

Pradžia>Šeimos teisė ir pavaldėjimas>Šeimos išlaikymas

Family maintenance

Švedija

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 shall discharge 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 is living with a new partner.

A person who is living 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 or 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 an agreement. An agreement will be valid only if it is in writing and witnessed by two persons. The parties can also agree that future maintenance payments will be made as a lump sum or for periods of more than three months. If the child is under 18 years of age, such an agreement must be approved by the relevant social welfare committee (*socialnämnden*).

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.

Maintenance is paid in advance for each calendar month. However, the court may decide on another method of payment if there are specific reasons for doing so.

A claim to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the claim 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.

Couples

During the marriage, each of the spouses is responsible for their own maintenance and that of their spouse. If one of the spouses cannot maintain him or herself completely, the other spouse is 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 specific reasons for doing so, e.g. if the spouse has to make a pension payment.

A claim to establish maintenance payments cannot be granted retroactively for a period more than three years before the date on which the claim 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 secondary 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 authority in Sweden that determines or helps to determine maintenance. Maintenance payments may be determined either by a court ruling or by an agreement. If the parties fail to reach agreement, the petitioner therefore has to apply to a district court (*tingsrätt*) and submit an application for a summons.

If you have any questions concerning international maintenance, you can contact the Swedish Social Insurance Agency (*Försäkringskassan*), which is the central authority in Sweden.

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 (*föräldrabalken*), the Marriage Code (*äktenskapsbalken*) and the Code of Judicial Procedure (*rättegångsbalken*). Information can also be obtained from a district court.

Child maintenance proceedings are 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) lays down 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 must 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, except for an application fee, which is currently SEK 900. If the petitioner engages a legal adviser or 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.

The granting of legal aid means that the petitioner is assigned a legal counsel and that the State pays that person's fee if the petitioner cannot afford it. Legal aid also includes the costs involved in submitting evidence, investigation, interpretation and translation and the costs of an intermediary. Those who have been granted legal aid are also exempted from certain fees payable to courts and the Swedish Enforcement Authority (*Kronofogdemyndigheten*).

Those who are not Swedish citizens and are not or have not been resident in the country can be granted legal aid for cases to be brought in Sweden, if there are particular reasons for doing so. If the matter is to be examined abroad, legal aid can only be granted if the person is 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.

For cross-border disputes within the EU, there are some specific provisions on legal aid, notably to ensure that free legal aid can be provided for certain cases under the Maintenance Regulation concerning a parent's maintenance to a child under the age of 21.

Information about legal aid can be obtained from the Swedish 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)?

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 post-tax income a certain 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 an index-linked standard amount. The parent in question can also reserve an amount for maintenance of the spouse with whom he or she lives, if there are specific reasons for doing so. Finally, the parent liable for maintenance can reserve an amount for the maintenance 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 maintenance. To some extent, deductions can be made for expenses for contact.

There are no legal 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 (*socialförsäkringsbalken*), unless a different provision on indexation is referenced in the court ruling or agreement setting the maintenance allowance. The Social Insurance Agency 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 determined before 1 November of the preceding year.

If the parties agree, they may amend a fixed maintenance payment by signing a new agreement. This applies 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. Specific grounds 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 under which the agreement was made and the general circumstances. However, repayment of maintenance already received may only be ordered if there are specific 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 maintenance payment for the future, without needing to invoke any specific grounds.

9 How and to whom will the maintenance be paid?

Maintenance must be paid to the person to whom it is owed. If the person owed maintenance 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 enforcement may be submitted to the Enforcement Authority. The application is made orally or in writing. The enforcement order must be filed 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

In the case of child maintenance, a claim to determine maintenance may not be granted for a period longer than three years prior to the date on which the claim was brought, unless the debtor so agrees. Claims for established maintenance allowance become unenforceable (time-barred) five years after the due date of payment.

In the case of maintenance to a spouse, a claim to determine maintenance may not be granted for a period longer than three years prior to the date on which the claim was brought, unless the debtor so 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, e.g. 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 the care thereof. 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 (*förbehållsbeloppet*) is determined by reference to a standard amount. The standard amount covers all usual living expenses, with the exception of housing costs, which are determined separately and added to the standard amount. The standard amount 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 Authority provides assistance in recovering maintenance. In cross-border cases, the person entitled to maintenance can obtain administrative assistance from the Social Insurance Agency in applying to the Enforcement Authority for recovery.

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

For children whose parents have separated, the Social Insurance Agency may provide maintenance support totalling SEK 1 673 per month until the month in which the child reaches the age of 7, SEK 1 823 per month until the child reaches the age of 15, and SEK 2 223 per month from the month in which the child reaches the age of 15 to the parent who lives and is officially registered with the child. The decision on maintenance support is taken after an application to the Social Insurance Agency, 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. 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 pay is determined by an administrative procedure. If the maintenance allowance is instead paid directly to the parent who lives with the child, the amount of maintenance support paid by the Social Insurance Agency will be reduced accordingly. This is known as supplementary allowance (*utfyllnadsbidrag*).

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

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 Agency. The Social Insurance Agency is the central authority under the EU 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 of Maintenance Abroad.

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

See reply to question 14.

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

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

Swedish Social Insurance Agency (*Försäkringskassan*)

PO Box 1164

SE-621 22 Visby

Sweden

Tel.: +46 (771) 17 90 00

Fax: +46 (10) 11 20 411

E-post: centralmyndigheten@forsakringskassan.se

The Social Insurance Agency will take all appropriate measures to facilitate recovery of maintenance. The functions of the Social Insurance Agency as a central authority under the Maintenance Regulation and the 2007 Hague Convention derive respectively from the Regulation and the Convention. Among other things, the Social Insurance Agency must assist persons entitled to maintenance with applications that can be made via the authority, such as an application to obtain a ruling on maintenance in another State. For further information on help available to applicants, please contact the Social Insurance Agency.

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

Applicants 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 (the Social Insurance Agency).

The same applies if the applicant wishes to receive the assistance that can be obtained from central authorities under the Maintenance Regulation or the 2007 Hague Convention, i.e. the applicant must contact the central authority of his home country, which will forward the application to the central authority in Sweden (the Social Insurance Agency).

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

If the person entitled to maintenance wishes to recover maintenance under the 1956 New York Convention on the Recovery of Maintenance Abroad, the Maintenance Regulation or the 2007 Hague Convention, he or she must submit an application to the transmitting agency / central authority in Sweden (the Social Insurance Agency), which will then forward the application to the receiving authority in the country in which you reside and/or have income.

If, as a person liable to pay maintenance, you wish to be assisted with, for example, changing a fixed maintenance allowance, you may contact the central authority in your home country, which will forward the application to the central authority in Sweden (the Social Insurance Agency).

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

See 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 applied in the EU since 18 June 2011. The main rule under the Hague Protocol is that the law of the State in which the person entitled to maintenance is habitually resident is applicable. For the sake of the child, in particular, it is possible to apply the law of the country of the court or the law of the country of which both the child and the person liable to pay maintenance 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 HagProtocol (see 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 reply to question 7 on the general conditions for legal aid.

In the case of cross-border disputes within the EU, there are some specific provisions on legal aid. Where the conditions for legal aid laid down in the Maintenance Regulation are met, legal aid will be granted and will be free of charge if the claimant needs legal assistance and that need cannot be met by other means.

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 have been adopted.

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