

DRAFT STATUTORY INSTRUMENTS

2012 No.

The Child Support Maintenance Calculation Regulations 2012

PART 4

THE MAINTENANCE CALCULATION RULES

CHAPTER 2

RATES OF CHILD SUPPORT MAINTENANCE

Reduced Rate

43. The reduced rate is an amount calculated as follows—

$$F + (A \times T)$$

where—

F is the flat rate liability applicable to the non-resident parent;

A is the amount of the non-resident parent's gross weekly income between £100 and £200; and

T is the percentage determined in accordance with the following Table—

	<i>Number of relevant other children of the non-resident parent</i>	<i>T (%)</i>
1 qualifying child of the non-resident parent	0	19
	1	16.40
	2	15.60
	3 or more	15.20
2 qualifying children of the non-resident parent	0	27
	1	23.50
	2	22.50
	3 or more	21.90
3 or more qualifying children of the non-resident parent	0	33
	1	28.80
	2	27.70
	3 or more	26.90

Flat Rate

44.—(1) The following benefits, pensions or allowances are prescribed for the purposes of paragraph 4(1)(b) of Schedule 1 to the 1991 Act⁽¹⁾ (that is the benefits, pensions or allowances that qualify the non-resident parent for the flat rate)—

(a) under the Social Security Contributions and Benefits Act 1992⁽²⁾—

- (i) bereavement allowance under section 39B⁽³⁾,
- (ii) category A retirement pension under section 44⁽⁴⁾,
- (iii) category B retirement pension under section 48C⁽⁵⁾,
- (iv) category C and category D retirement pension under section 78⁽⁶⁾,
- (v) incapacity benefit under section 30A⁽⁷⁾,
- (vi) carer’s allowance under section 70⁽⁸⁾,
- (vii) maternity allowance under section 35⁽⁹⁾,
- (viii) severe disablement allowance under section 68⁽¹⁰⁾,
- (ix) industrial injuries benefit under section 94,
- (x) widowed mother’s allowance under section 37⁽¹¹⁾,
- (xi) widowed parent’s allowance under section 39A⁽¹²⁾, and
- (xii) widow’s pension under section 38⁽¹³⁾;

(b) contribution-based jobseeker’s allowance under the Jobseekers Act 1995⁽¹⁴⁾;

(c) a social security benefit paid by a country other than the United Kingdom;

