

Social Benefits and Families with Children – The Family Concept

Lars Bejstam

1 Introduction

The point of this survey is to give a concise description of the most important family policy benefits in Sweden. However, already by way of introduction I want to point out that the different benefit types are described in various depth. This is due largely to their varied importance for a family's economy and their different levels of complexity; therefore the presentations require different amounts of space. It is still my hope that this survey can serve as a basis for a comparison with the law statutes of other countries. The different benefit types presented below are as follows: parental benefits, child allowance, study assistance, maintenance support, housing allowance as well as family allowance during military service. In conclusion, I make an attempt to summarise to what an extent Swedish legal statutes are an expression of a uniform family concept.

What is common to all the social benefits described below, with the exception of study assistance, is that they are administered by the National Social Insurance Board and the public social insurance offices. The National Social Insurance Board is the central administrative authority with the task of ensuring that the different regulations are applied uniformly and fairly. This is made possible by the department's promulgation of regulations and general advice concerning the application of the social welfare legislation, as well as its responsibility for the overseeing of the activities of the public social insurance offices. However, the National Social Insurance Board does not administrate individual cases; rather it is to the public social insurance offices that the individual shall turn when he wishes to avail himself of one of the various benefits, and it is the public social insurance offices that determine whether a person is entitled to the benefit in question and determines the amount of the benefit to be paid out. The decision of the public social insurance offices can be appealed in the manner that generally applies to administrative decisions. Thus complaints of the decisions by the public social insurance office shall be

addressed to the County Court. The County Court's judgement can be appealed to the Administrative Court of Appeals; the Supreme Administrative Court is the highest court of appeals.¹ In order for the Administrative Court of Appeals or the Supreme Administrative Court to examine a case, it is necessary for one of the courts to grant certiorari, normally for the reason that it is of legal importance to resolve the case at a higher level.

The National Board for Student Aid administers study assistance, as well as the other types of state financial aid for students. The Board's decisions in study assistance matters may not be appealed. This means that if an individual is dissatisfied with a decision, his only possibility to secure a new examination is to demand that the board re-examines its decision. At such a re-examination a decision may not be changed to the disadvantage of the individual.

2 Parental Allowance Benefits

Parental allowance or parental insurance is part of the public insurance and is placed in the section on health insurance in the National Insurance Act (1962:381) regarding public insurance. This is not because parenthood is seen as an illness. Rather this organisational placement is explained by the fact that compensation from parental insurance has developed as part of general health insurance. The construction of the insurance is built on the fundamental elements in the sickness benefit insurance. Parental allowance is paid out as a result of a child's birth and as a temporary parental allowance.

A fundamental requirement for the right to parental allowance is that the parent is insured according to the National Insurance Act. Briefly, it can be stated that all Swedish citizens are insured, as are all those who are not citizens but are residents of Sweden. An additional requirement is for the parent to have been registered at the public insurance office at least 180 uninterrupted days prior to the date that the parental allowance shall begin. In order to be considered registered, one must be insured and a resident of the country as of the month of turning 16 years of age. To ensure that persons who have children before or close to their 16th birthday will not lose the parental allowance, there is a rule stating that if the registration requirement cannot be met because of the age requirement alone, the allowance shall be paid out anyway. The rule regarding 180 days of registration with the insurance office, which makes no differentiation between Swedish citizens and foreigners, is intended to prevent someone from taking residence in Sweden temporarily in order to receive parental allowance. An insured that leaves Sweden shall however be considered to still reside in the nation, if it is his intention that the foreign visit will last at most one year. This means that parental allowance can be paid out to a parent who resides abroad for a period of at most twelve months. Parental allowance is

¹ Previously another route for appeal of public social insurance office decisions was in effect. Until July 1 1991 public social insurance office decisions were appealed at one of the three regional public social insurance offices and up until July 1 1995, the Supreme Social Insurance Court was the highest level of appeal in social insurance cases. Since the decisions of the Supreme Social Insurance Court still are relevant to legal applications, some of its decisions are mentioned in this overview.

only paid out for the care of children residing in Sweden. New-borns are generally considered to reside together with the mother. This means that parental allowance can be paid out for a child that resides abroad under the same conditions that apply to a parent travelling abroad, i.e. for travel abroad which from the start is not intended to last for more than one year. In the case of international adoption, a child is considered to reside in Sweden if the prospective adoptive parents reside in the country.

Parental allowance is paid out to the child's parents. However, several other groups may be considered in loco parentis. First included among these are those who have legal guardianship and care for the child. Also included in the parent concept is an individual who takes care of a child with the permission of the Social Welfare Board and who intends to adopt the child. Finally, a person is included who continuously lives with the child's parents, if they are or have been married with each other or if they have or have had children in common.

Parental allowances due to the birth of a child is paid out at most for a total of 450 days for both parents. At the birth of several children, parental allowance is paid out for an additional 180 days per additional child.

At the earliest, parental allowance can be paid out from the sixtieth day before the child's estimated time of the birth. Parental allowance for the time prior to the birth of the child can only be paid to the mother. One exception from this rule is that parental allowance can be paid out also to the expectant father in connection with childcare education.

One requirement for receiving parental allowance is that the parent has custody of the child. And after the child's birth, parental allowance is paid out to the parent that has primary custody of the child. However an exception is generally permitted from the requirement that the parent have custody of the child, so that the mother can have a right to parental allowance up to the twenty-ninth day after the delivery, even if she does not have custody of the child. In the same way, exceptions are allowed from the requirement that the parent have custody of the child for a parent who takes part in childcare education. Parental allowance is paid out up until the child turns eight or, if this point in time is later, when the child finishes its first year of school.

A parent who has sole child custody has the right to parental allowance alone during the whole period that compensation is paid out. If the parents have joint custody of the child, each parent has a right to parental allowance during half of the period in question. A parent may refrain from his right of parental allowance in favour of the other parent, regardless of whether the other parent has custody or not. The right to transfer days with parental allowance is however limited, so that 30 of the days may not be transferred. The intention behind this limitation is to increase the father's lifting of parental allowance. In order to minimise the negative effects of this equality rule, it is however stated that if, as a result of a lasting illness or a handicap, a parent lacks the capacity to care for the child, the other parent has a sole right to the parental allowance. According to the legislative history of the statute, a parent's inability to care for the child shall be attested to by a physician. A possibility exists, however, for unmarried parents living together to circumvent the statute's intended purpose of increasing by force the father's use of parental leave. This occurs when unmarried parents do not report their wish to have joint custody of the child. In such a case the mother

alone can take out all of the parental leave without any restrictions in the number of days.

Parental allowance is at least 60 SEK per day. This amount constitutes the so-called guarantee level. However, under certain circumstances the amount may be increased. If the parent has been insured for health care compensation above the minimum guarantee for at least 240 days before the birth of the child or the estimated date of birth, parental allowance is paid out for the first 180 days at the same level as the health care compensation. Parental allowance is also paid out during the next 180 days at an amount equal to the health care insurance amount, but without any requirement that the parent shall have had health care insurance during a minimum time at a higher level than the guaranteed benefit. For the remaining 90 days, disbursement is never paid out for more than 60 SEK per day.

The amount with which parental allowance above the guarantee amount is paid out has changed on several occasions in later years. From originally having consisted of 90% of the parent's income qualifying as health care insurance, the benefit amount has been lowered. During 1995, parental allowance was paid out at 80%, respectively 90% of the health care based income, depending on the compensatory day in question, and during 1996 the amounts were 75% respectively 85%. The reason for the differing compensation amounts was that the governmental authorities wanted to stimulate the father to take out more of his parental allowance. That is why, during 1995 and 1996, compensation below 30 days was paid out to either parent with the higher amounts, and these 30 days of higher compensation could not be transferred between the parents. However, this incentive has been terminated and during 1997 the parental allowance for all compensatory days was 75% of the health care insurance based income.² However, it is still true, in accordance with the above, that 30 days of each parent's compensation may not be transferred to the other parent. From 1998 the level of compensation will be increased and parental allowance will be paid out for 360 of the 450 at 80% of the parent's health care-based income, on condition that the above mentioned conditions are met. For the remaining 90 days, compensation is paid out according to the guarantee level, or 60 SEK per day.

Parental allowance due to the birth of a child can be paid out as full, half or quarter compensation. Full parental allowance is paid out on days when the parent has no employment whatsoever, while half and quarter parental allowance payments are paid out when the parent has been employed one half, respectively three quarters of a normal work period. However, guarantee days as such can be paid out as full, half or quarterly compensation when the parent works at least three fourths of a normal work period.

The other type of compensation available within the parental insurance scheme is the possibility of *temporary parental allowance*. One requirement for temporary parental allowance payment is that a parent, as a result of certain reasons stated in the statute, must refrain from employment in order to care for a

² During 1995 fathers took out barely 10 percent of the total number of compensatory days with parental allowance due to the birth of the child. During 1994 this figure was over 11 percent. Seen over a period of time during the last ten-year period the fathers share of number of day taken advantage of has, however, increased.

child under twelve years of age. The concept of parenting is, however, somewhat tenuous when it comes to temporary parental allowance, compared to parental allowance due to the birth of a child. Thus, the person that a parent resides with under marital circumstances may have a right to temporary parental allowance, as well as the individual who has accepted a child for permanent care in his or her home without the Social Welfare Board having given permission. Furthermore, a parent can transfer his or her right to temporary parent aid to another person, without the requirement of kinship, cohabitation or other formal ties between the parent and this individual. The requirements for transference are that a parent, who would otherwise be forced to refrain from employment as a result of the child's or its regular guardian's illness or infection may transfer his or her right to temporary parental allowance to another person who is insured according to the law of public insurance and who, in place of the parent, refrains from employment in order to care for the child.

Situations that result in temporary parental allowance can being paid out are, firstly, those where the child suffers from an illness or, without being ill, has been infected with a contagious disease or in some other way is the carrier of disease. Another situation when temporary parental allowance is paid out is when the child's regular guardian is ill or contagious. Here it is notable that the definition of a child's regular guardian includes, according to the legislative history, a parent who works at home as well as a third party, such as a day care worker, a children's trainee or a close relative. According to a decision in the Supreme Social Insurance Court there does not exist a right to temporary parental allowance in the event a day care centre has been forced to close on account of illness among all its employees. Nor does the right to compensation exist if the ordinary guardian, for example a day care worker, can not take care of a healthy child on account of illness in one of his or her own children.

A third situation when temporary parental allowance is paid out is when a parent needs to accompany his or her child during a visit to public preventive childcare institutions. Furthermore, temporary parental allowance can be paid out when a parent needs to take care of a child as a result of the other parent visiting a doctor with another child. One requirement is, in such a case, that both children fulfil the requirements for temporary parental allowance, i.e., that they have not turned twelve years of age.

