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Swedish

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Family maintenance

Sweden

1 What do the concepts “maintenance” and “maintenance obligation” mean in practical terms? Which persons have to pay a maintenance allowance to another person?

Swedish law provides for a maintenance obligation for children, spouses and divorced spouses. The provisions concerning maintenance obligations between spouses are applicable also to registered partners.

Children

Parents are responsible for their children’s maintenance, according to what is reasonable having regard to the needs of the child and the combined financial capacity of the parents. A parent who does not have any capacity to contribute to his or her child’s support is not liable to provide maintenance.

A parent who neither has custody of the child nor lives permanently with the child must satisfy his or her maintenance obligation by paying a maintenance allowance. A parent who has joint custody with the other parent may also be liable to pay a maintenance allowance. This is the case if the child permanently lives with only the other parent, regardless of whether that person is single or lives together with a new partner.

A person who lives permanently with another person’s child and with a parent who has custody of the child is also responsible for maintenance of that child if the parties are married to each other or have a child/children together. A step-parent is, however, responsible for maintenance only to the extent that the child cannot obtain maintenance from the other parent, i.e. not the one with whom the step-parent is living. Maintenance payments are determined by a court ruling or by agreement.

Payments are made in advance for each calendar month. However, the court may decide on another mode of payment if there are special reasons for doing so.

The parties can also agree that future maintenance payments will be made as a lump sum or for periods of more than three months. Such an agreement is valid only if it is made in writing and witnessed by two other people. If the child is under the age of 18, the agreement must also be approved by the Social Welfare Committee.

Maintenance in the form of a lump sum must be paid to the Social Welfare Committee if the child is under the age of 18. The sum paid to the Committee must be used to purchase from an insurance company an annuity for the child appropriate to the maintenance obligation, unless the agreement prevents this or the Committee considers that the sum can be used in some other appropriate manner for the maintenance of the child.

An action to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the action was brought, unless the person liable for maintenance agrees.

Claims for established maintenance allowance become unenforceable (time-barred) five years after the due date of payment.

Spouses

During the marriage, each of the spouses is responsible for their joint maintenance. If one of the spouses cannot maintain him or herself completely, the other spouse is also liable to contribute to the spouse’s personal needs.

After a divorce the principle is that each spouse is responsible for his or her own support. However, if one of the spouses needs money for his or her maintenance for a transitional period, he or she is entitled to an allowance from the other spouse according to what is reasonable, having regard to the capacity of that spouse and other circumstances. In exceptional cases a spouse can obtain maintenance for a longer period.

If the spouses cannot agree on the issue of maintenance, the dispute can be settled in court.

After a divorce, the maintenance allowance will be paid in regular instalments. However, the court may order the amount to be paid as a lump sum if there are special reasons, e.g. if the spouse has to make a pension payment.

An action to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the action was brought, unless the person liable for maintenance agrees.

Claims for established maintenance allowance become unenforceable (time-barred) three years after the due date of payment.

2 Up to what age can a child benefit from a maintenance allowance? Are there different rules for maintenance concerning minors and adults?

The parents’ maintenance obligation generally ceases when the child reaches the age of 18. However, if the child has not yet completed secondary education, the maintenance obligation will continue to apply while the child remains at school, until his or her 21st birthday at the latest. School here means compulsory education or upper secondary school or other comparable general education.

3 Should I apply to a competent authority or a court to obtain maintenance? What are the main elements of this procedure?

There is no specific government authority in Sweden that determines or helps to determine maintenance. Maintenance payments may be fixed either by agreement or by a court ruling. If the parties fail to reach agreement the petitioner therefore has to apply to the district court and submit an application for a summons.

4 Can a request be made on behalf of a relative (if yes, what grade), or a child?

A parent who has custody is entitled to claim maintenance on behalf of a minor child. If a special guardian has been appointed, he or she is also entitled to act on behalf of the child.

5 If I plan to bring the case to court, how do I know which court has jurisdiction?

The rules on jurisdiction can be found in the Parental Code, the Marriage Code and the Code of Judicial Procedure. Information can also be obtained from a district court.

