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## **MAINTENANCE FACT SHEET**

### **Maintenance for Spouses**

While both parties are alive, a spouse or former spouse has a claim for maintenance (also called periodical payments) until the Court makes an Order dismissing their claim or until they remarry. In every case the Court must decide whether it would be appropriate to dismiss their claim for maintenance and will do so when it is satisfied that the wife can adjust to the dismissal of her maintenance claim “without undue hardship”.

If a husband does not make reasonable financial provision for his wife in the period immediately after separation the wife can apply to the Court for an immediate “Interim Maintenance Order” (which used to be called “Maintenance Pending Suit” but is now referred to as a “Maintenance Pending Outcome” of proceedings under the new Family Procedure Rules). The Court arranges hearings of these applications without delay. The husband can be liable to pay his wife’s legal costs if he has been unreasonable and the maintenance order in favour of the wife can include a provision for him to pay an ongoing contribution to her future legal costs. It is therefore advisable for a husband to agree a reasonable short term financial arrangement to avoid his wife applying to the Court for a “Maintenance Pending Suit”. It is also beneficial if a couple can agree their short term financial arrangements as there is an increased chance that they will then later be able to go and agree the long term financial settlement.

### **Maintenance for Children**

The Court very rarely decides the level of the maintenance for children. Parents usually have to agree the level of maintenance paid on a voluntary basis. In order to know how much maintenance you should be looking to agree to you need to work out the level of child maintenance that might be assessed by the Child Support Agency. If maintenance cannot be agreed an application for child maintenance can be made to the CSA (Child Support Agency) by either parent. The CSA is now part of CMEC (Child Maintenance Enforcement Commission) Child Maintenance Options is a service of the Commission and has its own useful website at [www.cmoptions.org](http://www.cmoptions.org).

The CSA has a good website at [www.csa.gov.uk](http://www.csa.gov.uk) this website explains how the level of child maintenance is calculated and includes a calculator tool. It also includes an online application form.

If parents can agree the level of child maintenance but wish to see it recorded as a Child Maintenance Order, the Court can make a Child Maintenance Order by consent. This usually forms part of the financial consent order which also records all other assets of the financial settlement.

Where the Court has made a Child Maintenance Order no application can be made to the CSA until a year after the making of the Order.



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The Court can also make an Order for payment of school fees whether these are agreed or not. The Court can also make a top-up maintenance order.

### **Orders the Court can make in respect of Maintenance.**

1. An order for “Maintenance Pending Suit”; (the new Rules refer to “Maintenance Pending Outcome of Proceedings”);
2. An interim maintenance order;
3. A term order – where maintenance is expressed to end on a fixed date or event in the future;
4. A term order with a Section 28 bar – where maintenance is expressed to end on a fixed date or event in the future, but excluding the wife’s right to go back to Court and seek an extension of the length of the term;
5. A joint lives order – where the husband is ordered to pay maintenance until one of them dies or until the wife remarries;
6. A nominal maintenance order – of, say £1 a year. These orders are usually made for a fixed term and end when the youngest child reaches a particular age. The value, of course, is not £1, but the fact that an application can be made by the wife in the future to increase the amount of maintenance if her circumstances become much worse or if her husband’s become much better;

### **Where the Court has made a maintenance order**

1. Either party can apply to the Court at any time to vary it if there has been a change in their circumstances that justifies the amount being varied;
2. The husband can apply to have the maintenance order dismissed if there has been a change in their circumstances that justifies this; for example, if the wife has increased her income or her husband feels she should have done so;
3. The wife can apply to have her maintenance capitalised so that her husband pays her a lump sum in return for which her maintenance claim is dismissed.