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Financial support for children from parents: cross-border cases

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The UK system of child maintenance aims to ensure a child's living costs are met when one parent does not live with their child. However, this system only applies when both parents and the child are living in the UK. This briefing focuses on the legal framework and procedures for parents in Scotland seeking financial support for a child from a parent who is living overseas.

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Contents

Executive summary

In Scotland, as in the rest of the UK, a parent is legally responsible for financially supporting their child.

The main focus of this briefing is on how one parent (the **receiving parent**) can enforce obligations of financial support if the other parent (the **paying parent**) moves abroad.

In Scotland, the system of financial support has two separate parts - child maintenance, sometimes called **child support**, and aliment. The law of aliment can apply in some circumstances when the system of child maintenance does not.

A **child** is an **under 16** for child maintenance purposes but an older age limit can apply (**up to the age of 20**) if the young person is in approved education or training. For aliment, a child is an **under 18**, or **under 25** if in further education (including university education) or training.

The Child Maintenance Service (CMS) is the UK administrative body with responsibility for the system of child maintenance. Aliment can be enforced through the courts. With both child maintenance and aliment, parents can choose instead to negotiate a legal agreement privately.

With child maintenance, the CMS can only process applications for child maintenance, calculate payments, and enforce them if the paying parent, the receiving parent, and the child are all habitually resident in the UK. If the paying parent is no longer habitually resident in the UK, the CMS must cancel any existing calculation and reject new applications.

An international convention may create a reciprocal arrangement between countries or overseas territories for the enforcement of legal obligations relating to the financial support of children. The exact reciprocal arrangements will depend on the country or territory and the agreement with that country or territory.

The agreements currently used are incorporated into UK law by the Maintenance Orders (Reciprocal Enforcement) Act 1972, as amended, and associated secondary legislation.

The main international convention is the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance ('the 2007 Convention').

Each country bound by the 2007 Convention is required to have a **central authority**. Central authorities aim to cooperate with each other in relation to the recovery of a child maintenance and therefore spare affected individuals the cost and difficulty of dealing directly with foreign courts.

In the UK, Scotland has its own central authority, the Central Authority for Scotland, hereafter **the Scottish Central Authority**, which is part of the Scottish Government.

A receiving parent should contact the Scottish Central Authority to establish whether a particular country is bound by the 2007 Convention.

Note that the Scottish Central Authority does **not** have a role if the paying parent moves to another part of the UK. However, if the countries in question are bound by the 2007 Convention, the Scottish Central Authority can have a role when the paying parent remains in Scotland and the receiving parent has become habitually resident overseas, helping enforce relevant legal obligations.

Introduction and overview

This briefing covers:

- sources of advice, information, and support for child maintenance issues
- an introduction to child maintenance and the law of aliment
- the legal framework and procedures for obtaining financial support for children when one parent lives in Scotland and the other lives overseas
- a brief look at some other cross-border scenarios, namely:
  - financial support from a parent living elsewhere in the UK or in certain constitutionally linked territories
  - cases where a parent overseas seeks financial support from a parent living in Scotland.

Separately, SPICe published a briefing on child abduction in 2025, where a key focus is the situation where a child crosses international borders. [1]

Other resources and the need for legal advice

This section of the briefing signposts **sources of advice, information and support** on child maintenance other than this SPICe briefing.

House of Commons research briefings

SPICe's research colleagues at the House of Commons Library have produced a range of briefings relating to different aspects of the UK child maintenance system, which are regularly updated.

These UK briefings are helpful for Scottish readers in understanding domestic law and procedures. However, it is important to note that some legal and administrative aspects of financial support differ in Scotland.

These differences are explained in detail later in this SPICe briefing, and also touched on, for example, in the equivalent House of Commons library publication, Child maintenance: Overseas cases and income (UK). [2]

Legal advice for individuals

SPICe cannot give legal advice in individual cases and it is recommended that a solicitor is consulted for this purpose.

For legal advice from a solicitor trained in Scots law and practising in Scotland, see the SPICe Briefing, Legal Advice - where to go and how to pay. [3]

In some situations, explored in more detail later, advice from a lawyer qualified in another country or part of the UK may be necessary.

For legal advice in England and Wales, the House of Commons Library has published an equivalent briefing to the SPICe publication referred to above. [4] There does not appear to be a comparable publication for Northern Ireland (but see the box below).

Finding a specialist lawyer, including overseas

Some solicitors in the UK specialise in family law and child law, which is particularly relevant for financial support for children.