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- (1) Paragraph 4 of Schedule 1 was amended by paragraphs 1 and 2 of Schedule 4 to the 2008 Act.
 - (2) 1992 c. 4.
 - (3) Section 39B was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c. 30) and amended by sections 254(1) and 261(4) of, and paragraph 21 of Schedule 24, and Schedule 30, to the Civil Partnership Act 2004 (c. 33).
 - (4) Section 44 was amended by section 6 of, and paragraphs 2 and 3 of the Schedule 4 to, the Social Security (Consequential Provisions) Act 1992 (c. 6), section 190 of, and paragraph 38 of Schedule 8 to, the Pension Schemes Act 1993 (s.48), section 128(1) and (2) of the Pensions Act 1995 (c.26), section 68 of the Social Security Act 1998 (c.14), sections 30(2) and 35(1) and (5) to (7) of the 2000 Act, section 6 of, and paragraphs 1 and 10 of the Schedule 1 to, the National Insurance Contributions Act 2002 (c.19), sections 1(4), 11(5)(c) and 12(2) of, and paragraph 1 of Schedule 1 and paragraph 5 of Schedule 2 to, the Pensions Act 2007 (c.22), section 3(1) and (3) of the National Insurance Contributions Act 2008 (c.16) and article 4 of S.I. 2012/780.
 - (5) Section 48C was inserted by section 126 of, and paragraph 3(1) of Schedule 4 to, the Pensions Act 1995 (c.26). It was amended by sections 70 and 84(1) of, and paragraphs 2 and 7 of Schedule 8 and paragraphs 14 and 21 of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c.30) and sections 35(1) and (12) and 39(1)(a) and (2)(b) of the 2000 Act, and section 11(5) (c) of, and paragraph 10 of Schedule 2 to, the Pensions Act 2007 (c.22) and by S.I. 2005/2053.
 - (6) Section 78 was amended by section 60 of, and Schedule 6 to, the Tax Credits Act 2002 (c.21) and sections 4(3) and 27(2) of, and paragraph 13 of Schedule 1, and Part 2 of Schedule 7 to, the Pensions Act 2007 (c.22).
 - (7) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c.18). It was amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30) and section 254(1) of, and paragraph 14 of Schedule 24 to, the Civil Partnership Act 2004 (c.33).
 - (8) Section 70 was amended by S.I.s 1994/2556, 2002/1457 and 2011/2426.
 - (9) Section 35 was amended by section 2 of the Still-Birth (Definition) Act 1992 (c.92), section 67 of the Social Security Act 1998 (c.14), section 53(1) and (2) of the Welfare Reform and Pensions Act 1999 (c.30), section 53 of, and paragraphs 2 and 4 of Schedule 7 to, the Employment Act 2002 (c.22) and section 11(1) of, and paragraph 6 of Schedule 1 to, the Work and Families Act 2006 (c.18) and by S.I. 1994/1230.
 - (10) Section 68 was repealed by section 65 of the Welfare Reform and Pensions Act 1999 with savings in S.I. 2000/2958.
 - (11) Section 37 was amended by sections 254(1) and 261(4) of, and paragraph 18 of Schedule 24, and Schedule 30, to, the Civil Partnership Act 2004 (c.33), section 1(3) of, and paragraphs 1 and 2 of Schedule 1 to, the Child Benefit Act 2005 (c.6) and sections 50 and 67 of, and Schedule 8 to, the Welfare Reform Act 2007 (c.5).
 - (12) Section 39A was inserted by section 55(2) of the Welfare Reform and Pensions Act 1999 (c.30). It was amended by sections 254(1) and 261(4) of, and paragraph 20 of Schedule 24, and Schedule 30, to the Civil Partnership Act 2004 (c.33), section 1(3) of, and paragraphs 1 and 3 of Schedule 1 to, the Child Benefit Act 2005 (c.6) and section 51 of the Welfare Reform Act 2007 (c.5).
 - (13) Section 38 was amended by sections 254(1) and 261(4) of, and paragraph 19 of Schedule 24, and Schedule 30, to the Civil Partnership Act 2004 (c.33) and section 13(2) of, and paragraph 40 of Schedule 1 to, the Pensions Act 2007 (c.22).
 - (14) 1995 c. 18.

- (d) a training allowance (other than work-based training for young people or, in Scotland, Skillseekers training);
- (e) a war disablement pension within the meaning of section 150(2) of the Social Security Contributions and Benefits Act 1992(15) or a pension which is analogous to such a pension paid by the government of a country outside Great Britain;
- (f) a war widow's pension, war widower's pension or surviving civil partner's war pension within the meaning of that section(16);
- (g) a payment under a scheme mentioned in section 1(2) of the Armed Forces (Pensions and Compensation) Act 2004(17) (compensation schemes for armed and reserve forces); and
- (h) contributory employment and support allowance.

(2) The following benefits are prescribed for the purposes of paragraph 4(1)(c) of Schedule 1 to the 1991 Act (that is the benefits that qualify the non-resident parent for the flat rate if received by the non-resident parent or their partner)—

- (a) income support;
- (b) income-based jobseeker's allowance;
- (c) income-related employment and support allowance; and
- (d) state pension credit.

(3) Where the conditions referred to in paragraph 4(2) of Schedule 1 to the 1991 Act are satisfied (that is where an income-related benefit is payable to the non-resident parent or their partner and a maintenance calculation is in force in respect of each of them) the flat rate of maintenance payable is half the flat rate that would otherwise apply.

(4) In paragraph (1)(d) "training allowance" means a payment under section 2 of the Employment and Training Act 1973(18) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(19) which is paid to a person for their maintenance while they are undergoing training.

Nil rate

45.—(1) The nil rate is payable where the non-resident parent is—

- (a) a child;
- (b) a prisoner or a person serving a sentence of imprisonment detained in hospital;
- (c) a person who is 16 or 17 years old and—
 - (i) in receipt of income support, income-based jobseeker's allowance or income-related employment and support allowance, or
 - (ii) a member of a couple whose partner is in receipt of income support, income-based jobseeker's allowance or income-related employment and support allowance;
- (d) a person receiving an allowance in respect of work-based training for young people, or in Scotland, Skillseekers training; or

(15) Relevant amendments were made to section 150(2) by section 722 of, and paragraphs 169 and 180(1) and (3) of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003 (c.1).

