
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 4

THE MAINTENANCE CALCULATION RULES

CHAPTER 1

DETERMINATION OF GROSS WEEKLY INCOME

The general rule for determining gross weekly income

34.—(1) The gross weekly income of a non-resident parent for the purposes of a calculation decision is a weekly amount determined at the effective date of the decision on the basis of either historic income or current income in accordance with this Chapter.

(2) The non-resident parent's gross weekly income is to be based on historic income unless—

- (a) current income differs from historic income by an amount that is at least 25% of historic income; or
- (b) the amount of historic income is nil or no historic income is available.

(3) For the purposes of paragraph (2)(b) no historic income is available if HMRC did not, when a request was last made by the Secretary of State for the purposes of regulation 35, have the required information in relation to a relevant tax year.

(4) "Relevant tax year" has the meaning given in regulation 4(2).

(5) This regulation is subject to regulation 23(4) (change to current income outside the annual review or periodic current income check).

Historic income – general

35.—(1) Historic income is determined by—

- (a) taking the HMRC figure last requested from HMRC in relation to the non-resident parent;
- (b) adjusting that figure where required in accordance with paragraph (3); and
- (c) dividing by 365 and multiplying by 7.

(2) A request for the HMRC figure is to be made by the Secretary of State—

- (a) for the purposes of a decision under section 11 of the 1991 Act (the initial maintenance calculation) no more than 30 days before the initial effective date; and
- (b) for the purposes of updating that figure, no more than 30 days before the review date.

(3) Where the non-resident parent has made relievable pension contributions during the tax year to which the HMRC figure relates and those contributions have not been deducted under net pay arrangements, the HMRC figure is, if the non-resident parent so requests and provides such information as the Secretary of State requires, to be adjusted by deducting the amount of those contributions.

Historic income – the HMRC figure

36.—(1) The HMRC figure is the amount identified by HMRC from information provided in a self-assessment return or under the PAYE regulations, as the sum of the income on which the non-resident parent was charged to tax for the latest available tax year—

- (a) under Part 2 of ITEPA (employment income);
- (b) under Part 9 of ITEPA (pension income);
- (c) under Part 10 of ITEPA (social security income) but only in so far as that income comprises the following taxable UK benefits listed in Table A in Chapter 3 of that Part—
 - (i) incapacity benefit;
 - (ii) contributory employment and support allowance;
 - (iii) jobseeker’s allowance; and
 - (iv) income support; and
- (d) under Part 2 of ITTOIA (trading income).

(2) The amount identified as income for the purposes of paragraph (1)(a) is to be taken—

- (a) after any deduction for relievable pension contributions made by the non-resident parent’s employer in accordance with net pay arrangements; and
- (b) before any deductions under Part 5 of ITEPA (deductions allowed from earnings).

(3) The amount identified as income for the purposes of paragraph (1)(b) is not to include a UK social security pension.

(4) The amount identified as income for the purposes of paragraph (1)(d) is to be taken after deduction of any relief under section 83 of the Income Tax Act 2007⁽¹⁾ (carry forward trade loss relief against trade profits).

(5) Where, for the latest available tax year, HMRC has both information provided in a self-assessment return and information provided under the PAYE Regulations, the amount identified for the purposes of paragraph (1) is to be taken from the former.

Current income – general

37.—(1) Current income is the sum of the non-resident parent’s income—

- (a) as an employee or office-holder;
- (b) from self-employment; and
- (c) from a pension,

calculated or estimated as a weekly amount at the effective date of the relevant calculation decision in accordance with regulations 38 to 42.

(2) Where payment is made in a currency other than sterling, an amount equal to any banking charge payable in converting that payment to sterling is to be disregarded in calculating the current income of a non-resident parent.

Current income as an employee or office-holder

38.—(1) The non-resident parent’s current income as an employee or office-holder is income of a kind that would be taxable earnings within the meaning of section 10(2) of ITEPA and is to be calculated as follows.

(1) 2007 c. 3.