A subset of these solicitors focus on international family law, including cross-border financial support issues.

In Scotland, the Law Society of Scotland offers a find a solicitor tool to help locate qualified specialists. Similarly, the Law Society of England and Wales provides an online directory for legal specialists within its jurisdiction, while the Law Society of Northern Ireland also maintains a solicitor search tool for practitioners in Northern Ireland.

The GOV.UK website provides a dedicated section on finding a lawyer overseas.

Specialist organisations

One Parent Families Scotland is a charity dedicated to supporting lone parents. It can provide support and advice on various issues, including child maintenance. Its helpline number is 0808 801 0323.

Shared Parenting Scotland provides advice, assistance and other support to separated parents on a range of shared parenting issues, in particular where parents are living apart from their child. Its helpline number is 0131 557 2440.

An introduction to the system of financial support

This section provides an overview of the system of financial support in the UK.

In Scotland, as in the rest of the UK, a parent is legally responsible for financially supporting their child. This still applies if they are separated or divorced from the other parent.

The financial responsibility also exists even if the parent in question does not have parental responsibilities and rights (PRRs) in respect of that child, [5] or indeed any contact with the child in practice.

Two separate statutory frameworks

In Scotland, the system of financial support has two separate parts, **child maintenance**, sometimes called **child support**, and **aliment**.

The system of **child maintenance** is set out under the Child Support Act 1991 ('the 1991 Act'), as amended, and associated secondary legislation. It applies to Scotland, as well as England and Wales, with Northern Ireland having a separate statutory equivalent.

The Child Maintenance Service (CMS), the successor body to the Child Support Agency and part of the Department of Work and Pensions (DWP) in the UK Government, is a key part of the administrative system under the 1991 Act.

Where the 1991 Act applies, the CMS can:

- work out an amount of child maintenance to pay (**a maintenance calculation**)
- arrange payments and take enforcement action if a parent does not pay
- support parents in sorting out disagreements about parentage
- try to find the other parent if the parent wishing to claim child maintenance does not know where they are. [2]

Second, when the 1991 Act does **not** apply, the Family Law (Scotland) Act 1985 ('the 1985 Act') may become relevant. It sets out a statutory obligation of **aliment,** that is a financial duty of support by parents, and sometimes other family members, to children.

The 1985 Act places primary responsibility on **the courts**, rather than an administrative body like the CMS.

Both the 1991 Act and the 1985 Act are considered in more depth later.

How parents obtain financial support in respect of children

In practice, there are a range of approaches for a parent in Scotland seeking financial support in respect of their child:

1. through an informal agreement with the other parent
2. reaching a legally binding agreement privately with the other parent, supported by a solicitor
3. for circumstances covered by the 1991 Act, applying to the CMS for a maintenance calculation
4. in certain circumstances, applying to the courts for an award of aliment.

On point 2 above, a legally binding agreement usually take one of two forms:

- A **minute of agreement** is a legally binding document that records what is agreed outside a court process. It is registered in the Register of Deeds, one branch of a register known as the Books of Council and Session.
- A **joint minute of agreement** is similar but is formally approved by the court via a court order - it is often used when court proceedings begin but parents later reach an agreement.

Parents often negotiate informal or legally binding agreements based on what would likely be payable through the CMS using the 1991 Act or the courts under the 1985 Act, where applicable.

Parents can start with negotiated agreements (formal or informal), but this does not prevent later use of the CMS or the courts. However, if a joint minute of agreement is approved by the court, the CMS cannot be used for 12 months.[i]

The 1991 Act and the 1985 Act are described in more detail in the next sections of the briefing.

Child maintenance under the Child Support Act 1991

This section of the briefing on the Child Support Act 1991 describes:

- some key terms and concepts
- who can apply for child maintenance
- a brief overview of how the system run by the CMS works

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i Child Support Act 1991, section 4(10).

- the geographical limits of the CMS's authority.

Key terms and concepts

Before there can be any liability for child maintenance under the 1991 Act, there has to be:

- a **person with care** - usually a parent, also called **the receiving parent**
- a **qualifying child**
- a **non-resident parent** - often referred to as **the paying parent**.

The **person with care** is the individual with whom the child lives and who provides day-to-day care, either exclusively or jointly with another person.[ii]

A **qualifying child** is one who has at least one parent not living in the same household as them - that is, there is a non-resident parent.[iii] There are also requirements relating to the age of the child and their stage of education and training. Child maintenance is legally payable for a child until they reach **the age of 16** (if they go into full-time employment)[iv] or **up to the age of 20** if they continue in approved education or training.