Temporary parental allowance can also be paid out when a parent of a sick or handicapped child refrains from taking employment without caring for or being together with the child. The reason is that the parent shall be able to visit an institution in order to take part in a child's treatment or to learn to care for the child or participate in a course for that purpose. Temporary parental allowance according to the above reasons is paid out for a child for a maximum of 60 days during one year.

As has just been mentioned, temporary parental allowance is paid out for the care of a child that has not yet turned twelve. However for children who are in need of special care or treatment as a result of illness, mental retardation or other disabilities, temporary parental allowance can be paid out up until the child turns 16. For children to whom the special Act concerning Support and Service for Persons with Certain Functional Impairments (1993:387) applies, the age limit is 21 and can in certain cases, be raised up to the end of the spring term of the

calendar year when the child turns 23. The number of days for which temporary parental allowance can be paid out according to these requirements is up to 60 days per child and year. In addition, temporary parental allowance can be paid out for the same child for an additional 60 days during one year, according to the principles that apply to all children, for example, on the grounds that the child or its regular caretaker is ill.

Temporary parental allowance is also paid out to the parent of a child who is encompassed by the aforesaid act concerning support and service to certain handicapped persons. In this are included children with developmental problems, permanent diminished mental capacity or permanent physical or mental retardation. Up until the child turns 16, the parent has a yearly right to 12 days of parental allowance, when the parent refrains from employment in connection with parental education or in order to visit the child's school, pre-school or child care facility, so-called contact days.

There is a special form of temporary parental allowance consisting of ten days to which a father has a right to in connection with the birth of the child. The intention of allowing these days is to give the father the possibility to be present at birth, as well as to assist in the home. This form of parental allowance makes it possible for both parents to be at home after the birth and to take care of the new-born child. The father must take out these ten days within sixty days, counted from the child's birth.

Since temporary parental allowance is intended to cover the loss of income for a parent during a child's illness etc., the compensation amount is tied to the income on which health care insurance benefits are based. No guaranteed amount exists. Just as has been the case with parental allowance in general, the compensation amount for temporary parental allowance has been changed several times in latter years. After an original compensation amount consisting of 90% of the parent's benefit-based income was paid out a statutory change occurred in 1993, according to which the compensation during the first 14 compensatory days in one calendar year consisted of an amount corresponding to 80% of the qualified income, and for the time thereafter to 90% of the qualified income. During the years 1996 and 1997, compensation was paid out with 75% of the qualified income, and from 1998 temporary parental allowance is paid out with 80% of the qualified income.

3 Child Allowance

Child allowance is paid out in three different ways; as ordinary child allowance, as prolonged child allowance and as multiple child allowance. Fundamental support to families with children - the ordinary child allowance - was introduced through the Act respecting Ordinary Child Allowances (1947:529), which is still in force. The original purpose of child allowance was partly to level out the support burden of children between families with children and families without children, and partly to level out, over time, the support burden for families with children. As a complement to the ordinary child allowance there exists, on one hand, the prolonged child allowance, on the other hand, the so-called multiple child allowance. Prolonged child allowance is paid out when the right to

ordinary child allowance has ceased but the child is still a student in the obligatory school system. Multiple child allowance is paid out to families with three or more children. The implication is that child allowance is paid out with an increased amount to these families. When the multiple child allowance was implemented, the intention was to compensate families with children for increased food costs. The child allowance was previously administered by the municipal child care board, but since 1974 it is the public social insurance offices and the National Social Insurance Board that administer the child allowance.

The main rule for receiving *ordinary child allowance* for a child is that the child resides in Sweden. Child allowance is always paid out if the child is a Swedish citizen. Child allowance can also be paid out for a child that is not a Swedish citizen, if the child resides here and if either the child or one of its parents resides in Sweden during at least six the last months. Furthermore, child allowance is paid out to foreign children who, with the permission of the Social Welfare Board have been received for care and fostering with the purpose of adoption.

The presumably most common problem in the application of child allowance legislation concerns children who leave Sweden for a period of time. According to the law, a child that leaves Sweden shall still be considered to reside there, if the foreign visit is intended to last at the most six months. If however it is clear that the child has left Sweden and the foreign visit is intended to last for more than six months, then the right to child allowance ceases at the start of the foreign visit. If the foreign visit should cease for some reason and the child return to Sweden again within six months from the departure date, this entails that the child allowance be paid out anew from the point in time of the return to Sweden. On the other hand, the fact that the foreign visit was shorter than originally intended does not entail that the child allowance be paid out also for the time during which the foreign visit lasted.

The conclusive significance given in the statute to the intended length of a foreign visit can be questioned. The result is that someone who leaves the country, with the intention of staying abroad for at the most six months, has a right to be paid child allowance during this time period, even if the stay should be prolonged and last longer. On the other hand, someone who already from the start intends to stay away for a longer period of time loses the right to child allowance already at his or her departure from Sweden, even if the stay abroad in reality should be terminated. It goes without saying that such a difference in the right to child allowance can be perceived as unfair to someone in the latter category. It may be necessary for the statute to state clearly the time limits for the right to child allowance during visits abroad. If the consequences of the rule be well known, the difference that occurs as a result of the importance attached to the intended length of the stay may result in the fact that a person who intends to travel abroad stating that the visit shall be at most six months, even though the trip already from the start was intended to last for a longer period of time. In this way, a family will be able to collect child allowance during six months, which it would otherwise not have been entitled to. It must be mentioned that such an action by an individual is in violation of the statute and can result in an obligation repay what has been wrongfully received.

Besides the ordinary right to receive a child allowance during a foreign visit, there also exist special rules for two groups of children. The first of these concerns the accompanying child of a Swedish governmental employee, sent to work abroad by his employer. Such children shall be considered to reside in Sweden during their entire stay abroad, and child allowance shall be paid out during the entire length of the stay abroad. The other group consists of accompanying children to someone employed abroad by the Swedish church, a Swedish religious order, an organisation tied to such an order, or a Swedish non-profit organisation that carries out aid relief. These children shall be considered to reside in Sweden if the foreign stay is intended to last at most three years. It should be pointed out that also for this latter category of children, it is the intended length of the stay abroad that is determinative and not the actual length of the stay.

Ordinary child allowance is paid out with the same amount for all children regardless of the income of the parents. Therefore the ordinary child allowance has a rather simple construction, seen from a legal perspective. The ordinary child allowance is paid out from the month of the child's birth up until the quarter the child turns 16. From the start of 1998, the amount of child allowance is 9 000 SEK per year or 750 SEK per month. The child allowance is paid out without the parents having to apply for it and it is paid out to the child's caretaker. If the parents care together for the child, the child allowance is paid out to the mother of the child. In those cases when the parents have joint custody but live apart, the right to receive child allowance falls on that parent with whom the child lives permanently. If, as a result of the efforts of the Social Welfare Board, the child is placed in a private home, the public social insurance office may – upon the recommendation of the Social Welfare Board - determine to pay out the allowance to the person fostering the child. If the placement has occurred without the collaboration of the Social Welfare Board, a decision regarding the payment may be made after an application has been received from the parent who has the right to receive the allowance. If, at the start of a month, a child resides at a childcare home or residence administered by the social services, the Social Welfare Board has the right to the child allowance for that month.

Prolonged child allowance entails that child allowance may continue to be paid out for a child who studies in a mandatory school system, although it has reached the age when ordinary child allowance no longer is paid out. Even if the child has turned 16 and therefore no longer qualifies to child allowance, it lacks the ability to support itself as a result of its school obligation. Thus prolonged child allowance is paid out for children above age 16 who are still students in the mandatory school system or in certain other school types mentioned in various statutes, for example, so-called free school, Sami or special education schools. No upper age limit exists for the prolonged child allowance; rather the allowance is paid out as long as the child is a student in one of the school types qualified for child allowance. Mandatory school duty for intellectually disabled can exist up until the age of 23.

Prolonged child allowance is paid out to students living in Sweden. He who is not a Swedish citizen must have resided in the country for at least six months in order to qualify for prolonged child allowance. However, prolonged child allowance can also be paid out to someone who is in school in a foreign country,

if the school receives Swedish government aid. An additional requirement for receiving prolonged child allowance for studies abroad is that the child fulfils the necessary residency requirements for ordinary child allowance.

Prolonged child allowance is paid out at the same rate as ordinary child allowance and the allowance is paid out according to the same rules that apply for the ordinary child allowance.

*Multiple child supplement*³ is paid out to someone who receives child allowance for three or more children. In calculating the size of the multiple child supplement, children for whom child allowance is paid out shall be treated in the same way as children with the right to prolonged child allowance, as well as children pursuing studies for which study assistance is available. In order for a child over 16, who studies, to qualify for multiple child supplement, the child must reside on a continuous basis with the parent or with the individual who otherwise would apply for the multiple child supplement. The multiple child supplement is paid out as an extra benefit, in addition to the ordinary child allowance. As of 1998, multiple child supplement is paid out in the amount of 2 400 SEK per year for the third child, 7 200 SEK per year for the fourth child and 9 000 SEK per year for the fifth child, as well as for each additional child.

Thus, a family with five children, fulfilling the requirements for children's benefits, receives, as of 1998, an ordinary child allowance and a multiple child supplement for a total of $5 \times 9\,000 \text{ SEK} + 2\,400 \text{ SEK} + 7\,200 \text{ SEK} + 9\,000 \text{ SEK} = 63\,600 \text{ SEK}$ per year, or 5 300 SEK per month. If the family has seven children, the child allowance total paid out is $7 \times 9\,000 \text{ SEK} + 2\,400 \text{ SEK} + 7\,200 \text{ SEK} + 3 \times 9\,000 \text{ SEK} = 99\,600 \text{ SEK}$ per year, or 8 300 SEK per month.

Children who are entitled to multiple child supplement, need not be biological siblings in order to be counted together. This means that two parents who may have one child in common but each of whom has a child from an earlier marriage, can add up all the children and thus qualify for the multiple child supplement. Even if the two parents do not have a child in common but are married to each other, multiple child supplement is paid out. The reasonableness of paying out multiple child support in these cases can be questioned. Children who are regarded as siblings and fulfil the requirement for multiple child supplement in this context are at the same time regarded in the child maintenance context, as if they lived together with only one of the parents; thus they qualify both for child maintenance from the non-present parent and for maintenance support, a social benefit intended to be paid out to children who reside only with one parent.

In conclusion and in this context it can be mentioned that in order to qualify for the receipt of multiple child supplement, it is not necessary that children qualifying for the multiple child supplement reside together or with the parents who receive the supplemental aid. The right to the multiple child supplement is

³ As part of the effort to minimise the state budget deficit, the multiple child supplement was removed, so that those children born from 1996 and later did not qualify for multiple child allowance. The Parliament has however decided that the multiple child supplement shall be reinstated as of 1998.

not tied to the child's residence, but rather to the parent who receives the child allowance. This means that parents who have joint custody at the social insurance office can indicate to whom they wish the child allowance to be paid out. This right for parents to decide who shall receive the child allowance means that two parents in a so-called restructured family, who have children from an earlier relationship, can, for the purposes of calculating the multiple child supplement, include these earlier children regardless of where the children reside.

