
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 4

THE MAINTENANCE CALCULATION RULES

CHAPTER 2

RATES OF CHILD SUPPORT MAINTENANCE

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⁽¹⁾ 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⁽²⁾ respectively;

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

⁽²⁾ 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).

“care home service” has the meaning given by paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010⁽³⁾ and “independent health care service” has the meaning given by section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978⁽⁴⁾;

“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⁽⁵⁾; 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⁽⁶⁾ (in any case where there is such a release date); or
- (b) is being detained under—
 - (i) section 59A of the Criminal Procedure (Scotland) Act 1995⁽⁷⁾; or
 - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁸⁾;

“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⁽⁹⁾ or the Prisons (Scotland) Act 1989⁽¹⁰⁾,

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.

(3) 2010 asp 8.

(4) 1978 c. 29; section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(5) 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.

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

(7) 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.

(8) 2003, asp 13.

(9) 1952 c 52.

(10) 1989 c.45.