(16) Relevant amendments were made to section 150 by section 722 of, and paragraphs 169 and 180(1) and (4) of Schedule 6 to, the Income Tax (Earnings and Pensions) Act 2003 (c.1) and section 254(1) of, and paragraph 49 of Schedule 24 to, the Civil Partnership Act 2004 (c.33).

(17) 2004 c. 32.

(18) 1973 c.50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c.19). It was amended by section 29(4) of, and Part 1 of Schedule 7 to, the Employment Act 1989 (c.38).

(19) 1990 c.35. Section 2 was amended by sections 47 and 51 of, and Schedule 10 to, the Trade Union Reform and Employment Rights Act 1993 (c.19), and section 211(1) of, and paragraphs 19 and 20 of Schedule 26 to, the Equality Act 2010 (c.15) (as inserted by S.I. 2010/2279) and by S.I.1999/1820.

- (e) a person who is resident in a care home or an independent hospital or is being provided with a care home service or an independent health care service who—
- (i) is in receipt of a pension, benefit or allowance specified in regulation 44(1) or (2) (flat rate), or
 - (ii) has the whole or part of the cost of their accommodation met by a local authority.

(2) For the purposes only of determining whether paragraph 5(b) of Schedule 1 to the 1991 Act⁽²⁰⁾ applies (nil rate payable where non-resident parent has gross weekly income of below the flat rate that is referred to in, or prescribed for the purposes of, paragraph 4(1) of Schedule 1 to the 1991 Act), the gross weekly income of the non-resident parent is to include any payments made by way of benefits, pensions or allowances referred to in regulation 44(1) or (2).

(3) In paragraph (1)—

“independent hospital” and “care home” have the meaning given by sections 2 and 3 of the Care Standards Act 2000⁽²¹⁾ respectively;

“care home service” has the meaning given by paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010⁽²²⁾ and “independent health care service” has the meaning given by section 10F(1)(a) and (b) of the National Health Service (Scotland) Act 1978⁽²³⁾;

“person serving a sentence of imprisonment detained in hospital” means a person who—

- (a) is being detained—
 - (i) under section 45A or 47 of the Mental Health Act 1983⁽²⁴⁾; and
 - (ii) before the day which the Secretary of State certifies to be that person’s release date within the meaning of section 50(3) of that Act⁽²⁵⁾ (in any case where there is such a release date); or
 - (b) is being detained under—
 - (i) section 59A of the Criminal Procedure (Scotland) Act 1995⁽²⁶⁾; or
 - (ii) section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽²⁷⁾;
- “prisoner” means a person who—
- (a) is detained in custody pending trial or sentence upon conviction or under sentence imposed by a court; or
 - (b) is on temporary release in accordance with the provisions of the Prison Act 1952⁽²⁸⁾ or the Prisons (Scotland) Act 1989⁽²⁹⁾,

⁽²⁰⁾ Paragraph 5 of Schedule 1 was amended by paragraphs 1 and 2 of Schedule 4 to the 2008 Act.

⁽²¹⁾ 2000 c. 14. Section 2, as it applies in relation to Wales, was amended by section 106 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), paragraph 199 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43), paragraph 3 of Schedule 5(1) to the Health and Social Care Act 2008 (c. 14) and by S.I.s 2001/3968 and 2002/325. Section 3 was amended by paragraph 4 of Schedule 5(1) to the Health and Social Care Act 2008 (c. 14).

⁽²²⁾ 2010 asp 8.

⁽²³⁾ 1978 c. 29; section 10F was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

⁽²⁴⁾ 1983 c. 20. Section 45A was inserted by section 46 of the Crime (Sentences) Act 1997 (c. 43) and amended by paragraph 1 of Schedule 37(7) to the Criminal Justice Act 1993 (c. 44) and by sections 4(6) and 10(8) of, and paragraph 9 of Schedule 1(1) to, and paragraph 1 of Schedule 11(1) to, the Mental Health Act 2007 (c. 12). Section 47 was amended by paragraph 1 of Schedule 6 to the Crime (Sentences) Act 1997, by paragraph 18 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004 (c. 28), paragraph 97 of Schedule 16 to the Armed Forces Act 2006 (c. 52) and by paragraph 1 of Schedule 11(1) to the Mental Health Act 2007.

⁽²⁵⁾ Section 50(3) was substituted by section 294(3) of the Criminal Justice Act 1993.