The education in question must not be **advanced education**, a term which includes university education, Higher National Certificates (HNCs) and Higher National Diplomas (HNDs).[v]

The effect of equally shared care and other shared care

If day-to-day care is **shared equally** between both parents, **no child maintenance is payable**, as there is no non-resident parent.[vi]

This does not apply to other splits of shared care, such as 60/40 shared care, where one parent is still considered non-resident, but maintenance levels may be adjusted because of the shared care.

There are also **geographical requirements** - in terms of where the child, the receiving parent and paying parent must live - that must be satisfied for the 1991 Act to apply. These are particularly important in the context of this briefing and discussed in more detail later.

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ii Child Support Act 1991, section 3(3).

iii Child Support Act 1991, section 3(1)(a) & (b); 3(2)(a) & (b).

iv Child Support Act 1991, section 55(1)(a).

v Child Support Act 1991, section 55(1)(b); Child Support Maintenance Calculation Regulations SI 2012/2677, reg 76(1); Social Security Contributions and Benefits Act 1992, section 142(2)(b); the Child Benefit (General) Regulations SI 2006/223, regs 1(3), 3 and 6.

vi The Child Support Maintenance Calculation Regulations SI 2012/2677, reg 50.

The terms **paying parent** and **receiving parent** are commonly used in the context of the 1991 Act. For convenience, these terms are also used in this briefing to describe situations where the CMS does not have authority, such as when one parent moves overseas.

Individuals who can apply to the CMS for a child maintenance calculation

The following people can apply to the CMS for a child maintenance calculation:

- a **parent with care**, or other **person with care** - for example, a grandparent when the child lives with them
- a **non-resident parent**, who might apply, for example, if they have been unable to reach agreement privately on financial support
- in Scotland, although not in England and Wales, a **qualifying child**, aged 12 years or over, can apply on their own behalf.[vii]

How the system operated by the CMS works

There are currently three statutory child support schemes operating in Great Britain under the 1991 Act: the 2012 scheme, the 1993 scheme and the 2003 scheme.

The 2012 scheme is the current scheme and open to new applicants. It is administered by the CMS.

The 1993 and 2003 schemes are closed to new applicants. Only cases with arrears in payments, as opposed to current maintenance obligations, continue to operate under the older schemes. [2]

In making a maintenance calculation, the CMS will first establish the paying parent's yearly gross income (then converted by the CMS into a weekly figure) and whether they (or their partner) receive any state benefits.

One of five rates of child maintenance will then be applied, based on the paying parent's financial circumstances - and, in some circumstances, those of their partner - as well as how many children are supported by the household.

As noted earlier, the CMS will also take account of any shared care (less than equal care) of the child by the paying parent, as this can affect the amount the paying parent has to pay.

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vii Child Support Act 1991, section 7.

The geographical limits of the CMS's authority

Crucially, a child maintenance application to the CMS can only be accepted, a calculation made, and payment enforced, if the non-resident parent, person with care and qualifying child are **habitually resident** in the UK.[viii]

Accordingly, if a paying parent is no longer habitually resident in the UK, the CMS must **cancel** an existing child maintenance calculation and also **not accept** any new application.

If there are outstanding child maintenance arrears when a case is closed, the CMS may have a **liability order** in place that provides legal recognition of those arrears. As discussed in more detail later, these can be helpful when considering the next legal steps in respect of those arrears thereafter.

If a paying parent requests that a child maintenance calculation is cancelled because they are no longer habitually resident in the UK, the onus is on the paying parent to prove that this is the case.

The definition of **habitual residence** is not set out in legislation but instead has been developed by case law, that is, the branch of law created by the courts in previously decided cases. See the next section of this briefing for a more detailed discussion of the concept of habitual residence.

The UK is defined as England, Scotland, Wales and Northern Ireland, and includes coastal islands like the Isle of Wight. It does **not** include the Crown Dependencies of the Isle of Man and the Channel Islands.[ix] The Crown Dependencies are considered separately later in the briefing.

As a **limited exception** to the general requirement to be UK-based as a habitual residence, it may still be possible to make a new child maintenance claim if the paying parent is **now working abroad for certain British organisations**. For example, if they are working as a civil servant, a member of the armed forces or for His Majesty's Diplomatic Service. The full list of qualifying organisations, and further information, can be found on the GOV.UK website.