(2) As regards any part of the non-resident parent's income that comprises salary, wages or other amounts paid periodically—

- (a) if it appears to the Secretary of State that the non-resident parent is (or is to be) paid a regular amount according to a settled pattern that is likely to continue for the foreseeable future, that part of the non-resident parent's income is to be calculated as the weekly equivalent of that amount; and
- (b) if sub-paragraph (a) does not apply (for example where the non-resident parent is a seasonal worker or has working hours that follow an irregular pattern) that part of the non-resident parent's income is to be calculated as the weekly average of the amounts paid over such period preceding the effective date of the relevant calculation decision as appears to the Secretary of State to be appropriate.

(3) Where the income from the non-resident parent's present employment or office has, during the past 12 months, included bonus or commission or other amounts paid separately from, or in relation to a longer period than, the amounts referred to in paragraph (2), the amount of that income is to be calculated by aggregating those payments, dividing by 365 and multiplying by 7.

(4) Where the earnings from the non-resident parent's present employment or office have, in the past 12 months, included amounts treated as earnings under Chapters 2 to 11 of Part 3 of ITEPA (the benefits code) the non-resident parent's current income is to be taken to include the amount of those benefits as last obtained by HMRC divided by 365 and multiplied by 7.

(5) Where the non-resident parent's employer makes deductions of relievable pension contributions from the payments referred to in paragraph (2) or (3) the amount of those payments is to be calculated after those deductions.

Current income from self-employment

39.—(1) The non-resident parent's current income from self-employment is to be determined by reference to the profits of any trade, profession or vocation carried on by the non-resident parent at the effective date of the relevant calculation decision.

(2) The profits referred to in paragraph (1) are the profits determined in accordance with Part 2 of ITTOIA for the most recently completed relevant period or, if no such period has been completed, the estimated profits for the current relevant period.

(3) The weekly amount is calculated by dividing the amount of those profits by the number of weeks in the relevant period.

(4) In paragraphs (2) and (3) the "relevant period" means a tax year or such other period in respect of which the non-resident parent should, in the normal course of events, report the profits or losses of the trade, profession or vocation in question to HMRC in a self-assessment return.

(5) In the case of a non-resident parent who carries on a trade, profession or vocation in partnership, the profits referred to in this regulation are the profits attributable to the non-resident parent's share of the partnership.

(6) The profits of a trade, profession or vocation that the non-resident parent has ceased to carry on at the effective date of the relevant calculation decision are to be taken as nil.

Deduction for pension contributions relievable at source

40. Where the non-resident parent—

- (a) has current income from self-employment or as an employee or office-holder at the effective date of the relevant calculation decision; and
- (b) makes relievable pension contributions which are not taken into account under regulation 38(5),

there is to be deducted from the sum of any amounts calculated in accordance with regulation 38 or 39 (current income as an employee, current income from self-employment) an amount determined by the Secretary of State as representing the weekly average of those contributions.

Current income from a pension

41. The non-resident parent's current income from a pension is to be calculated as the weekly average, over such period as the Secretary of State considers appropriate, of amounts received by the non-resident parent from a pension or annuity or other income (excluding UK social security pensions) of a kind that would be charged to tax under Part 9 of ITEPA.

Estimate of current income where insufficient information available

42.—(1) Where—

(a) current income applies by virtue of regulation 34(2)(b) (historic income nil or not available); and

(b) the information available in relation to current income is insufficient or unreliable,

the Secretary of State may estimate that income and, in doing so, may make any assumption as to any fact.

(2) Where the Secretary of State is satisfied that the non-resident parent is engaged in a particular occupation, whether as an employee, office-holder or self-employed person, the assumptions referred to in paragraph (1) may include an assumption that the non-resident parent has the average weekly income of a person engaged in that occupation in the UK or in any part of the UK.

