

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 Northern Ireland.

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 Northern Ireland applies to all cases decided in Northern Ireland.

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 Regulation (EC) 4/2009. Regulation 3 and Schedule 1 designate the Central Authorities for the UK (including Northern Ireland). Regulation 4 and Schedule 2 sets 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.

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