Habitual residence: in more detail

SPICe cannot determine whether somebody is habitual resident in the UK for the purposes of child maintenance. A constituent should seek advice from a solicitor, or the CMS, on this topic.

As noted earlier, the definition of **habitual residence** is not set out in legislation but

viii Child Support Act 1991, section 44 and Interpretation Act 1978, schedule 1.

ix Child Support Act 1991, section 44 and Interpretation Act 1978, schedule 1.

instead has been developed by the courts.

The Child Poverty Action Group's (CPAG) Child Support Handbook 2025/26 explains that a person is habitually resident if they are "ordinarily resident in the UK and have been for an appreciable period of time." It adds "'ordinary residence' means 'residence for a settled purpose'". [6 2]

The Department for Work and Pensions (DWP) publishes guidance for child maintenance decision makers ('the DWP guidance'). This says that whether a person is habitually resident is a discretionary decision, made on **the balance of probabilities**. [7] This means it must be more likely than not (that is, over 50% probable) that the relevant facts are established.

There is no comprehensive list of factors to be considered in reaching a decision. Drawing from case law, CPAG notes that some of the most important factors include:

- the person's usual centre of interest or connections to a particular place
- the length, continuity and purpose of residence in the UK
- the length and purpose of any absence from the UK
- the nature of the person's work. [6 2]

To guide decision-making, there are also key principles that have been developed by the courts. CPAG explains these include:

- A person can be habitually resident in more than one country, or in none.
- A person may continue to be habitually resident in the UK even though absent from the UK for some time - for example, because they have employment and accommodation elsewhere.
- There is no minimum period of time required to have been living in another country before a new habitual residence can be established, it can be as little as one day.
- A person who leaves the UK intending never to live there again stops being habitually resident in the UK on the day they leave. However, the intention never to return must be a "settled intention" and not just a decision to see how things will work out in another country.
- A person held in a country against their will may not be habitually resident there, even after a long period of time there.
- A person who is in the UK unlawfully may be habitually resident. [6 2]

The DWP guidance has specific material on **when an absence is temporary**, which an absence might be classified as if a person intends to return to the UK.

The guidance says temporary absences are usually **less than 12 months**. On the other hand, absences over 12 months are generally not considered temporary unless there are special circumstances (for example, an accident delays return), or there is a reasonable prospect of the absence ending. In keeping with the case law described above, the

guidance also stresses that not all absences under 12 months are considered temporary. [8] [2]

Aliment under the Family Law (Scotland) Act 1985

Under the 1985 Act, a parent can owe an obligation of aliment to their child.[x]

A person can also owe an obligation of aliment to a child they have **accepted as a child of their family**.[xi] Whether there has been that acceptance - for example, by a step-parent - depends on the facts and circumstances of an individual case.

An application for aliment can be made to the local sheriff court, or the Court of Session in Edinburgh.

For the purposes of the 1985 Act, a **child** means a person:

- under the age of 18 years
- over the age of 18 and under the age of 25 who is "reasonably and appropriately" undergoing instruction at an educational establishment, or training for employment or for a trade, profession or vocation.

A key point to note is that the 1985 Act, unlike the 1991 Act, extends to young people undergoing **advanced education**, such as university education or an HNC or HND at college.

The 1985 Act defines aliment as reasonable financial support based on the needs and resources of both parties, giving courts a discretion to determine the amount of aliment in an individual case.

The 1991 Act (on child maintenance) anticipates a continuing role for aliment cases decided through the courts in limited circumstances. This is both via some explicit statutory exceptions to the main approach in the 1991 Act and by implication in other situations: [9]

- **Explicit exceptions** in the 1991 Act where the courts continue to have a role include so-called 'top up' awards to child maintenance, where one parent is particularly wealthy;[xii] additional payments to cover certain educational expenses, such as school fees;[xiii] and expenses attributable to a child's disability.[xiv]
- **Implicit exceptions** in the 1991 Act include, for example, the court's power to award aliment to cover the costs of advanced education, as alluded to above.

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x Family Law (Scotland) Act 1985, section 1(1)(c).

xi Family Law (Scotland) Act 1985, section 1(1)(d).

xii Child Support Act 1991, section 8(6).

xiii Child Support Act 1991, section 8(7).

xiv Child Support Act 1991, section 8(8) and (9).

Another important, implicit exception for this briefing concerns situations where one parent is habitually resident abroad.

Here, with some limited exceptions, the 1991 Act does not apply.[xv] However, an application can be made to the courts for aliment.