CHAPTER 2

RATES OF CHILD SUPPORT MAINTENANCE

Reduced Rate

43. The reduced rate is an amount calculated as follows—

$$F + (A \times T)$$

where—

F is the flat rate liability applicable to the non-resident parent;

A is the amount of the non-resident parent's gross weekly income between £100 and £200; and

T is the percentage determined in accordance with the following Table—

	<i>Number of relevant other children of the non-resident parent</i>	<i>T (%)</i>
1 qualifying child of the non-resident parent	0	19
	1	16.40
	2	15.60
	3 or more	15.20
2 qualifying children of the non-resident parent	0	27
	1	23.50
	2	22.50

	<i>Number of relevant other children of the non-resident parent</i>	<i>T (%)</i>
	3 or more	21.90
3 or more qualifying children of the non-resident parent	0	33
	1	28.80
	2	27.70
	3 or more	26.90

Flat Rate

44.—(1) The following benefits, pensions or allowances are prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the 1991 Act(2) (that is the benefits, pensions or allowances that qualify the non-resident parent for the flat rate)—

- (a) under the Social Security Contributions and Benefits Act 1992(3)—
- (i) bereavement allowance under section 39B(4),
 - (ii) category A retirement pension under section 44(5),
 - (iii) category B retirement pension under section 48C(6),
 - (iv) category C and category D retirement pension under section 78(7),
 - (v) incapacity benefit under section 30A(8),
 - (vi) carer’s allowance under section 70(9),
 - (vii) maternity allowance under section 35(10),
 - (viii) severe disablement allowance under section 68(11),
 - (ix) industrial injuries benefit under section 94,

(2) Paragraph 4 of Schedule 1 was amended by paragraphs 1 and 2 of Schedule 4 to the 2008 Act.

(3) 1992 c. 4.

(4) Section 39B was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c. 30) and amended by sections 254(1) and 261(4) of, and paragraph 21 of Schedule 24, and Schedule 30, to the Civil Partnership Act 2004 (c. 33).

(5) Section 44 was amended by section 6 of, and paragraphs 2 and 3 of the Schedule 4 to, the Social Security (Consequential Provisions) Act 1992 (c. 6), section 190 of, and paragraph 38 of Schedule 8 to, the Pension Schemes Act 1993 (s.48), section 128(1) and (2) of the Pensions Act 1995 (c.26), section 68 of the Social Security Act 1998 (c.14), sections 30(2) and 35(1) and (5) to (7) of the 2000 Act, section 6 of, and paragraphs 1 and 10 of the Schedule 1 to, the National Insurance Contributions Act 2002 (c.19), sections 1(4), 11(5)(c) and 12(2) of, and paragraph 1 of Schedule 1 and paragraph 5 of Schedule 2 to, the Pensions Act 2007 (c.22), section 3(1) and (3) of the National Insurance Contributions Act 2008 (c.16) and article 4 of S.I. 2012/780.

(6) Section 48C was inserted by section 126 of, and paragraph 3(1) of Schedule 4 to, the Pensions Act 1995 (c.26). It was amended by sections 70 and 84(1) of, and paragraphs 2 and 7 of Schedule 8 and paragraphs 14 and 21 of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c.30) and sections 35(1) and (12) and 39(1)(a) and (2)(b) of the 2000 Act, and section 11(5) (c) of, and paragraph 10 of Schedule 2 to, the Pensions Act 2007 (c. 22) and by S.I. 2005/2053.

(7) Section 78 was amended by section 60 of, and Schedule 6 to, the Tax Credits Act 2002 (c.21) and sections 4(3) and 27(2) of, and paragraph 13 of Schedule 1, and Part 2 of Schedule 7 to, the Pensions Act 2007 (c.22).

(8) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c.18). It was amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and section 254(1) of, and paragraph 14 of Schedule 24 to, the Civil Partnership Act 2004 (c.33).

(9) Section 70 was amended by S.I.s 1994/2556, 2002/1457 and 2011/2426.

(10) Section 35 was amended by section 2 of the Still-Birth (Definition) Act 1992 (c.92), section 67 of the Social Security Act 1998 (c.14), section 53(1) and (2) of the Welfare Reform and Pensions Act 1999 (c.30), section 53 of, and paragraphs 2 and 4 of Schedule 7 to, the Employment Act 2002 (c.22) and section 11(1) of, and paragraph 6 of Schedule 1 to, the Work and Families Act 2006 (c.18) and by S.I. 1994/1230.

(11) Section 68 was repealed by section 65 of the Welfare Reform and Pensions Act 1999 with savings in S.I. 2000/2958.

