STATUTORY INSTRUMENTS

2012 No. 2677

The Child Support Maintenance Calculation Regulations 2012

PART 4

THE MAINTENANCE CALCULATION RULES

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 [M1]; 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.

[[F1](4) For the purposes of paragraph (3), where a person has made an election under section 13A(1) of the Social Security Administration Act 1992 (election not to receive child benefit) for payments of child benefit not to be made, that person is to be treated as receiving child benefit.**]**

Textual Amendments

F1 Pt. 4 reg. 50(4) inserted (30.9.2013) by The Child Support (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/1517), regs. 1(2), **8(4)**

Commencement Information

I1 Reg. 50 wholly in force; reg. 50 not in force at made date; reg. 50 in force at 29.7.2013 for certain purposes and reg. 50 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

Marginal Citations

M1 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) to (3) of Schedule 3 to, the Child Support, Pensions and Social Security Act 2000

(c. 19) and by section 35(1) of, and Schedule 8 to, the Child Maintenance and Other Payments Act 2008 (c. 6).

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) [F2]... of the Children Act 1989 **[**[F3]or section 81(2) of the Social Services and Well-being (Wales) Act 2014**]**[M2], 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.

Textual Amendments

F2 Words in Pt. 4 reg. 51(1) omitted (3.11.2017) by virtue of The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **28(2)**

F3 Words in Pt. 4 reg. 51(1) inserted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **14(2)**

Commencement Information

I2 Reg. 51 wholly in force; reg. 51 not in force at made date; reg. 51 in force at 29.7.2013 for certain purposes and reg. 51 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

Marginal Citations

M2 1989 c. 41. Section 22C(2) is inserted prospectively by section 8 of the Children and Young Persons Act 2008 (c.23); when it is in force, it will replace section 23(5).

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

(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).

Commencement Information

I3 Reg. 52 wholly in force; reg. 52 not in force at made date; reg. 52 in force at 29.7.2013 for certain purposes and reg. 52 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

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—

Number of nights in care of local authority	*Fraction to subtract*
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 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 [M3] or section 17(6) of the Children (Scotland) Act 1995 **[**[F4]or section 74 of the Social Services and Well-being (Wales) Act 2014**]**[M4].

Textual Amendments

F4 Words in Pt. 4 reg. 53(12) inserted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **14(3)**

Commencement Information

I4 Reg. 53 wholly in force; reg. 53 not in force at made date; reg. 53 in force at 29.7.2013 for certain purposes and reg. 53 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

Marginal Citations

M3 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.

M4 1995 c. 36.

Care provided for relevant other child by a local authority

54.—[[F5](1)**]** 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.

[[F6](2) For the purposes of paragraph (1), where a person has made an election under section 13A(1) of the Social Security Administration Act 1992 (election not to receive child benefit) for payments of child benefit not to be made, that person is to be treated as receiving child benefit.**]**

Textual Amendments

F5 Words in Pt. 4 reg. 54(1) in reg. 54 renumbered as reg. 54(1) (30.9.2013) by The Child Support (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/1517), regs. 1(2), **8(5)**

F6 Pt. 4 reg. 54(2) inserted (30.9.2013) by The Child Support (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/1517), regs. 1(2), **8(5)**

Commencement Information

I5 Reg. 54 wholly in force; reg. 54 not in force at made date; reg. 54 in force at 29.7.2013 for certain purposes and reg. 54 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

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.

(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).

Commencement Information

I6 Reg. 55 wholly in force; reg. 55 not in force at made date; reg. 55 in force at 29.7.2013 for certain purposes and reg. 55 in force at 25.11.2013 in so far as not already in force, see reg. 1, SI 2013/1860 and S.I. 2013/2947

Changes to legislation:
There are currently no known outstanding effects for the The Child Support Maintenance Calculation Regulations 2012, CHAPTER 4.