Note that in Scotland, unlike in England and Wales, if the CMS ceases to have authority over a case (for example, because a paying parent becomes habitually resident abroad), any court order previously made (before the case became a CMS one) revives and takes legal effect again.[xvi] This can be significant when later trying to enforce child maintenance under an international convention, a topic discussed in depth in the next section of the briefing.

xv Child Support Act 1991, section 44.

xvi Child Support (Maintenance Arrangements and Jurisdiction) Regulations 1992/2645, reg 3(4).

Where the paying parent moves overseas

This section of the briefing covers the scenario in which the paying parent, originally habitually resident in Scotland, relocates abroad with sufficient permanence to establish a new habitual residence.

There are three main possibilities here:

1. **formal arrangement via court order or registered agreement:** there is no prior or recent involvement of the CMS, but financial support for the child is governed by either a court order or a registered minute of agreement
2. **informal or no arrangement**: again, there is no prior CMS involvement. Any payments made have been under an informal arrangement between the parents, or no payments have been made at all
3. **CMS-administered arrangement that has ceased:** there was previous involvement of the CMS, but this ends when the paying parent becomes habitually resident outside the UK.

Each of these situations is considered in this part of the briefing. The first section looks at the situation where there is already a court order or registered agreement (point 1 above), the second section considers the scenarios outlined at points 2 and 3 above.

Note that the scenario covered by point 1 above is often called a **recognition case** by specialists working with the relevant international conventions. This reflects the fact that what will be sought abroad is the recognition of an existing court order or registered agreement.

The scenarios outlined at points 2 and 3 above are often called **establishment cases**, reflecting the fact that a key remedy here is seeking a new legal decision about child maintenance abroad.

Where there is a court order or registered minute of agreement

This section considers the situation where the paying parent has moved overseas and there is either:

- an existing court order (including one that endorses a joint minute of agreement)
- a registered minute of agreement.

To recap here on the distinction between the types of legal agreement, a **joint minute of agreement** involves court approval of the parents' agreement, while a registered **minute of agreement** is made entirely without court involvement.

For court orders or registered minutes of agreement, an **international convention** may

create a reciprocal arrangement between countries for the enforcement of the relevant legal obligations contained in the court order or registered minute of agreement.

The exact reciprocal arrangements will depend on the country and the agreement with that country. The main agreements currently used are incorporated into UK law by the Maintenance Orders (Reciprocal Enforcement) Act 1972, as amended, and associated secondary legislation.

In other parts of the UK, and sometimes in Scotland, international arrangements for enforcing child maintenance are referred to as Reciprocal Enforcement of Maintenance Orders **(REMOs**). However, this term is less commonly used in Scotland, where overseas enforcement can also apply to registered minutes of agreement, not just court orders.

The main international convention relating to financial support for children is currently the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. This is covered in detail in the next section of the briefing.

Other relevant international conventions include the 1956 UN Convention on the Recovery Abroad of Maintenance and the 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations. Both conventions are relevant, for example, in the context of cross-border cases involving Scotland and Australia, or Scotland and Switzerland. [10]

The 2007 Hague Convention

As discussed earlier, a key international convention is the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance ('the 2007 Convention').

There are **47 countries** bound by the 2007 Convention. These include the 27 member states of the European Union (note: for Denmark, the Convention entered into force on 1 October 2025, so some online or AI sources may not yet reflect this), as well as the United States, New Zealand, Brazil, Ukraine, Botswana, Bosnia and Herzegovina, Serbia, Kazakhstan and the Philippines.

In Canada, the 2007 Convention currently applies in three of the ten provinces: Ontario, British Columbia, and Manitoba. Since this change took effect in 2024, some online or AI sources may not yet reflect the update. [11]

Noteworthy examples of countries **not** bound by the 2007 Convention include Australia, Russia, Switzerland, India, Pakistan, China, Nigeria, South Africa, Egypt, Argentina, Saudi Arabia, the United Arab Emirates and Iran.

It is important to note that the lists above contain examples only and are not exhaustive. The lists are correct at the date of publication of the briefing.

The official status table for the 2007 Convention has information on countries participating in the 2007 Convention. For additional legal background, SPICe Briefing on child

abduction explains some of the technical terms typically associated with status tables for Hague conventions, which can sometimes be difficult to interpret in practice.

The role of the central authority

Each country signed up to the 2007 Convention is required to have a **central authority**. Central authorities aim to cooperate with each other in relation to the recovery of child maintenance and therefore spare affected individuals the cost and difficulty of dealing directly with foreign courts.

