

CHILD  
SUPPORT  
*a g e n c y*



A guide to  
**child support  
maintenance**



## About this leaflet

This is one of several guides issued by the Department of Health and Social Services. It is intended for professional and voluntary advisers and for members of the public who want to know more about child support maintenance.

## This leaflet and the law

This leaflet is only a guide to child support maintenance. It has no status in law. It does not describe all the rules covering child support maintenance for every situation, nor does it provide a full interpretation of the rules. It should not be treated as a complete and authoritative statement of the law. The correct legal term for maintenance awarded under the Child Support (Northern Ireland) Order 1991 is child support maintenance but, except where the context makes it important to distinguish between the old and the new system, this guide uses the general term 'child maintenance'.

The basis of the law for child maintenance is the Child Support (Northern Ireland) Order 1991 as amended by the Child Support (Northern Ireland) Order 1995 and the Social Security (Northern Ireland) Order 1998. These Orders provide the framework for the detailed rules contained in Regulations made by the Department of Health and Social Services and approved by Parliament. Annex 2 lists all the relevant legislation. Throughout the text there are references to the relevant Regulations or Schedules to allow you to consult the legal wording of the rules. Abbreviations of the references are explained in Annex 2 on pages 135 to 138.

Child maintenance rates are based on Income Support benefit rates. The rates used in this guide reflect the position as at April 1999. A list of the Income Support rates used in the formula is included in Annex 3 on pages 139 to 143.

# Contents

	page
Introduction to child maintenance . . . . .	6
The main child maintenance rules . . . . .	7
When to apply . . . . .	9
Take-on of work by the Child Support Agency . . . . .	11
The cost of using the CSA's services . . . . .	12
The child maintenance formula . . . . .	12
The maintenance needed . . . . .	16
Assessable income . . . . .	18
Net income . . . . .	18
Exempt income . . . . .	29
The deduction rate . . . . .	47
Additional element . . . . .	47
Protected level of income . . . . .	52
Minimum payment . . . . .	57
Interim maintenance assessments . . . . .	58
Phasing the formula assessment . . . . .	60
Special cases . . . . .	64
The requirement to authorise . . . . .	70
Disputed paternity . . . . .	77

Case checks . . . . .	.79
Rights of appeal . . . . .	.82
Collection: payments, arrears and enforcement . . .	.84
Disclosure of information . . . . .	.89
Open government . . . . .	.91
Child maintenance bonus . . . . .	.93
Departure directions . . . . .	.97

# Annexes

	page
<b>Annex 1</b>	
Cases where the minimum amount of child maintenance is not to be payable . . . . .	133
<b>Annex 2</b>	
The Child Support (Northern Ireland) Order 1991 (The 1991 Order) . . . . .	135
The Child Support (Northern Ireland) Order 1995 (The 1995 Order) . . . . .	135
Statutory Rules made by the Department . . . . .	135
Statutory Rules made by the Lord Chancellor . . . . .	138
<b>Annex 3</b>	
Main benefit rates used in the formula . . . . .	139
How to contact the Child Support Agency . . . . .	141
A list of Child Support Agency leaflets . . . . .	142
Alpha index . . . . .	144

## Introduction to child maintenance

The current system for child maintenance was introduced in England, Wales, Scotland and Northern Ireland from 5 April 1993. Under the Child Support (Northern Ireland) Order 1991 (the 1991 Order), child maintenance is an amount of money that non-resident parents (see definition below) pay as a contribution to the upkeep of their children.

A formula is used to work out how much child maintenance is payable. It takes into account each parent's income and essential outgoings. Child maintenance will be looked at at intervals, based on individual circumstances of the case and following significant changes in either parent's circumstances.

This leaflet uses terms to describe those who live with or apart from the child or children for whom child maintenance is payable and some terms that are used regularly throughout the leaflet.

Children for whom child maintenance is payable under the 1991 Order (because one or both of their parents do not live with them) are called **qualifying children**.

**Parent with care** is used to describe the parent who is the main provider of day to day care of the children for whom maintenance is needed.

**Non-resident parent** is used to describe those parents who do not normally live with the children concerned. The law refers to the non-resident parent as an 'absent parent'.

Both parents have a legal responsibility to support their children financially if they can afford to do so.

The phrase **person with care** is sometimes used. It includes parents with care and also people other than parents who live with, and have care of, the children for whom maintenance is needed.

In this guide, parents with care are referred to as female, and non-resident parents as male. This is the position in more than 9 out of 10 families. The rules apply in the same way when the father is the parent with care and the mother is the non-resident parent.

Where parents are separated or divorced from each other, some tax relief may be allowed on child maintenance payments. The local tax office should be contacted for information about this.

**Decision Maker** is used to refer to a person making a decision who works for the Agency and who is acting on behalf of the **Department (Dept)**.

**TAS** is used to refer to The Appeals Service (previously called the Independent Tribunal Service).

## The main child maintenance rules

All applicants have to satisfy the following rules to be able to apply for a child maintenance assessment.

- The Child Support Agency (the Agency or CSA) will accept an application for child maintenance only when all the people involved are habitually resident in Great Britain or Northern Ireland. In most cases it is clear where a person normally lives, but in some cases a Decision Maker, acting on behalf of the Department (Dept) will need to make a decision about whether a person is habitually resident here.

The courts will continue to deal with cases where one of the people concerned lives abroad.

- Parents with care who get Income Support, Family Credit, Disability Working Allowance, or income-based Jobseeker's Allowance, or who are the current partner of someone who gets one of these benefits, are likely to be required to give their authority to the Department to seek child maintenance on their behalf. An example of where authority will not be required is in cases where there is a risk that it would lead to harm or undue distress for the applicant or any of the children living with her if she gave the authorisation. This is covered more fully on pages 70 to 74.
- Parents with care who do not get Income Support, Family Credit, Disability Working Allowance, or income-based Jobseeker's Allowance may apply for child maintenance if they wish to do so provided that a court order for maintenance, or a written maintenance agreement dated before 5 April 1993, is not in force. All parties must normally be habitually resident in the United Kingdom.
- Non-resident parents may apply provided that: a court order for maintenance, or a written maintenance agreement dated before 5 April 1993, is not in force, and the parent with care does not get Income Support, Family Credit, Disability Working Allowance, or income-based Jobseeker's Allowance.
- A child of 12 or over who lives in Scotland and who has at least one parent living apart from them in England, Scotland, Wales or Northern Ireland may also apply provided that there is no court order, or written

maintenance agreement dated before 5 April 1993 in force and no other application has been made in respect of that child.

People other than parents, such as grandparents or other relations, or guardians, who have the care of a child whose parents live elsewhere in England, Scotland, Wales or Northern Ireland may also be able to apply for child maintenance from the non-resident parents provided that there is no court order, or written maintenance agreement dated before 5 April 1993 in force. See page 64 (Special cases) for more information.

The child maintenance scheme is administered by the Agency, which assesses child maintenance, collects payment if required, and enforces payment when appropriate. See page 141 for details of how to contact the Agency.

## When to apply

In general, it is no longer possible for people who do not already have a court order or a written maintenance agreement to make arrangements for child maintenance through the courts. However, the courts will usually retain the power (jurisdiction) to make arrangements for child maintenance in certain circumstances, for example: where one of the persons concerned lives abroad; or where the child is not a qualifying child as defined by the 1991 Order; or where the request is for top-up maintenance. Top-up maintenance may be awarded (under *Article 10 of the 1991 Order*) in addition to child maintenance, for school fees, the extra costs incurred by children with disabilities, or because the non-resident parent has a high income.

Parents with care who get Income Support, Family Credit, Disability Working Allowance, or income-based Jobseeker's Allowance, or who are the current partner of someone who gets one of these benefits are likely to be required under *Article 9 of the 1991 Order* to give their authority to the Department of Health and Social Services to seek maintenance on their behalf. If the parent with care believes that giving such authorisation will lead to harm or undue distress for her or any of the children living with her, she may inform the Department and ask that she not be required to give the authority. If, however, the parent with care is required to give her authority, a maintenance application form will be sent to her by the Agency or the Social Security Agency. The maintenance application form asks for details of the non-resident parent (amongst other information).

Persons with care who are not the parent of the children, but who get Income Support, Family Credit, Disability Working Allowance, or income-based Jobseeker's Allowance, will not be required to authorise the Department to seek child maintenance. If they do not have an existing written maintenance agreement or court order they may apply to the Agency at any time. If they have an existing written maintenance agreement or court order they should continue to use the courts.

**Note:** Persons with care who are not getting a relevant benefit may come to a voluntary maintenance agreement with the non-resident parents if they wish.

## Take-on of work by the Child Support Agency

*Child Support (Northern Ireland) Order 1991 (Articles 7, 9, 10, 11)*

The Agency continues gradually to take on cases where the parent with care or her current partner has been getting Income Support continuously since before 5 April 1993. The Agency will consider sympathetically, in the light of individual circumstances, the case of any of these existing benefit recipients who ask to be taken on sooner.

Parents with care who apply for Income Support, Family Credit, Disability Working Allowance or income-based Jobseeker's Allowance, are usually contacted once the claim is made.

Some people who do not get any of the above benefits are not yet able to apply to the Agency. These are people who have a court order, or a written maintenance agreement made before 5 April 1993 in force, which is in relation to the qualifying child or children and the non-resident parent, and provides for periodic payments of child maintenance. However, people not getting the above benefits and without such an arrangement, may apply immediately.

The courts are still able to vary orders provided that the Agency has not already taken on the case. The courts are also able to deal with applications from parties to existing child maintenance orders for the revocation of those orders and with applications for top-up maintenance, see page 10.

Where it is already collecting child maintenance, the Agency may collect and enforce top-up maintenance awards made by the court, under Article 10 of the 1991 Order. The Agency offers a similar service for spousal maintenance.

## The cost of using the Agency's services

*Article 44 of the Order, and Child Support Fees Regulations (Northern Ireland) 1993 (CSFR) amended by regulation 5 of the Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995 (CSISAR '95) Reg 6 of CS (Misc Amendments) Regs (Northern Ireland) 1999*

No fees have been charged since 18 April 1995. People who owe fees due before 18 April 1995 are still required to pay them.

## The child maintenance formula

This part of the guide explains how the child maintenance formula works. It includes examples to illustrate the various stages in an assessment.

The formula applies whether or not a parent with care is getting benefit. It takes into account the number and ages of the children. The ability of both parents to contribute towards child maintenance is calculated unless the parent with care is getting benefit. Ability to pay is calculated by looking at the income available to parents after making allowances for their basic day-to-day expenses.

The formula is based on Income Support benefit rates. The benefit rates reflecting the position as at April 1999 are listed in Annex 3 on pages 139 to 143.

## The framework of the formula

Part I of Schedule 1 of the Order sets out the framework for the calculation, and uses algebraic formulae to explain the basic principles.

*The Child Support (Maintenance Assessments & Special Cases) Regulations (Northern Ireland) 1992 (MASCR) set out the details of the formula. These involve:*

- **the maintenance needed**  
the basic day-to-day costs of maintaining and caring for the children.
- **assessable income**  
the income available to each parent after allowances for basic day-to-day expenditure (their exempt income) have been offset against their net income.
- **the deduction rate**  
which sets the proportion of assessable income to be used for the maintenance of the children.
- **additional element**  
applies where the total assessable income is high enough for parents to provide more than the maintenance needed. A lower deduction rate is used for this extra child maintenance. There is a maximum level for each child.

- **a protected level of income**  
there are safeguards to ensure that non-resident parents keep more money than they would get if they were getting Income Support, and do not pay maintenance of more than 30% of their net income as assessed under the Child Support formula. If they owe arrears they will not generally be asked to pay more than 33% of their net income, unless they have failed to make or keep to an agreement to repay arrears, when they may be required to pay up to 40% of their net income.
- **a minimum amount**  
non-resident parents are normally expected to pay at least a minimum amount of maintenance for their children (currently £5.20 a week as from April 1999) but there are some exceptions.

## Special cases

Some cases involving unusual circumstances are treated as special cases and the assessment is modified, see pages 64 to 69.

## Date liability starts

Calculations for a child maintenance assessment are usually based on amounts and circumstances that apply at the effective date of the assessment. The effective date of an assessment is as follows:-

**If there is no existing court order and:**

- 1 the non-resident parent returns the maintenance enquiry form within four weeks of the date it was issued to him, **and** confirms his name, address **and** that he is the parent of the child in question. Maintenance is payable from eight weeks after the form was originally issued (or, in the case of an application by a non-resident parent, eight weeks after the form was received by the Agency). Where a Decision Maker accepts there was unavoidable delay in providing the information within the time limit he may still allow the eight week deferral;
- 2 the non-resident parent does not return the maintenance enquiry form within four weeks of issue with the information set out in paragraph 1 above, maintenance becomes payable from the date the form was originally issued to him (or, in the case of an application by a non-resident parent, the date the form was received by the Agency). *Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 (MAPR), regulation 29 as amended by Child Support Income Support (Amendment) Regulations (Northern Ireland) 1995 (CSISAR), regulation 8(10)*.

**If there is an existing court order** child maintenance is payable from two days after the assessment is made *Child Support (Maintenance Arrangements & Jurisdiction) Regulations (Northern Ireland) 1992 (MAJR) regulation 3(4)*. This is to allow time for the existing court order to be cancelled, before the maintenance assessment takes effect.

## The maintenance needed

*Para 1 of Schedule 1 of the 1991 Order, and MASCR regulations 3 & 4*

This is the amount required to provide for the day-to-day needs of the child or children for whom the child maintenance assessment is being made. It is calculated as follows:

- 1 for each child the amount equal to the Income Support personal allowance for a child of the same age;

**plus**

- 2 an amount equal to the Income Support family premium;

**plus**

- 3 where at least one child is under 11 years of age, an amount to cover the cost of care by an adult equal to the Income Support personal allowance for a person aged 25 years or over;

or

where the youngest child is aged at least 11 but under 14, an amount equal to 75% of this allowance;

or

where the child is aged at least 14 but under 16, an amount equal to 50% of this allowance. No amount is allowed for a child aged 16 or over. *(MASCR reg 3 amended by the Child Support (Miscellaneous Amendments & Transitional Provisions) Regulations (Northern Ireland) 1994 (MATPR '94), reg 5(2)).*

The amount of Child Benefit (but not the extra amount for the eldest qualifying child of a lone parent) that is payable for these children is then deducted from the total.

The amount to be deducted (at April 1999 rates) is:

- £14.40 for the eldest, or only child;
- £9.60 for all other children.

### Example

This is how the maintenance needed will be calculated for two children aged 9 and 12 who live in a lone parent family.

Child allowances	£46.10 (£20.20 for child under 11 and £25.90 for child aged 12)
Family premium	£13.90
Carer allowance	£51.40
Subtotal	£111.40
Less Child Benefit	£24.00 (£14.40 for first child and £9.60 for the second child)
<b>Total maintenance requirement</b>	<b>£87.40 a week</b>

## Assessable income

*Para 5 of Schedule 1 of the 1991 Order*

The next step is to look at the income and basic expenditure of both parents to see how much each of them is expected to contribute towards the maintenance needed.

Assessable income is income available for child maintenance. It is the income left after allowance has been made for day-to-day expenditure against net income.

The calculation of assessable income is the same for each parent but only the non-resident parent will actually make a payment of child maintenance.

## Net income

*MASCR, regs 7 & 8, and Schedules 1 & 2*

This comprises the total of income from all sources available to the non-resident parent, or parent with care. For example:

- earnings from employment after deduction for tax, National Insurance contributions, and generally 50% of any contribution to an occupational or personal pension scheme.
- earnings from self-employment net of tax, National Insurance contributions and generally 50% of contributions to a personal pension scheme.
- social security benefits (with some exceptions).

- income from capital (for example, interest on bank/building society accounts, income from trusts/property, etc).
- training allowances.
- student grants/loans (but subject to various disregards, and ignored completely if the student has no other income).
- income from occupational or personal pension schemes.
- income from boarders/subletting/rents (with some disregards).

### **Calculation of weekly income**

An average level of weekly income is calculated to reflect the normal income level at the time that a maintenance application form or maintenance enquiry form is issued. When establishing income the Decision Maker can have regard to amounts received in any period he considers reasonable, normally, within a period beginning up to eight weeks before the issue of the forms and ending with the date the assessment is made. Income is counted in the week it is due to be paid. *(CSISAR '95 reg 9(14)(c))*.

Income paid by calendar months is converted to weekly equivalents by multiplying by 12 and dividing by 52. For example, net monthly pay: £1,085; weekly equivalent =  $£1,085 \times 12/52 = £250.38$ .

Holiday pay, overtime, and payments in lieu of notice are generally treated as earnings. However, any payment made after employment has ceased, and where the effective date for assessment is after the period which the payment covers, is ignored.

If a bonus or commission is for a longer period than the earnings with which it is paid, it is treated as available for a year and converted to a weekly amount by dividing by 52.

## **Calculation of earnings from employment**

### *MASCR, Part I of Schedule 1*

The average income obtained from earnings can be calculated or estimated. A Decision Maker will look at payments received in a period beginning up to eight weeks before the Agency receives a maintenance application form or issues a maintenance enquiry form and ending with the date he works out the assessment. If evidence is incomplete or considered to be unrepresentative of the normal earnings, the Decision Maker will estimate the amount of earnings to be taken into account. In the determination of earnings the Decision Maker can have regard to evidence of a person's year-to-date earnings so long as the evidence relates to the tax year in which the application is made.