4 Study Assistance

Study assistance is the common term for such economic aid that can be paid out to someone who studies at the upper secondary school (sw. gymnasium) or in certain other educational programs. The main statutory regulation for study assistance is found in 3 chap. of the Student Support Act (1973:349) and in 3 chap. of the Student Support Ordinance (1973:418). Study assistance is, at the most, paid out up until the first half year of the year in which the student turns 20. Study assistance can be paid out as study grant, additional supplement and boarding supplement.

Study assistance is paid out to Swedish students. The main rule is that study assistance is granted for studies taking place in Sweden, but assistance is also granted for studies abroad if these studies can not be carried out with equal success at a Swedish school. Swedish citizens who are studying in the public school system in the Nordic countries have a right to study assistance. The studies must, however, last at least 3 months, full-time. Study assistance can also be granted for studies outside the Nordic countries if they last at least 3 months full-time and the student has been nationally registered in Sweden for the last two years. He who is not a Swedish citizen may receive study assistance for studies in Sweden if he resides there and if his residency is due primarily to factors other than education.

Since study assistance is a support intended for education after the mandatory compulsory school, study assistance can be paid out at the earliest from the month the "gymnasium" studies begin. However, study assistance can not be paid out until the quarter after the student turns 16. The ordinary child allowance is paid out up until this point in time. As mentioned above, the individual receiving study assistance shall be included in calculating multiple child supplement within the child allowance system.

That portion of study assistance which all students at the gymnasium receive, the so-called *study grant*, can most accurately be seen as an extension of the child allowance. Thus, as of 1998 study grant is paid out in the amount of 750 SEK per month. However, the aid is normally paid out only for that portion of the school year when the student is actually studying, i.e., normally nine months per school year, where the autumn term normally consists of four months and the spring term of five months.

Beside the study grant, an additional supplement can also be paid out. This supplement is income-based, and both the student's and the parent's economy are considered. One fifth of the combined wealth of the student and his parents

above 75 000 SEK is added to the calculation of the employment income. If, the student is married, the economic base is calculated without consideration to the parents' income and wealth. The additional supplement is paid out in the amount of 285 SEK, 570 SEK or 855 SEK per month. The maximum allowance, 855 SEK, is paid out if the combined yearly income of the student and his parents is less than 85 000 SEK. If the income is within the interval 85 500 – 104 999, the additional supplement amount is 570 SEK, and if the income is between 105 000 and 124 999, then the additional supplement amount is 285 SEK per month. If the combined income is above 125 000 SEK, no additional supplement is paid out.

An individual, who cannot continue to reside in the parental home during his or her education but must live at the study location, can receive *boarding supplement* as a benefit to cover costs of living at the study location. The size of the boarding supplement is determined by the municipality where the student is a resident, and it is also the municipality that administers the boarding supplement.

5 Maintenance Support

The rules of maintenance obligation listed in the Parental Code, 7 chap. constitute the fundamental regulations regarding parent's maintenance obligation towards their children. According to the main principle, each of the parents shall answer for the child's maintenance needs according to their capacity. These rules apply to all parental obligations for their children's needs, regardless of whether the parent lives together with the child or not. However, in those cases where the child and both parents live together, the rules regarding maintenance seldom become actualised, since the parents supposedly support the child through their cohabitation. Therefore the rules regarding maintenance are in practice applied to those cases where one of the parents – or both – does not live with the child. A parent who does not live with the child on a permanent basis shall however fulfil his maintenance obligation towards the child. In calculating the size of the allowance the economic situation of both parents is considered. This means that the greater the portion of the child's needs that is provided for by the parent with whom the child lives, the smaller the maintenance amount will be and vice versa. The rules regarding child maintenance have however largely come to lose their importance through the Maintenance Support Act (1996:1030), which has been in effect since 1997. Maintenance support replaces the earlier system with advance payments of maintenance allowances, originally instituted in 1937 and functioning, even if with major changes, for 60 years.

A maximum amount of 1 173 SEK per month in maintenance support is paid out to the child whose parents do not live together. Maintenance is paid out when the child lives with only one of the parents, as well as when the child lives alternately with both parents. However, in the latter case, the maintenance support is paid out as a supplemental benefit and the size of the benefit is determined in consideration of the fact that both parents contribute to the child's welfare by having the child living with them. Maintenance support can also be paid out when the child's parents are deceased. Finally, maintenance support can

be paid out when the child lives permanently with one or two specially appointed guardians.

The purpose of maintenance support is to give children of separated parents a guaranteed benefit to the child's welfare if for some reason the child does not get sufficient maintenance allowance from the parent with whom it does not live. Maintenance support can be paid out to children under 18, and to those who, having turned 18, continue to study at the "gymnasium" or other educational programs. The parent with whom the child does not reside is responsible for repaying the maintenance support that is paid out to the child. It is the child that is entitled to the maintenance support and not the parent with whom the child lives. With regard to the prolonged maintenance support, this constitutes a difference compared to the earlier maintenance allowance to students. This form of benefit was paid out for the child, and it was normally the right of the parent to collect it, if he or she resided permanently with the child and previously had been the child's legal guardian.

A child has a right to maintenance support in three different situations. The first and most common one is a situation where the child's parents do not reside together. It is not required that the parents live together permanently in order for the benefit to cease. As soon as the parents actually live together, the child is no longer entitled to maintenance support.

The question of whether the child's parents shall be considered to reside together is decided, in the first place, by the rules in the National Registration Act (1991:481). If the parents are registered at the same address or are supposed to be so according to the rules in the national registration act, they shall be considered living together. Thus in a normal case one can follow the existing national registration record. There may however be cases when a parent regularly spends his night-time with the family but is registered somewhere else. In such cases, the public social insurance office must decide, against the background of all relevant circumstances, whether or not the parents, ought to be considered as living together, in spite of the registration. If such is the case, no maintenance support is to be paid out. A special circumstance may occur when maintenance support can be paid out, namely when parents, registered at the same address, live in separate apartments in the same multiple family dwelling.

The statute includes two presumptive rules as to when parents shall be considered to live together. Thus cohabitation is considered to exist when the child's parents are registered at the same address, and when they are married to each other without being registered at the same address. If any of these circumstances exists, it is up to the individual applying for the maintenance support to show that cohabitation according to the meaning of the statute does not exist. If support is granted, the person to whom the support is paid out must do the same. If the individual is unable to provide such evidence, the support shall be denied and cease to be paid out.

Both of these presumptive rules mean that it is the applicant or the recipient of maintenance support who must show that cohabitation actually does not really exist. This placement of the burden of proof implies a difference compared to the earlier rules for advance payment of maintenance allowance. According to case law, then developed, it was up to the public social insurance office to show that the parents actually lived together, if the residence parent denied this.

Earlier great importance was also attached to the parents being married to each other or registered at the same address. If the parents are married to each other, it is rare, according to statements in the legislative history of benefit advance statute, that they live separately under such circumstances that they cannot be considered to live permanently together. Parents living separately during the consideration period prior to a divorce judgement were considered a possible exception. In all other cases it would appear to "be a rarity for married parents to live apart under such circumstances that the maintenance allowance (nowadays maintenance support) can be paid out". Furthermore the department head considered church registration (nowadays national registration) to serve as an indicator in determining if parents live together or not. With regard to a parent who, as a result of his employment, resides elsewhere than the rest of the family, but who frequently visits his family, the same authority considered this a permanent residency. The same also applies today to the right to maintenance support.

The second case when a child is entitled to maintenance support is when one of the child's parents is deceased and the child lives with the surviving parent. It should, however, be pointed out that the right to maintenance support does not exist if, according to rules in the social insurance act, the child is entitled to a child pension after the deceased parent.

The third situation when maintenance support can be paid out is when the child lives together with one or two specially appointed guardians. The child must reside permanently together with one or several, specially appointed guardians and be completely registered at their address. It is required that these guardians reside in Sweden. If the child has turned 18, the right to prolonged maintenance support requires that the child lives together with someone who was specially appointed as guardian of the child, prior to its having turned 18. Thus the child may not move from one or several persons who have been specially appointed as guardians and continue to receive prolonged maintenance support. This was also the case earlier regarding the right to prolonged maintenance allowance in advance. A case in point concerned a boy who had earlier lived together with his mother and older brother. The father paid maintenance allowance, and maintenance in advance was paid out in the form of a so-called supplemental allowance. When the mother died, the boy's uncle was appointed guardian, but the boy continued to live with his older brother in the parental home. The father continued to pay maintenance allowance, and supplemental support was also paid out after the mother's death. When the boy turned 18, he applied for prolonged supplemental allowance, at which time it was determined that when the boy turned 18, he did not live permanently with his uncle who had been appointed guardian. The requirement that the child permanently lives with the other parent or with someone who was the child's guardian when it turned 18 was therefore not fulfilled. Against this background, prolonged maintenance support could not be paid out. Nor can prolonged maintenance support be paid out today in a situation such as this.

A special guardian is appointed if neither of the child's parents is suitable as a guardian or if both parents are deceased. A public court makes the appointment of guardianship after a motion by the Social Welfare Board. Since the child in these cases does not live with either one of its parents, double maintenance

payments can be paid out, possibly with a deduction for what the respective parent pays in support directly to the child. Repayment obligation can also be determined for both parents.

Through the maintenance support act two new concepts have been introduced as definitions of the child's parents. The first of these is residential parent. With residential parent is meant a parent with whom the child permanently resides and with whom it is registered. The registration requirement entails that only one of the parents can be residence parent, even if the child lives equally as much at both parents. With regard to the registration it should be mentioned that the parents, even if they are in agreement, can not decide with whom the child shall be registered; rather this is determined by the national registration authority, using as its measure the place where the child largely spends its night-time rest.⁴

A person who has accepted, with the Social Welfare Board's permission, a foreign child for permanent care and fostering with the purpose of adoption is, according to statute, considered the same as a parent or guardian of a child. The rule means that someone who has accepted a foreign child for the purpose of adopting the child alone, may receive maintenance support already prior to the completion of the adoption. That adoptive parents, once the adoption is finalised, are considered equal to biological parents is made clear by the Parental Code. Maintenance support can then be paid out for the child. This is a difference compared to what applied earlier according to the Act relating to Advance Payments on Maintenance Allowances (1964:143).

The second new term, which really is not new since it has existed in the Parental Code previously, is the expression "maintenance obligated". To be maintenance obligated means, according to the Parental Code, to fulfil one's maintenance obligation towards the child by paying maintenance allowance. In the Parental Code two situations are listed when a parent shall pay maintenance allowance to a child. The first of these is if the parent does not have custody of the child and does not reside permanently with the child. The second situation is when the parent has guardianship of the child together with the other parent, but the child resides permanently with only the other parent.

