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## STATUTORY INSTRUMENTS

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# 2001 No. 155

## The Child Support (Maintenance Calculations and Special Cases) Regulations 2000

### PART III

#### SPECIAL CASES

##### Persons treated as non-resident parents

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

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) at least one of those persons is a parent of the child,

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this special case a parent who provides day to day care for a child of his is to be treated as a non-resident parent for the purposes of the Act in the following circumstances—

- (a) a parent who provides such care to a lesser extent than the other parent, person or persons who provide such care for the child in question; or
- (b) where the persons mentioned in paragraph (1)(a) include both parents and the circumstances are such that care is provided to the same extent by both but each provides care to an extent greater than or equal to any other person who provides such care for that child—
  - (i) the parent who is not in receipt of child benefit for the child in question; or
  - (ii) if neither parent is in receipt of child benefit for that child, the parent who, in the opinion of the Secretary of State, will not be the principal provider of day to day care for that child.

(3) For the purposes of this regulation and regulation 10 “child benefit” means child benefit payable under Part IX of the Contributions and Benefits Act.

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##### Commencement Information

11 [Reg. 8](#) coming into force in accordance with {reg. 1(4)}

##### Care provided in part by a local authority

9.—(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 a flat rate or the nil rate.

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(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 12 month period ending with the relevant week; or
- (b) where, in the opinion of the Secretary of State, a period other than the 12 month period 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 shall be in the care of the local authority for a number of nights in a period from the effective date,

that case shall be treated as a special case for the purposes of the 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 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
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 I of Schedule 1 to the Act, read with regulation 7 of 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 rate stated in or prescribed for the purposes of paragraph 4(1) of Part I of Schedule 1 to the Act, he 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 the Act and regulation 6.

(10) 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.

(11) A child is in the care of a local authority for any night in which he is being looked after by the local authority within the meaning of section 22 of the Children Act 1989<sup>M1</sup> or section 17(6) of the Children (Scotland) Act 1995<sup>M2</sup>.

**Commencement Information**

**I2** [Reg. 9](#) coming in force into accordance with {reg. 1(4)}

**Marginal Citations**

**M1** 1989 c. 41.

**M2** 1995 c. 36.

**Care provided for relevant other child by a local authority**

**10.** 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 his partner receives child benefit for that child, the child is a relevant other child for the purposes of Schedule 1 to the Act.

**Commencement Information**

**I3** [Reg. 10](#) coming into force in accordance with {reg. 1(4)}

**Non-resident parent liable to pay maintenance under a maintenance order**

**11.—(1)** Subject to paragraph (2), where the circumstances of a case are that—

- (a) an application for child support maintenance is made or treated as made, as the case may be, with respect to a qualifying child and a non-resident parent; and
- (b) an application for child support maintenance for a different child cannot be made under the Act but that non-resident parent is liable to pay maintenance under a maintenance order for that child,

that case shall be treated as a special case for the purposes of the Act.

(2) This regulation applies where 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 a flat rate or the nil rate.

(3) Where this regulation applies, the amount of child support maintenance payable by the non-resident parent shall be ascertained by—

- (a) calculating the amount of maintenance payable as if the number of qualifying children of that parent included any children with respect to whom he is liable to make payments under the order referred to in paragraph (1)(b); and
- (b) apportioning the amount so calculated between the qualifying children and the children with respect to whom he is liable to make payments under the order referred to in paragraph (1)(b),

and the amount payable shall be the amount apportioned to the qualifying children, and the amount payable to each person with care shall be that amount subject to the application of apportionment under paragraph 6 of Schedule 1 to the Act and the shared care provisions in paragraph 7 of Part I of that Schedule.

(4) In a case where this regulation applies paragraph 7 of Part I of Schedule 1 to the Act (shared care) and regulation 10 (care provided in part by local authority) shall not apply in relation to a child

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in respect of whom the non-resident parent is liable to make payments under a maintenance order as provided in paragraph (1)(b).

**Commencement Information**

**I4** [Reg. 11](#) coming into force into accordance with {reg. 1(4)}

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

**12.**—(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 shall be treated as a special case for the purposes of the Act.

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

**Commencement Information**

**I5** [Reg. 12](#) coming into force in accordance with {reg. 1(4)}

**Child who is allowed to live with his parent under section 23(5) of the Children Act 1989**

**13.**—(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 his under section 23(5) of the Children Act 1989, that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case, section 3(3)(b) of the Act shall be modified so that for the reference to the person who usually provides day to day care for the child there shall be substituted a reference to the parent of the child with whom the local authority allow the child to live with under section 23(5) of the Children Act 1989.

**Commencement Information**

**I6** [Reg. 13](#) coming into force in accordance with {reg. 1(4)}

**Person with part-time care who is not a non-resident parent**

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

- (a) two or more persons who do not live in the same household each provide day to day care for the same qualifying child; and
- (b) those persons do not include any parent who is treated as a non-resident parent of that child by regulation 8(2),

that case shall be treated as a special case for the purposes of the Act.

(2) For the purposes of this case—

- (a) the person whose application for a maintenance calculation is being proceeded with shall, subject to sub-paragraph (b), be entitled to receive all of the child support maintenance payable under the Act in respect of the child in question;
- (b) on request being made to the Secretary of State by—
  - (i) that person; or
  - (ii) any other person who is providing day to day care for that child and who intends to continue to provide that care,the Secretary of State may make arrangements for the payment of any child support maintenance payable under the Act to the persons who provide such care in the same ratio as that in which it appears to the Secretary of State that each is to provide such care for the child in question;
- (c) before making an arrangement under sub-paragraph (b), the Secretary of State shall consider all of the circumstances of the case and in particular the interests of the child, the present arrangements for the day to day care of the child in question and any representations or proposals made by the persons who provide such care for that child.

**Commencement Information**

**I7** [Reg. 14](#) coming into force in accordance with {reg. 1(4)}

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