When calculating a person's net earnings the Decision Maker deducts income tax, National Insurance contributions, and an amount for sums paid towards an occupational or personal pension scheme. The amount deducted in respect of a pension scheme is 50% of the sums paid or, if the scheme is intended to discharge a mortgage and provide a pension, 25% of the contributions are allowed as a housing cost and 50% of the remainder is deducted.

Any payments of bonus, commission, or profit-related pay are averaged over a year if they are paid separately from, or for a longer period than, other earnings.

Payments for expenses are ignored provided they are wholly, exclusively and necessarily incurred in carrying out the employment. (If they are tax free they will automatically be ignored.)

### Example

This example shows the calculation of net earnings for a weekly paid person who is married. The variations reflect overtime payments and a pay increase. There is also a contribution to an occupational pension of 6% of earnings. The Decision Maker decides to take account of earnings over 5 weeks in this case.

Week	Gross per week £pw	Tax £pw	National Insurance £pw	Half pension contribution £pw	Net per week £pw
Week 1	250	28.06	19.88	7.50	194.56
Week 2	250	28.06	19.88	7.50	194.56
Week 3	270	32.66	21.88	8.10	207.36
Week 4	260	30.36	20.88	7.80	200.96
Week 5	290	37.26	23.88	8.70	220.16
Average of 5 weeks	264	31.28	21.28	7.92	203.52

This example is calculated using Notional Tax and National Insurance levels

Net amount of earnings to be taken into the maintenance calculation is £203.52.

## Calculation of income from self-employment

### *MASCR, Part I of Schedule 1*

The calculation of earnings for the self-employed is intended to reflect the flow of cash through the business and the money available to the non-resident parent or parent with care for the payment of child maintenance.

The calculation reflects the difference between the earnings from the employment (the gross receipts) and expenses wholly, exclusively and necessarily incurred in the running of the business.

The assessment period is either a year, the period of self-employment if less than a year, or such other period as provides a more reliable calculation. However, the parent may provide the latest profit and loss account for a period of between 6 and 15 months. Provided that period ends within 24 months of the date the maintenance enquiry form was sent, then earnings for the purpose of the assessment will be the average of earnings over the period of the accounts (from October 1999 a self-employed parent will also be able to provide a copy of their self-assessment form or a tax calculation notification).

### **Example**

Calculation of net earnings for a self-employed market trader who is married. The expenses allowed are incurred wholly and exclusively in the running of the business. He is also paying into a personal pension scheme at £40 a calendar month.

Period of assessment 1 year

£ per year Gross receipts		£ per year Allowable expenses	
Sales	26,400	Purchases	12,820
		Rent	1,910
		Accountancy costs	223
		Vehicle expenses	578
		Vehicle fuel costs	1,111
Gross receipts	26,400	Insurance	172
Less expenses	17,376	Loan interest	562
<b>Net profit</b>	<b>9,024</b>	<b>Total</b>	<b>17,376</b>

**Conversion to weekly amount**  $£9,024 \div 52 = £173.54$

Less:

Tax £11.27  
 (estimated at basic rate with married  
 couple allowance)

National Insurance £8.33  
 (estimated Class 2 and Class 4 )

Personal pension contribution

Conversion to a weekly amount

£40 x 12 ÷ 52 x 50%= £4.62

(half of contribution to be offset against earnings)

Total deductions £24.22

Net weekly earnings £149.32

### **Partner's income**

The income of any partner living with the parent is excluded from the calculation of net income. A partner's income is taken into account only to determine whether she can cover half the costs of her own children (see pages 33 to 35), or in protected income (see pages 52 to 57) to establish whether maintenance payable by the non-resident parent should be reduced to safeguard his second family's income. If a non-resident parent prefers not to disclose his partner's income, the assessment will assume that the partner can meet half the cost of any children she shares with the non-resident parent, and that the second family does not need to benefit from protected income.

### **Children's income**

*MASCR, Part IV of Schedule 1, amended by reg 9(14)(g) of the CSISAR '95*

Where the non-resident parent or parent with care has a child of his or her own living with him or her, income, other than earnings, of the child which exceeds £10 weekly may be included up to certain limits as if it were the parent's income. A child's earnings are ignored.

The following paragraphs describe how income other than earnings, for example, from money left by a relative, is counted.

The first £10 is disregarded, and any excess is treated as follows:

- 1 where the child is not the subject of the child maintenance assessment:
  - (i) income is counted up to the amount of the allowance(s) for the child included in exempt income (personal allowance and any premium in respect of disability (see page 29). For example, for a child under 11 the personal allowance is £20.20 a week. Income up to this amount will be counted against the cost of maintaining this child.
- 2 where the child is the subject of the child maintenance assessment in question, either:
  - (i) the child's income will be counted in full if the child is the only child for whom the assessment is being made;
  - or**
  - (ii) if the child is one of several for whom the maintenance assessment is made, the child's income will be counted to the extent of his or her own share of the maintenance needed, pages 16 to 17, and the maximum additional amount, see pages 50 to 52.

### **Example of 2 (ii)**

Jennifer is divorced from Brian. They have two daughters, Avril aged 12 and Sarah aged 14, who live with Jennifer.

Sarah has a net income of £40 a week from capital in a building society.

To work out how much of Sarah's income should be included as income in the assessment, first disregard £10 of the income, then calculate the maximum amount of maintenance for Sarah payable under the formula as follows:

Personal allowance	£25.90	Allowance for child aged 11 to 15
Adult allowance	£19.28	half of allowance for child's care, (£51.40 x .75 x .5 (she is one of two children))
Family premium	£6.95	half of family premium (again, she is one of two children)
Subtotal	£52.13	
Less Child Benefit	£14.40	
<b>Sarah's share of the maintenance requirement</b>	<b>£37.73</b>	
Additional maintenance (explained more fully on pages 46 to 47)	£59.70	1.5 x (£25.90 plus £13.90) child allowance plus family premium
<b>Total</b>	<b>£97.43</b>	

Sarah's income of £30 (£40 less £10) which is eligible to be taken into account, is less than the maximum amount for her which is £97.43 so the full £30 is added to Jennifer's net income for the purposes of the child maintenance assessment.

## **Shared/joint income**

In most cases it will be clear who owns a particular income. Where a source of income is held jointly, then the value is divided between the owners based on whatever information is available (*MASCR, reg 7(4)*). Certain Social Security benefits contain extra amounts for a partner or child. For the purposes of this calculation the amount that is paid for a person is to be treated as that person's income (*MASCR, Schedule 1, para 7(1)*).

## **Social Security benefits**

*MASCR, Part II of Schedule 1*

When Income Support or income-based Jobseeker's Allowance (and in the case of a parent with care, Family Credit or Disability Working Allowance) is paid to a parent, or to someone else for a parent, that parent's assessable income will be taken to be nil. Where the parent is a non-resident parent, who gets Income Support or income based Jobseeker's Allowance he is required to make a minimum contribution to maintenance by a deduction from benefit unless he is exempt, see pages 57 to 58. It is not, therefore, necessary to do an assessable income calculation in such cases.

Housing Benefit is not counted in net income. Housing Benefit is offset against housing costs in exempt or protected income.

Family Credit and Disability Working Allowance are counted as the income of the person whose earnings they are supplementing - either the non-resident parent or his partner. If two adults are earning, the benefit is deemed to belong to the main earner (the person with the largest net earnings (*MASCR, paras 7(2) - (5) of Schedule 1*)).

From 5 October 1999 Working Families' Tax Credit replaces Family Credit and Disabled Person's Tax Credit replaces Disability Working Allowance. If either you or your partner who lives with you now receive either of these Tax Credits, they will not take into account any child maintenance that you receive when working out the claim.

You can get more information about Tax Credits by phoning the helpline on 0845 609 7000 or Textphone 0845 607 6078.

If a parent with care gets Working Families' Tax Credit or Disabled Person's Tax Credit, or someone else gets it for them, we take it they have no income which we can use in the assessment.

If Working Families' Tax Credit or Disabled Person's Tax Credit is paid to a non-resident parent's household and:

- the NRP is the main earner, we use all of the income from the Tax Credits in the assessment;
- the NRP's partner who they live with now is the main earner, we use none of the income from the Tax Credits in the assessment;
- the NRP's partner who they live with now earn equal amounts, we use half of the income from the Tax Credits in the assessment.

Child Benefit is not counted in net income, but see pages 16 to 17 for its treatment in the maintenance needed and page 54 for its treatment in protected income.

Income from certain other benefits is also to be ignored completely, for example:

- Attendance Allowance;
- Disability Living Allowance;
- Social Fund payments;
- certain war pension allowances.

A full list of benefits which are disregarded is set out in *MASCR (Schedule 2)*.

### **Students, prisoners and trainees on work based training for young people or skill seekers training**

Unless they have income in addition to:

- for students- student grant and loans;
- for prisoners- prisoners' pay; and
- for trainees- training allowance,

they are assessed as having no net income (*MASCR, reg 7(3)*).

### **Forms of income which may be disregarded in full or in part**

A wide variety of income is ignored in the child maintenance calculation, a list is given in *MASCR (Schedule 2)*.

### **Exempt income**

*MASCR, regs 9 & 10; CSISAR '95 reg 14 revokes MASCR reg 17*

For each parent, exempt income represents the income which the parent keeps for his or her own personal expenses. It also includes allowances for any children of that parent living with him or her. It does not include

allowances for a partner, stepchildren, other relatives or other persons living in the parent's family or household. Exempt income includes:

- 1 an amount equal to the Income Support personal allowance for a single person aged at least 25 years;  
**plus**
- 2 if the non-resident parent or parent with care would qualify for the inclusion of the disability premium if Income Support were claimed, an amount equal to this premium;  
**plus**
- 3 if the non-resident parent or parent with care would qualify for the inclusion of the severe disability premium if Income Support were claimed, an amount equal to this premium;  
**plus**
- 4 if the non-resident parent or parent with care would qualify for inclusion of the carer premium if Income Support were claimed, an amount equal to this premium;  
**plus**
- 5 for any child of the non-resident parent or parent with care living with him or her, an amount equal to the Income Support personal allowance that would be appropriate for a child of the same age. See page 34 for the position when the child's other parent also lives in the family and can help support the child financially;  
**plus**

6 if there are children of the non-resident parent or parent with care living with him or her, an amount equal to the Income Support family premium. See page 34 for the position when the children's other parent also lives in the family and can help support them financially;

**plus**

7 if any of the children of the non-resident parent or parent with care living with him or her would qualify for the disabled child premium if Income Support were claimed, an amount equal to the Income Support disabled child premium. See page 34 for the position when the child's other parent also lives in the family and can help support the child financially;

**plus**

8 housing costs for the non-resident parent or parent with care. See pages 36 to 41 for a description of the way housing costs are worked out;

**plus**

9 where the non-resident parent or parent with care is in residential care (including residential care provided by a local authority) or nursing home, the amount of the fees;

**plus**

10 where the non-resident parent or parent with care travels more than 150 miles a week between home and work (measured as a straight line) and incurs a cost, an allowance towards travel-to-work costs, see pages 42 to 44;

**plus**

11 where a non-resident parent (or parent with care who used to be a non-resident parent) made a property and capital settlement valued at at least £5000 to the other parent in consequence of a court order or written maintenance agreement made before 5 April 1993, an allowance to take account of the settlement, see page 44.

### Example

Martin lives alone and pays rent of £40 a week. His exempt income is calculated as follows.

Adult personal allowance	£51.40 a week
Rent	£40 a week
Total	£91.40

## Child is child of parent and new partner

If the non-resident parent lives with a new partner and they have a child of their own living with them, an allowance for this child is included in exempt income. The new partner may be able to contribute to the support of that child. If so, the amount to be included under (5) and (7) on pages 30 to 31 is half of the standard amount.

The amount to be included under (6) on page 31 will similarly be half of the standard amount unless the non-resident parent has another natural or adopted child living with him who is not the child of his partner, (*MASCR, reg 9(2)*). These provisions are one of the reasons that the maintenance enquiry form asks for income details of a parent's new partner.

The partner's ability to share the support of her child is assessed by comparing the amount of her net income (pages 18 to 29) with the aggregate of sums equivalent to:

- the amount of the Income Support personal allowance for someone aged at least 25;
- half the amount of the child's personal allowance;
- half the amount of any disabled child premium (where appropriate);
- half the amount of the family premium except where the family premium is included in exempt income irrespective of that child.

## Example

This calculation shows a partner's ability to support his or her child and the effect on exempt income.

Richard and Sheila have one child, Becky aged two. Richard has a child from a previous relationship, Paul aged 9, who lives with his mother. Richard earns £175 net a week.

Richard and Sheila are buying their own home and their housing costs are £50 a week. If Sheila has no income of her own, Richard's exempt income will be:

Child allowance: for Becky aged two	£20.20
Personal allowance	£51.40
Family premium	£13.90
Housing cost	£50.00
<b>Total exempt income</b>	<b>£135.50</b>

If Sheila also works, with earnings (net) of £80 a week, the position would be as follows.

Allowances for Sheila:

Adult allowance	£51.40
Half of child allowance for Becky	£10.10
Half of family premium	£6.95
<b>Total</b>	<b>£68.45</b>

Sheila's income of £80 a week exceeds her allowances, so Sheila is considered able to help towards the support of her child, Becky.

Richard's exempt income will now be:

Child allowance: age two (half rate)	£10.10 (the other half is covered by Sheila)
Personal allowance	£51.40
Family premium (half rate)	£6.95 (the other half is covered by Sheila)
Housing cost	£50.00
Total exempt income	£118.45

Where a non-resident parent or parent with care has his or her child living with them for at least the equivalent of 104 nights in 12 months (two nights a week on average) but less than seven nights a week, then the amount to be included under (5) and (7) on pages 30 to 31 is proportionately reduced. (For example, care of three nights a week = three sevenths of standard amount.)

Normally the amount to be included under (6) on page 31 is reduced on the same basis, but only if the amount of the family premium has not been included in full for other children (*MASCR, regs 9(3) & (4)*), see also page 65 for information about shared care.

## Housing costs

*MASCR, regs 14-18 and Schedule 3. CSISAR '95 regulation 9(9), 9(10) and regulation 14 amends regs 15, 16 & 17*

Reasonable housing costs - most commonly rent or costs of house purchase (mortgage) - are allowed for the dwelling which the parent normally occupies as his or her home.

Similarly, costs are allowed for shared ownership schemes, board and lodging and other costs eligible for:

- Housing Benefit - such as licences to occupy, mooring charges for a house-boat (not for other craft), site rents for mobile homes or caravans;

**or**

- consideration as housing costs under the Income Support scheme - such as payments under co-ownership schemes, ground rent relating to a long tenancy and payments in respect of a tent and the site on which it stands.

Appropriate housing costs for certain other types of accommodation not normally coverable by either Income Support or Housing Benefit are also allowed. These may include, for example, the cost of accommodation provided by an employer (tied accommodation).

Charges made for fuel, water, or sewerage services and for meals, do not count as housing costs in the formula, neither do service charges where they exceed one quarter of the net eligible housing costs, unless they would count in the calculation of Housing Benefit if they applied to rented property.

Housing costs not already expressed in weekly amounts are recalculated as weekly sums like other elements in the calculations of exempt and protected income. Weekly rent is allowed for 'rent free' weeks.

The test to see if housing costs are reasonable is described on page 41.

## **Rent**

Exempt income includes the parent's net eligible rent which is arrived at as follows:

- 1 the amount of rent is based on the amount eligible for Housing Benefit. Charges for meals, fuel, water and sewerage are not allowed as housing costs. Other service charges which would not be allowed for Housing Benefit, such as charges for laundry, leisure items, cleaning, and transport can be counted as rent, provided the total service charges do not amount to more than one quarter of the net eligible rent;
- 2 where there is a joint tenancy with a person who is not a member of the parent's family, the rent is divided equally among the joint tenants. Where there is a joint tenancy with a partner, the rent is not divided.

Any Housing Benefit received is deducted and the amount left - net assessable rent - will be the full housing cost for the parent's household.

## Owner-occupiers

There are a number of ways to fund house purchase. These include:

- annuity loan (or repayment mortgage);
- endowment mortgages;
- pension-linked mortgages;
- personal equity plan (PEP) mortgages.

The last three of these all work by generating a capital sum, which will be at least sufficient, at the end of the term, to meet the amount, borrowed.

Eligible housing costs for exempt income purposes include mortgage interest, capital repayments or payments on endowment policies or investment plans intended to discharge the mortgage, and premiums on a mortgage protection policy.

Premiums on an endowment policy or PEP intended to pay off the mortgage will be allowed in full, even if the policy or PEP includes a 'with profits' element, provided the mortgage does not exceed £60,000. Where the mortgage is more than £60,000 the repayment element allowed in exempt income is limited to an amount which would be sufficient to pay off the loan. (*MASCR, para 3 of Schedule 3 amended by MATPR '94 reg 5, para (6)*).

One quarter of the costs of a personal pension plan linked to a mortgage are allowed as a housing cost, the remaining costs are treated as pension costs and 50% of them are allowed when calculating a parent's net income.

In the same way as for rent cases, an owner-occupier's assessable housing costs are subject to:

- deductions for certain service and other charges, and property insurance;
- sharing of costs where there is joint ownership and the other joint owner(s) is/are not the parent's present partner.

### **Other types of housing cost**

These include:

- 1 **Parent as non-dependant:** where the parent is living as a non-dependant in someone else's household, no housing allowance is added in exempt income if he/she has no personal liability for the costs of the accommodation in which they live.