Even if the child lives together with only one of the parents, and thus is entitled to maintenance support, the law lists certain situations where the right to maintenance support does not exist. The first of these is when the residence parent is the child's mother and she fails to take or contribute to measures establishing the fatherhood of the child. When prolonged maintenance support is paid out, it is the responsibility of the student to contribute to the determination of paternity.

One precondition for the maintenance support being refused on the basis of this point is that the mother – or in the case of prolonged maintenance support, the student – *clearly without legitimate reason* fails to take or contribute to

⁴ It can be mentioned that some registration authorities apply the rules regarding children's registration in such a way that the child, if the parents after a separation have joint custody, always is considered to reside with a parent who continues to live in the family's earlier common residence, even if the child spends the majority of its time and night time rest at the other parent. Such an application can appear to be wrong, since registration shall be where a person spends the majority of his or her time.

measures for the determination of paternity. This means that the rule can be applied only when the mother or the student is to blame for the fact that paternity can not be determined. In order for the nonfeasance to contribute to the determination of paternity to be considered invalid, very clear cases of refusal must be shown. The refusal of a woman to disclose the father of the child in consideration of the father or his family has not been regarded as an acceptable reason. In one case the mother, who was a Danish citizen, refused to disclose the father of her child out of consideration of the man's marriage and family. The Social Welfare Board in the mother's home municipality terminated the paternity inquiry on the grounds of the mother's refusal to co-operate. The mother had been relieved of the obligation to provide the father's name by a Danish authority. The Supreme Social Insurance Court held that the reasons stated by the mother could not be considered a valid excuse for her nonfeasance to co-operate to determine the paternity. The fact that she had been excused by a Danish authority in this matter did not lead to a different conclusion.

A similar conclusion was made in a case where the mother pointed out that, for emotional and social reasons, she did not want to reveal the father of the child. The mother stated that already prior to the conception of the child, an agreement had been made between her and the father not to mention his name. The concealment of paternity was a precondition for the conception to occur. What the mother had stated about the agreement with the child's father was not considered a valid reason for the nonfeasance to contribute to the determination of paternity.

There have been circumstances which have been considered sufficient to warrant a mother's refusal to give information leading to determination of paternity, such as a woman stating her fear that the man may later come to threaten her or the child, or exert other forms of harassment. In one case the mother stated that "under no circumstances" could she imagine giving out the name of the child's father. The mother claimed that her reason for refusing to co-operate in determining paternity was her fear of psychological and physical violence by the father. She further stated that when becoming pregnant, the father had wanted to force her to perform an abortion and that he had threatened her and the child if she disclosed his name. The Supreme Social Insurance Court stated that the expression "clearly" limited the range of the limitation rule to cases of clear misuse, and that the rule, which was to be given a very generous interpretation with regard to the guardian, was intended to be applied only in exceptional cases. Since there had been no indication of clear misuse, and since the inquiry had failed to prove that the mother clearly, without valid reason, had failed to take or contribute to measures to determine the paternity of the child, the public social insurance office had been wrong in withholding the benefit advance. In two other cases where the mother had stated her fear of physical or psychological violence by the father, the same evaluation was made. No special evidence to support the mother's claims regarding the man's threats had been required. It was sufficient for the mother to claim that the father had made threats which she comprehended as intended to be taken seriously, or for the mother to consider it likely that the father would come to seriously harass her or the child or to kidnap the child. Thus, it is not the mother who must prove that she or the child will come to be exposed to harassment, if the child's father is

named. Instead, it is up to the public social insurance office to show that the mother's statements regarding this matter implies a clear misuse of the maintenance support. If this can not be shown – which many times may be difficult – maintenance support shall be paid out.

Maintenance support is not paid out if there is reason to suppose that the maintenance-obligated parent correctly pays maintenance allowance that is no less than the amount that would be paid out in maintenance support to the child. Maintenance support amount to 1 173 SEK per month or to a lower amount, if the child has an income. If the aid-obligated individual pays at least this amount, the child shall not be paid maintenance support. This is also the case if the aid-obligated individual should have to pay a smaller compensation amount to the public social insurance office in accordance with the repayment rules.

The fact that it is stated in this regulation that maintenance allowance shall be paid "in right order" means that payment shall occur in accordance with the manner and time prescribed in an agreement or a judgement. This ought to entail that only when the aid-obligated person pays maintenance in accordance with a decision made in a ruling or agreement shall the relevant point apply. If no maintenance amount has been determined and if the aid-obligated person contributes to the child's welfare with an amount of at least 1 173 SEK per month, the rule is not applicable.

The third situation when maintenance support is not to be paid out is that it is clear when the aid-obligated parent, in some other way than paying a determined maintenance aid, sees to it that the child receives the same level of support as required by the maintenance support level. The intention behind the rule is to prevent the maintenance support from being used in a way that was not intended and that can seem offensive. The purpose is, in the first place, to ensure that maintenance support not be paid out to children where the parents, in connection with a divorce, regulate the maintenance obligation towards the child in some other way than through the determination of maintenance allowance. This might conceivably occur if the parent with whom the child will primarily live in the future (the residence parent), receives property in conjunction with the division of joint property, which fulfils the child's need for maintenance despite the fact that no continual maintenance allowance is paid out. Furthermore, a residence parent may receive a relatively large alimony for his or her own needs, while the child is recommended a small allowance or no allowance at all. A third example is where the parents split custody of the child and the maintenance obligation between them in such a manner that no maintenance support shall be paid out.

The child has no right to maintenance support when the maintenance obligated parent resides out of the country, if the residence parent, despite a decision, without valid reason neglects to take or contribute to measures to get maintenance allowance determined for the child. When prolonged maintenance support is paid out, it is the child that shall contribute to the determination of the maintenance allowance. The rule is motivated by the fact that the public social insurance office needs a binding civil law determined of maintenance allowance in order to collect compensation for paid maintenance support from a maintenance obliged parent who resides abroad. The reason for this is that it would be difficult for the public social insurance office to collect abroad the state's claim for paid maintenance support since the international conventions on

which such debt collection is based - the 1956 New York Convention and the 1958 Hague Convention - are not applicable when it comes to claims stemming from public law. In order for the public social insurance office to be able to collect the payment for maintenance support from parents obligated to pay maintenance but living abroad, the claim must stem from civil law. The rule implies that if the residence parent, without having given a valid reason, does not contribute to the establishment of the maintenance allowance, the child will be refused maintenance support.

A valid reason for the residence parent's failure to co-operate can be his or her ability to show that the parent responsible for maintenance is unavailable or that it is reasonable to assume that the maintenance-obligated parent no longer is alive. In one case, the public social insurance office suspended the maintenance support for two children, since the mother refused to sign a convention document necessary for the public social insurance office's collection of the maintenance allowance from the children's father, who lived in Greece. The mother claimed that the demand for payment for maintenance support could severely damage the children's relationship to their father. The Supreme Social Insurance Court held that the right to maintenance support depended on the person who applies for the benefit, contributing to efforts to collect the paid support. The mother had failed to do so and she had not stated any valid reason for this omission.

Finally, maintenance support can not be paid out if the child is entitled to a child pension from an aid-obligated parent according to the National Insurance Act. References to the social insurance act pertain to the right to survivor's pension in the form of a child pension collected from state pension, as well as from additional pensions. Child pension is paid out to children if one or both parents are deceased. The pension is paid out up until the child turns 18. On the condition that the child, after turning 18, continues to study at the "gymnasium" or other school programs, a child pension can be paid out as long as the studies continue, however at the most up until the month of June in the year the child turns 20. These age limits are the same for maintenance support and prolonged maintenance support. The size of the child pension depends to a large degree on what additional pension the deceased parent had earned, but consists, at a minimum, of at least 40% of the base amount. This means that for 1998 a child pension is at least paid out in the amount of 1 213 SEK per month. This amount is somewhat higher than that of the maintenance support.

The rule that maintenance support is not paid out to children who receive child pension has come about in order to prevent that these children be overcompensated by also receiving maintenance support. They are therefore explicitly exempt from the statute's area of application. However, the fact that a child receives a child pension after a deceased parent does not prevent that maintenance support be paid out in relation to the other parent in cases where the child lives with a specially appointed guardian.

The rule of exempting children that receive a child pension from the right to maintenance support means that the majority of children whose parent – or parents – are deceased will not receive any maintenance support. A child residing in Sweden whose parent dies is normally entitled to a child pension. However, from an insurance perspective, it is the parent and not the child who is

insured and therefore regulates the right to a child pension. Therefore it is the rules in the deceased parent's country of domicile that determine whether or not child pension will be paid out. If the deceased parent resided in a country that lacked insurance for a child pension, the child will not get a child pension from that country. By the same token a Swedish child pension can not be paid out since the decedent was not a resident in Sweden. According to earlier regulations for maintenance in advance, a situation could come about where a child who resided in Sweden lacked the right to a child pension because the parent had died and the child at the same lacked the right to a child pension because the parent had not been a resident of Sweden. This is probably a rare case but it might seem unreasonable that these children are not covered by any of the social benefit forms.

Maintenance support is paid out in the amount of 1 173 SEK per month. The idea is not that this amount reflects what a child actually costs, but rather that the residence parent is expected to contribute to ensure that the child's needs are met. In addition to maintenance support the child also receives child allowance and eventual housing allowance paid out as a special allowance for children living at home.⁵ The maintenance amount can however be reduced under certain circumstances. A reduction shall occur if the aid-obligee pays the maintenance allowance to the child; if the child permanently resides with both its parents (so-called alternating living); if the maintenance allowance has been calculated to a one time payment; if the child has independent income above 48 000 SEK per year, or if the aid-obligee has the right to a deduction in his repayment obligation as a result of the child having visited with him or her. These situations shall be further treated below.

If the aid-obligee pays maintenance to the child as stipulated, the maintenance support shall be decreased by this amount. One condition is however that the maintenance paid out is at least equal to the amount that the aid-obliged parent shall repay for received maintenance support. If the aid-obliged parent pays out a smaller amount than the amount of the repayment obligation, this is not taken into account; rather, the child receives the full maintenance support and the aid-obligee's repayment obligation does not decrease. This is also the case when a public court has determined the maintenance allowance. If the aid-obliged parent lives abroad and pays the predetermined maintenance allowance to the child, as stipulated, this amount shall be deducted from the maintenance support, even if the maintenance allowance is less than the repayment obligation according to the act regarding maintenance support.

Another situation where the maintenance support is reduced is if the child lives permanently with both its parents in so-called alternating living. No exact rule exists to determine when the child shall be considered to live alternately with both parents; rather this is determined according to the circumstances in each individual case. As a rule of thumb, it is stated that if the child spends more than one third of its time at the aid-obliged residence, then it is a question of alternating living. On the other hand, a stay with the aid-obliged of up to one third of the time is considered to be a visitation. In the case of alternating living, both parents have expenses for the child by having to pay for the child's costs

⁵ See closer regarding housing allowance in section 6.

during the time that the child resides with him or her. No maintenance obligation according to the Parental Code can be determined for alternating living. At the same time, the residence parent has lower costs for the child during the time that the child resides with the other parent. Therefore, the maintenance support in cases of alternating living shall be reduced and be paid out as an extra allowance to the residence parent. The reduction constitutes the same amount as what the parent with whom the child is not registered would have had to repay to the state, if full maintenance support had been paid out. This however is only a fictitious amount and no repayment shall occur.