In the UK, Scotland has its own central authority, the Central Authority for Scotland, hereafter **the Scottish Central Authority**, which is part of the Scottish Government.

A receiving parent should contact the Scottish Central Authority to establish whether a particular country is bound by the 2007 Convention.

Individuals should contact the Scottish Central Authority using the following contact details:

- **Email:** maintenanceenforcement@gov.scot
- **Address:** Scottish Government, Room GW-15, St. Andrew's House, Regent Road, EDINBURGH, EH1 3DG, Scotland, UK
- **Telephone:** +44 (0) 131 244 4829.

Note that, in **England and Wales**, part of the administrative structure relating to the 2007 Hague Convention is the Maintenance Enforcement Business Centre (MEBC). However, this centre does not have a role in relation to Scotland.

More about the process under the 2007 Hague Convention

If a receiving parent approaches the Scottish Central Authority, they ideally should have the following information to hand:

- details of the court order or minute of agreement
- which country the person has gone to (note that it is possible that a paying parent will keep moving countries to avoid detection)
- the payment history to date
- details of the affected children, including their ages.

In cases covered by the 2007 Convention, the following things will then usually happen:

- The Scottish Central Authority will provide the appropriate application form for the receiving parent to complete and return.
- Once returned, the Scottish Central Authority will check the form and associated documents before transmitting to the central authority in the reciprocating country.

- The central authority in the reciprocating country will then take various steps with the aims of locating the paying parent and enforcing the relevant legal obligations abroad.

Note that the effectiveness of the process initiated by the Scottish Central Authority, and overall timescales, may vary depending on the reciprocating country. **The Scottish Central Authority cannot advise on how long a particular process will take.**

EU cross-border cases commenced before 31 December 2020

There are separate legal arrangements for cross-border child maintenance cases that involve a paying parent habitually resident in an EU member state, and which were begun **before 11pm on 31 December 2020** - the date which marks the end of the UK's transition period relating to their departure from the EU.

Title VI of the EU-UK Withdrawal Agreement states that these child maintenance cases will continue to be covered, not by the 2007 Hague Convention, but by the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations ('the 2009 Regulation').

As with the 2007 Hague Convention, in terms of administrative process, the Scottish Central Authority, as well as the central authorities of all EU member states, carry out a key role under the 2009 Regulation.

For more about child maintenance cases covered by the 2009 Regulation, see the Maintenance section of the Scottish Government's publication, Cross-EU border family law from 1 January 2021: guidance for legal professionals. [12]

Other cases not covered by the 2007 Hague Convention

As explained earlier, there are various relevant international conventions other than the 2007 Convention.

The UK typically enters international child maintenance agreements as a single entity, making these international agreements applicable across all four nations. However, a key exception exists in the Maintenance Orders (Facilities for Enforcement) Act 1920, **which only applies in England and Ireland**.

This means that the 1920 Act does not extend to Scotland or Wales, leaving no enforceable child maintenance agreement, for example, between Scotland and the Cayman Islands.

For cases not covered by the 2007 Hague Convention, the receiving parent may have to **commence court proceedings directly in the country concerned**, if the dispute cannot be resolved by other means. See the earlier section, Legal advice for individuals, on getting legal advice in this context.

As noted earlier, a receiving parent can contact the Scottish Central Authority to establish whether a particular country is covered by the 2007 Convention.

Where there is no existing court order

This section of the briefing considers the situation where the paying parent has moved abroad and there is no existing court order or registered agreement.

To recap, this situation will arise either because any agreement about child maintenance was either informal or non-existent between the parents, **or** because the CMS has closed a case as the paying parent is no longer habitually resident in the UK.

2007 Hague Convention cases

Here there are two broad choices for cases covered by the 2007 Convention:

- First, the receiving parent could contact the Scottish Central Authority, after which the overseas central authority can seek a relevant court order abroad if necessary.
- Second, the receiving parent could commence court proceedings in the Scottish courts to obtain a court order relating to financial support, which the Scottish Central Authority could then use following the process for recognising court orders described earlier.

Each choice has possible benefits and drawbacks, and the significance of these in a specific situation will depend on the circumstances of the individual case.

Financial costs

First, there are the financial costs of each route to consider. There are no financial costs for a receiving parent relating to a court order obtained overseas if the Scottish Central Authority is contacted directly by the receiving parent.