However, an amount is allowed in the protected income calculation, see pages 52 to 57. This is an amount equivalent to the non-dependant deduction which would be made if the householder with whom the parent lives were receiving Housing Benefit or receiving Income Support, see Annex 3 on pages 139 to 143.

- 2 **Parent as boarder:** where there is an inclusive board and lodging charge, the amount included in exempt income in respect of housing costs is limited to the accommodation element of the charges. It does not include the portion of the charges which are, for example, for meals or heating. These costs are covered by the parent's personal allowance.
- 3 **Accommodation used for residential and other purposes:** where accommodation is used partly for residential and partly for other purposes, only the amounts attributable to use as a residence will be allowed as housing costs. The parent is normally expected to provide information about this. Where the domestic element seems abnormally expensive, the amount allowed may be assessed by reference to the proportion of floor area used for each purpose.
- 4 **Interest and repayments on loans for essential repairs and improvements:** where the loan was taken out before issue of the maintenance enquiry form to the non-resident parent, these costs are allowed irrespective of whether the repair or improvement was essential.

## Reasonable housing costs

Housing costs calculated according to the above rules will normally be allowed in full. However, it is expected that a parent should have acted reasonably in taking on housing costs in the light of existing and future commitments.

These include the need to maintain his or her children.

*MASCR, reg 18* provides that, with various exceptions, weekly housing costs of a non-resident parent should not exceed the greater of £80 or half net income. The exceptions are where:

- Housing Benefit has been awarded (or the outcome of a claim is awaited);
- the non-resident parent has the day-to-day care of a child;
- the non-resident parent or partner is disabled;
- the non-resident parent remains in the home he occupied with his former partner;
- the non-resident parent has been meeting the costs for more than 52 weeks before the date of the first application for child maintenance;
- the housing costs would not exceed the maximum but for increased interest rates

**or**

- housing costs are higher than they otherwise might be because the non-resident parent does not have access to his share of the equity from the former home, which the former partner continues to occupy.

## Allowance for travel-to-work costs

*CSISAR '95 reg 9(5) amends MASCR reg 9, reg 9(7) amends MASCR 11, CSISAR '95 schedule 2 inserted in MASCR as schedule 3B*

*CSMA (No 2) '95 reg 4(11) amends schedule 3B to MASCR*

If the straight line distance between the parent's home and normal work place multiplied by the number of journeys they make each week is more than 150 miles, an allowance of 10p a mile is made in exempt and protected income for each mile over 150.

### Example

The distance between Andrew's home and place of work (measured in a straight line) is 30 miles, and he makes 5 journeys each way a week which means he travels 300 miles.

Andrew is allowed 10p a mile for each mile over 150:  $10p \times 150 = \text{£}15$ .

This amount is allowed in full in exempt and protected income.

If the parent has more than one normal place of work, all the actual journeys made to and from home and workplace and between the workplaces are included in the calculation. Providing these add up to more than 150 miles a week, the parent will be eligible for the allowance.

## Example

The distance between Neil's home and work place A (measured in a straight line) is 20 miles. He works a five day week. Four evenings a week he travels from work place A to work place B which is 10 miles away. He travels home from workplace B, a further distance of 20 miles.

Journeys to workplace A =  $5 \times 20 = 100$  miles a week

Journeys between A and B =  $4 \times 10 = 40$  miles a week

Journeys between B and home =  $4 \times 20 = 80$  miles a week

Journeys between A and home =  $1 \times 20 = 20$  miles a week

Total straight-line distance is 240 miles a week.

Neil is allowed 10 pence a mile for each mile over 150 = 90 miles @ 10p per mile = £9.

The amount is allowed in full in exempt and protected income.

Some travel to work costs will not be eligible for the allowance, these are:

- travel in connection with self-employment (but if a self-employed person has regular employed earner's employment as well, the journeys they undertake in that employment will be taken into account);

- where the employer provides assistance towards their travel-to- work costs by providing free transport, a company car, or a contribution towards the costs unless such contribution is also taken into account when assessing the parent's income.

There are special rules, based on notional work places, for those whose work is so irregular that actual distances cannot be used. (*CSISAR '95 schedule 2 15(2)*)

## **Allowance for a property and capital settlement**

*CSISAR '95 schedule 1 inserted in MASCR as schedule 3A*

*CSMA (No 2) '95 reg 4(10) amends schedule 3A to MASCR*

*CSMA '99 reg 4(6) amends schedule 3A to MASCR*

An allowance is made in exempt income for non-resident parents (or parents with care who used to be non-resident parents) who made a settlement of property and/or capital to the other parent in consequence of a court order or maintenance agreement made before 5 April 1993 where the settlement is:

- partly or wholly in respect of a child for whom a child support assessment is being made; and
- valued at least £5000.

Where the transfer was wholly in respect of the other parent (spousal maintenance), or is valued at less than £5000, no allowance is made.

'Property and capital' means property, cash and/or savings, business assets (money or an interest in land or otherwise which, prior to the transfer, was used in the course of a trade or business) and endowment policies linked to a mortgage on the property.

The total value of the settlement is calculated by taking the value of the property transferred by the non-resident parent to the parent with care (deducting the amount of any mortgage outstanding on the property at the time of the settlement) and deducting the value of any "compensating transfer" (property transferred by the parent with care to the non-resident parent as part of the settlement). Normally, it is assumed that:

- at the time the settlement was made, each parent was entitled to half of the total value of the property or capital of which the transferred property forms part or the whole; and
- the transfer was made equally for spousal and child maintenance.

Value of transfer	Allowance added to exempt income
£5000 to £9999	£20
£10,000 to £24,999	£40
£25,000 and over	£60

### Example

Charles and Linda agreed a transfer involving property and capital in January 1992. Charles transferred the property to Linda and received £15,000 from their joint savings of £23,000. At the time the property was valued at £80,000 and had an outstanding mortgage of £40,000.

Value of property transferred to Linda	<b>£20,000</b>	(Half of £80,000 value minus half of outstanding mortgage)
Value of the capital transferred to Linda	<b>Nil</b>	(After the settlement Linda ends up with less capital than the half share of £23,000 she is assessed to have had originally - see "compensating transfer" below)
<b>Total value of property and capital transferred to Linda</b>	<b>£20,000</b>	
Value of compensating transfer of capital from Linda to Charles	<b>£3,500</b>	(half of £23,000 savings less balance retained by Linda following the settlement - £8,000)
Total value of transfer	<b>£16,500</b>	(Value of Charles's transfer to Linda minus value of Linda's compensating transfer to Charles)
Amount allowed in exempt income	<b>£40</b>	

## The deduction rate

### Up to the maintenance needed (*MASCR, regulation 5(b)*)

A deduction rate of 50% is applied to the combined assessable income of both parents until the maintenance needed is met.

### Example

Peter is separated from Sally. They have two children who live with Sally. She does not work. The maintenance needed is £87.40 and Peter's assessable income is £140 a week. He is required to pay 50% of his assessable income in child maintenance, which amounts to £70 a week. He does not have enough income to meet the full maintenance needed of £87.40 and pays £70.

## Additional element

### *MASCR, regulation 6*

Where the total amount of assessable income (net income minus exempt income) exceeds that needed to meet the maintenance needed, the formula provides for an additional amount of maintenance to be calculated and levied. The deduction rate, to be applied to the balance of assessable income remaining after the maintenance needed is met, depends upon the number of children to whom the maintenance assessment relates. Where there is one such child it is 15%, where there are two such children it is 20%, and where there are three or more children it is 25% (*MASCR, reg 6 amended by MATPR '94 reg 4*). These rates apply until the maximum amount of maintenance is reached, see page 51.

## Example

Steve and Rosemary are divorced and have two children, Catherine and Samantha who live with Rosemary. Rosemary does not work. Steve has assessable income of £200 a week. The maintenance needed for Catherine and Samantha is £87.40 a week. Half (50%) of the total assessable income is £100 which is more than the maintenance needed of £87.40, therefore Steve is liable to pay an additional element in addition to the maintenance needed.

Steve's assessable income = £200.00

Already used up at 50% deduction rate = £174.80  
(£87.40 x 2)

Leaves further assessable income of £25.20  
from which to pay further maintenance.

£25.20 x 20% (for two children) = £5.04

Therefore Steve pays maintenance of £92.44  
(£87.40 + £5.04) for Catherine and Samantha.

## Both parents have assessable income

When both the non-resident parent and the parent with care have assessable income, both contribute towards the maintenance needed and the additional maintenance. This is worked out in proportion to each parent's share of their total assessable income.

## Example

William and Susan are divorced. They have two children, Keith and Michael, who live with Susan.

The maintenance needed for the two children is £87.40 a week. Susan has assessable income of £50 a week, and William has assessable income of £150 a week. This means there is a total assessable income of £200 a week. Half (50%) of this total assessable income is £100, which exceeds the maintenance needed. As a result, an additional element of maintenance will be payable on top of the maintenance needed.

The payment William is asked to make towards the maintenance needed (the basic element) is based on his proportion of the total assessable income. It is therefore:

$$\frac{\pounds 87.40 \times \pounds 150}{(\pounds 150 + \pounds 50)} = \pounds 65.55$$

The remaining part of the maintenance needed (£21.85) is met from Susan's assessable income.

William's assessable income is £150 a week. At a deduction rate of 50%, £131.10 of his assessable income covers the payment of £65.55 towards the maintenance needed. This leaves assessable income as follows:

William's assessable income =	£150.00
Already used up at 50% deduction rate =	£131.10
Leaves =	£18.90
Additional element payable = (£18.90 x 20% - for two children)	£3.78

William pays a total child maintenance of  
 $£65.55 + £3.78 = £69.33$

Susan, in this example, would also be able to contribute at the additional element rate. It is unnecessary to do this part of the calculation, however, because as she is the parent with care she does not actually make a payment.

### **Maximum amount**

*Child Support (Northern Ireland) Order 1991, Schedule 1, para 4(2)-(3) CSISAR '95 reg 9(4) amends reg 6 of MASCR*

There is a maximum amount of child maintenance payable under the Child Support (Northern Ireland) Order. It comprises the maintenance needed and an extra amount for each child calculated as follows:

- an amount equivalent to the Income Support personal allowance for the child as included in the maintenance needed ;

**plus**

- an amount equal to the Income Support family premium.

The total of these is multiplied by 1.5.

### **Example**

Karen and James are divorced. They have two children, Louise aged 10 and Emma aged 15. Karen is a lone parent and receives Income Support. James has a net income (after tax, National Insurance, and half of pension contributions) of £3,677.66 a month and housing costs of £800 a month.

The maintenance needed is £87.40

James' exempt income is £246.50, including an allowance for travel to work costs.

James' assessable income is:

Net income	£848.69 a week
less exempt income	£246.50 a week
Total assessable income	£602.19 a week

The maintenance needed of £87.40 is met when 50% of the first £174.80 of assessable income is paid. After paying this, James has a further £427.39 assessable income available from which more maintenance can be paid.

20% (because there are two children) of the remaining £427.39 of assessable income is £85.48. Provided this does not exceed the maximum amount, this is the additional maintenance James should pay.

The maximum amount of additional maintenance is calculated as shown in this example.

Maximum additional element for Louise and Emma:

Louise child allowance + family premium =	
(£20.20 + £13.90 = £34.10) x 1.5 =	£51.15
Emma child allowance + family premium =	
(£25.90 + £13.90 = £39.80) x 1.5 =	£59.70
Maximum additional maintenance =	£110.85

The normal calculation for the amount that James should pay as additional maintenance gave a figure of £85.48, which is less than the maximum additional element.

So James pays additional maintenance of £85.48 which, added to the basic maintenance needed of £87.40, means that he pays a total of £172.88 maintenance a week.

## Protected level of income

*MASCR, regulation 11*

The protected income provisions ensure that a non-resident parent retains enough income after paying child maintenance to meet his day-to-day needs and those of any second family. An adjustment is made to reduce the assessed amount of child maintenance in those cases where the non-resident parent's disposable income would otherwise fall below his protected income level. There are two types of protected income provision:

- i) The first reflects the day-to-day expenses of the non-resident parent and his current family. That is, including any partner and stepchildren, and other dependent children (but not foster children) living with them. Allowance is also made for children who live with the non-resident parent for at least the equivalent of 104 nights in 12 months (2 nights a week on average). The protected income calculation does not include non-dependants living in the same house or any person who has reached 16 and left full-time non-advanced education.

The protected income calculation cannot be made where the details of the non-resident parent's current partner's income are not known.

The protected income calculation includes:

- 1 an amount equal to the Income Support personal allowance for a single person aged at least 25 years;

**or**

if the non-resident parent has a partner, an amount equal to the Income Support personal allowance for a couple where both are aged not less than 18;

**plus**

for each child, an amount equivalent to the Income Support personal allowance that would be appropriate for a child of the same age;

**plus**

an amount equivalent to any Income Support premiums which would be applicable if Income Support were claimed;

**plus**

- 2 reasonable housing costs calculated as for exempt income, see pages 36 to 41, except that no allowance is made for mortgage or loan capital repayments, or premiums on a mortgage protection policy, or other policy linked to a mortgage;

**plus**

- 3 rates for the non-resident parent and his partner or, if the non-resident parent is sharing with persons other

than a partner, his share (unless he has to pay it all because the others fail to do so) less any rate rebate;

**plus**

- 4 where appropriate, an allowance towards travel-to-work costs;

**plus**

- 5 a standard amount of £30 in all cases;

**plus**

- 6 a further amount of 15% of the amount by which the family's disposable income exceeds the basic protected income level which is the total of 1 - 5 above.

The extra amounts of £30 and 15% ensure the non-resident parent is left with an income higher than the appropriate Income Support level.

## **Calculation of disposable income**

The protected income calculation, by and large, treats income in the same way as described for net income, see pages 18 to 29.

The main differences are:

- the income of any partner or children who are members of the current family will be included, but a child's earnings and £10 of any other weekly income of the child are ignored;
- Child Benefit and maintenance paid for any member of the family are counted as income.

## Example

Richard and Sheila have one child, Becky, aged two. Their housing costs are £50 a week for a mortgage, of which £45 is interest. Richard has been assessed to pay child maintenance of £35.58 a week for another child, Paul, who is nine.

The family's net income is:

his net earnings	£198.00
plus Child Benefit	<u>£14.40</u>
giving a total family income of	£212.40

The next part of the calculation builds up the elements of Richard's protected income.

Income Support personal allowances and premiums:

couple	£80.65
child aged two	£20.20
family premium	<u>£13.90</u>
giving a total of	£114.75
then add in housing costs	£45.00

(In the protected income calculation, the non-resident parent who has a mortgage is allowed whatever would be allowed in an Income Support calculation for a mortgage - the interest only.)

Then add in -

the actual rates payable (ie net of any rate rebate)	£8.68
---	-------

and:

the initial margin of	£30.00
giving basic protected income	£198.43

An additional 15% of the difference between disposable income and basic protected income is then added to this figure. For the purpose of this calculation, disposable income (*MASCR, reg 12(1)(a)*) is the same as the family's total income, which for Richard's family is £212.40. The £198.43 basic protected income figure is deducted from this, leaving £13.97 15% of this (£2.10) is added to basic protected income, giving total protected income of £200.53 a week.

Richard was assessed to pay child maintenance of £35.58 for his other child, Paul. However, if he paid that from the family disposable income of £212.40, he would be left with only £176.82, which is less than the protected income level of £200.53 a week. This means that the child maintenance actually paid for Paul has to be reduced to a level which leaves Richard and his second family with £200.53 a week. Richard will therefore pay £11.87 (£212.40 - £200.53) for Paul, instead of the full amount of £35.58.

- ii) The second type of protected income provision ensures that non-resident parents will not normally be assessed to pay more than 30% of their net income in child maintenance. If their assessment works out at more than 30% of their net income, the assessment will normally be reduced (*CSISAR '95, regulation 8(2)(e) & 9(7)(c)*). In addition, the Agency will not generally require non-resident parents to pay more than 33% if they are also paying off arrears unless they have failed to make or keep an agreement to repay arrears, when they may be required to pay up to 40%.

Where the application of protected income produces an amount of maintenance payable which is less than £5.20, the minimum payment rules will apply, see next section.

## Minimum payment

*MASCR, regs 13, 26 & 28, and Schedule 4*

Except where a person is in an exempt category, every non-resident parent is required to pay a minimum amount of maintenance. This applies where the amount payable under the formula would otherwise be nil or an amount less than the minimum. The minimum amount is set at two times 5% of the amount of the Income Support adult personal allowance for a single person aged 25 or over. (The 5% figure is rounded up to the nearest 5p.) At 1999/2000 rates, the minimum amount is £5.20 a week. The following non-resident parents will be exempt:

- those in receipt of various sickness and disability benefits or award, see Annex 1 for full list;
- those whose protected income calculation includes an amount equal to the family premium in Income Support;
- prisoners;
- those aged under 18 who are receiving Income Support or income-based Jobseeker's Allowance;
- those who are children as defined in Article 3 of the 1991 Order;
- those whose net income is less than the minimum amount.

A non-resident parent who receives Income Support or income-based Jobseeker's Allowance normally has an amount equal to the minimum payment deducted from his benefit payments by way of a contribution to child maintenance. Non-resident parents receiving Income Support or income-based Jobseeker's Allowance will not be subject to this deduction where they are in one of the exempt categories above or have care of any children.