Suppose that the parent with whom the child is not registered as living has an income of 125 000 SEK. If the child qualifies for full maintenance support, the repayment obligation per month would be 841 SEK. In the case of alternating living, maintenance benefits in the form of an extra allowance are paid out in the amount of $1\,173 - 841 = 332$ SEK per month. This is a pure benefit and no repayment shall occur.

The possibility of receiving maintenance support during alternating living is new compared to what was previously the rule regarding maintenance allowance in advance. The purpose is to facilitate for parents living apart to take joint responsibility for their children. In alternating living arrangements it is presumed that the parents can also come to terms with how the maintenance support shall be divided between them. An extra allowance can also be paid out without the public social insurance office being forced to investigate to determine if the child alternately resides at both its parents, when the parent seeking maintenance support only applies for the extra allowance. The reduction of the maintenance support occurs in the same way as for alternating living.

Maintenance allowance can be determined as a one-time sum, but this is very rare. If this occurs, then, normally, a life annuity shall be purchased for the child. Maintenance support shall then be reduced by an amount corresponding to the maintenance allowance per month.

If the child has independent income, the support shall be reduced with half of the child's income in cases where this exceeds 48 000 per year.

Finally, the maintenance support amount can be reduced if the aid-obligated parent has a right to a deduction on the grounds that the child has resided with him or her. The availability of a deduction shall be seen as a way of facilitating, economically, for the aid-obligated parent to spend time with the child. A deduction is permitted if the child has resided with the aid obligee for at least five entire calendar days in a row.⁶ Repayment responsibility then decreases by 1/40 for every day that the child has resided with the aid-obligated parent. By the same token, the amount the child receives in maintenance support diminishes. One effect of this is that the greater the income of the aid-obligated parent, the greater the deduction experienced by the child.

⁶ According to a newly submitted statutory suggestion, the deduction for repayment responsibility shall also be allowed when the aid obligee has had the child for at least six whole days during a calendar month, even if these days have not been successive. The Parliament is expected to make a decision regarding this during the spring of 1998.

It should be pointed out that the residence parent's income or economic situation as a whole does not affect the size of the maintenance support. This means that under the condition that the parents can come to an agreement regarding with whom the child shall live, the societal support to them will be greater if the child lives with the parent who has the largest income, since the repayment responsibility in that case decreases.

When the maintenance support is paid out, the aid-obligated parent is liable to repay all or a certain portion of the maintenance support to the state. The repayment amount is calculated as a certain percentage of the income of the parent who is responsible for the repayment. The income is determined in accordance with the latest tax return, which means that the source for the repayment amount during 1998 is the aid-obligated parent's income during 1996. Income calculation is based on the aid-obligated parent's income from services and business as well as capital income. In the event that a business income has been affected by certain tax accounting measures, income shall be adjusted accordingly. Furthermore, the following are to be considered as income: seaman's income⁷, study allowance, and one percent of the aid-obligated individual's wealth over 800 000 SEK. However, the aid-obligated individual is allowed to make a general deduction of 24 000 SEK. The intended purpose of this general deduction is not that it shall cover the aid-obligated individual's own cost of living; rather, the deduction has been created out of consideration of parents with poor economies who are obligated to make repayments. As a result of the general deduction, these parents will end up with a low repayment obligation or may be completely exempt from this burden. Furthermore, the repayment obligation completely disappears if the repayment amount should be less than 100 SEK per child and month.

When the repayment founding income is determined, the aid-obligated party shall pay a percentage amount of this to the state. The number of children for whom the aid-obligated party is responsible to pay maintenance according to the Parental Code determines the percentage amount. This includes children with whom the parent lives and to whom he or she fulfils his maintenance obligation through cohabitation. If the aid-obligated parent is responsible for the maintenance of one child, the repayment amount is one tenth of his income. If the obligated parent has two children, the percentage amount is six and one-quarter percent, and if maintenance responsibility exists for three children, the repayment amount is five percent for every child receiving maintenance support. If responsibility exists for three or more children, the percentage figure shall correspond to the figure arrived at by dividing the total of fifteen and the number of children above three with the total number of children. This means that if the aid-obligated parent is responsible for maintenance for five children, the repayment figure is 3,4 percent of his income per child. Repayment responsibility for a child may never be above what has been paid in maintenance support to the child during the time period covering the repayment corresponds to. In the Parental Code, a rule has also been introduced specifying that a parent who is responsible for repayment according to the rules for maintenance support

⁷ The system with a special seaman's tax is under dismantling. From the 1999 tax year seamen will pay regular communal and state income tax.

shall be considered to have fulfilled his duty according to the Parental Code with the same amount as the maintenance support has been paid to the child. Otherwise, the rules of the Parental Code regarding maintenance support remain unchanged.

As has been shown, repayment responsibility can be reduced if the child has lived with the aid-obligated parent during at least five consecutive days. One condition for this is that the aid-obligated parent makes a report regarding the visitation to the public social insurance office within three months from the calendar month when the visit ended.

One might consider the rules regarding repayment responsibility as relatively strict towards the aid-obligated parent. In the first place, it can be established that for many parents the rules have led to an essential increase in the amount to be paid. As an example it can be mentioned that for someone who is repayment responsible for two children and has one additional child, as well as a monthly income over 15 000 SEK, the monthly repayment amount is 1 300 SEK. The net income in this case is about 10 300 SEK per month. After the repayment obligation is fulfilled, about 9 000 SEK remains. If the aid-obligated parent contributes to the child's welfare by granting certain expenses, he or she may not count these towards the public social insurance office. Nor may the parent responsible for aid deduct what he or she pays in maintenance allowance to the child, unless the support amounts to at least the sum that the repayment amount has been determined to be. Therefore, it is of no importance that a public court, in accordance with the rules in the Parental Code, has determined the maintenance benefit that is paid out. A situation is possible where the maintenance allowance has been determined in accordance with the rules in the Parental Code, and in the final instance by the Supreme Court, yet the aid-obligated parent shall still pay a completely different, and possibly essentially higher, amount according to the law regarding maintenance support.

If the parent responsible for maintenance lacks, temporarily or more permanently, the means to fulfil his repayment obligation, he can be granted a respite as well as a debt concession. A respite means that for a certain period of time, but at the most for one year at a time, the aid-obligated parent is relieved from his responsibility to repay his portion of the maintenance support received by the child. The debt remains however and even increases if the maintenance support is paid out to the child during the time of the respite. Furthermore, a person responsible for maintenance shall pay interest on the debt for the time of the respite. A respite shall be granted if this is necessary in order for the person responsible for support to keep what is needed for his own and the family's maintenance. A respite may be granted also in other cases if there are valid reasons on account of the aid-obligated individual's personal and economic situation or for other personal reasons. A respite ought to come into question, in the first place, during financial difficulties of a temporary nature and when these are not sufficient reason for a debt concession. Occasions that may lead to a granting of a respite are, for instance, a considerably diminished income for the individual responsible for the support, when compared to the latest tax return, and such diminished income may be due to unemployment, illness or other similar circumstances.

If it can be determined that the aid-obligated individual's economic difficulties will be of a lasting nature, the question of a debt concession should be actualised. In the statutory text it is stated that debt concession can be granted only when special circumstances exist. This should imply that the possibility of a debt concession should be used only in exceptional cases. According to the legislative history, a determination of debt concession shall only be applied very restrictively. Debt concession can normally not be considered if it seems possible that the aid-obligated individual shall be able to repay at least a portion of the debt before it is written off. This means that temporary liquidity problems can not motivate that debt concession be granted. In such cases, a respite ought to be the solution to the situation. A combination whereby a debt is partially conceded and a repayment plan is established for the remainder of the debt is also a possibility.

Debt concession can be granted on two different conditions. The first one concerns special reasons for debt concession on account of the aid obligator's economic situation. Such a case may be a parent, obligated to make a repayment, who has been granted a respite during a long period of time, where there is reason to believe that his economic situation will not improve during the foreseeable future.

The second motivation for a debt concession may be the existence of special reasons in terms of the aid-obligee's personal situation. Debt concession may be feasible in situations of a rehabilitative nature or in other similar situations where a concession of the debt is necessary in order for the rehabilitation to be successful or for the repayment obligated parent not to be socially ostracised. Concession of the debt in consideration of the aid-obligee's personal situation presumes that he or she has difficulties in paying the created debt. If the aid-obligee's economy is such that he or she can repay without greater difficulty what has been paid out in maintenance support to the child, then reasons for a concession do not exist.

6 Housing Allowance

As the title suggests, housing allowance is a benefit for the housing cost of households. The benefit has its origins in the support that started to crop up during the 1930s. Nowadays housing allowance are regulated in the Housing Allowance Act (1993:737). The purpose of the housing allowance is, in the first place, to raise the housing standard for economically weak households, both in terms of the size and the standard of equipment. Housing allowance may be paid out to families with children and to households without children, on the condition that none of the household's members has turned 29. Housing allowance is constructed in such a way that it is paid out partly as a support for the cost of the household, partly as a special benefit for children living at home. As of 1994, the public social insurance offices have administered and paid out the housing allowance.

As the basis for calculating the size of the housing allowance, an income concept called benefit-based income is used. Benefit-based income shall be determined for those who apply for housing allowance, and for the applicant's

spouse or the person who can be considered equal to a spouse. A man and a woman who live together without being married, and have or have had a child in common or are registered at the same address, are considered equal to a spouse. The rule is intended to be used if there is a presumption that a man and a woman live together, since they have or have had a child in common or are registered at the same address. It is therefore the applicant's responsibility to show that cohabitation does not exist. There is reason for criticism of a rule structure where compliance with one of the rule requirements, the presence of a child in common or registration at the same address, is seen as evidence of fulfilment of required cohabitation.

The benefit-based income is calculated for each spouse individually. The reason for individual income limits is that otherwise the housing allowance might come to function as a subsidisation of households, where one of the parents chooses to stay at home or reduce his or her work hours. Against the background of wanting to minimise state expenses, the Government and the Parliament found it unreasonable to subsidise, via housing allowance, reductions in employment hours to very low levels. Furthermore, according to the legislative history, by using individual income levels, the marginal effects for the household are less if a parent working at home chooses to enter the work force, compared to a system where the spouses' income is calculated together. Individual income limits are thus considered to support the so-called employment stance.