However, if the receiving parent applies for a court order in Scotland, legal aid is means-tested. Even if a receiving parent is eligible, depending on the circumstances, legal aid may only cover part of the costs, and if ineligible, the parent must pay the full amount themselves. Depending on the receiving parent's particular circumstances, this could be an argument in favour of going via the Scottish Central Authority from the outset.

Arrears that built up when a case was under the remit of the CMS

Where arrears of child maintenance built up while a case was under the remit of the CMS, there is an added complexity to consider. These arrears are **not automatically recoverable** via any court action commenced by the Scottish Central Authority overseas and may point in the direction of use of the Scottish courts instead.

However, as noted earlier, if there are outstanding child maintenance arrears when a case is closed, the CMS may have a **liability order** in place that provides legal recognition of the debt. Had the paying parent not left the UK, this would have enabled the CMS to take further enforcement measures.

It **may** be possible to have a liability order registered abroad for enforcement using the recognition procedure under the 2007 Convention described earlier in the briefing.

The timing of an application to the Scottish Central Authority

A more general point is that timing matters when contacting the Scottish Central Authority.

Once the CMS closes a case because the paying parent is no longer habitually resident in the UK, no further CMS arrears can accrue, even though the child's living costs continue. Similarly, if an informal child maintenance agreement breaks down, the receiving parent bears the financial shortfall from that point onward.

If a receiving parent is considering a court application through the Scottish courts (because the circumstances suggest this is the best option) a solicitor may still recommend negotiating with the other parent first, resorting to court action only if those negotiations fail.

However, attempting to negotiate with a paying parent before contacting the Scottish Central Authority carries a risk, at least where there is no existing court order or registered agreement, as there is no legal obligation recognised. It is usually always beneficial to the receiving parent to instigate the process of establishment as soon as possible with the Scottish Central Authority.

Accordingly, to protect a receiving parent's position, a receiving parent should consider making an application to the Scottish Central Authority as a first step; this application can always be withdrawn later if negotiations between the parents lead to a positive outcome.

Cases not covered by an international agreement

The Scottish Central Authority can confirm whether a specific country is bound by the 2007 Convention and, therefore, whether a receiving parent can use the administrative process outlined in the preceding section of this briefing.

Once more, where a case is not covered by an international agreement it may be necessary for the receiving parent to take **direct legal action abroad**, if the dispute cannot be resolved by other means. See Legal advice for individuals.

Other cross-border maintenance situations

The final section of this briefing covers two other cross-border maintenance situations:

- where the paying parent becomes habitually resident in another part of the UK or

certain other territories closely connected constitutionally to the UK

- where the receiving parent has moved overseas and the paying parent is habitually resident in the UK.

Where the paying parent moves to another part of the UK, Channel Islands, the Isle of Man or certain UK overseas territories

This section covers the situation where the paying parent moves to another part of the UK, to the Channel Islands, to the Isle of Man, or to certain UK Overseas Territories.

The paying parent moves to England or Wales

In a child maintenance case with the CMS (ongoing or prospective), if a paying parent moves to England or Wales, but the receiving parent and qualifying child stay in Scotland, then the legal authority of the CMS to deal with a case continues.

This is because, as noted earlier, the authority of the CMS to deal with a case is based on the paying and receiving parents, as well as the qualifying child, being habitually resident in the UK.[xvii]

For cases falling outside the authority of the CMS (for example, due to the age of the qualifying child) and where there is an existing court order or registered minute of agreement, the receiving parent would need to take legal advice on options for enforcing such an order or agreement in England or Wales. Obtaining a court order for the first time is also a matter for legal advice.

The Scottish Central Authority (or any other central authority) is not the appropriate point of contact for cross-border cases involving Scotland and England or Wales.

The paying parent moves to Northern Ireland

A paying parent may move from Scotland to Northern Ireland.

In child maintenance cases involving the CMS - whether current or anticipated - it is important to note that Northern Ireland operates its own Child Maintenance Service (referred to as the 'Northern Ireland CMS') under a separate legal framework.

This legal framework includes both primary and secondary legislation, including the Child Support (Northern Ireland) Order 1991 and the Child Maintenance Act (Northern Ireland) 2008, as amended.

xvii Child Support Act 1991, section 44.

SPICe's research colleagues at the Northern Ireland Assembly have published two useful resources: the Constituency Casework Guide: Child Maintenance (2022) and a research paper on the bill that became the Child Support Enforcement Act (Northern Ireland) 2025 (not yet in force). Both provide valuable background on Northern Ireland's child maintenance system.