## Interim maintenance assessments

*MAPR, reg 8 amended by CSMA (No. 2) '95 reg 3(3) and 1991 Order Article 14*

Where the non-resident parent has not provided the information required by the Decision Maker to make a maintenance assessment or to conduct a case check, the Decision Maker may make an interim maintenance assessment (IMA).

There are four types of IMAs; categories 'A', 'B', 'C' and 'D'.

**A category 'A'** IMA is made where the non-resident parent has not provided sufficient information to allow a child maintenance assessment to be made, even though he has the information or could reasonably be expected to acquire it. The amount that the non-resident parent pays through an IMA is usually higher than if a full maintenance assessment is calculated, and will be set at a rate one and a half times the maintenance needed, see page 16.

**A category 'B'** IMA is made where information relating to the income of the partner or other member of the family of the non-resident parent or parent with care has not been provided to enable a full assessment to be made.

The amount that the non-resident parent pays is calculated on the assumption that his partner can help support any children of their relationship, and that the protected income safeguard (see page 52) is not needed.

In a case where the parent with care failed to provide information relating to the income of her partner, her exempt income would be calculated on the assumption that her partner was able to help support any children of their relationship.

**A category 'C'** IMA is made where the non-resident parent is self-employed and, through no fault of his own, is unable for the time being to provide sufficient evidence of his income. In these cases the non-resident parent may be asked to pay £30 a week (or less if the Decision Maker thinks a lesser or nil amount is reasonable) until the necessary evidence is available.

**A category 'D'** IMA may be made in the case of non-resident parents with high incomes where, on the information available, the Decision Maker considers that a maintenance assessment made under the formula would be higher than the amount of a category 'A' IMA. The Decision Maker will use the best available information about the means of the non-resident parent to calculate the amount of the IMA using a modified formula calculation. No allowance will be made for housing costs and no protected income provisions apply, but the amount of the IMA will still be subject to the maximum normally payable under the formula.

## Liability for maintenance under an IMA

Once the non-resident parent provides the details needed for a formula assessment to be made the IMA is replaced by that assessment. The amount the non-resident parent is liable to pay for the period of the IMA is also reduced to the level of the formula assessment, except where that liability was for a period before 18 April 1995 then the liability for any such period stays at the IMA rate.

## Phasing the formula assessment

*Child Support (Northern Ireland) Order 1991 (Commencement No 3 and Transitional Provisions) Order (Northern Ireland) 1992 Part II. The Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations (Northern Ireland) 1994*

The calculation of child maintenance as described earlier in this guide will, in many cases, increase the level of maintenance payable by the non-resident parent. Where a non-resident parent has established a second family it may, in some cases, be necessary to mitigate the effects of the increase, so that the non-resident parent has time to adjust to the new maintenance arrangements, and manage his finances accordingly.

There are two different types of phasing arrangement. Neither arrangement applies where a category 'A' or category 'D' interim maintenance assessment has been made.

The first type, (*Child Support (1991 Order) (Commencement No 3 & Transitional Provisions) Order (Northern Ireland) 1992 Part II*) applies where the amount of maintenance assessed under the formula is £60 a week or less and:

- 1 there is an existing maintenance arrangement made prior to 5 April 1993 that is still in place which includes all the children in the maintenance assessment. The following are included in the term 'arrangement':
  - a court order;
  - a maintenance agreement made or evidenced in writing;
- 2 the non-resident parent has responsibility for maintaining at least one child who lives with him;
- 3 the maintenance assessed under the formula exceeds the level of the amount due under the existing agreement by at least £20.

Phasing lasts for a maximum of one year from the effective date of the assessment, but will end earlier if the above conditions are no longer satisfied.

The phased assessment will be calculated in the following way:

### **Example**

Child maintenance under the formula amounts to £57 a week.

The original court order was for £19 a week.

Add £20 to the value of the court order, see 3 above.

The amount the non-resident parent should pay, in this example, because phasing-in is appropriate is £20 + £19.

The non-resident parent pays £39 a week (£18 less than the child maintenance assessment of £57 a week).

He pays £39 (assuming no change in circumstances) for one year, after which he will be expected to pay the full amount of £57 a week.

The second type, (*The Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations (Northern Ireland) 1994*), applies where the amount of maintenance assessed under the formula is more than that paid under a maintenance arrangement and:

- 1 there is an existing maintenance arrangement made before 5 April 1993 that is still in place and includes at least one child covered by the maintenance assessment. 'Maintenance arrangement' has the same meaning as above;
- 2 the non-resident parent has at least one child in his family of whom he or his partner has day-to-day care.

Non-resident parents whose formula amount is over £60 may be able to make payments of child maintenance in up to three stages after their new assessment has been worked out. The number of stages will depend on when the amount payable under the phasing provisions becomes the same as that payable under the formula as described on this page.

1 In the first six months:-

Unless the formula amount has already been reached, the child maintenance to be paid will be the higher of either:

- the amount payable under the old court order or maintenance arrangement plus 25% of the difference between the old amount and the amount of the maintenance assessment;

**or**

- the amount payable under the old court order or maintenance arrangement plus £20.

2 In the second six months:-

Unless the full amount has already been reached, the child maintenance to be paid will be the higher of either:

- the amount payable under the old court order or maintenance arrangement plus 50% of the difference between the old amount and the amount of the maintenance assessment;

**or**

- the amount payable under the old court order or maintenance arrangement plus £40.

3 In the third six months:-

Unless the full amount has already been reached, the child maintenance to be paid will be the higher of either:

- the amount payable under the old court order or maintenance arrangement plus 75% of the difference

between the old amount and the amount of the maintenance assessment;

**or**

- the amount payable under the old court order or maintenance arrangement plus £60.

4 After the third six months:-

The full amount of child maintenance will be paid.

If at any of the six month stages the level of the new maintenance assessment is reached, the non-resident parent will be required to pay the full amount from that point onwards.

## Special cases

The formula described above deals with the majority of cases where a child is looked after by one parent and child maintenance is sought from the other. Article 39 of the 1991 Order provides for regulations to define special cases and to enable special arrangements to be made for them.

### Both parents are non-resident parents

*MASCR, reg 19 amended by CSAMR '96*

If neither parent looks after the child, but the child is cared for instead by, say, a grandparent, aunt or family friend, the person with care of the child may apply for a child maintenance assessment provided that there is no court order or written maintenance agreement made before 5 April 1993 in force. Both parents (if alive) are non-resident parents in this case and both have a responsibility to pay child maintenance for the child.

### *MASC reg 19(2)*

The ability of both parents to pay child maintenance is calculated in the normal way, with the assessable income of the second non-resident parent taking the place of the assessable income of the parent with care in the calculation. Where the income of the second parent is not known, it will be assumed to be nil for the purposes of calculating assessable income until that information is available (*MASCR, reg 19(3)*). If the application is in relation to one non-resident parent only, the maintenance needed and applicable in that case is halved.

## **Shared care of the child**

### *MASCR, reg 20*

There are cases where a child spends time in each parent's household. Provided that each parent has the child for at least 104 nights a year, then an adjustment is made to the amount of child maintenance to be paid. The parent who has the child for the longer period is regarded as the parent with care, and the other parent is treated as the non-resident parent. The 104 nights care need not be spent as two nights a week regularly throughout the year. They could be spent, for example, as blocks of weeks. It is the total in the year which is counted.

The maintenance assessment in these cases differs from the standard assessment in three ways:

- exempt income and protected income include allowances for the child based on the time spent with the parent;

- the amount of the child maintenance due from the non-resident parent and the notional maintenance from the parent with care is worked out in the usual way. Adding these two amounts together gives the total amount of child maintenance due for the child;
- the non-resident parent is deemed to have already contributed the proportion of the total maintenance due for the child which is equivalent to the proportion of time the child spends with him.

So, if the non-resident parent is due to pay child maintenance of £50 a week, and the parent with care can afford notional child maintenance of £20 a week, then the total amount of child maintenance due for the child will be £70 a week. If the non-resident parent looks after the child for two nights a week, he or she is deemed to have met  $\frac{2}{7}$  of the £70 - that is, £20, by virtue of having cared for the child for those two nights. So the £50 the non-resident parent was due to pay to the parent with care is reduced to £30.

## **Different children of a non-resident parent in the care of different people**

*MASCR, regulation 22*

Some non-resident parents have children by more than one parent with care. Where applications for maintenance are received for these children, the non-resident parent's assessable income is worked out in the normal way. It is shared between the different applications based on the comparative sizes of the maintenance needed.

### Example 1

Ken is the non-resident parent of Deirdre's daughter, Tracy, and June's sons, Mike and Tony. The maintenance needed for Tracy is £71.10 and that for Mike and Tony is £87.40 (therefore the total of the maintenance needed amounts to £158.50). Ken has assessable income of £120. The amount of Ken's assessable income which will be used for assessing maintenance for Tracy will be:

$$\frac{\pounds 71.10 \times \pounds 120}{\pounds 158.50} = \pounds 53.83$$

The amount of Ken's assessable income which will be used for assessing maintenance for Mike and Tony will be:

$$\frac{\pounds 87.40 \times \pounds 120}{\pounds 158.50} = \pounds 66.17$$

The amount of maintenance Ken can afford to pay for Tracy with assessable income of £53.83 can now be worked out using the formula already described in this guide. Assuming Deirdre has no assessable income of her own this will work out at £26.92 a week (50% of £53.83).

Similarly the amount of maintenance he has to pay for Mike and Tony can be worked out, and will be £33.09 a week (50% of £66.17) if June has no assessable income. Therefore, he pays a total of £60.01 maintenance a week for his children, which is 50% of his total assessable income of £120.

## Example 2

In the example on page 67 Ken has been assessed to pay £26.92 maintenance for Tracy and £33.09 maintenance for Mike and Tony, making a total of 60.01 a week. However, say his disposable income is £240 and his protected income level is £210, which means he can afford to pay only a total of £30 maintenance a week. This £30 is apportioned as follows:

For Tracy:

$$\frac{\pounds 26.92 \times \pounds 30}{\pounds 60.01} = \pounds 13.46$$

For Mike and Tony:

$$\frac{\pounds 33.09 \times \pounds 30}{\pounds 60.01} = \pounds 16.54$$

Ken, therefore, in this second example will pay £13.46 for Tracy and £16.54 for Mike and Tony.

If the non-resident parent has to pay the minimum amount of maintenance (see page 57) then this is apportioned between the different applications based on the comparative sizes of the maintenance needed for each application.

## A person with care looks after the children of more than one non-resident parent

*MASCR, regulation 23*

Where a person has care of children who have different non-resident parents, and claims child maintenance from more than one non-resident parent, then the amount of maintenance each non-resident parent should pay is calculated as normal except:

- 1 in each case the maintenance needed comprises:

the allowances relating specifically to the children of the non-resident parent in question (offset by the Child Benefit for those children);

**plus**

the appropriate rate of family premium divided by the number of non-resident parents in relation to that person with care;

**plus**

an amount for the adult caring for the children of the relevant non-resident parent. This is the amount which would apply if they were the only children for whom the person has care divided by the number of non-resident parents.

- 2 Where the person with care is the children's parent and has assessable income, this is shared out between the different applications in the same way as for a non-resident parent with more than one maintenance application against him - that is, on the basis of the comparative sizes of the maintenance needed, see pages 67 to 68.

## The requirement to authorise

*Articles 9 and 43 of the 1991 Order and MAPR regs 33 to 48, CSISAR '95 reg 8(12) – (14) amend regs 35, 39 and 41 MAPR, reg 34A inserted by CSMA (No2) R '95.*

*CSMAR '96 amends regs 34, 35, 37, 38, and 45 of MAPR*

*Under Article 9 of the 1991 Order the parent with the care of a child whose other parent is a non-resident parent may be required to authorise the Department to take action under the Order if she is getting Income Support, Family Credit, income-based Jobseeker's Allowance, or any other prescribed benefit. Disability Working Allowance is prescribed in MAPR, reg 33. (Schedule 2, para 19 amended Article 9 of the 1991 Order to include income-based Jobseeker's Allowance).*

The requirement to authorise will not be imposed if the Department accepts that there would be a risk of the parent with care, or any child living with her, suffering harm or undue distress as a result of authorising him to take action (*Article 9 of the Order*).

Where the requirement to authorise has been imposed the parent with care will be asked to fill in a maintenance application form (MAF), which asks, amongst other information, for details of the name, date of birth and other information about the non-resident parent.

*Under Article 43 of the Order if the parent fails to comply with the requirement to authorise or fails to give information required by the Department, a Decision Maker may issue a reduced benefit direction, see page 75.*

The following sequence of events applies to *Article 9* cases:

Claimants of Income Support, income-based Jobseeker's Allowance, Family Credit and Disability Working Allowance will be contacted about child support maintenance:

### **Income Support**

- Parent with care or parent with care's current partner claims Income Support.
- Included in the Income Support claim pack is a declaration for the parent with care to fill in to say whether she wishes to make representation that there would be a risk of harm or undue distress occurring to her or any child living with her if she authorises the Department to take action.
- The parent with care will then, normally, be visited by an officer from the Social Security Agency to either fill in a maintenance application or take details of why the PWC believes she, or any child living with her, would be at risk of harm or undue distress. The parent with care may apply for additional time to consider her options, in these cases the Social Security Agency will arrange to contact her again.

### **Income-based Jobseeker's Allowance**

- Parents with care or parent with care's current partner claims income-based Jobseeker's Allowance.
- The parent with care will, normally, be visited by an officer from the Social Security Agency to either fill in a maintenance application or take details of why the PWC believes she, or any child living with her, would be at risk of harm or undue distress. The parent with care

may apply for additional time to consider her options, in these cases the Social Security Agency will arrange to contact her again.

### **Family Credit and/or Disability Working Allowance**

- Parent with care, or parent with care's current partner claims Family Credit or Disability Working Allowance.
- The Agency writes to the parent with care asking her to return a declaration saying whether she wishes to make representations that there would be a risk of harm or undue distress occurring to her or any child living with her if she authorises the Department to take action.
- If the parent returns the declaration to say that she does not wish to make representations concerning harm or undue distress, or if she does not return the declaration within 14 days, the Department may decide that she is required to give her authority. If the Department does decide she must authorise action, a maintenance application form (MAF) is sent to her with a letter telling her that she must authorise action.
- If the parent returns the declaration to say that she wishes to make representations concerning harm or undue distress she is asked to attend an interview if appropriate, or is asked to contact the Agency to arrange an interview. She may be visited at home or work if necessary. Alternatively, this interview may be conducted over the phone.

In all cases:

- If the Department accepts that there is a risk that harm or undue distress might result to the parent with care or any child living with her if she gives her authority, no further action is taken under Article 9 of the Order, and the application for child maintenance is not pursued.
- If the Department does not accept that there are reasonable grounds for believing that there is a risk that harm or undue distress will result if the parent with care gives her authority, or if the parent fails to attend the interview (where one is necessary in the view of the Department) or to respond at all to contact by the Agency, the Department may decide she must authorise action and, if he does, she is issued with a MAF and a covering letter. She is given 14 days to fill in and return the MAF.
- If she fails to respond, the parent with care is given notice that she should co-operate within two weeks, or give her reasons in writing why she, or any child living with her, would be at risk of harm or undue distress if she co-operated.
- If she does not reply within two weeks the interviewing officer refers the case to a Decision Maker who, having considered the welfare of any child likely to be affected, may write to the parent with care to give her a further two weeks in which to comply with the requirement to authorise or to give reasons for failure to do so.
- If she does reply within two weeks, giving reasons why she, or any child living with her, would be at risk of harm or undue distress if she co-operated, the Department will consider what she says. The

Department will either accept her reasons or, if not, he will allow her six weeks from the date of his letter to her before referring the case to a Decision Maker.

- After the case has been referred to a Decision Maker, and after he has allowed a further two week period, if the Decision Maker is satisfied there are no reasonable grounds for believing that a risk of harm or undue distress would occur to the parent with care or any child living with her if she were required to authorise or give information, a reduced benefit direction may be issued to the parent and to the Social Security Agency. The Decision Maker must give consideration to the welfare of any child likely to be affected by his decision before the decision is made.

Parents with care have a right of appeal against this decision. Appeal rights are described on pages 82 to 84 of this guide.

In many cases, parents with care who do not wish to authorise the Department to take action under the Order do not have to provide evidence for their claim that co-operation would cause them or their children harm or undue distress but any evidence they have should be produced. Their statement will be believed unless it is improbable or self-contradictory, in which case evidence will be requested. Each customer's position will be considered separately in the light of what she says.

## **Reduced benefit direction**

The amount and duration of the reduced benefit direction is set out in *MAPR, reg 35 (amended by CSMAR 1996)*. This specifies that the amount and duration of the reduced benefit direction will be:

- for three years, 40% of the adult Income Support personal allowance (£20.14 a week at 1998 rates) and may be renewed immediately if the parent with care continues to fail to comply.

This reduction will be modified where the relevant benefit payable would otherwise be reduced to nil, or less than the minimum amount (*MAPR, reg 36*).

## **Parent with care subsequently decides to co-operate or provides good cause**

A parent with care may change her mind and decide to co-operate by authorising action, or may provide reasons acceptable to the Department why she should not do so at any stage after the reduced benefit direction has been applied.

In these cases, the direction will cease on the last day of the benefit week in which she complies or it is accepted she had good reason not to do so (*MAPR, regs 40 and 41*).