The difference between individual and common income calculation lies primarily in the fact that with the present top limit for receiving housing allowance without a reduction – 58 500 SEK per spouse - a spouse who lacks employment income can start to work and earn up to 58 500 SEK before the income affects the size of the housing allowance. With common income calculation, such an increase in the size of the household income will directly reduce the size of the allowance, provided that the common income is at least 117 000 SEK. This can be illustrated by the following example:

Suppose the man in the family has a yearly income of 150 000 SEK while the woman lacks employment income. If the household income increases by the man increasing his income, this will have an immediate effect on the size of the housing allowance. If however, the combined income for the household is increased by the woman beginning employment, she may still earn up to 58 500 SEK before any reduction in the housing allowance occurs.

For families with children with only one adult, the household income may amount to 117 000 SEK before a reduction in the size of the housing allowance occurs.

The fundamental basis of the benefit-based income is the sum of the income from business ventures, employment income and capital income accrued by the applicant and respective co-applicant. Taxable income, i.e., employment and business income, is that income which is determined by the tax authority for the calendar year for which the allowance is intended. Thus, it is not the public social insurance office that determines which income shall be considered as the base for calculating the housing allowance. The income determined by the tax

decision can be affected by deductions for travel expenses to and from work if these, as of 1998, exceed 7 000 SEK per year, and by deductions for the cost of employment travel, as well as other costs associated with the acquirement of income, for example, tools, magazines or fees to unemployment insurance, in as far as these costs during the year are above 1 000 SEK.

Employment income shall be added to capital income. The tax authority for the calendar year, for which housing allowance is intended, also determines capital income. The fact that capital income is determined in accordance with what is prescribed by the tax statutes means that not only positive profits are considered but also deficits in this type of income. However, see below what is said about the possibility of offsetting profits against losses.

In order to ensure that the benefit-based income reflects as closely as possible to the benefiting household's real economic standard, the taxed employment income and the capital income are increased, alternately decreased, with certain items. To begin with, the income determined at the time of taxation shall be increased by such income, including meal subsidies, that is taxed according to the Seaman's Income Tax Act (1958:295). These incomes are not included in the Municipal Income Tax Act (1928:370) or in the National Income Tax Act (1947:576).⁸

Furthermore, added to the income tax shall be such income that has been earned during stays abroad and income which, according to treaties on dual taxation, is free from Swedish taxation. In the benefit-based income shall also be included study grant for studies received by the applicant or spouse. Study grant is that portion of state student allowance that does not have to be repaid. The size of the study allowance is dependent on the student's income. If the income is above the so-called free amount, the amount of the study allowance is reduced. This applies to study grant and student loans. The free amount is calculated separately for the first, respectively the second half, of a calendar year, and is paid out to the full-time student during 4,5 months per term in the amount of 65% of the base amount for the first half of the calendar year, and 85% of the base amount for the second half of the year. The reason for the free amount difference for the two six month periods is that for students employed during their vacation, a larger portion of their salary will normally fall during the second half of the calendar year. For 1998, the free amount for full-time students is normally 23 660 respectively 30 940 SEK. If the income does not exceed these amounts, unreduced study allowance will be paid out; however, if the income should be above the free amount, study allowance is reduced by about half of the amount that is above the free amount. In calculating the benefit-based income for someone who studies nine months of a calendar year, the combined study grant for this period, 17 755 SEK, shall be presumed paid out in the amount of 1 480 SEK per month.

In addition to the income that is determined by the tax authority, non-taxable stipends above 3 000 SEK per month that the applicant or co-applicant receives shall also be added. Since not only study allowance but also income in the form of stipends are considered to be distributed over the twelve month calendar year,

⁸ As mentioned above the system with special seaman's tax is under dismantling. From the 1999 tax year seamen will pay the regular municipal and state tax.

the applicant for housing allowance may receive tax-free stipends of up to 36 000 SEK during a calendar year before these shall be included in the benefit-based income. Taxable stipends, however, are included in their entire amount in the benefit-based income, since they affect the taxable income determined by the tax authority.

For individuals who have an income from a business venture income, i.e., for the self-employed, the tax statutes include certain possibilities to undertake different measures of income adjustment, which may mean that the taxable income is a poor measuring stick for the self-employee's economic standard. Therefore, in calculating benefit-based income, the same calculation method ought to be used for business venture income as applies for employment and capital income. This means that to the taxable income shall be added amounts where the business venture income has been reduced as a result of the following deductions: contribution to a periodic fund, increase in expansion funds, private pension payments as well as deficits from earlier tax years. However, as a result of the tax system structure the business venture income will increase in the year when these amounts are added to the taxable income. It follows that the benefit-based income should be decreased with the amount that is reintroduced for taxation. It would not be logical for this addition to affect income used as a basis for calculating the housing allowance.

Wealth shall be added to the calculation of income. This addition is made for the applicant's and co-applicant's individual wealth as well as, in certain cases, for the children's wealth. Capital in and of itself is considered to be an asset that the household can take advantage of to reach a comfortable living standard. Therefore the benefit-based income shall be increased by 15 % of that portion of the household's combined wealth that exceeds 100 000 SEK. In order to counteract possible difficulties in calculating the wealth, it is levelled off downward to the nearest ten-thousandth SEK in determining the benefit-based income.

As has already been made clear, the benefit-based income is calculated individually for the applicant and the co-applicant. This separation of the income of the spouses also applies to the wealth supplement; i.e., if only one of the spouses controls the wealth above 100 000 SEK, it is only his or her benefit-based income that shall be increased with 15% of that portion which is above the free-amount level. However, it should be observed that a wealth supplement must be made as soon as the household's combined assets are above 100 000 SEK. If, for example, the man has a net wealth of 60 000 SEK and the woman's assets are 80 000 SEK, 15% of the portion above 100 000 SEK, in this case 40 000 SEK is divided proportionately between the spouses. Thus the man's benefit-based income would be increased by 15% $(60\,000/140\,000 \times 40\,000) = 2\,571$ SEK and for the woman with 15% $(80\,000/140\,000 \times 40\,000) = 3\,429$ SEK. Thus the combined income increase considered to be an addition to the household as a result of the spouses' wealth of 140 000 SEK is 6 000 SEK or 500 SEK per month.

In one case the income shall be divided evenly between the spouses, namely if there are children in the household who possess wealth that shall be included in the benefit-based income. These children, whose wealth shall be divided

equally between the spouses and added to each and everyone's benefit-based income, is, to begin, children over whom the applicant or co-applicant has custody and who permanently reside together with them. It must be noted that it is of no significance if the child is the common child of the two spouses or if only one spouse is the biological parent. Furthermore, children are to be included who, because of education or special care, do not reside permanently in the household, for which housing allowance is sought, but who live there during the year for at least as long a period of time as the regular school vacation. Finally, the wealth possessed by children who have turned 18 is included in the calculation of benefit-based income, if the child still lives in the parental residence and receives prolonged child allowance or financial aid. It may be noted that if the household's combined net wealth only reaches 100 000 SEK when the child's assets are added, this shall still mean that the income-based income of the two spouses shall be increased by a total of 15% of that portion which is above 100 000 SEK.

The method of calculating the benefit-based income for a household, applying for housing allowance, has no doubt become complicated. The intention behind the calculation model is, obviously, to reach a high level of allocation fairness, so that households with a similar economic base are treated equally, regardless of whether the income stems from employment, business ventures or from capital. Furthermore, the intended purpose is to ensure that the housing allowance system attains a high social political accuracy and is paid out to those households that are in need of this benefit. Yet, despite the carefulness that characterises the rules regarding income calculation, some of their effects may be questioned. To begin with, the regulations may be difficult to understand for someone applying for a housing allowance and difficult to execute for the public social insurance offices. An additional difficulty lies in the fact that even if a majority of the necessary income figures can be obtained from the tax authority, some figures - for example declaration of tax-free stipends or wealth under 100 000 SEK - are reported by the individual applying for housing allowance. These figures can be difficult to control by the public social insurance offices.

As has been mentioned, the purpose behind the method of income calculation is to reach a high degree of fairness within the allocation system and, especially, to favour those households with the lowest incomes. Furthermore, the intention is to give households with similar circumstances the same amount of housing allowance. However, it is debatable if a system that includes individual income levels for spouses may not result in households with similar circumstances being treated differently and receiving different amounts of housing allowance. The determinative factor for the size of the housing allowance is not solely the household's combined income; it is also of importance how this income is divided between the spouses. The individual income calculation results in a household with two adults, where only one of them is employed, receiving a lower amount of housing allowance than a household where both adults are employed, even if the combined income is the same. Also, a single parent receives more housing allowance than a household does with two adults even if the income, the cost of housing and the number of children are the same. Obviously it can be questioned whether these quite intentional effects are consistent with the intent of the statute to be fair and treat like cases similarly.

It can also be questioned whether or not the travel cost between the household and the place of employment ought to be considered when calculating housing allowance. However, this is the result of the taxable income being the basis for income calculation. This entails that someone who has incurred costs for travel to and from the place of employment receives a lower benefit-based income than would otherwise have been the case. Therefore, someone with expenses of this type may in some way be considered overcompensated. The consideration of travel expenses results in both the housing allowance being larger and the tax being decreased. Even if it is desirable to stimulate people to employment, the correctness in allowing these costs to be considered both in terms of taxation and in the calculation of the housing allowance may be discussed.

Suppose that the deduction for travel to and from work are 24 000 SEK per year. The individual in question will then receive apx. 7 200 – 14 000 SEK in lower taxes, and his income base for a housing allowance will decrease by 24 000 SEK, which means that the housing allowance will be 4 800 SEK greater per year or 400 SEK per month.

The travel deduction thus leads to both lower taxes and a higher housing allowance. Furthermore and by the same token, when the level of allowed deduction is increased in 1998 from 6 000 to 7 000 SEK per year, a person will get a higher tax and a decreased housing allowance.⁹

As mentioned above housing allowance is paid out as a benefit for the cost of housing, and as a special benefit for children at home. Calculating the size of the benefit amount is however rather complex and depends – apart from whether there are children in the household or not - on the household's benefit-based income, the cost of housing and the number of people in the household. As mentioned above, the availability of housing allowance for households without children presupposes that none of the household members has turned 29. Here only the main rules for determining the size of the allowance will be discussed.

In order for a benefit to be paid out as a housing allowance to families with children, it is necessary that the family includes children under the age of 18. The most common case, presumably, is when the allowance is paid to one or two parents with custody of the child, who permanently reside together with it. However, housing allowance to families with children can also be paid out to a parent who does not permanently live together with the child but with whom the child lives periodically as a result of custody or visitation rights. Housing allowance can also be paid out for children who do not permanently reside in the home for educational reasons, but who at least stay in the home during school vacations. Housing allowance to families with children can also be paid out to a person who has received a child for care in the family home after a decision by the authorities, and provided the child is intended to live in the home for at least three months. In terms of the cases now described regarding housing allowance

⁹ This is however not the entire truth. Since the deduction for travel to and from work and for employment trips by private car will be raised in 1998 from 15 SEK to 17 SEK per mile, many will be allowed to make a higher deduction than is now possible, despite, that the amount for allowable deduction is going to be raised from 6 000 to 7 000 SEK. This may lead to a situation whereby the effect of the tax decreases while the housing allowance increases.

paid out to families with children, it should be noted that an allowance can be paid out for children who have turned 18, if the child receives prolonged child allowance or financial aid.