- (x) widowed mother's allowance under section 37(12),
- (xi) widowed parent's allowance under section 39A(13), and
- (xii) widow's pension under section 38(14);
- (b) contribution-based jobseeker's allowance under the Jobseekers Act 1995(15);
- (c) a social security benefit paid by a country other than the United Kingdom;
- (d) a training allowance (other than work-based training for young people or, in Scotland, Skillseekers training);
- (e) a war disablement pension within the meaning of section 150(2) of the Social Security Contributions and Benefits Act 1992(16) or a pension which is analogous to such a pension paid by the government of a country outside Great Britain;
- (f) a war widow's pension, war widower's pension or surviving civil partner's war pension within the meaning of that section(17);
- (g) a payment under a scheme mentioned in section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004(18) (compensation schemes for armed and reserve forces); and
- (h) contributory employment and support allowance.

(2) The following benefits are prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the 1991 Act (that is the benefits that qualify the non-resident parent for the flat rate if received by the non-resident parent or their partner)—

- (a) income support;
- (b) income-based jobseeker's allowance;
- (c) income-related employment and support allowance; and
- (d) state pension credit.

(3) Where the conditions referred to in paragraph 4(2) of Schedule 1 to the 1991 Act are satisfied (that is where an income-related benefit is payable to the non-resident parent or their partner and a maintenance calculation is in force in respect of each of them) the flat rate of maintenance payable is half the flat rate that would otherwise apply.

(4) In paragraph (1)(d) "training allowance" means a payment under section 2 of the Employment and Training Act 1973(19) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(20) which is paid to a person for their maintenance while they are undergoing training.

-
- (12) Section 37 was amended by sections 254(1) and 261(4) of, and paragraph 18 of Schedule 24, and Schedule 30, to, the Civil Partnership Act 2004 (c.33), section 1(3) of, and paragraphs 1 and 2 of Schedule 1 to, the Child Benefit Act 2005 (c.6) and sections 50 and 67 of, and Schedule 8 to, the Welfare Reform Act 2007 (c.5).
 - (13) Section 39A was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c.30). It was amended by sections 254(1) and 261(4) of, and paragraph 20 of Schedule 24, and Schedule 30, to, the Civil Partnership Act 2004 (c. 33), section 1(3) of, and paragraphs 1 and 3 of Schedule 1 to, the Child Benefit Act 2005 (c. 6) and section 51 of the Welfare Reform Act 2007 (c. 5).
 - (14) Section 38 was amended by sections 254(1) and 261(4) of, and paragraph 19 of Schedule 24, and Schedule 30, to, the Civil Partnership Act 2004 (c.33) and section 13(2) of, and paragraph 40 of Schedule 1 to, the Pensions Act 2007 (c.22).
 - (15) 1995 c. 18.
 - (16) Relevant amendments were made to section 150(2) by section 722 of, and paragraphs 169 and 180(1) and (3) of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003 (c.1).
 - (17) Relevant amendments were made to section 150 by section 722 of, and paragraphs 169 and 180(1) and (4) of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003 (c.1) and section 254(1) of, and paragraph 49 of Schedule 24 to, the Civil Partnership Act 2004 (c.33).
 - (18) 2004 c. 32.
 - (19) 1973 c.50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c.19). It was amended by section 29(4) of, and Part 1 of Schedule 7 to, the Employment Act 1989 (c.38).
 - (20) 1990 c.35. Section 2 was amended by sections 47 and 51 of, and Schedule 10 to, the Trade Union Reform and Employment Rights Act 1993 (c.19), and section 211(1) of, and paragraphs 19 and 20 of Schedule 26 to, the Equality Act 2010 (c.15) (as inserted by S.I. 2010/2279) and by S.I.1999/1820.