## **New qualifying child**

Only one reduced benefit direction may be in operation in respect of a parent with care at any time. If a reduced benefit direction is in operation and a further reduced benefit direction is issued for a new qualifying child, the earlier direction ceases to be in force. (*MAPR, reg 45 amended by CSMAR '96*).

### **Transfer from one benefit to another**

Where a parent who is subject to a reduced benefit direction moves from Family Credit or Disability Working Allowance to Income Support or income-based Jobseeker's Allowance while the direction is still in force, the balance of weeks transfers to Income Support or, as the case may be, income-based Jobseeker's Allowance (*MAPR, regulation 38*).

### **Suspension of the reduced benefit direction**

A parent may move off benefit altogether before the three year period has expired. The balance of weeks in such a case is held over until she re-applies for a relevant benefit, and will then be applied to the new award (after she has been given two weeks to consider her position), until the three year period has been completed (*MAPR, reg 37 amended by CSMAR '96*). However, if the parent is off benefit for more than 52 weeks, the direction ceases. If the parent re-applies for benefit after 52 weeks and still refuses to co-operate, a new direction may be issued for the balance of weeks left since the direction last applied. The same procedures will be followed before the direction is imposed as were applicable to the earlier direction. A new direction may be issued at the end of three years if the parent continues to fail to comply.

A reduced benefit direction will be suspended where a parent with care is paid a modified applicable amount in Income Support or income-based Jobseeker's Allowance because she enters, or is in, hospital, residential accommodation, or a residential care or nursing home. After 52 weeks the reduced benefit direction ceases to be in force (*MAPR reg 39*).

A reduced benefit direction will also be suspended for up to 52 weeks where the parent concerned ceases to be a person with care or where the sole qualifying child ceases to be a child. If, within 52 weeks, the parent again becomes a person with care and is on benefit, or the child again becomes a qualifying child for the purposes of the Order, the reduced benefit direction is re-applied for the balance of weeks outstanding if co-operation is still refused. After 52 weeks the reduced benefit direction ceases to be in force (*MAPR reg 46*).

### **Exemptions from the reduced benefit direction**

A parent with care is exempt from a reduced benefit direction if she gets (or if her current partner gets) a disability premium, higher pensioner premium, or disabled child premium in Income Support or income-based Jobseeker's Allowance, or if an amount equal to one of these premiums is included in that parent's exempt income for child support purposes where Family Credit or Disability Working Allowance apply (*CSMA(No2), reg 3(23) inserts reg 34A into MAPR*).

## **Disputed paternity**

*Articles 27, 27A & 28 Child Support (Northern Ireland) Order 1991. Articles 14 & 15 1995 Order*

Where an alleged parent disputes that he is the father of the qualifying child the Decision Maker is able to make a maintenance assessment only in specific circumstances specified in the Act (Article 27(2)).

These are broadly:

- where the alleged parent has adopted the qualifying child;
- or**
- where a court has already adjudged the alleged parent to be the father of the child.

If the provisions of Article 27(2) do not apply, the Agency will normally interview the parent with care and the alleged non-resident parent to establish the facts of the relationship at the time of conception. Where there is reasonable corroborative evidence the Agency may invite the parties to undertake DNA tests at a discounted rate obtained by the Agency through a contract with a testing company. The alleged parent is expected to pay for the tests and the Agency will refund the cost of the tests where he is shown not to be the father. In some cases, if the alleged parent is unwilling or unable to pay for the test, the Agency may pay and recover the money from the alleged parent if he accepts paternity following the test (Article 14 1995 Order). If the dispute still cannot be resolved, either the Department or person with care may apply to the court for a declaration of parentage (*Article 28 1991 Order amended by Article 15 1995 Order*).

## Case checks

Cases will be looked at, at intervals based on the circumstances of the case.

If neither party to the assessment is in receipt of a prescribed benefit, both parties will be invited to tell the Agency of any changes in their circumstances, which may affect their assessment. If either party is in receipt of a prescribed benefit, a case check will be carried out automatically. The case officer will check the benefit details of the party in receipt of the prescribed benefit and contact the other party for up-to-date details about their circumstances. A fresh assessment will then be made based on the information they provide.

### **Notified change of circumstances**

A non-resident parent, or a parent or person with care, may apply to the Agency, by phone or in writing, if there has been a change of circumstances. If the party reporting the change does not provide sufficient information, the Dept will not change the assessment. Any new assessment will be made on the notified change and will, as well, take into account any other information relating to change of circumstances known to the Decision Maker at the time. If the party reports a change of circumstances about the other party, they must provide evidence before the Decision Maker will consider a change.

When an assessment is changed because of a notified change of circumstances, the amount of the assessment will normally only change if the difference between the original and the fresh assessment would be more than £10 a week. Where, however, the non-resident parent is paying

reduced maintenance because of the effect of the protected income calculation, the assessment will change if the new assessment would be at least £5 more or at least £1 less than the old amount.

If there is a change in the qualifying children of the non-resident parent a new assessment will only be made if the difference between the old and the new assessment is over £1.

A new assessment will always be made in cases where the non-resident parent starts to receive or stops receiving Income Support or income-based Jobseeker's Allowance, otherwise has a nil assessment income or where he pays the minimum amount.

### **Disputed decisions and revisions**

The following is only a guide, with regard to disputed decisions and revisions, it does not cover every situation. More detailed information can be found in the Social Security (Northern Ireland) Order 1998 and the DMA and Child Support Regulations

If a parent with care or non-resident parent is dissatisfied with an assessment, a refusal to make an assessment, or a refusal to change an assessment, they may contact the Agency by phone or in writing, to dispute the decision of the Decision Maker on the grounds that it was made in ignorance of a relevant fact or it was based on a mistake as to a relevant fact or was wrong in law. The Decision Maker will then re-examine the disputed decision and will explain the decision to the customer.

If the Decision Maker decided that the decision was made in ignorance of a relevant fact or was based on a mistake as to a relevant fact or was wrong in law then the decision will be changed and a fresh assessment made. Both parties will be notified of the new assessment and will have the right to dispute and appeal against it.

If the dispute concerns a decision relevant to the party who has not instigated the dispute and the Decision Maker decides that there is validity in the dispute, then the Decision Maker will contact that party for any further information required to decide if the decision is to be revised.

### **Reconsideration at the instigation of the Decision Maker**

The Decision Maker may revise a maintenance assessment if he thinks it is wrong.

The Decision Maker can also:

- revise a decision to refuse to make or to revise a maintenance assessment; and
- revise a decision to cancel or refuse to cancel a maintenance assessment.

For the Decision Maker to reconsider in this way, the Decision Maker must suspect that the maintenance assessment was made in ignorance of a relevant fact or it was based on a mistake as to a relevant fact or was wrong in law.

The Decision Maker can also revise an assessment by implementing a change of circumstances if he thinks it appropriate without any application being made.

## Providing information for revision of assessments

Information for a revision must be provided within the timescale agreed between the Decision Maker and the customer or an interim maintenance assessment may be imposed Article 14 Child Support (Northern Ireland) Order.

## Rights of appeal

*Articles 22 - 26 and 43 of the 1991 Order*

The basic right of appeal is contained in *Article 22 of the 1991 Order*. Any person who is aggrieved by the decision of a Decision Maker, whether it has been revised following a dispute or not may appeal direct to The Appeals Service (TAS). If the appeal is received before the Decision Maker has had a chance to consider if a revision would be appropriate, this will be done before the appeal progresses by the Appeals Section.

Under *The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) Regulation 30*, appeals must be made within one calendar month of the decision being notified. *Regulation 31* provides for an appeal to be made after the specified period if there are special reasons.

All applications made after the expiry of the time specified as above will be considered to include an application for an extension of time for special reasons. If applications for extensions of time do not state the reason for the delay, TAS may give the person making the appeal an opportunity to provide a reason.

When an appeal has been made, any information provided in connection with the child maintenance assessment either before or during the appeal may be copied to the other parties concerned. The Appeals Section will write to the parties to the appeal about this. If either party to the appeal wants their address, or any other information which could lead to them being located, withheld, they must give notice of this in writing within 14 days of the date on the form. *Decisions and Appeals Regulation 44*. As well as to appeal tribunals, information will go to any court that may be involved with a child support matter.

When TAS allows an appeal the tribunal may give any directions it considers appropriate (*Article 22(4)) of the 1991 Order*). An example of this might be to re-calculate a maintenance assessment on the basis of a changed amount (the non-resident parent's income for instance).

An appeal will lapse if, before the appeal is heard, the Decision Maker makes a revised decision which is to the advantage of the appellant.

Any person who is aggrieved by a decision of the tribunal, and any Decision Maker, may appeal to a Child Support Commissioner on a point of law (*Article 25(1)) of the 1991 Order*). Details on how to do this are given in the decision from the appeal tribunal. An application to the Chairman of an appeal tribunal for permission to appeal to a Commissioner must be made within three months from the date a copy of the decision was given or sent to the applicant. Where permission has been refused, an application to appeal may be made to a Commissioner within 42 days from the date of notice of the refusal. (*Child Support Commissioners (Procedure) Regulations (Northern Ireland) 1993*).

Where a Commissioner on an appeal under *Article 25(1) of the 1991 Order* holds that the decision was wrong in law, he can set it aside. The Commissioner then has a number of options: he can give the decision he thinks ought to have been given by the tribunal, provided that he can do so without making fresh or further findings of fact; if he thinks it appropriate he can make further findings and then give a decision; or he can refer the case, with instructions as to how to deal with it, to a different Decision Maker or a differently constituted tribunal (*Articles 25(4) and 25(5) of the 1991 Order*).

Following the decision of a Commissioner (or Tribunal of Commissioners constituted to hear a case of special difficulty, *Schedule 4 of the 1991 Order Paragraph 2*), an appeal lies on a point of law to the Court of Appeal (*Article 26 of the Order*). Ultimately, an appeal could go to the House of Lords.

## Collection: payments, arrears and enforcement

As well as assessing the amount of child maintenance due, the Agency can arrange for it to be collected. A collection service may be offered at the Department's discretion in the following circumstances:

- where the application has been made under *Article 9 of the 1991 Order*;
- **or**
- where, in any other case, one of the parties to the assessment requests a collection service.

If neither of the last two points applies, the timing, form and method of payment will be a private matter between the parties themselves, though either party may request the collection service at any time.

## Payments

*Child Support (Collection and Enforcement) regs (Northern Ireland) (CS(CE)R), regs 2-7, regs 4 & 5 amended by CSISAR '95 regs 4(2) and (3))*

If payment is made through the Agency, the interval at which the non-resident parent pays and the interval at which the person with care receives payment will usually be the same unless the Department is satisfied that would cause undue hardship. The Agency will collect payments from the non-resident parent by:

- Direct Debit;
- standing order;
- voluntary Deduction from Earnings Order (DEO).

The Agency may accept other means of payment, but generally cheques or cash are not suitable for long-term use.

The Department can direct the non-resident parent to try to open a bank or building society account.

Where payment is made through the Agency, onward payment to the person with care is by:

- direct credit into a bank or building society account;
- payable order.

If a non-resident parent has failed to make regular payments of child maintenance the Agency may impose a Deduction from Earnings Order (DEO) on the non-resident parent's employer. This requires the employer to make deductions from the non-resident parent's earnings at source for onward payment to the Agency to cover maintenance liabilities (*CS(CE)R*, regs 8-25).

DEO's may be applied to either maintenance assessments made under the formula, or to interim maintenance assessments and can be used to obtain payment of current maintenance and arrears of maintenance. The employer may deduct an additional £1 from the employee's earnings for each deduction made as a contribution towards administrative costs.

- The employer must pay the Agency by the 19th of the month following the month in which the deduction is made.

A DEO has two main components:

- the normal deduction rate: that is, the amount to be deducted in a given period;
- the protected earnings rate (PER), which ensures that the non-resident parent is left with a minimum level of net earnings (that is, earnings left after National Insurance, tax and 50% of pension contributions) after deduction of the amount due under the DEO. The PER is the same as exempt income in the child maintenance formula. Where a DEO is applied to an interim maintenance assessment the PER is based on Income Support rates and any information known about the circumstances of the non-resident parent.

Where the non-resident parent does not have high enough net earnings for a full deduction to be made, the shortfall is carried forward and added to the deduction rate for the next pay period. This allows for a shortfall to be made good if earnings increase. Similarly, if a non-resident parent has earnings which are less than the PER, the difference is added to the PER on the next pay-day. If there is a long-term fall in earnings, the non-resident parent can ask for this to be taken into account except in the case of IMAs. The aim is that the non-resident parent receives average net earnings of at least the PER.

The non-resident parent may appeal to a magistrates court if he considers that the DEO has not been made in accordance with regulations, or there is a dispute about what constitutes earnings.

## **Arrears of payment of maintenance**

*The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regs (Northern Ireland) (CS(AIMA)R) 1992, regs 2-8, reg 4 amended by reg 3(2) CSISAR '95, reg 8 amended by reg 5(2) CSMA (No 2) '95)*

If the non-resident parent does not pay the full amount due, or fails to make any payment, the Agency will contact him immediately and ask for full payment of the outstanding amount. If the full amount is still not paid, the Agency will try to negotiate an agreement for the payment of arrears with the non-resident parent, and may accept that arrears be paid off by the non-resident parent in instalments.

Interest on arrears may be payable in relation to maintenance payments due before 18 April 1995.

If arrears build up, or the payments are irregular, the Agency may review the payment method in use and specify an alternative.

## **Enforcement**

*Articles 33-37, 1991 Order CS(CE)R, regs 26-34*

Enforcement action may be taken against those non-resident parents who do not pay the full assessed child maintenance, and when a DEO has been ineffective or is not appropriate. Each case is considered on its merits taking into account the likely effect on the welfare of any children concerned, and a variety of other factors including the likelihood of success of the action.

## **Enforcement in Northern Ireland**

The following action will apply in Northern Ireland:

- 1 the Department applies to a court of Summary Jurisdiction for a Liability Order, having given the non-resident parent seven days notice in writing that the application will be made and setting out the amounts due and unpaid;
- 2 the court must issue a Liability Order if satisfied that payments are due and have not been paid. The issue of an order authorises action to recover the debt stated on the order;

- 3 once a Liability Order has been granted enforcement will be carried out through the Enforcement of Judgements Office at the request of the Department. The Enforcement of Judgements Office will use its power to obtain payment of the liability order, including where appropriate:
  - a Garnishee Order, to be placed on a bank or building society account requiring the release of funds up to the amount on the Liability Order;
  - a Charging Order, to be placed on property so that if sold, the proceeds of the sale will be released to the Department up to the amount on the Liability Order;
- 4 where other forms of enforcement fail, the Department may apply for a warrant to commit the liable person to prison.

## Disclosure of information

The Agency treats the protection of personal information very seriously. Addresses and phone numbers of a parent will not normally be disclosed by the Agency to anyone else unless that parent consents. However, should a court make an order requiring an address to be disclosed the Agency must comply with that order. The Agency also has the power to give any information it holds, including addresses etc, to a court or tribunal in connection with proceedings before them in relation to child maintenance or child support; and to the appropriate authority for the calculation of Housing Benefit.

In calculating the amount of maintenance that should be paid by the non-resident parent, the assessable income of both parents is considered. Details of the assessable

income figures for both parents are shown on the notification of maintenance assessment, which is issued to both of the parents. Similarly where the protected income figure affects the amount of maintenance to be paid, details of the protected income figure for the non-resident parent will be shown on the notification form issued to both parents.

The Agency may also give out information to either party to the assessment, but only if that information is essential to explain either what has happened to an application for an assessment or revision; or how an assessment has been calculated; or in relation to the collection or enforcement of the amount due under the assessment. This information will not include any details of addresses unless permission is given.

Either party has a right to ask for a revision or to appeal. As the assessment notification form is the only notification either party receives, the Agency is obliged to set out in sufficient detail the calculation of the assessment, so that both parties may make an informed decision as to whether the assessment is correct. When an appeal has been made, any information provided in connection with the child support maintenance either before or during the appeal may be copied to the other parties concerned. The Appeals Section will write to the parties to the appeal about this. If either party does not want information which might lead to their whereabouts being disclosed to the other party, they must write to the appeal tribunal within 14 days of the form issued by TAS. *The Social Security and Child Support (Decisions and Appeals Regulations (Northern Ireland) 1999 regulation 44).*

## Open government

On 4 April 1994 a Code of Practice on Access to Government Information was published. The Code applies to all departments, their Agencies and many other public bodies. The Code, as part of the Citizen's Charter initiative, commits Government departments to being more open in their dealings with the public and includes commitments to:

- provide information about public services, costs, targets, performance, complaints, redress;
- supply facts and analysis with major policy decisions;
- open up internal guidelines about departments' dealings with the public;
- supply explanations for administrative decisions;
- respond to specific requests for information.

The Agency is fully committed to the principles of this Code.

## What to do if you want more information about Open Government.

If you would like further information about Open Government as it affects the Child Support Agency please get in touch with:

Chief Executive's Office  
Northern Ireland Child Support Agency  
Great Northern Tower  
17 Great Victoria Street  
Belfast  
BT2 7AD

## Child Maintenance Bonus

*Social Security (Child Maintenance Bonus) Regulations (Northern Ireland) 1996 (CMBR)*

From April 1997, persons with care getting child maintenance who receive (or whose current partner receives) Income Support or income-based Jobseeker's Allowance, may be eligible for a lump sum of up to £1000 when they (or their partner) leave benefit to start work. This is called a Child maintenance bonus (the bonus).