The child maintenance proceedings will be heard in the place where the defendant has his or her habitual residence. If no other court is competent, the case will be heard by the Stockholm District Court.

Questions about maintenance payments to a spouse may be dealt with in the divorce hearing. Matrimonial cases are heard by the district court in the place where one of the spouses has his or her habitual residence. If neither of them has their habitual residence in Sweden, the case will be heard by the Stockholm District Court. If proceedings relating to maintenance for the spouse are not started in connection with the matrimonial case, the general rules on jurisdiction in Chapter 10 of the Code of Judicial Procedure will apply.

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (the Maintenance Regulation) contains rules on jurisdiction in cross-border cases.

6 As an applicant, do I have to go through an intermediary to bring the case to court (e.g. a lawyer, central or local authority, etc.)? If not, which procedures apply?

No. Anyone wishing to bring a case to court has to apply to the competent district court for a summons.

7 Do I have to pay fees to bring a case to court? If so, how much are they likely to be? If my financial means are insufficient, can I obtain legal aid to cover the costs of the procedure?

The court proceedings themselves are free of charge in Sweden, apart from an application fee, which is currently SEK 900. If the petitioner engages a legal adviser or a lawyer this will entail costs. The submission of evidence, e.g. through witnesses, may also involve costs.

It is impossible to estimate costs, as they will vary from one case to another.

Legal aid can be granted under certain conditions. Particular grounds are required for legal aid to be granted in a maintenance case. Such grounds may exist, for instance, if the circumstances are more complicated than usual and call for more extensive legal assistance.

Where legal aid is granted, the petitioner is assigned a legal counsel and the state pays that person's fees if the petitioner cannot afford them. Legal aid also includes the costs involved in submitting evidence, investigation, interpretation and translation and the costs of a mediator. Those who have been granted legal aid are also exempted from certain fees payable to courts and the Enforcement Service (Kronofogdemyndigheten).

Those who are not Swedish citizens and are not or have not been resident in the country can be granted legal aid for actions that are to be brought in Sweden, if there are particular reasons for doing so. If an action is to be brought before a court in another country, legal aid can be granted only to persons resident in Sweden. Citizens of all EU Member States have the same right to legal aid as Swedish citizens. Citizens of certain other countries also have the same rights under a special provision that requires there to be an agreement on reciprocal treatment in force.

There are certain special provisions on legal aid applicable to cross-border disputes within the EU, e.g. to ensure that legal aid can be provided free of charge in particular cases covered by the Maintenance Regulation which relate to maintenance paid by a parent for a child under the age of 21.

Information about legal aid can be obtained from the Legal Aid Authority (Rättshjälpsmyndigheten) (<http://www.rattshjalp.se/>).

8 What kind of maintenance is likely to be granted by the court? How is the amount of maintenance calculated? Can the court's decision be revised, if living costs or family circumstances change? If yes, how (e.g. by means of an automatic indexation system)?

The assessment of the amount of child maintenance is based on legal criteria. A parent who is liable for maintenance is entitled to retain from his or her income net of tax an amount for his or her own maintenance. This includes the cost of housing, which is calculated separately at a level deemed to be reasonable. Other living costs are calculated on the basis of a standard amount that is index-linked. The parent in question can also reserve an amount for maintenance of the spouse with whom he or she cohabits, if there are special reasons for doing so. Finally the parent liable for maintenance can reserve an amount for the support of any children living at home. How much of the remaining amount should go to the maintenance allowance depends, among other things, on the needs of the child and the other parent's capacity to bear the costs of the child's upkeep. Deductions can to some extent be made for expenses for contact.

There are no statutory criteria for the maintenance allowance for a spouse. However, some of the assessment criteria mentioned above serve as guidelines. Maintenance payments are index-linked to ensure that they retain their original value. The index reflects the changes in the price base amount according to the Social Insurance Code, unless a different provision on indexation is included in the court ruling or agreement setting the maintenance allowance. The Social Insurance Office decides each year whether the maintenance allowance is to be altered and, if so, by what percentage. The alteration, usually on 1 February, applies to maintenance allowance that has been decided before 1 November of the preceding year.