Nil rate

45.—(1) The nil rate is payable where the non-resident parent is—

- (a) a child;
- (b) a prisoner or a person serving a sentence of imprisonment detained in hospital;
- (c) a person who is 16 or 17 years old and—
 - (i) in receipt of income support, income-based jobseeker’s allowance or income-related employment and support allowance, or
 - (ii) a member of a couple whose partner is in receipt of income support, income-based jobseeker’s allowance or income-related employment and support allowance;
- (d) a person receiving an allowance in respect of work-based training for young people, or in Scotland, Skillseekers training; or
- (e) a person who is resident in a care home or an independent hospital or is being provided with a care home service or an independent health care service who—
 - (i) is in receipt of a pension, benefit or allowance specified in regulation 44(1) or (2) (flat rate), or
 - (ii) has the whole or part of the cost of their accommodation met by a local authority.

(2) For the purposes only of determining whether paragraph 5(b) of Schedule 1 to the 1991 Act⁽²¹⁾ applies (nil rate payable where non-resident parent has gross weekly income of below the flat rate that is referred to in, or prescribed for the purposes of, paragraph 4(1) of Schedule 1 to the 1991 Act), the gross weekly income of the non-resident parent is to include any payments made by way of benefits, pensions or allowances referred to in regulation 44(1) or (2).

(3) In paragraph (1)—

“independent hospital” and “care home” have the meaning given by sections 2 and 3 of the Care Standards Act 2000⁽²²⁾ respectively;

“care home service” has the meaning given by paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010⁽²³⁾ and “independent health care service” has the meaning given by section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978⁽²⁴⁾;

“person serving a sentence of imprisonment detained in hospital” means a person who—

- (a) is being detained—
 - (i) under section 45A or 47 of the Mental Health Act 1983⁽²⁵⁾; and
 - (ii) before the day which the Secretary of State certifies to be that person’s release date within the meaning of section 50(3) of that Act⁽²⁶⁾ (in any case where there is such a release date); or
- (b) is being detained under—

(21) Paragraph 5 of Schedule 1 was amended by paragraphs 1 and 2 of Schedule 4 to the 2008 Act.

(22) 2000 c. 14. Section 2, as it applies in relation to Wales, was amended by section 106 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), paragraph 199 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43), paragraph 3 of Schedule 5(1) to the Health and Social Care Act 2008 (c. 14) and by S.I.s 2001/3968 and 2002/325. Section 3 was amended by paragraph 4 of Schedule 5(1) to the Health and Social Care Act 2008 (c. 14).

(23) 2010 asp 8.

(24) 1978 c. 29; section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(25) 1983 c. 20. Section 45A was inserted by section 46 of the Crime (Sentences) Act 1997 (c. 43) and amended by paragraph 1 of Schedule 37(7) to the Criminal Justice Act 1993 (c. 44) and by sections 4(6) and 10(8) of, and paragraph 9 of Schedule 1(1) to, and paragraph 1 of Schedule 11(1) to, the Mental Health Act 2007 (c. 12). Section 47 was amended by paragraph 1 of Schedule 6 to the Crime (Sentences) Act 1997, by paragraph 18 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28), paragraph 97 of Schedule 16 to the Armed Forces Act 2006 (c. 52) and by paragraph 1 of Schedule 11(1) to the Mental Health Act 2007.

(26) Section 50(3) was substituted by section 294(3) of the Criminal Justice Act 1993.

- (i) section 59A of the Criminal Procedure (Scotland) Act 1995(27); or
- (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003(28);

“prisoner” means a person who—

- (a) is detained in custody pending trial or sentence upon conviction or under sentence imposed by a court; or
- (b) is on temporary release in accordance with the provisions of the Prison Act 1952(29) or the Prisons (Scotland) Act 1989(30),

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 or, in Scotland, the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995.

Decrease for shared care

46.—(1) This regulation and regulation 47 apply where the Secretary of State determines the number of nights which count for the purposes of the decrease in the amount of child support maintenance under paragraphs 7 and 8 of Schedule 1 to the 1991 Act(31).

(2) Subject to paragraph (3), the determination is to be based on the number of nights for which the non-resident parent is expected to have the care of the qualifying child overnight during the 12 months beginning with the effective date of the relevant calculation decision.