The basic statutory rule is that the Northern Ireland CMS's authority to handle a case is based on the paying parent, receiving parent, and qualifying child being habitually resident in the UK, rather than in any specific part of the UK.[xviii]

However, the Child Support (Great Britain Reciprocal Arrangements) Regulations (Northern Ireland) 1993/117, as amended, set out the reciprocal arrangements for child maintenance cases involving Northern Ireland and the rest of the UK. Generally, cases are handled by the child maintenance service where the receiving parent lives.[xix] Accordingly, for example, if the receiving parent lives in Scotland, the case would be dealt with by the CMS (not the Northern Ireland CMS).

However, there are exceptions relating to enforcement powers for arrears of child maintenance and appeals relating to those powers. These are dealt with by the child maintenance service where the paying parent lives, with the aim of ensuring effective enforcement.[xx] So, for example, if a paying parent moves from Scotland to Northern Ireland, the Northern Ireland CMS might handle any enforcement action relating to arrears.

If a case falls outside the authority of any child maintenance service (for example, due to the child's age) and there is an existing court order or registered agreement, the receiving parent should seek legal advice on enforcement options in Northern Ireland.

The Scottish Central Authority (or any other central authority) is not the appropriate point of contact for cross-border cases involving Scotland and Northern Ireland.

Where the paying parent moves to another part of the Channel Islands, the Isle of Man or certain 'UK overseas territories'

As discussed earlier, and reflecting their distinct constitutional status, the Crown Dependencies of the Channel Islands (Jersey and Guernsey) and the Isle of Man are not part of the UK under the 1991 Act.

If a parent who owes a duty of financial support moves to the Channel Islands or the Isle of Man, then the 1991 Act ceases to apply and, unless one of the limited exceptions applies, the CMS must cancel any relevant maintenance calculation. Any receiving parent who is affected by such a change of habitual residence should consult a solicitor.

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xviii The Child Support (Northern Ireland) Order 1991, article 41.

xix The Child Support (Great Britain Reciprocal Arrangements) Regulations (Northern Ireland) 1993/117, schedule 1, article 5.

xx The Child Support (Great Britain Reciprocal Arrangements) Regulations (Northern Ireland) 1993/117, schedule 1, article 10, 11 and 12.

Note that Jersey and the Isle of Man are covered by a reciprocal maintenance arrangement with the UK, including Scotland; Guernsey is **not** covered by such an arrangement. [10]

Separately, there are the UK Overseas Territories (UKOTs), (UKOTs), also known as British Overseas Territories (BOTs), which are constitutionally linked to the UK but are not part of it.

The legal position of the Cayman Islands in relation to Scotland for child maintenance has already been highlighted earlier in the briefing. However, more generally, the table below shows nine UKOTs with a permanent population, where it is known whether there is a relevant reciprocal maintenance enforcement arrangement covering Scotland and the UKOT. [10] Once more, legal advice is recommended in individual cases.

Table: UKOTs and reciprocal maintenance enforcement arrangements

UKOT	Reciprocal arrangement including Scotland?
Anguilla	Yes
Bermuda	Yes
British Virgin Islands	**No**
Cayman Islands	**No**
Falkland Islands	Yes
Gibraltar	Yes
Montserrat	**No**
Turks and Caico Islands	Yes
St Helena, Ascension and Triston da Cunha	Yes

Scottish Govermment, 2024[10]

Where the receiving parent has moved overseas

The final section of this briefing considers the situation where the receiving parent has moved overseas and the paying parent remains habitually resident in the UK.

This section differs from the rest of the briefing, which primarily focuses on relocations by the paying parent.

Here, when the paying parent remains in Scotland, and a case is covered by the 2007 Convention, the receiving parent receives automatic (that is, not means-tested) legal aid. The Law Society of Scotland keeps a list of solicitors willing to act for the Scottish Central Authority in this capacity, paid for by the Scottish Legal Aid Board.

In terms of process, a solicitor will typically write to the paying parent first, encouraging the payment of the ongoing maintenance obligation laid out in the court order. If a person starts to make payments voluntarily, the solicitor acting for the receiving parent will vouch for these to the Scottish Central Authority. If the Scottish Central Authority is happy with the state of affairs, it will let the overseas central authority know that it is intends to close the case, however, it would be willing to reopen it should any issues arise in the future.

It is also possible for a receiving parent in a reciprocating country to apply for the establishment of a maintenance order in the Scottish courts, if there is no existing court order or voluntary payments are not being made. They are able to apply through their country's central authority to the Scottish Central Authority.

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