If the parties agree, they can alter the amount of maintenance by writing a new agreement, even if the maintenance allowance was previously determined by a court ruling. A ruling or agreement can also be adjusted by the court, if there are grounds for doing so in view of a change in circumstances. For the period prior to the commencement of proceedings, an adjustment contested by either party may only take the form of a reduction or cancellation of payments not yet made. Special reasons are required for a court to increase the allowance for a divorced spouse as a result of changed circumstances.

The court may also alter a maintenance agreement if the agreement is unreasonable in view of the circumstances at the time of its creation and other conditions. However, repayment of maintenance already received may only be ordered if there are special reasons for doing so.

If the amount of a periodic maintenance payment for a child has been unchanged for six years, apart from index-linked adjustments, the court may review the future maintenance payment, without needing to invoke any special reasons.

9 How and to whom will the maintenance be paid?

Maintenance allowances are paid to the dependant. If the dependant is a child under the age of 18, the allowance will be paid to the parent who has custody and lives with the child.

Maintenance in the form of a lump sum must be paid to the Social Welfare Committee if the child is under the age of 18.

10 If the person concerned (debtor) doesn't pay voluntarily, what action can be taken in order to force him/her to pay?

An application for judicial enforcement may be made to the Enforcement Service (Kronofogdemyndigheten). This application can be made orally or in writing. The writ of enforcement must be submitted with the application. A written undertaking, witnessed by two persons, relating to maintenance allowance in accordance with the Marriage Code or the Parental Code, can be enforced as a final judgment that has the force of law.

11 Please describe briefly any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods in your enforcement system

As regards maintenance for children, an action to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the action was brought, unless the person liable for maintenance agrees. Claims for established maintenance allowance become unenforceable (time-barred) five years after the due date of payment.

As regards maintenance for spouses, an action to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the action was brought, unless the person liable for maintenance agrees. Claims for established maintenance allowance become unenforceable (time-barred) three years after the due date of payment.

As regards enforcement, there are a number of exemptions from attachment. For instance, clothes and other items intended only for the debtor's personal use, up to a reasonable value, and certain belongings needed for a home and its care are exempted from attachment. If the debtor has a family, the items used by the family and the family's needs are taken into account in determining what is to be exempted from attachment.

Only that part of the debtor's wages or salary that exceeds what they need for their own subsistence and that of their family may be attached. The part of the debtor's wages or salary which cannot be attached (known as the 'förbehållsbeloppet' or 'protected part') is determined by reference to a standard sum. The

standard sum covers all usual living expenses, with the exception of housing costs, which are determined separately and added to the standard sum. The standard sum is established annually by the Enforcement Service.

12 Is there an organisation or an authority which can help me to recover maintenance?

In Sweden the Enforcement Service provides assistance in recovering maintenance. In crossborder cases, the dependant can obtain administrative assistance from the Social Insurance Office (Försäkringskassa) in applying to the Enforcement Service for recovery.

13 Can organisations (government or private) advance the payment of maintenance wholly or partly in the debtor's place?

The Social Insurance Office (Försäkringskassa) can pay maintenance support of SEK 1 273 per month for a child whose parents have separated. The money is paid to the parent who has custody and who lives with the child and is officially registered at the same address as the child. The decision on maintenance support is taken after an application to the Social Insurance Office, the authority that administers social insurance. Maintenance support is a way for society to ensure that a child whose parents have separated receives a certain level of maintenance even if the parent liable for maintenance fails to fulfil his or her maintenance obligation. Maintenance support can be provided as full support, a supplementary payment or as support in cases of shared custody. The parent liable for maintenance must repay the State, according to his or her income and the total number of children in respect of whom he or she is liable for child maintenance. The obligation to repay is determined through an administrative process. If the maintenance allowance is instead paid directly to the parent who has custody, the amount of maintenance support paid by the Social Insurance Office will be reduced accordingly (this is known as a supplementary allowance).