(3) The Secretary of State may have regard to a period of less than 12 months where the Secretary of State considers a shorter period is appropriate (for example where the parties have an agreement in relation to a shorter period) and, if the Secretary of State does so, paragraphs 7(3) and 8(2) of Schedule 1 to the 1991 Act are to have effect as if—

- (a) the period mentioned there were that shorter period; and
- (b) the number of nights mentioned in the Table in paragraph 7(4), or in paragraph 8(2), of that Schedule were reduced proportionately.

(4) When making a determination under paragraphs (1) to (3) the Secretary of State must consider—

- (a) the terms of any agreement made between the parties or of any court order providing for contact between the non-resident parent and the qualifying child; or
- (b) if there is no agreement or court order, whether a pattern of shared care has already been established over the past 12 months (or such other period as the Secretary of State considers appropriate in the circumstances of the case).

(5) For the purposes of this regulation—

- (a) a night will count where the non-resident parent has the care of the qualifying child overnight and the child stays at the same address as the non-resident parent;
- (b) the non-resident parent has the care of the qualifying child when the non-resident parent is looking after the child; and
- (c) where, on a particular night, a child is a boarder at a boarding school, or an in-patient in a hospital, the person who would, but for those circumstances, have the care of the child for that night, shall be treated as having care of the child for that night.

(27) 1995 c.46. Section 59A was substituted by paragraph 8(6) of Schedule 4 to the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), asp13.

(28) 2003, asp 13.

(29) 1952 c 52.

(30) 1989 c.45.

(31) Paragraph 7 was amended by paragraphs 1 and 6 of Schedule 4, and paragraph 1(1) and (29) of Schedule 7, to the 2008 Act; paragraph 8 was amended by paragraphs 1 and 7 of Schedule 4 to the 2008 Act.

Assumption as to number of nights of shared care

47.—(1) This regulation applies where the Secretary of State is required to make a determination under regulation 46 for the purposes of a calculation decision.

(2) If it appears to the Secretary of State that—

- (a) the parties agree in principle that the care of a qualifying child is to be shared during the period mentioned in regulation 46(2) or (3) (decrease for shared care); but
- (b) there is insufficient evidence to make that determination on the basis set out in regulation 46(4) (for example because the parties have not yet agreed the pattern or frequency or the evidence as to a past pattern is disputed),

the Secretary of State may make the decision on the basis of an assumption that the non-resident parent is to have the care of the child overnight for one night per week.

(3) Where the Secretary of State makes a decision under paragraph (2) the assumption applies until an application is made under section 17 of the 1991 Act for a supersession of that decision and the evidence provided is sufficient to enable a determination to be made on the basis set out in regulation 46(4).

Non-resident parent party to another maintenance arrangement

48.—(1) An agreement described in paragraph (2) is an agreement of a prescribed description for the purposes of paragraph 5A(6)(b) of Schedule 1 to the 1991 Act⁽³²⁾ (that is an agreement which is a qualifying maintenance arrangement for the purposes of that paragraph).

(2) The agreement may be oral or written and must satisfy the following conditions—

- (a) it must relate to a child of the non-resident parent who is habitually resident in the UK;
- (b) it must be between the non-resident parent and a person with whom the child has their home (but not in the same household as the non-resident parent) and who usually provides day to day care for that child; and
- (c) it must provide for the non-resident parent to make regular payments for the benefit of the child.

(3) The payments mentioned in paragraph (2)(c) may include payments made by the non-resident parent direct to the person mentioned in paragraph (2)(b) or payments to other persons.

CHAPTER 3

DEFAULT MAINTENANCE DECISIONS

Default rate

49.—(1) Where the Secretary of State makes a default maintenance decision under section 12(1) of the 1991 Act (that is where there is insufficient information to make a maintenance calculation) the default rate is set out in paragraph (2).

(2) The default rate is—

- (a) £39 where there is one qualifying child;
- (b) £51 where there are two qualifying children; or
- (c) £64 where there are three or more qualifying children,

⁽³²⁾ Paragraph 5A was inserted by paragraph 5(2) of Schedule 4 to the 2008 Act.

apportioned, where the non-resident parent has more than one qualifying child and in relation to them there is more than one person with care, as provided in paragraph 6(2) of Schedule 1 to the 1991 Act.

