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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

**The Child Support Maintenance Calculation Regulations 2012**

**PART 4**

**THE MAINTENANCE CALCULATION RULES**

**CHAPTER 2**

**RATES OF CHILD SUPPORT MAINTENANCE**

**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<sup>(1)</sup>.

(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

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(1) 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.

- (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.