### Accruing a Child Maintenance Bonus

*CMBR reg 4, SS(MA)R 1998 reg 2*

The time after 7 April 1997 during which:

- the applicant (or their partner) is entitled to qualifying benefit (Income Support or income-based Jobseeker's Allowance); and
- the applicant has the qualifying child living with her; and
- child maintenance is paid or payable to the person with care under a child support assessment, a court order or a voluntary agreement, or is retained by the Department:

is called the 'bonus period'.

## Amount payable

*CMBR reg 5*

The amount paid as a bonus is calculated with reference to a person with care's bonus period. The amount paid will be the lowest of the following:

- i) the maintenance payable each week, up to a maximum of £5, multiplied by the number of weeks in the bonus period;
- ii) the amount of maintenance paid during the bonus period;
- iii) £1000.

Only child maintenance paid after 7 April 1997 counts towards the bonus.

## Entitlement to a bonus

*CMBR reg 3/4, SS(MA)R 1997 reg 8, SS(MA)R 1998 reg 2*

To be entitled to a bonus, the applicant must be a person with care who satisfies the following conditions:

- She (or her partner) must start work which removes her entitlement to Income Support or income-based Jobseeker's Allowance within 14 days of the bonus period ending. (Special rules apply in certain cases, for example, where the person with care reaches age 60 or pension age, where the child, the non-resident parent, or the person with care of the child, dies or where the non-resident parent leaves the country or is found not to be the parent of the qualifying child.)

- She must claim the bonus up to one week before entitlement to benefit stops and up to 28 days after this date.

### **Example 1**

Wendy has been on Income Support and getting child maintenance for 26 weeks. She gets £6 a week child maintenance as decided by the Agency. Wendy leaves Income Support to start work. Her bonus will be either:

The amount of child maintenance due each week (up to a maximum of £5 a week) multiplied by the number of weeks in the bonus period ( $£5 \times 26 \text{ weeks} = £130$ ) or;

the total amount of child maintenance she got during the bonus period ( $£6 \times 26 \text{ weeks} = £156$ ).

**Whichever is less.**

In this example Wendy's bonus will be £130.

### **Example 2**

Judith's partner, Steve, has been claiming Income Support for them both for 37 weeks. Judith is due £18 child maintenance a week. Judith has actually received only one maintenance payment of £100. Steve leaves Income Support to start work. As Judith gets child maintenance, she is the one who claims the bonus. Her bonus will be either:

- the amount of child maintenance due each week (up to a maximum of £5 a week) multiplied by the number of weeks in the bonus period ( $£5 \times 37 \text{ weeks} = £185$ ); or
- the total amount of child maintenance she got during the bonus period (£100);

**whichever is less.**

In this example, Judith's bonus will be £100.

## **Connected periods**

*CMBR reg 4*

It is possible for two or more bonus periods to be connected by a period (the connected period) in which the applicant does not qualify. This allows any bonus periods joined by a connected period to be treated as one bonus period. The following can be treated as connected periods:

- any period of not more than 12 weeks, including where no qualifying child lives with the applicant or where the applicant ceases to be entitled to the qualifying benefit;
- any period throughout which maternity allowance is payable to the applicant;
- any period of not more than two years throughout which Incapacity Benefit, Severe Disablement Allowance or Invalid Care Allowance are payable to the applicant.

Bonus periods separated by two or more connected periods remain separate bonus periods.

## **Statements**

*CMBR reg 6*

Statements are sent to the person with care every six months. These are estimates of how much her bonus could be if she stopped claiming benefit and started work. They are estimates based on the information the Agency has about any child maintenance paid - the final amount payable may be different.

## Retirement

*CMBR reg 8*

When the person with care reaches the age limit (age 60 where the qualifying benefit is Income Support, pension age where it is income-based Jobseeker's Allowance), the person with care ceases to participate in the CMB scheme and a bonus payment is automatically sent. There is no need for the person with care to make a claim for the bonus.

In cases where the qualifying benefit ends within 12 weeks of the person with care reaching the age limit, she can make a claim for the bonus without having to fulfil any work criteria.

## Departure directions

### Introduction

In a small minority of cases there may be special circumstances that the child support formula cannot take into account. The 1991 Order (as amended by the 1995 Order) provides the power to 'depart' from the formula assessment in prescribed circumstances. The departures scheme is discretionary.

A departure direction may be given where a parent has certain 'special expenses' or in other specified circumstances as set out in the Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996 (DD&CAR).

## The main departure rules

An application for a departure direction may be made by a person who is a party to a maintenance assessment and who is a person with care or a non-resident parent.

All applicants have to satisfy the following rules to be able to apply for a departure direction.

- Non-resident parents who are getting Income Support or income-based Jobseeker's Allowance or who were getting either of these benefits at the date on which any departure given in response to the application would take effect, are not eligible for a departure direction on grounds of 'special expenses'.
- Non-resident parents are not eligible for a departure direction on grounds of 'additional cases' where, at the date on which any departure given in response to the application would take effect, Income Support, income-based Jobseeker's Allowance, Family Credit or Disability Working Allowance was in payment to the parent or person with care.
- Parents or persons with care who are getting Income Support, income-based Jobseeker's Allowance, Family Credit or Disability Working Allowance, or who were getting either of these benefits at the date on which any departure given in response to the application would take effect, are not eligible for a departure direction on the grounds of 'special expenses'.

- Parents or persons with care are not eligible for a departure direction on any ground where, at the date on which any departure given in response to the application would take effect, Income Support or income-based Jobseeker's Allowance was in payment to the non-resident parent.
- Applications cannot be made where certain categories of interim maintenance assessment are in force.
- Applications on certain special expense grounds can be made only by the non-resident parent.

It is up to the applicant to justify his or her case for a departure direction to be awarded. If they are unable to do this, a departure direction cannot be given and the formula assessment will not be departed from .

## **Applications**

*CS Order, A28A and DD&CAR, reg 4*

An application can only be made where a child maintenance assessment has been made. An application must be made in writing, normally on the relevant form, and contain as much information as possible. It must be signed by the applicant or his representative, state the grounds on which it is made and state whether it is made because of the effect of the current assessment or because of a change in circumstances since the current assessment was made.

## Determination of applications

*DD&CAR, reg 7 and 32D*

An application, either for a first departure direction or for an amended departure direction, will be considered in detail by the Department only, if there are grounds on which a direction or amended direction could be given, and it appears that the difference between the current maintenance assessment and the assessment that would result from the giving of a direction or amended direction would be at least £1 a week.

*CS Order, A28D and DD&CAR reg 8 and 8A*

Where the Department is satisfied that he should consider an application in detail, he shall decide the application himself or refer it to The Appeals Service for determination by a tribunal. In either event, a non-resident parent or person with care will be sent details of the application and supporting evidence and invited to comment.

A parent's address or other information which might identify where they live will not normally be given if the parent concerned asks that the details be kept confidential. There are certain circumstances when information will be given unless there is a risk of harm or undue distress being caused to the person or child concerned.

In determining the application, account will be taken of all information provided in relation to that application and also in general any relevant information held in relation to the maintenance assessment or benefit claims.

Once an application has been determined, the applicant and any other relevant person will be notified of the reasons for the decision and, where a departure direction is given, the way in which the maintenance assessment will be affected.

## **Grounds for applying**

### **Special expenses**

*Para 2 of Schedule 4B to the 1991 Order and DD&CAR, regs 13 to 18*

There are six types of special expenses in respect of which people can apply for a departure from the formula assessment.

### **Travel to work**

*DD&CAR, reg 13*

To qualify for a departure direction an applicant must establish that his travel to work costs are high and that the formula allowance (if there is one) is not an accurate reflection of his exceptional costs. Both non-resident parents and parents with care can apply on these grounds.

Parents who cannot qualify for a formula allowance, such as the self-employed and those who receive some help with travel from an employer, may qualify for a departure direction. Only those costs incurred actually travelling to and from work which cannot be offset against tax may be considered for a departure direction and the amount of any financial help, for example from an employer, will be deducted from the total cost.

The first £15 of weekly travel costs will be disregarded, so if costs are less than £15 the application will be rejected. If costs are, for example, £20 then £5 is eligible for consideration for a departure direction, see 'the £15 threshold' - pages 112 to 113.

Where journeys are made by private vehicle only fuel costs and other incidental expenses of travel to work such as toll fees may be considered. No allowance can be made for any other running costs like Road Fund Licence, MOT certificate, insurance, repairs, purchase loan repayments, depreciation, etc.

Taxi fares will be considered only in exceptional circumstances where an unavoidable journey must be undertaken during hours when no other reasonable mode of travel is available.

Where the Department considers that travel to work costs cited by the applicant are unreasonably high or have been unreasonably incurred, he may consider giving a departure direction for a lower amount or refuse to allow any amount.

## **Contact costs**

*DD&CAR, reg 14*

**The right to visit the children is not a matter for the Agency. Where either party has difficulties regarding contact with the children they should approach the courts.**

Only non-resident parents can apply on grounds of contact costs. The costs must arise from contact with the children who are the subject of the assessment.

Non-resident parents will be able to apply for an allowance for their travel costs only in excess of £15 a week, see 'the £15 threshold' - pages 112 to 113. No allowance can be made for meals, overnight accommodation or any other incidental expenses, for example, arising from taking the children out for the day.

Where travel is by private vehicle only fuel costs and other incidental expenses of the journey such as toll fees may be considered. No allowance can be made for any other running costs like Road Fund Licence, MOT certificate, insurance, repairs, purchase loan repayments, depreciation etc.

Taxi fares will be considered only where it is impracticable for the non-resident parent to use public transport due to disability and there is no other way of meeting the expense.

If the Department determines that the costs cited by the applicant are unreasonably high or unreasonably incurred, he may consider making a departure direction for a lower amount or not allow any amount.

The pattern of visiting in the case will be established by reference to the information provided by the applicant and any representations made by the person with care. The application will then be considered on the basis of the actual journeys made and the reasonable cost of those journeys. Where there is a court order which provides for access, the Department may, because the non-resident parent may be visiting more often, restrict costs on the basis of the frequency of visits specified by the order.

If no regular pattern of visiting has been established, the Department may consider the application on the basis of the intended frequency of visits providing the intended pattern is agreed by the person with care.

## **Costs arising from long-term illness or disability**

*DD&CAR, reg 15*

This ground can apply where either the applicant or any of his dependants suffers from a long-term illness or disability as defined below. The applicant's 'dependants' are those people for whom, were he to claim Income Support or income-based Jobseeker's Allowance, he could claim benefit, ie his wife or partner and any children for whom he or his partner receives Child Benefit. A parent with care may not apply for costs arising from a disability suffered by a qualifying child (that is a child for whom she receives child support under the assessment in respect of which the application is made) - the remedy here is a 'top-up' order from the courts, see page 9.

A person suffering a disability is defined as one who is blind, deaf or dumb or is substantially or permanently handicapped by illness, injury, mental disorder or congenital deformity. A long-term illness is an illness which is likely to last for at least 52 weeks from the date of application or for the rest of the life of the applicant or his dependant if this is expected to be shorter than 52 weeks.

Additional expense arising from personal care and attendance; mobility; domestic help; medical aids not supplied by the health services; extra heating; extra clothing; extra laundry; special diet; adaptation to the home; personal communication needs; day care; rehabilitation; respite care may be considered for a departure direction.

A departure direction on these grounds can be given only to the extent that any costs arising from disability exceed any benefit provision through Disability Living Allowance or Attendance Allowance. So, if an applicant has care needs that cost £35 a week but higher rate Disability Living Allowance of £52.95 a week is in payment a departure direction cannot be given.

Where an applicant is not getting Disability Living Allowance or Attendance Allowance but the Department considers that they may be entitled to help if they were to make a claim the applicant must explore that entitlement to benefit before a departure direction can be considered. The decision on their departure application will be deferred until the benefit position has been resolved. However, if an applicant has not taken steps to claim their entitlement within six weeks the Department will deal with the application as if the benefit was in payment at the highest rate.

Any help in the form of cash payments, grants, services or practical assistance from the Independent Living (Extension) Fund or the Independent Living (1993) Fund, help from the HSS Boards or Trusts, and help from voluntary or charitable organisations which the applicant receives will be taken into account when determining the amount of the expense which remains to be met by the applicant.

## Debts of the relationship

*DD&CAR, regulation 16*

Where a non-resident parent or person with care has an outstanding debt which was incurred before the non-resident parent became the non-resident parent (in relation to that assessment unit) they may be eligible for a departure direction. The applicant must have incurred the debt at a time when he was living together with the parent with care as a married or unmarried couple. A non-resident parent who has never lived with the parent with care will not be eligible for a departure direction on this ground.

The debt must have been incurred for the benefit of both parents or for any children, or for the other parent where the applicant remains legally liable for repayment. For example - items for the previously shared home such as furniture or other household equipment, redecoration or alterations to that home (house extension, central heating, double glazing and so on), or things for the children such as computer equipment, television or even private medical or dental treatment.

Where the applicant continues to enjoy the benefit from the item or service giving rise to the debt, his application will be excluded. Also excluded are most debts accepted by the applicant as part of a financial settlement or under a court order. For example, a non-resident parent may take on the family's debts but also receive the lion's share of any assets.

Only debts which are formal loans where the weekly rate of repayment exceeds £15 will be considered, see 'the £15 threshold' - page 112. An indication of when a debt is a 'formal loan' is that the loan is for a set sum for a set period, repayable with interest over an agreed period.

Certain types of debt are excluded, for example credit card debts, business debts, debts relating to the costs of separation/divorce, fines or loans obtained other than from an employer, bank, building society or other registered lending institutions.

Where an applicant has sufficient capital to clear the entire debt the Department will consider whether it would be reasonable to expect the applicant to use the capital to clear the debt rather than alter the child maintenance liability.

Any departure direction given will be based on the original rate of repayment and for the remaining duration of the original repayment period. No account will be taken of re-scheduling of a debt or missed payments other than where the applicant has been registered as unemployed or sick during the repayment period or has suffered a substantial reduction in income, for example, because of a change of job.

## **Pre-April '93 financial commitments**

*DD&CAR, regulation 17*

Any non-resident parent may apply for a departure direction where:

- as at 5 April 1993 there was in force a maintenance order or a written order or written agreement for

maintenance for himself and each of his children from whom he was at the time living apart (at least one of whom is a child for whom the current assessment is made); and

- during the period that the maintenance or written agreement was in force and before 5 April 1993 he entered into a financial commitment from which he cannot now withdraw, or from which the Department feels it would be unreasonable to expect him to withdraw.

The financial commitment must amount to more than £15 a week, see 'the £15 threshold' on page 112. The term 'financial commitment' is likely to be broadly interpreted to mean any agreement to making regular payments for an item or service. Applications may, for example, be made for such expenses as life assurance premiums, the costs of meeting an elderly parent's care home fees, private medical cover or school fees. However, financial commitments arising from a business are excluded (this includes expenses arising from an ailing business or expenses from a business which has ceased trading) as are commitments arising from gambling debts, fines, legal costs arising from divorce or separation, credit card and overdraft debts and commitments which have already wholly or partly been taken into account in the maintenance assessment.

## Costs incurred in supporting certain children

*DD&CAR, regulation 18*

Any non-resident parent or person with care who has children of a current or former partner, who are not his own children, whom he supports and who have lived continuously within his family since before 5 April 1993, can apply for a departure in recognition of that expense.

No allowance will be made where:

- the relevant children's own non-resident parent is assessed to pay, either by the Agency or under a court order, a sum sufficient for the support of those children, whether or not that maintenance is being paid; or
- the net income of the current partner (if they are the parent of those children) is above a certain level - see below.

The rules governing the amount allowable under this ground are designed to ensure that relevant children are not treated more generously than any natural children of the applicant. To this end it will first be necessary to calculate:

### **The Allowable Amount**

This is the total of amounts equal to the following Income Support allowances:

- the personal allowance for each relevant child;
- where appropriate, any disability premium payable for each relevant child;

**plus**

- where appropriate, solely because of those children (ie the applicant has no children of his own in the household), the family premium;

**less**

- any maintenance fixed in respect of those relevant children by Maintenance Assessment, a court order or a written maintenance agreement.

### **The New Partner's Contribution**

The following calculation will be made to assess whether the applicant's partner can afford to support her own children. (The new partner's contribution does not form part of the calculation if that partner is not the child's natural parent, eg the relevant child is the child of the applicant's former partner.)

A 'net income calculation' will be made in accordance with the normal formula assessment but including any Child Benefit received for the relevant children and any income of the relevant children which exceeds £10. Any earnings of the relevant children are wholly disregarded.

From this amount will be deducted the following:

- an amount equal to the Income Support personal allowance for a single person aged 25 year or over;
- the amount of any part of the housing costs attributed to the new partner under an existing departure direction;
- any contribution the partner has to make towards supporting any natural children of the relationship under reg 9(2) of the Child Support MASCR;
- the Allowable Amount as calculated on page 109.

If a balance of 'net income' remains after deducting the total of the sums listed above she will be deemed to be capable of supporting her own children (the non-resident parent's stepchildren) herself. No departure direction will therefore be made.

### **Example**

The non-resident parent has remarried and his new partner has two children from a previous relationship, both aged under 11. They have no natural children of their own and the new partner has net part-time earnings of £90 a week. She was previously a widow and so there is no child maintenance for the children. She receives Child Benefit of £24.00. Her total income is therefore £114.00. From this income deduct the Income Support personal allowance for a single person over 25 (51.40) and the Allowable Amount. The Allowable Amount will be the total of the equivalent of the Income Support allowances for the children (£40.40) and the family premium (£13.90) ie £54.30. A total to be deducted therefore of £105.70

As this is less than her total income she is in a position to support the children herself and so no departure direction will be made.