CHAPTER 4 SPECIAL CASES

Parent treated as a non-resident parent in shared care cases

50.—(1) Where the circumstances of a case are that—

- (a) an application is made by a person with care under section 4 of the 1991 Act⁽³³⁾; and
- (b) the person named in that application as the non-resident parent of the qualifying child also provides a home for that child (in a different household from the applicant) and shares the day to day care of that child with the applicant,

the case is to be treated as a special case for the purposes of the 1991 Act.

(2) For the purposes of this special case, the person mentioned in paragraph (1)(b) is to be treated as the non-resident parent if, and only if, that person provides day to day care to a lesser extent than the applicant.

(3) Where the applicant is receiving child benefit in respect of the qualifying child the applicant is assumed, in the absence of evidence to the contrary, to be providing day to day care to a greater extent than any other person.

Child in care who is allowed to live with their parent

51.—(1) Where the circumstances of a case are that a qualifying child who is in the care of a local authority in England and Wales is allowed by the authority to live with a parent of that child under section 22C(2) or 23(5) of the Children Act 1989⁽³⁴⁾, that case is to be treated as a special case for the purposes of the 1991 Act.

(2) For the purposes of this case, section 3(3)(b) of the 1991 Act is to be modified so that, for the reference to the person who usually provides day to day care for the child there is substituted a reference to the parent of the child with whom the local authority has allowed the child to live.

Non-resident parent liable to maintain a child of the family or a child abroad

52.—(1) A case is to be treated as a special case for the purposes of the 1991 Act where—

- (a) an application for a maintenance calculation has been made or a maintenance calculation is in force with respect to a qualifying child and a non-resident parent;
- (b) there is a different child in respect of whom no application for a maintenance calculation may be made but whom the non-resident parent is liable to maintain—
 - (i) in accordance with a maintenance order made in respect of that child as a child of the non-resident parent's family, or
 - (ii) in accordance with an order made by a court outside Great Britain or under the legislation of a jurisdiction outside the United Kingdom; and

⁽³³⁾ Section 4 was amended by section 18(1) of the Child Support Act 1995 (c.34), paragraph 19 of Schedule 7, and Schedule 8, to the Social Security Act 1998 c.14), sections 1(2) and 2(1) to (3) of, and paragraph 11(1), (2) and (3) of Schedule 3 to, the 2000 Act and by section 35(1) of, and Schedule 8 to, the 2008 Act.

⁽³⁴⁾ 1989 c. 41. Section 22C(2) is inserted prospectively by the Children and Young Persons Act 2008 (c.23), section 8; when it is in force, it will replace section 23(5).

(c) the weekly rate of child support maintenance, apart from this regulation, would be the basic rate or the reduced rate or would be calculated following agreement to a variation where the rate would otherwise be the flat rate or the nil rate.

(2) In any such case the amount of child support maintenance is to be calculated in accordance with paragraph 5A of Schedule 1 to the 1991 Act as if the child in question were a child with respect to whom the non-resident parent was a party to a qualifying maintenance arrangement.

(3) For the purposes of this regulation “child” includes a person who has not attained the age of 20 whom the non-resident parent is liable to maintain in accordance with paragraph (1)(b)(ii).

Care provided in part by a local authority

53.—(1) This regulation applies where paragraph (2) applies and the rate of child support maintenance payable is the basic rate, or the reduced rate, or has been calculated following agreement to a variation where the non-resident parent’s liability would otherwise have been the flat rate or the nil rate.

(2) Where the circumstances of a case are that the care of the qualifying child is shared between the person with care and a local authority and—

- (a) the qualifying child is in the care of the local authority for 52 nights or more in the period of 12 months ending with the effective date of the relevant calculation decision;
- (b) where, in the opinion of the Secretary of State, a period other than the period of 12 months mentioned in sub-paragraph (a) is more representative of the current arrangements for the care of the qualifying child, the qualifying child is in the care of the local authority during that period for no fewer than the number of nights which bears the same ratio to 52 nights as that period bears to 12 months; or
- (c) it is intended that the qualifying child is to be in the care of the local authority for a number of nights in a period beginning with the day after the effective date and—
 - (i) if that period were a period of 12 months, the number of nights is 52 nights or more; or
 - (ii) if that period were a period other than 12 months, the number of nights is no fewer than the number of nights which bears the same ratio to 52 nights as that period bears to 12 months,

that case is to be treated as a special case for the purpose of the 1991 Act.