⁽²⁶⁾ 1995 c.46. Section 59A was substituted by paragraph 8(6) of Schedule 4 to the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#), asp13.

⁽²⁷⁾ 2003, asp 13.

⁽²⁸⁾ 1952 c 52.

⁽²⁹⁾ 1989 c.45.

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 or, in Scotland, the Mental Health (Care and Treatment)(Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995.

Decrease for shared care

46.—(1) This regulation and regulation 47 apply where the Secretary of State determines the number of nights which count for the purposes of the decrease in the amount of child support maintenance under paragraphs 7 and 8 of Schedule 1 to the 1991 Act⁽³⁰⁾.

(2) Subject to paragraph (3), the determination is to be based on the number of nights for which the non-resident parent is expected to have the care of the qualifying child overnight during the 12 months beginning with the effective date of the relevant calculation decision.

(3) The Secretary of State may have regard to a period of less than 12 months where the Secretary of State considers a shorter period is appropriate (for example where the parties have an agreement in relation to a shorter period) and, if the Secretary of State does so, paragraphs 7(3) and 8(2) of Schedule 1 to the 1991 Act are to have effect as if—

- (a) the period mentioned there were that shorter period; and
- (b) the number of nights mentioned in the Table in paragraph 7(4), or in paragraph 8(2), of that Schedule were reduced proportionately.

(4) When making a determination under paragraphs (1) to (3) the Secretary of State must consider—

- (a) the terms of any agreement made between the parties or of any court order providing for contact between the non-resident parent and the qualifying child; or
- (b) if there is no agreement or court order, whether a pattern of shared care has already been established over the past 12 months (or such other period as the Secretary of State considers appropriate in the circumstances of the case).

(5) For the purposes of this regulation—

- (a) a night will count where the non-resident parent has the care of the qualifying child overnight and the child stays at the same address as the non-resident parent;
- (b) the non-resident parent has the care of the qualifying child when the non-resident parent is looking after the child; and
- (c) where, on a particular night, a child is a boarder at a boarding school, or an in-patient in a hospital, the person who would, but for those circumstances, have the care of the child for that night, shall be treated as having care of the child for that night.

Assumption as to number of nights of shared care

47.—(1) This regulation applies where the Secretary of State is required to make a determination under regulation 46 for the purposes of a calculation decision.

(2) If it appears to the Secretary of State that—

- (a) the parties agree in principle that the care of a qualifying child is to be shared during the period mentioned in regulation 46(2) or (3) (decrease for shared care); but
- (b) there is insufficient evidence to make that determination on the basis set out in regulation 46(4) (for example because the parties have not yet agreed the pattern or frequency or the evidence as to a past pattern is disputed),

⁽³⁰⁾ Paragraph 7 was amended by paragraphs 1 and 6 of Schedule 4, and paragraph 1(1) and (29) of Schedule 7, to the 2008 Act; paragraph 8 was amended by paragraphs 1 and 7 of Schedule 4 to the 2008 Act.

the Secretary of State may make the decision on the basis of an assumption that the non-resident parent is to have the care of the child overnight for one night per week.

(3) Where the Secretary of State makes a decision under paragraph (2) the assumption applies until an application is made under section 17 of the 1991 Act for a supersession of that decision and the evidence provided is sufficient to enable a determination to be made on the basis set out in regulation 46(4).

Non-resident parent party to another maintenance arrangement

48.—(1) An agreement described in paragraph (2) is an agreement of a prescribed description for the purposes of paragraph 5A(6)(b) of Schedule 1 to the 1991 Act⁽³¹⁾ (that is an agreement which is a qualifying maintenance arrangement for the purposes of that paragraph).

(2) The agreement may be oral or written and must satisfy the following conditions—

- (a) it must relate to a child of the non-resident parent who is habitually resident in the UK;
- (b) it must be between the non-resident parent and a person with whom the child has their home (but not in the same household as the non-resident parent) and who usually provides day to day care for that child; and
- (c) it must provide for the non-resident parent to make regular payments for the benefit of the child.

(3) The payments mentioned in paragraph (2)(c) may include payments made by the non-resident parent direct to the person mentioned in paragraph (2)(b) or payments to other persons.

⁽³¹⁾ Paragraph 5A was inserted by paragraph 5(2) of Schedule 4 to the 2008 Act.