Where a departure direction is made for stepchildren the protected income calculation remains the same. There is no addition to be made, as there is with other types of departures on the grounds of special expenses, because the protection calculation already makes full allowance for the day to day costs involved in supporting stepchildren.

Where a category B IMA (see page 58 to 59) is in force, the parent against whom the IMA has been imposed is not entitled to apply for a departure in respect of the cost of supporting stepchildren. No details of the new partner's circumstances are held in these circumstances and so it will be impossible to identify whether she is in fact in a position to support her own children, thus avoiding the need to reduce support for the applicant's own children.

## **The £15 threshold**

*DD & CAR, regs 19 and 20*

The preceding paragraphs have highlighted those special expenses which have 'thresholds' ie where the full amount of the weekly expense is not to be considered but only that in excess of £15. They are:

- i) travel to work expenses;
- ii) contact costs;
- iii) debts of the relationship;
- iv) pre-April 1993 financial commitments.

Where an application is made on more than one of the above grounds the total of those eligible special expenses should be calculated before deducting £15. Thus the threshold for multiple grounds applications is £15. This is to allow those people who may face several different types of special expense to apply for a departure direction even though the separate types of special expense may not, individually, exceed £15 a week.

For example, a non-resident parent may have travel to work costs of £10 a week, contact costs of £12 a week and be repaying a debt of £8 a week. None of the expenses looked at individually reach the threshold. However, the total of £30 does exceed the threshold and so the balance above £15 is eligible for consideration.

## Property transfers

### *Para 3 & 4 of Schedule 4B to the 1991 Order*

A parent may apply for a departure direction where an allowance made under *Schedule 3A of MASCR* for a property or capital transfer is not a proper reflection of the settlement that was actually made. A parent may also apply where such an allowance has been refused, or has not been applied for because, for example, it was clear to the applicant that he would not succeed under the broad brush rules, but the parent nevertheless argues that a property transfer was made to defray child maintenance.

A departure direction may also be given for a broad brush allowance to be removed where the transfer was not made for the purposes of defraying child maintenance, for instance, it was a spousal settlement. This type of departure application will be made by parents with care.

There may be any number of reasons why a property transfer is not properly reflected in the maintenance assessment. The transfer may have included items which could not be taken into account for the purposes of the formula allowance or there may have been insufficient evidence to justify awarding a formula allowance; or a formula allowance may have been given but the assumption for the purposes of that allowance, that assets

were equally owned or that the transfer was made equally for spousal and child maintenance, may not be correct.

To qualify for a departure direction a court order or written agreement made in connection with the transfer of property must have been in force before 5 April 1993, and the value of the transfer made by the non-resident parent in lieu of child maintenance must have been £5,000 or more at the date of the settlement.

The Regulations do not define 'property'. Anything specified in the court order or agreement or in the transfer document might qualify. So for example, property in the form of household items, funds held in trust and shares could be considered for the purpose of departures.

*DD&CAR, reg 22*

In assessing the value of a property transfer, the Department will seek to establish the value of that part of the transfer made by the non-resident parent which was in lieu of child maintenance. That is, property or capital which was owned by the non-resident parent and was transferred by him for the normal day-to-day living expenses of the child. In order to determine this amount the Department will need to establish the respective ownership of the assets transferred deducting any mortgage or charge on the property in question, any compensating transfer or transfers made by the parent with care and any sums transferred for purposes other than child maintenance.

Unless there is evidence to the contrary, the Department will assume that half of the assets transferred were owned by the non-resident parent and, where the parents were married, that half of the assets were transferred for spousal rather than child maintenance.

*DD&CAR, reg 22(3) and Schedule*

The equivalent weekly value of the transfer is calculated using the table in the Schedule to the DD&CAR. The total amount transferred in lieu of child maintenance is attributed over the period of whole years from the date of the court order or written agreement to the date specified in the court order or, where not specified, the date that the youngest qualifying child reaches the age of 18, using the statutory interest rate prevailing at the date of the settlement in Northern Ireland, in respect of a judgment debt - these rates are available on request from the Agency.

The table produces an equivalent weekly value of the net capital transferred using the annuity method, whereby account is taken of accumulated interest on a diminishing capital sum.

**Example**

Mr Smith transferred the matrimonial home to his former wife on 8 November 1992 in pursuance of a court order dated 12 September 1991. The property was valued at £80,000 and there was a mortgage outstanding of £35,000. In the absence of any evidence to the contrary, the Department decided that the matrimonial home was owned equally by the parties and that half of the value of the transfer was in lieu of spousal maintenance.

Under the terms of the court order Mr Smith was required to pay maintenance for his daughter, Jessica, until she reached the age of 17. Jessica will be 17 on 3 January 2005. The weekly value of the transfer in lieu of child maintenance is therefore calculated as follows:

#### **Amount transferred in lieu of child maintenance**

£80,000 less mortgage of £35,000 =	£45,000
£45,000 ÷ 2 (to reflect joint ownership) =	£22,500
£22,500 ÷ 2 (to apportion between spousal and child maintenance) =	£11,250

**£11,250** was therefore the amount transferred by the non-resident parent in lieu of child maintenance.

#### **Number of years of liability**

The number of full years from the date of court order to Jessica's 17th birthday is 13. (The part year, being less than half of a year, is disregarded.)

#### **Statutory rate**

The statutory interest rate prevailing at the date of the court order was 15%.

The table in the Schedule to the DD&CAR shows that the figure to be used to calculate the weekly value of the transfer is **.00344**.

The equivalent weekly value of the transfer is therefore  $£11,250 \times .00344 =$  **£38.70**.

## Additional cases

*Para 5 of Schedule 4B to the 1991 Order, DD&CAR, regulations 23 to 29*

### **Assets capable of producing income or higher income**

*DD&CAR, regulation 23*

Child support regulations already provide that where a person has deliberately deprived themselves of income with the intention of reducing their child support liability, an amount of notional income can be included in the assessment to represent the income foregone.

The Department may give a departure direction on the ground that a parent has assets which are not producing income but are capable of doing so. This is not conditional on the Department establishing intent.

Departure regulations make provision for situations where assets owned by a parent, or over which he has control, whether in the UK or overseas:

- are capable of being used to produce income but are not doing so;
- have been invested in such a way that the income is less than might be reasonably expected, for example, with the objective of achieving capital growth at the expense of income yield;
- are choses in action (for example, a debt, the right to enforce which, can be traded);

- have not been sold, enforced or payment requested where that would be reasonable;
- are assets which have been made or become subject to a trust of which the non-applicant is a beneficiary.

For the purposes of these grounds assets are money in cash or on deposit, interests in land and rights over land, shares, stocks and other similar instruments.

A departure direction will be refused where a parent has assets with a value of less than £10,000.

The Department may exclude from consideration for a departure on this ground any asset which has been set aside by a parent for a reasonable purpose. For example, cash or money held in a non-interest bearing account, which has been obtained from the sale of a home and where it is clear that the intention is to use the money shortly to buy a new home. Another example might be where it would be unreasonable to expect the parent to dispose of the property in particular circumstances.

## **Diversion of income**

*DD&CAR, reg 24*

This ground for a departure is designed to cover cases where parents deliberately reduce the level of their income and thus avoid or reduce their liability for child maintenance.

The Department may make a departure direction where a parent has the ability to control the amount of income he receives, and the Department is satisfied that the parent has unreasonably reduced the level of income that he would have otherwise received and which would have been taken into account in the maintenance assessment, by diverting it to other persons or for purposes other than the provision of that income for himself.

## **Lifestyle inconsistent with declared income**

*DD&CAR, reg 25*

Before giving a departure on this ground the Department must be satisfied that the income of the parent used in the calculation of the maintenance assessment is substantially lower than the level of income required to sustain the overall lifestyle of that parent.

Cases are excluded where the lifestyle of the parent is sustained by using his capital or is funded by a partner, unless the parent has influence or control over the amount of income received by that partner.

Where it appears that lifestyle is being supported by a partner, the Department may consider whether the case falls to be considered under the ground that the partner can make a contribution to housing costs.

## Unreasonably high housing costs

*DD&CAR, reg 26*

Child support regulations (*MASCR, reg 18*) already provide that a non-resident parent's eligible housing costs shall not exceed the greater of £80 or half the amount of his net income, unless the parent is exempt from the restriction, see page 41.

Where a non-resident parent falls within an exempt category (parents with care are in any case exempt from restriction), they may nevertheless have housing costs which are unreasonably high and which cannot be justified even taking account of special circumstances.

A departure direction may only be considered where the housing costs of a non-resident parent or parent with care exceed the limits laid down in the formula regulations, and in the case of a non-resident parent, he falls within one of the exempt categories and as a consequence his housing costs are not restricted.

## Partner's contribution to housing costs

*DD&CAR, reg 27*

A departure direction may be considered in cases where it would be unfair to the other parent to allow the non-resident parent or parent with care all the housing costs in the formula assessment because it appears reasonable to expect the partner of the non-resident parent or parent with care to make a contribution towards those housing costs.

## **Unreasonably high travel costs**

*DD&CAR, reg 28*

This ground for a departure is intended to deal with the situation where an allowance for travel to work costs has been made in the formula assessment under *reg 9(1)(i) of the MASCR*, but the other party to the assessment feels that the travel to work costs which gave rise to the formula allowance are unreasonably high, or that the formula allowance itself over-compensates the other parent for their travel costs.

## **Travel costs to be disregarded**

*DD&CAR, reg 29*

This ground for a departure deals with the situation where an allowance for travel to work costs has been made in the formula assessment under *reg 9(1)(i) or 10 of the MASCR*, and the Department is satisfied that the other party to the assessment would have sufficient income remaining after payment of child support if no amount or a lesser amount were to be allowed in respect of travel to work costs.

## **Just and equitable**

*Article 28F of the Order, DD&CAR, reg 30*

A departure direction will be given where the case is one of those which falls within *Part I of Schedule 4B to the Order*, and in the opinion of the Department it would be just and equitable, in all the circumstances of the case, to do so.

In reaching this decision the Department will have regard in particular to the financial circumstances of the non-resident parent and person with care concerned (although he will take no account of the fact that the parent with care is, or is not, claiming benefit) and to the welfare of any child likely to be affected by the direction.

The Department will consider any evidence which suggests, for example, that the granting of a departure direction is likely to result in the non-resident parent or the parent with care having to cease employment or that there is other income available to an applicant for a 'special expenses' departure direction under DD&CAR regs 13 - 20 and that income is currently used for non-essential purposes whereas it could reasonably be used to meet the 'special expense'.

## **Implementation, effective date and effect of departure directions**

### **Implementation**

*DD&CAR, regs 31 and 46*

A departure direction or amended departure direction will not be given if the difference between the amount of the maintenance assessment to which the direction would be applied and the amount that that assessment would be if a departure direction were to be given would be less than £1 a week.

## Effective date of departure directions

*DD&CAR, reg 32*

Where a departure direction is given it will take effect from the effective date of the maintenance assessment in respect of which that application was made or in the week in which the circumstances giving rise to the departure direction first arose if later, where the application is received within a month of the notification of the assessment.

Where a departure application is received more than one month after the notification of a maintenance assessment it will take effect from the week in which the application was made unless there was unavoidable delay in making the application, when the provisions referred to in the previous paragraph will apply.

## Effect of a departure direction

*DD&CAR, regs 36, 37, 38, 39 and 40*

Where a departure direction is made in respect of a special expense the effect of the direction will be that an amount will be added to the applicant's exempt income. Where the applicant is a non-resident parent, the same amount will be added to his protected income except where the ground for the departure direction is costs incurred by a non-resident parent supporting step-children. The addition to protected income will be made before the 30% cap is applied under *reg 11(5A) of the MASCR*.

A departure direction given on the grounds of high travel to work costs will have the effect of topping up any existing allowance for travel to work costs given under *reg 9(1)(i) of the MASCR*.

When a departure direction is given on the ground that a property or capital transfer is not properly reflected in the maintenance assessment the effect will be the removal of any formula allowance made in respect of the transfer under *reg 9(1)(bb) of the MASCR*.

If applicable, the maintenance liability figure before protected income is applied is then modified by the subtraction of the equivalent weekly value of the transfer. No adjustment is made to protected income.

If the ground for a departure direction is assets capable of producing income or higher income, diversion of income or life-style inconsistent with declared income the effect of a departure direction will be that an amount will be added to net income ('N' or 'M' as calculated under *regs 7(1) and 8 of the MASCR*) thereby increasing the parent's assessable income.

A departure direction given on the grounds that housing costs are unreasonably high will have the effect of reducing the allowance for eligible housing costs in exempt income and protected income to no more than the amount specified in *MASCR reg 18(1)*.

The effect of a departure direction given on the grounds that housing costs are attributable to a partner will have the effect of reducing the amount of eligible housing costs in exempt income by the percentage of housing costs attributed to the partner. The allowance for housing costs in protected income will remain unchanged.

Where the grounds for a departure direction are that travel to work costs are unreasonably high or should be disregarded, the formula allowance made under *reg 9(1)(i) of the MASCR* will be removed from exempt and protected income and, if appropriate, replaced by the amount the Department considers appropriate.

## **Maximum and minimum amounts**

*MASC, regs 6 and 13*

A departure direction cannot reduce a non-resident parent's liability to an amount which is below the standard minimum amount, or increase it above the maximum amount which applies to his case under the maintenance formula.

## **The 'higher income adjustment'**

*Paragraph 6 of Schedule 4B to the 1991 Order, DD&CAR, regs 41, 42 & 43*

The formula used to assess child maintenance includes provision for an 'additional element' to be paid by some non-resident parents, see pages 46 to 51.

This means that non-resident parents at higher income levels should have less difficulty in meeting any special expenses from the margins of income retained after application of the formula than those at lower levels of income. Where a non-resident parent pays an additional element and has applied for a departure direction on the grounds of 'special expenses' the Department will consider whether a 'higher income adjustment' is appropriate to mitigate the effect of any reduction.

The higher income adjustment is only applied to the non-resident parent's assessment and only where the departure relates to one or more of the 'special expenses' listed above.

A departure direction will not be given if the application of the higher income adjustment means that the assessment would change by less than £1 a week. (Regs 7 & 31 of the DD&CAR 1996).

## How the higher income adjustment works

A departure direction given on the grounds of special expenses will result in an addition to exempt income to produce a new figure for assessable income. The higher income adjustment calculation applies the 50% deduction rate throughout the whole of this new assessable income figure. The resultant figure is compared with:

- the underlying liability (that is without the effect of any departure direction) at the date of the application; and
- the amount payable under the protected income provisions.

The amount payable is the lowest of the three figures.

### Example

The non-resident parent has net income of £295.50 a week and exempt income of £95.50 a week. His assessable income is therefore £200 a week. The maintenance needed is £70 and there are two children in the assessment unit. He would be assessed to pay £82 a week thus:

Basic element	£70
Additional element (£60 x 20%)	<u>£12</u>
	£82

He is then granted a departure of £30 for contact costs. Assessable income drops to £170 so assessment becomes:

Basic element	£70
Additional element (£10 x 20%)	<u>£ 2</u>
	£72

The higher income adjustment means that the non-resident parent pays the lowest of the following amounts:

- the original liability (£82); or
- the assessment based on 50% of the revised assessable income (in this case £85); or
- the amount payable under the protected income provisions.

## Protected income

A departure direction given on account of a special expense will, in all cases with the exception of any allowance made on account of the costs incurred in supporting step children, result in an addition to protected income.

In this example, protected income level before the departure for contact costs is £213.37. Meeting the original child maintenance liability (£82) out of the disposable income (£295.90) would leave the non-resident parent with income above the protected income level. Protected income does not therefore apply and the non-resident parent would pay the assessed liability of £82.

However, following the award of the departure, the protected income level is also increased by adding the amount of the departure into the first margin. This results in a new protected income level of £238.87 (£25.50 higher for a £30 increase due to the 85% taper). The non-resident parent's liability under the protected income provision is therefore reduced to £56.63 a week (£295.50 - £238.87).

This is the lowest of the three figures for the purposes of the higher income adjustment. This therefore becomes the revised liability.

### **More than one direction in force**

When considering the higher income adjustment it is usually necessary only to have regard to departure directions for special expenses. However where more than one direction which affects the level of exempt income is in force it is the net effect of the directions which is important. For example, applications by the parent with care on the grounds that the non-resident parent's housing costs should be apportioned will affect the level of assessable income and should be netted off against the non-resident parent's application for special expenses.

In applying the higher income adjustment in such cases the non-resident parent will pay whichever is the least of the underlying assessment at the date of the later application or 50% of the revised assessable income (or the protected income rate if appropriate). So, if a case were subject to an increase on the grounds that the non-resident parent's housing costs should be apportioned and then a decrease because of a special expenses and the net result was a decrease in liability the higher income

adjustment calculation would apply. Liability would be the lowest of the formula assessment before either departure direction is applied or 50% of the new assessable income figure (ie after calculating the net effect of the two departure directions) or the protected income rate if appropriate.