In addition to the above mentioned situations when a housing allowance to families with children can be paid out, such an allowance can also be paid out to parents when the child lives in a foster home or in a special home for care and shelter. However, in this case, children who have turned 18 are not counted.¹⁰

To begin with, a housing allowance to families with children can be paid out as a special benefit in the amount of 600 SEK/month for one child, 900 SEK/month for two children and 1 200 SEK/month if there are three or more children in the household. It should be noted that this form of housing allowance is not tied to the cost of the living quarters but only to the number of children in the family. This is reminiscent of a form of strengthening of the ordinary child allowance.¹¹ However, the right to a special benefit does not exist for all families with children. A special allowance can be paid out to an individual who has custody of a child and permanently lives together with it, as well as to a person who has received the child for care in a foster home. Furthermore, the special benefit may be paid out for children who do not - as a result of care or education - reside at home other than during school vacations. Special benefit can also be paid out under special circumstances to the parents when the child lives in a foster home or in a home for care or shelter. But no special benefit is paid out to someone with whom the child lives as a result of custody or visitation.

Together with the special benefit a housing allowance is paid out to families with children as a contribution to the housing cost. One prerequisite for this portion of the housing allowance is, however, that the applicant lives in a home that he or she owns or occupies as a rental or condominium. This rule means that someone who rents his living quarters second hand may receive a housing allowance under the condition that the rental agreement is in writing and has been accepted by the landlord or the rental authority. Someone who is boarder may not receive support for the housing cost.

An allowance for housing expenses corresponding to 75% of that portion of the monthly payments that exceed 2 000 SEK, but not more than 3 000 SEK, may be given for families with one child; for families with two children the amount is 2 000 SEK but not more than 3 300 SEK; and for families with three or more children 2 000 SEK but not more than 3 600 SEK. If the cost of the housing expenses exceed the stated amounts, an allowance is paid out at a rate of

¹⁰ A possible incongruity in the statute may exist here. In 2 §, where certain definitions are made, it is stated that as a child shall be counted he who is under 18 years old or receives prolonged child allowance or study assistance. Against this background it appears as both unnecessary and incorrect to in 10 § state that certain regulations shall be applied also in relation to those over 18 years who do not receive prolonged child allowance or study assistance. That it is unnecessary is due to the fact that this already follows from the definition in 2 § and that it possibly is incorrect is due to the fact that a situation is created whereby it appears as unclear what definitional category children really belong to.

¹¹ It can be questioned whether or not the housing allowance shall be determined according to the number of children in the family and not according to the cost of housing. Theoretically a family with small income and very small housing costs may receive a housing allowance that is larger than the cost for living quarters (so-called tent benefit).

50% of the exceeding housing cost up to 5 300 SEK for families with one child, 5 900 SEK for families with two children and 6 600 SEK for families with three or more children. If the parent is under 29 years of age and the child only occasionally lives with the parent as a result of custody or visitation, which means that the parent is not entitled to the special benefit, the allowance for housing expenses is slightly higher. In these cases, the allowance shall be calculated on that portion of the housing cost that exceeds 1 800 SEK/month, as opposed to 2 000 SEK/month in other cases. If some member of the family is functionally impaired, an even higher housing cost may be considered than what has been discussed here.

Besides the fact that housing expenses are not considered above certain amounts in calculating a housing allowance, such an allowance may not be paid out for the entire housing area if this should be above the limits established by the lawmakers. For households with one child, the largest benefit-based area is 80 square meters; for households with two children the limit is 100 square meters, for households with three children 120 square meters; for households with four children 140 square meters; and for households with five or more children, a housing allowance is not paid out for housing areas above 160 square meters. Just as is the case for the size of housing expenses, even larger areas may be considered if some member of the family is functionally impaired. The housing allowance may even apply to larger living areas than was mentioned here, if household expenses for a family with one child do not exceed 3 000 SEK; for a household with two children no more than 3 300 SEK; for a household with three children no more than 3 600 SEK; for a household with four children no more than 3 900 SEK. For households with five or more children the living area may be larger than normally allowed, if the cost of the household is not greater than 4 200 SEK per month.

A housing allowance calculated in this manner may be paid out unadjusted to a family with children if the benefit-based income does not surpass 117 000 SEK. If the benefit-based income is greater, the housing allowance is reduced by 20% of that portion of the income that is above this amount.

The calculation of the size of the housing allowance is best illustrated by an example:

Suppose that a family consists of two adults and two children under 18. The housing cost is 7 000 SEK/month and the family's benefit-based income is 205 000 SEK. The housing allowance would then be paid out as a special benefit of 900 SEK/month and as an allowance for the housing expenses at $75\% \times (3\,300 - 2\,000) + 50\% \times (5\,900 - 3\,300) = 2\,275$ SEK/month. Together, the special benefit and the housing cost allowance would total 3 175 SEK/month. This amount shall be reduced by 20% of the amount exceeding 117 000 SEK of the benefit-based income. In this example where the benefit-based income is 205 000, the reduction is $20\% \times (205\,000 - 117\,000) = 20\% \times 88\,000 = 17\,600$ or 1 466 SEK/month. The housing allowance may therefore be paid out in the amount of $3\,175 - 1\,466 = 1\,709$ SEK per month.

In order for a household without children to receive a housing allowance, it is necessary that the applicant has turned 18 but not 29. Nor may the applicant's

spouse or spousal equivalent have turned 29. Furthermore, in order to qualify for a housing allowance, the applicant must live in a residence that he owns or occupies through a rental or condominium contract. This is the same as applies to families with children.

The housing allowance for households without children may be paid out for a total of 75% of the housing cost within the interval 1 800 SEK – 2 600 SEK. For that portion of the housing cost that is greater than 2 600 SEK, a housing allowance is paid out at a rate of 50% of the exceeding amount, up to 3 600 SEK. The housing allowance is reduced if the household's benefit-based income exceeds 41 000 SEK for singles and 58 000 for spouses. In both cases the allowance shall be reduced by one third of the amount above the maximum.

As is the case concerning the housing allowance to families with children, in determining a housing allowance for families without children, may be considered higher housing costs than those mentioned in the statute, on condition that the applicant or spouse is functionally impaired.

A housing allowance is paid out continually as a preliminary benefit, calculated on the family situation and those housing costs that exist for the household, as well as the economic factors that can be calculated. When a tax return is available for the year the allowance is intended and the economic situation can be conclusively determined, the final housing allowance is calculated. If the final housing allowance is greater than the preliminary allowance, the public social insurance office shall pay out the difference to the household. In the same way, if the preliminary housing allowance was greater than the actual allowance, the household shall repay the difference. In both cases interest is paid out on the difference. The system of preliminary and final housing allowance means that he who receives a preliminary housing allowance during 1998 will not know the size of the actual housing allowance until the end of 1999 when the 1998 tax return is available. It is of course desirable that a social benefit be as closely related to the individual's income and economic circumstances in general, but at the same time it can create problems for him if he has to repay a portion of the benefit that was paid out one or two years earlier. His economic situation may have deteriorated after the allowance was paid out and the repayment demand can create a strain on him and his family. One other disadvantage with the system of preliminary and final housing allowances is that the temporal principle is set aside. This principle, which ought to exist in questions concerning social benefits, means i.e., that the support ought to be paid out at that point in time when the benefit is needed.

Finally the statute concerning housing allowance includes two general regulations which imply that the estimated housing allowance may under certain listed circumstances lead to a lowering or even a termination of the housing allowance. According to the first of these rules, if the household possesses a substantial fortune, the housing allowance may be set at a lower level than would be the case, should the normal calculation principles be used. According to the legislative history, the intention of this rule is to be used to lower the allowance or completely disallow it, if it becomes known that a family has substantial assets in the form of, for example, bank holdings or securities. Furthermore, the statute includes a general clause with the effect that the public social insurance office may, after a special inquiry, lower or terminate the

housing allowance. For such a rule to become applicable, it must be evident that the applicant does not need the housing allowance amount that was estimated according to the rules. The statute proposition states that the regulation is supposed to be used, for example, when someone has liquidated a substantial capital amount, making it clear that the apparent need for a housing allowance does not exist. Another case when the rule may be relevant is when someone has a high material standard of living despite low or untaxed income.

7 Family Aid

In connection with military service and certain other tours of duty within the national defence, it is possible to receive, in addition to the daily allowance¹² or similar disbursements, a family allowance as a benefit to help cover certain costs. The main rule regulating this form of benefit is found in the Act regarding Benefits for Military Service Personnel (1995:239). The family allowance may be paid out in the form of a family payment (so-called *familjepening*), housing allowance, business allowance and funeral allowance. Those who may qualify for family allowance are military service personnel during draft duty exceeding 60 days. Furthermore, he who completes shorter military duty tours or civilian duty programs may qualify for a business allowance. Those who have a right to family allowance are named qualified for benefits according to the statute.

The family allowance in the form of family payment may be paid out to two groups who are relatives of those qualified for benefits; on one hand to children under 18, on the other hand to the spouse. Partners of the same or opposite sex are considered as spouses. Family payments for children are paid out for children of a qualified individual if the child permanently lives with the individual or if, according to a judgement or an agreement, the individual is responsible for paying maintenance for the child. Family payment may even be paid out for a child, who is not the qualified individual's own offspring, if the child permanently resides with the qualified individual or his or her spouse.

Family payment for a spouse is paid to the spouse who cares for a child under 18, who permanently lives together with the qualified individual. Family allowance for a spouse may also be paid out to someone other than the spouse or similar person, if this person cares for the qualified individual's children under 18, who permanently reside with that person. Family payment for a spouse can also be paid out, even though the qualified individual does not permanently reside with a child under 18, if there are special circumstances for this. Finally, family payment for a spouse can be paid out for a divorced spouse if, according to a judgement or an agreement, the qualified individual is responsible for paying maintenance allowance to him or her.

¹² The right to compensation in the form of a daily allowance is paid out in the amount of 40 SEK per day during the general education period. If the general education lasts longer than 230 days, an additional supplemental amount of 15 – 90 SEK per day is paid out, depending on the length of the education. During military civil service and duty other than the general draft duty, daily allowance is paid out in an amount that is equal to 90% of the military service personnel health insurance-based income, however at least 55 SEK per day.