(3) In a case where this regulation applies, the amount of child support maintenance which the non-resident parent is liable to pay the person with care of that qualifying child is the amount calculated in accordance with the provisions of Part I of Schedule 1 to the 1991 Act and decreased in accordance with this regulation.

(4) First, there is to be a decrease according to the number of nights spent or to be spent by the qualifying child in the care of the local authority during the period under consideration.

(5) Where paragraph (2)(b) or (c) applies, the number of nights in the period under consideration shall be adjusted by the ratio which the period of 12 months bears to the period under consideration.

(6) After any adjustment under paragraph (5), the amount of the decrease for one child is set out in the following Table—

<i>Number of nights in care of local authority</i>	<i>Fraction to subtract</i>
52-103	One-seventh
104-155	Two-sevenths

<i>Number of nights in care of local authority</i>	<i>Fraction to subtract</i>
156-207	Three-sevenths
208-259	Four-sevenths
260-262	Five-sevenths

(7) If the non-resident parent and the person with care have more than one qualifying child, the applicable decrease is the sum of the appropriate fractions in the Table divided by the number of such qualifying children.

(8) In a case where the amount of child support maintenance which the non-resident parent is liable to pay in relation to the same person with care is to be decreased in accordance with the provisions of both this regulation and of paragraph 7 of Part 1 of Schedule 1 to the 1991 Act, read with these Regulations, the applicable decrease is the sum of the appropriate fractions derived under those provisions.

(9) If the application of this regulation would decrease the weekly amount of child support maintenance (or the aggregate of all such amounts) payable by the non-resident parent to less than the flat rate referred to in paragraph 4(1) of Schedule 1 to the 1991 Act (or in that sub-paragraph as modified by regulations under paragraph 10A of Schedule 1), the non-resident parent is instead liable to pay child support maintenance at a rate equivalent to that rate, apportioned (if appropriate) in accordance with paragraph 6 of Part I of Schedule 1 to that Act.

(10) If the number of nights calculated for the purposes of applying the table in paragraph (6) is 263 or more, the amount of child support maintenance payable by the non-resident parent in respect of the child in question is nil.

(11) Where a qualifying child is a boarder at a boarding school or is an in-patient at a hospital, the qualifying child shall be treated as being in the care of the local authority for any night that the local authority would otherwise have been providing such care.

(12) A child is in the care of a local authority for any night in which that child is being looked after by the local authority within the meaning of section 22 of the Children Act 1989⁽³⁵⁾ or section 17(6) of the Children (Scotland) Act 1995⁽³⁶⁾.

Care provided for relevant other child by a local authority

54. Where a child other than a qualifying child is cared for in part or in full by a local authority, and the non-resident parent or the non-resident parent's partner receives child benefit for that child, the child is a relevant other child for the purposes of Schedule 1 to the 1991 Act.

Child who is a boarder or an in-patient in hospital

55.—(1) Where the circumstances of the case are that—

- (a) a qualifying child is a boarder at a boarding school or is an in-patient in a hospital; and
- (b) by reason of those circumstances, the person who would otherwise provide day to day care is not doing so,

that case is to be treated as a special case for the purposes of the 1991 Act.

⁽³⁵⁾ 1989 c. 41. Section 22 was amended by paragraph 19 of Schedule 5 to the Local Government Act 2000 (c. 22) and by section 2(2) of the Children (Leaving Care) Act 2000 (c. 35); there are other amendments to section 22 that are not relevant to these Regulations.

⁽³⁶⁾ 1995 c. 36.

(2) For the purposes of this case, section 3(3)(b) of the 1991 Act is to be modified so that for the reference to the person who usually provides day to day care for the child there is substituted a reference to the person who would usually provide day to day care for that child but for the circumstances specified in paragraph (1).