## **Changes in circumstances**

The higher income adjustment mitigates the effect that the direction would otherwise have on liability. If the circumstances of either parent change, resulting in an adjustment to the underlying assessment but not the departure, the higher income adjustment formula will be applied to the new assessable income. The resultant liability will be the lowest of the formula assessment taking account of the change of circumstances but excluding the effects of the departure direction (even though this was not the assessment in place at the time the departure was applied for or awarded) or 50% of the figure obtained by deducting the amount of the departure from the assessable income figure used in that new formula calculation or the protected income rate if appropriate. In such a case normal tolerance rules will apply.

## **Maintenance assessment following a departure direction where there is a phased maintenance assessment**

*DD&CAR, reg 44*

There are special rules for the implementation of a departure direction in cases where transitional phasing in a maintenance assessment applies. In cases where the

departure direction takes effect from the effective date of the maintenance assessment the transitional phasing provisions are applied in the normal way but after implementation of the departure direction.

Where a departure direction takes effect from a date later than the date from which transitional phasing became applicable, the amount of maintenance payable will be adjusted so that, where the departure direction increases the un-phased maintenance liability the non-resident parent will pay the phased amount plus the difference between the formula amount and the formula amount following implementation of the departure direction. Where the departure direction reduces the un-phased maintenance liability the parent will pay the lower of either the phased amount or the new un-phased maintenance liability. Where such an assessment is subsequently changed the same principles apply but the comparison will be based on the fresh formula amount to which the departure direction has been applied.

## **Regular payments condition**

*Article 28C of the 1991 Order, DD&CAR, reg 45*

Where a non-resident parent applies for a departure direction, the Department may decide to impose a regular payments condition.

The terms of the regular payments condition will be either:

- that the applicant must make regular payments of the amount fixed by their maintenance assessment;
- or

- that the applicant must make regular payments of a lower amount based on the likely outcome of their application on the grounds of special expenses.

If a non-resident parent on whom a regular payments condition has been imposed does not make regular payments at the agreed amount the Department may suspend action on the application. If regular payments are not resumed within 28 days of the notification to the non-resident parent that he has failed to meet the condition imposed on him, the application will lapse.

## Appeals

*Article 22 of the 1991 Order (as extended by paragraph 3 of schedule 4c*

The parent with care or the non-resident parent may appeal against any decision of the Department on an application for a departure direction or an amended departure direction. The appeal will be heard by The Appeals Service (TAS).

Any person who is aggrieved by the decision of the tribunal on an appeal may appeal to a Child Support Commissioner on a point of law (*Article 25(1) of the 1991 Order*).

## Changes of circumstances and cancellation of a departure direction

*DD&CAR, reg 33*

A departure direction may be changed where the Department is satisfied, on the basis of a later application by either parent, that there has been a change of circumstances which materially affects the direction as originally given; or if a further application is made on a fresh ground. The fresh departure will replace the earlier one and will take effect from the week in which the later or further application was made.

Where the Department is satisfied, following a later application by either parent, that the ground (or grounds) on which the departure was originally given no longer applies, he may cancel the direction outright.

## Annex 1

### Cases where the minimum amount of child maintenance is not to be payable

*MASCR, Schedule 4*

People getting these payments and awards are not required to pay the minimum amount of maintenance under the Child Support (Northern Ireland) Order 1991, see pages 57 to 58.

- a the following payments under the Contributions and Benefits (NI) Act:
  - i) Incapacity Benefit under section 30A
  - ii) Long-term Incapacity Benefit for Widows under section 40.
  - iii) Long-term Incapacity Benefit for Widowers under section 41.
  - iv) Maternity Allowance under section 35
  - v) Attendance Allowance under section 64
  - vi) Severe Disablement Allowance under section 68
  - vii) Invalid Care Allowance under section 70
  - viii) Disability Living Allowance under section 71
  - ix) Disablement Pension under section 103
  - x) Disability Working Allowance under section 128
  - xi) Statutory Sick Pay within the meaning of section 147
  - xii) Statutory Maternity Pay within the meaning of section 160.

- b awards in respect of disablement, made under (or under provisions analogous to):
  - i) The War Pensions (Coastguards) Scheme 1944
  - ii) The War Pensions (Naval Auxiliary Personnel) Scheme 1964
  - iii) The Pensions (Polish Forces) Scheme 1964
  - iv) The War Pensions (Mercantile Marine) Scheme 1964
  - v) The Royal Warrant of 21st December 1964 (Service in the Home Guard before 1945)
  - vi) The Order by Her Majesty of 22nd December 1964 concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27th April 1952
  - vii) The Order by Her Majesty (Ulster Defence Regiment) of 4th January 1971
  - viii) The Personal Injuries (Civilians) Scheme 1983
  - ix) The Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983; and
- c payments from the Independent Living (1993) Fund or the Independent Living (Extension) Fund.

## Annex 2

The Child Support (Northern Ireland) Order 1991 (the 1991 Order)

The Child Support (Northern Ireland) Order 1995 (the 1995 Order)

### Statutory Rules made by the Department

The Child Support (1991 Order) (Commencement No. 1) Order (Northern Ireland) 1992 No. 278 (C.13)

The Child Support (1991 Order) (Commencement No. 2) Order (Northern Ireland) 1992 No. 347 (C.16)

The Child Support (Maintenance Assessment Procedure) Regulations (Northern Ireland) 1992 No. 340 (MAPR)

The Child Support (Maintenance Assessments and Special Cases) Regulations (Northern Ireland) 1992 No. 341 (MASCR)

The Child Support (Information, Evidence and Disclosure) Regulations (Northern Ireland) 1992 No. 339 (IEDR)

The Child Support (Collection and Enforcement) Regulations (Northern Ireland) 1992 No. 390 (CS(CE)R)

The Child Support (Arrears, Interest and Adjustment of Maintenance Assessments) Regulations (Northern Ireland) 1992 No. 342 (CS(AIAMA)R)

The Child Support Appeals Tribunals (Procedure) Regulations (Northern Ireland) 1993 No. 50 (CSAT(P)R)

The Child Support Commissioners (Procedure) Regulations (Northern Ireland) 1993 No. 42

The Child Support (1991 Order) (Commencement No 3, Transitional Provisions) Order (Northern Ireland) 1992 No. 467 (C.20)

The Child Support (Maintenance Arrangements and Jurisdiction) Regulations (Northern Ireland) 1992 No. 466 (MAJR)

The Child Support (Collection and Enforcement of other forms of maintenance) Regulations (Northern Ireland) 1992 No. 465

The Child Support Fees Regulations (Northern Ireland) 1993 No. 73 (CSFR)

The Finance (No 2) Act 1992, Section 62, (Commencement) Order 1992 S.I. 2642 (C.82)

The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1993 No. 164

The Child Support (1991 Order) (Commencement No. 3 and Transitional Provisions) (Amendment) Order (Northern Ireland) 1993 No. 174 (C.9)

The Child Support (Miscellaneous Amendments and Transitional Provisions) Regulations (Northern Ireland) 1994 No. 37 (MATPR '94)

The Child Support and Income Support (Amendment) Regulations (Northern Ireland) 1995 No. 19 (CSISAR '95)

Child Support (Northern Ireland) Order 1995 (the 1995 Order)

The Child Support (Miscellaneous Amendments) (No. 2) Regulations (Northern Ireland) 1995. CSMA '95 No. 475

The Child Support (Compensation for recipients of family credit and disability working allowance) Regulations (Northern Ireland) 1995 No. 476

Child Support (1995 Order) (Commencement No. 1) Order (Northern Ireland) 1995 No. 428 (C. 8)

The Child Support (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1995 No. 474 (C. 10)

The Child Support (1995 Order) (Commencement No. 3) Order (Northern Ireland) 1996 No. 492 (C. 24)

The Child Support (Miscellaneous Amendments) Regulations (Northern Ireland) 1996 No. 317 (CSMAR '96)

The Child Support Departure Direction and Consequential Amendments Regulations (Northern Ireland) 1996 No. 541 (DD&CAR)

The Child Support (Miscellaneous Amendments) (No. 2) Regulations (Northern Ireland) 1996 No. 590

The Social Security (Child Maintenance Bonus) Regulations (Northern Ireland) 1996 No. 622 (CMBR)

The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 1997 No. 130

The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 1998 No. 2

The Social Security (Miscellaneous Amendments) (No. 2) Regulations (Northern Ireland) 1998 No. 81

## Statutory Rules made by the Lord Chancellor

- a The Child Support (Consequential Amendments) Order (Northern Ireland) 1993
- b The Children Support Appeals (Jurisdiction of Courts) Order (Northern Ireland) 1993
- c The Child Maintenance (Consent Orders) Order (Northern Ireland) 1993
- d The Rules of the Supreme Court (Northern Ireland) (Amendment) 1993
- e The Magistrates' Courts (Child Support) Rules (Northern Ireland) 1993
- f The Legal Aid (Scope) Regulations (Northern Ireland) 1993
- g The Legal Aid and Assistance (Amendment No. 2) Regulations (Northern Ireland) 1993
- h The Child Support Commissioners (Procedure) Regulations 1993
- i Family Proceedings Rules (Northern Ireland) 1996
- j Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996
- k Child Support Commissioners (Procedure) (Amendment) Regulations 1996
- l Magistrates' Courts Fees Order (Northern Ireland) 1996
- m Magistrates' Courts Fees (Amendment) Order (Northern Ireland) 1997

## Annex 3

### Main benefit rates used in the formula (1999 rates)

#### Income Support

##### Personal allowances

Single person or lone parent	51.40
Couple	80.65
Dependent children	
birth to Sept following 11th birthday	20.20
from Sept following 11th birthday to Sept following 16th birthday	25.90
from Sept following 16th birthday to day before 19th birthday.	30.95

##### Premiums

family	13.90
family (lone parent rate)	15.75
pensioner	
single	23.60
couple	35.95
pensioner (enhanced)	
single	25.90
couple	39.20
pensioner (higher)	
single	30.85
couple	44.65

disability	
single	21.90
couple	31.25
severe disability	
single	39.75
couple (one qualifies)	39.75
couple (both qualify)	79.50
disabled child	21.90
carer	13.95

### **Housing Benefit**

non-dependant deductions

people aged 25 and over who are getting  
Income Support, or income-based Jobseeker's  
Allowance who are:

aged 18 or over, not in work or have gross income under £80	7.20
aged 18 or over and in work	
- gross income: less than £80	7.20
- gross income: £80 - £117.99	16.50
- gross income: £118 - £154.99	22.65
- gross income: £155 - £203.99	37.10
- gross income: £204 - £254.99	42.25
- gross income: £255 and above	46.35

### **Child Benefit**

only, elder or eldest for whom child benefit is payable(couple)	14.40
only, elder or eldest for whom child benefit is payable (lone parent)	17.10
each subsequent child	9.60

## How to contact the Child Support Agency

### Client Help Line

0845 713 9896

If you need further advice after reading this guide, or you want an application form, please call the Client Help Line on **0845 713 9896**. Lines are open between 8am to 8pm Mondays to Fridays and 9am to 5pm Saturdays. Calls from BT and Mercury phones to the line are charged at local call rates. Text phone users can call 0845 7139 704. The Agency may record calls to check their service and to train staff.

Alternatively you can write to the Child Support Agency at the following address:

Child Support Agency  
Great Northern Tower  
17 Great Victoria Street  
Belfast  
BT2 7AD

A leaflet about child maintenance called **CSA 2001 (NI) For parents who live apart** is available from local Social Security offices, or from the address above.

The amounts shown for the maintenance formula in this leaflet are correct as at April 1999. Changes in benefit regulations may alter these amounts. Leaflet NI L196 Social Security benefit rates gives current benefit rates on which amounts used in the maintenance formula are based. This is available from post offices and local Social Security offices.

## A list of Child Support Agency leaflets

CSA 100 (NI)	Your rights in the interview
CSA 2001 (NI)	For parents who live apart
CSA 2002 (NI)	Advice for employers
CSA 2006 (NI)	A guide to changing Child Support decisions
CSA 2006A (NI)	How to appeal
CSA 2022 (NI)	How to complain
CSA 2024 (NI)	Your child maintenance assessment and help in meeting exceptional circumstances
CSA 2034 (NI)	Paying child maintenance direct from your earnings
CSA 2047 (NI)	CSA Charter CSA Annual Report and Accounts
CSA 2090 (NI)	DNA testing CSA Business Plan
CSA 2200 (NI)	Departures leaflet
CSA 4051	Information Pack

## How to order

All leaflets mentioned are available free of charge. You can get a small number (up to about five) of most of them from your local Child Support Agency Area office.

If you are unable to pick up these leaflets locally or if you need large quantities of any of them, you can order them by phoning the Client Help Line on **0845 713 9896**.

Leaflets are also available in braille, large print and audio tape. Please contact:

Quality and Client Services  
Child Support Agency  
Great Northern Tower  
17 Great Victoria Street  
Belfast  
BT2 7AD

Telephone 028 90 896825

## Tax Credits

If you want general advice and information, phone the Tax Credit Helpline Number on 0845 609 7000 or Textphone 0845 607 6078.

Lines are open from 9.00am to 5.00pm Monday to Friday.

## Index

A	Additional Element	.13, 47-52, 125, 127
	Adopted child	.33
	Appeals	.82-84, 131
	Assessable Income	.13, 18, 27, 47, 52, 66-69, 90, 124, 126-129
B	Bank/Building Society accounts	.19, 85, 89
	Boarders	
	income from boarders	.19
	parent as boarder	.40
	Bonus	.20
C	Capital settlement	.32, 44-46
	Carer premium	.31
	Case checks	.79
	Child Benefit	.17, 28, 54-55, 69, 104, 110, 111, 140
	Child maintenance bonus	.93-97
	Child maintenance formula	.12-14, 86
	Children's income	.24-26
	Collection of payments	.84-90
	Commission	.20-21
	Cost of using the Agency's services	.12
D	Deduction Rate	.13, 46-50, 86-87, 126
	Deduction from Earnings Orders (DEOs)	.85-90
	Disabled child premium	.32, 33, 77
	Disability Premium	.30, 76, 110
	Disability Working Allowance	.8, 10-11, 27, 29, 70, 71, 72, 76, 97, 98, 133, 137
	Disclosure of information	.90-91
	Disputed decisions	.80
	Disputed paternity	.77-78

E	Earnings from employment	18-21
	Earnings from self-employment - see Self-employment	
	Enforcement	84, 88-90, 135
	Exempt Income	13, 25, 30-44, 47, 51, 53, 59, 65 77, 86, 124-126, 128
F	Family Credit	8, 10-11, 28, 70-72, 76-77, 98, 136
	Family premium	16, 31, 33-35, 50, 51, 55, 57, 69, 110, 111
G	Ground rent	36
H	Helpline	142
	Holiday pay	19
	Housing Benefit	27, 37, 38, 40, 41, 143
	Housing costs	27, 36-41, 139
I	Income Support	8, 10, 11, 12, 13, 14, 15, 16, 27, 30-33, 36, 39, 50, 53-55, 57-58, 70, 71, 75-77, 80, 86, 93, 94-95, 97, 98-99, 104, 109-111, 133, 139, 140
	Interim Maintenance Assessment (IMA)	58-60, 82, 86, 99
L	Leaflets	142-143
	Liability, starting date	14
	Loans	19, 30
	Lone parent	17, 50, 141
M	Maintenance Needed	13, 16-17, 18, 25, 28, 47-52, 58, 65, 66-68, 69, 126
	Minimum Payment	57-58
	Mortgage	20, 36, 38-39, 45, 53, 55, 114-116
N	National Insurance	18, 20-23, 50, 86
	Net Income	13-14, 18, 24-29, 33, 39, 41, 47, 50-51, 54-56, 57, 109, 110-111, 120, 124, 126
	Non-resident parent (definition)	6
O	Overtime	19, 21
	Owner-occupiers	38-39

P	Parent with care (definition) . . . . .	6
	Partner's Income . . . . .	24, 53
	Paternity . . . . .	77-78
	Payments . . . . .	84-87
	Pensions	
	occupational . . . . .	18, 21
	personal . . . . .	18, 21, 22-24, 38
	Person with care (definition) . . . . .	7
	Personal allowance (Income Support) . . . . .	16, 25, 30-33, 40, 50, 53, 55, 57, 75, 109
	Phasing . . . . .	60-64
	Prisoners' pay . . . . .	29
	Property and capital settlement . . . . .	32, 44-46
	Protected Income . . . . .	24, 27-31, 39, 42-43, 52-57, 59, 65, 68, 80, 90, 111, 123-126, 127, 128-129
Q	Qualifying child (definition) . . . . .	6
	Qualifying child . . . . .	9, 11, 17, 75, 77, 78, 80, 93-94, 96, 104, 115
R	Reduced benefit direction . . . . .	70, 74, 75-77
	Rent . . . . .	32, 36-39
	Requirement to authorise . . . . .	70-77
	Residential care . . . . .	32, 76
	Revised decisions . . . . .	83
	Rights of appeal . . . . .	82-84
S	Self-employment . . . . .	18, 22-24, 43
	Service charges . . . . .	37
	Shared care . . . . .	35, 65-66
	Social Security benefits . . . . .	27
	Special cases . . . . .	14, 64-69
	Spousal maintenance . . . . .	12
	Stepchildren . . . . .	30, 52, 111-112
	Students . . . . .	30
	Student grants and loans . . . . .	19, 30

T	Take-on of applications	11-12
	Tax	7, 18, 20-21, 22, 23, 27, 50, 90, 101
	Top-up maintenance	9, 11-12, 104
	Training Allowances	19, 30
	Travel-to-work costs	32, 42-44, 54





**CSA 2008 (NI)**

**October 1999**  
Northern Ireland Child Support Agency