If the parent liable for maintenance lives abroad, or lives in Sweden but receives a salary or other income in or from another country, the Social Insurance Office may instruct the parent who has custody of and lives with the child to take measures to ensure that the maintenance liability can be determined. In such cases, the Social Insurance Office takes over the child's right to maintenance allowance up to the sum paid out by the office as maintenance support. It is not possible for a spouse to obtain maintenance support from the Social Insurance Office.

14 If I am in this Member State and the debtor has his/her residence in another country:

In cross-border cases the petitioner may obtain administrative assistance from the Social Insurance Office. The Social Insurance Office (Försäkringskassa) is the central authority under the EU's Maintenance Regulation and the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Hague Convention), as well as the transmitting/receiving agency under the 1956 New York Convention on the Recovery Abroad of Maintenance.

14.1 Can I obtain the assistance of an authority or private organisation in this Member State?

See the reply to question 14.

14.2 If so, how can that authority or private organisation be contacted?

The contact details of the Social Insurance Office are as follows:

Social Insurance Agency

PO Box 1164

SE-621 22 Visby

Sweden

Tel: +46 (0)771 17 90 00

Fax: +46 (0)11 20 411

E-mail: centralmyndigheten@forsakringskassan.se

The Social Insurance Office will take all appropriate measures to facilitate recovery of maintenance. Its tasks as the central authority under the Maintenance Regulation and the 2007 Hague Convention derive from the Regulation and the Convention. For example, it assists those entitled to maintenance with their applications, which can be made via the authority, e.g. an application for a decision on maintenance in another country. For further information about the sort of help available to petitioners, please contact the Social Insurance Office.

15 If I am in another country and the debtor is in this Member State:

Petitioners who wish to recover maintenance under the 1956 New York Convention on the Recovery Abroad of Maintenance must apply to the transmitting agency in their home country, which will forward the application to the receiving agency in Sweden (Social Insurance Office).

The same applies to petitioners wanting to obtain the support available from central authorities under the Maintenance Regulation or the 2007 Hague Convention: they must apply to the central authority in their home country, which will forward the application to the central authority in Sweden, (the Social Insurance Office).

15.1 Can I address a request directly to such an authority or private organisation in this Member State?

See the reply to question 17. As regards applications under the Maintenance Regulation or the 2007 Hague Convention, petitioners can address a request directly to a competent authority.

15.2 If so, how can that authority or private organisation be contacted and what kind of assistance can I receive?

See the reply to question 16.

16 Is this Member State bound by the 2007 Hague Protocol?

Yes. Sweden is bound by the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations (the Hague Protocol), the provisions of which have been applicable in the EU since 18 June 2011. The general rule under the Hague Protocol is that the law of the country in which the dependant has his or her habitual residence will apply. For the sake of the child, in particular, it is possible to apply the law or laws of the country of which both the child and the maintenance debtor are nationals, if application of the law of the country of habitual residence is not in the child's interests. The parties may also reach agreement on which law is to be applicable, but the scope for such agreements is limited in cases of maintenance for children under the age of 18, for example.

17 If this Member State is not bound by the 2007 Hague Protocol, which law will be applicable to the maintenance claim according to its private international law rules? What are the corresponding private international law rules?

Sweden is bound by the Hague Protocol (see the reply to question 20).

18 What are the rules on access to justice in cross-border cases within the EU following the structure of Chapter V of the Maintenance Regulation?

See the reply to question 7 for the general requirements for legal aid.

For cross-border disputes within the EU, there are certain special provisions for legal aid. When the requirements for legal aid in the Maintenance Regulation have been met, legal aid must be granted and be free of charge if the petitioner needs a legal counsel and this need cannot be met in any other way.

19 What are the measures adopted by this Member State in order to ensure the functioning of the activities described in Article 51 of the Maintenance Regulation?

No specific measures planned.

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Last update: 16/12/2020

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