Housing allowance is paid for the housing expenses where the qualified individual lives. The allowance is paid out for housing where the qualified individual lives together with a spouse or with children. Furthermore, a housing allowance can be paid out for housing where the qualified individual lives with his parents, if the qualified individual has had economic capacity, up to the start of the military duty, to pay for his living arrangements and has contributed regularly, and a need exists for the allowance in terms of the family's other economic situation. A housing allowance may also be paid out if the qualified individual has lacked the capacity to pay for his living arrangements while living together with only one parent, provided special circumstances exist. Finally the allowance can be paid out for housing where the qualified individual lives alone or together with a person other than a spouse, child or parent, if he or she has lived at this location for at least three months prior to the start of the duty tour or, if this time limit is not reached, there exist special circumstances for paying out a housing allowance.

Housing allowance is not paid out for more than one residence and, normally, only for a residence where the qualified individual is registered. The size of the allowance may not exceed what is considered reasonable expense. In the case of a residence where the qualified individual lives together with his parents or with someone other than a spouse or a child, an allowance is allocated to cover the qualified person's share of the housing expenses. If the qualified individual should move during the tour of duty, a housing allowance will normally not be paid out for higher housing costs than those of the previous residence.

Family allowance is paid out in an amount of maximum 2 000 SEK per month for children and at maximum 4 000 SEK per month for a spouse or other qualified person. However, the amount that may be paid out in the form of family payment and housing allowance shall be decreased depending on the income of the spouse or the children, as well as any income that the qualified individual may have during the tour of duty. The allowance shall be decreased by three-eighths of the spouses income, if this income should be above 4 000 SEK per month. Children's income, including social benefits paid to the child, are deducted in their entirety. However, child allowance and study assistance shall not be deducted from the family allowance, and reduction of the allowance as a result of the income of the spouse or a child shall not be greater than enabling the allowance to cover at least half of the housing costs. The housing allowance is paid out with a supplement, of 350 SEK or 175 per month. The size of the supplement depends on whether the qualified individual lives with a spouse or with someone else. If the qualified individual lives together with his parents, no supplement is paid out.

Family allowance can also be paid out as a business allowance. Such an allowance is paid out if the qualified individual makes his living partly or wholly from a business venture pursued by himself or his spouse. A business allowance can then be paid out as compensation for the cost of labour that occurs if a special work force must be employed to replace the labour of the qualified individual during his tour of duty. A business allowance can only be paid out if the labour cost is reasonable and only if the cost exceeds normal expenditures of the business venture.

Finally it should also be mentioned that a family allowance may be paid out in the form of a burial allowance. Such an allowance is paid out if the family payment has been approved for a spouse or a child, and the spouse or the child dies during the tour of duty. A burial allowance may also be paid out even if, according to investigated need, a family payment has not been approved. Burial allowance is paid out in the amount of 8 000 SEK for a spouse and 4 000 SEK for a child.

8 The Family Concept in Swedish Legal Statutes

As may be evident from the descriptions above, one repeated question occurs in all the different benefit types available to families. This question concerns the different criteria that must be fulfilled in order for a family to be considered as existing. The question of which constellations of cohabitation that shall be considered constituting a family has been discussed for a long time. Among the sources for this *discussion can be mentioned Anders Agell's article from 1989 Familjebegrepp och lagstiftningsideologi i svensk rätt*.¹³ Other material contributing to the debate are Aulis Aarnio's *Äktenskapet som avtal* and Gudrun Nordborg's *Äktenskapet som könskontrakt*.¹⁴ However, the sociological or gender aspects of the family concept shall not be discussed in this article. Rather, what will be attempted here is to exemplify the requirements needed according to the Swedish legal statutes for a family to be considered to exist. To begin with, Swedish legal statutes do not include a uniform definition of the term family. The term is almost non-existent in the statutory text and when it appears in different contexts in family policy statutes, the term family is not clearly defined. In some contexts the term household or household community is used but neither of these terms is clearly defined. The term family can be defined both as a narrow unit and a larger group of people than those making up a household community. A household can consist of persons who do not belong to the same family and a family may include persons who do not have a common household.

In cases that where the statute includes the term family, the term does not normally have a legal significance. Thus, 1 chap. 2 § of the Marriage Code states that spouses jointly shall work in the best interest of the family, but this target statement is aimed at the internal spousal relationship and entails, among other things, that both spouses shall take responsibility for household duties and childcare. Thus the definition of family has no wider legal significance and there are no applicable legal sanctions available against a spouse who does not fulfil his or her duties according to the present regulations in the Marriage Act. In most other contexts where the term family is used in the statutes, the situation is the same, i.e., the term lacks legal significance.

However, in some cases, the family term in the statutory text is given a more independent meaning. In the Parental Code, the term family is used in two places, 13 chap. 4 § and 14 chap. 4 §. In connection with the rules regarding the

¹³ Agell, *Familjebegrepp och lagstiftningsideologi i svensk rätt*. I: Festskrift till Armann Snævarr.

¹⁴ Aarnio's and Nordborg's contributions are published in the anthology *Utvecklingslinjer inom avtalsrätten* edited by Claes Sandgren.

management of a minor's property and the parental, respectively the appointed guardian's responsibility to sell the minor's personal property, it is stated that objects with a special value to the minor or his family may be exempt from being sold. Next to the question regarding what property can be exempted from being sold, it is obviously of interest to determine what definition the term family ought to have in this context. The legislative history¹⁵ of the Parental Code does not define what persons shall be counted as being part of the minor's family; however according to the doctrine that has developed, such persons have been included as family who are dependent on the minor for their well being.¹⁶ Such a definition may seem natural if the intention is to retain property that can contribute to the minor's or his family's upkeep. The definition becomes more difficult if such property that has an affectionate value for the minor or his family shall also be exempted from sale. Should this mean going outside of the circle of people dependent on the debtor for their upkeep and expanding the family circle to encompass also other persons?

Another place in the statutory text where the term family is given an independent meaning is 5 chap. 2 § of the Enforcement Code. The statute, which regulates the amount a debtor may withhold during the execution of property, states that the provisional amount shall also include the family's needs. In this context, the term family includes not only the debtor's spouse and own children, but also foster children and spouse's children. A man or a woman with whom the debtor permanently cohabits in a marriage-like way is treated the same as a spouse.¹⁷ Thus, this definition of family goes further than that of traditional civil law, but at the same time it is narrower, in that it does not include biological family members such as, for example, siblings who live together with the debtor.

The problem in Swedish legislation and legal application has not concerned so much whether or not a man and a woman living together, who have or have had children in common or have been married to each other, should be considered as married. Within most of the social benefit types, these forms of cohabitation have been treated the same as marriage. Occasionally, however, the requirement of a formal marriage has been raised, as for example, in the earlier regulations regarding widow's pension paid out from the public supplemental pension plan. Instead, the decisive dividing line has been whether or not a man and a woman who live together without being married to each other and have or do not have had children together should be treated as a married couple. Generally the distinction has been that, in order to receive social benefits, those living together have been regarded as married, while legislation and the legal application have been more restrictive in treating those living together as married with regard to their internal responsibilities.

The Social Political Co-ordination Commission presented in its report, SOU 1979:94 *En allmän socialförsäkring* (A Public Social Welfare Insurance Plan),

¹⁵ The issue was not mentioned in prop. 1993/34:251 with a proposal for new statutes in the Parental Code on legal guardianship. The family term was not discussed in prop. 1949:63 with a proposal to a Parental Code and not either in the inheritance expert panels proposal for a Parental Code in SOU 1949:69.

¹⁶ Walin, *Föräldrabalken och internationell föräldrarätt*, 4 u., p. 348.

¹⁷ Gregow, *Utsökningsrätt*, 3 u., p. 92.

certain fundamental points of view where cohabitation relations shall be considered equal to marriage. According to the Commission, the main rule should be to treat as married a man and a woman who continuously live together if previously married to each other, or have or have had children in common. According to the Social Political Co-ordination Commission, a supplement could be added to the main rule concerning unmarried cohabitants who are expecting a child together. Finally, the Commission proposed to treat on a par with married couples a man and a woman who continuously live together under marriage-like circumstances. According to the Commission, the circumstances of the cohabitation should be judged according to the permanence of the relationship, the presence of a common residence and economic housekeeping as well as common current care for children. The Commission realised that the last supplemental rule might create certain application problems, but still saw such aspects as predominantly positive as increased neutrality in different forms of cohabitation and easier adaptation to changed family patterns. The Social Political Co-ordination Commission found that for reasons of fairness, the cohabitants themselves could not be given the choice of whether or not they were to be considered as married. The reason for this was the risk that the freedom of choice would be exploited to attain the most favourable assessment in terms of benefits. For this reason the Commission chose to propose that in his or her application for various family-related benefits, the applicant be responsible for providing information regarding his or her living arrangements. In the application, the individual should state his or her marital or cohabitation status and whether cohabitation was covered by the main rule or by any of the supplemental rules. The Commission's proposal has still not led to a common effort to bring about a major change of the cohabitation concept in Swedish legislation.

Instead, current legislation can now be said to present a fragmented picture. The tax statutes apply neutrality in so far as a person is taxed the same regardless of whether he is single, co-habitats or is married. Exceptions from this neutrality principle are few and most often occur in wealth taxation or when one spouse works in the other spouse's business firm. According to the Marriage Code, each spouse disposes of his or her property and answers to his or her debts. The Marriage Code also implies that spouses are mutually responsible for household support. The spouses shall, each to the best of their ability, contribute to the necessary upkeep of the household. A spouse who neglects his or her obligation can be adjudged by a court to pay alimony to the other spouse. Even if the internal upkeep between spouses is not without limits, and normally ceases in connection with dissolution of the marriage, it is a noticeable fact that a corresponding responsibility to provide for a cohabiting partner can not be imposed on those who are not married.

As concerns homosexuals that live together, the Registered Partnership Act (1994:1117) provides the possibility of attaining largely the same legal effects as those that follow with marriage. However, homosexual co-habitants may not, alone or together, adopt children. Through a long list of references in the Homosexual Cohabitees Act (1987:813), legislation regarding cohabitation shall also be applicable, in a number of regulations, to those living together in a homosexual relationship. However, homosexual co-habitants are normally not

covered by the term co-habitant in the social benefit statutes, with the exception of the regulation regarding benefits for military service personnel, where it is expressly stated that the regulations regarding a *spouse* also apply to a co-habitant *of the same or opposite sex* (my italics).

In this context the maintenance responsibility to the child of a spouse or co-habitant, stated in the Parental Code, is in practice very limited in this context. In the first place it is the responsibility of the biological parents to support the child. In addition this, the child is entitled to maintenance support if the maintenance allowance paid by the support-obligated parent does not reach the level of the maintenance support. Consequently, the stepparent's maintenance obligation usually pertains to the level above the maintenance support. The stepparent's maintenance obligation also presupposes that he or she lives together with both the child and the child's guardian.

With regard to benefits to children, a reminder is in place about the existing situation regarding the right to multiple child supplement, respectively the right to maintenance support. The multiple child supplement can be paid out for children that are not related to each other. These children, who in this regard are treated as siblings and entitled to the multiple child supplement, are at the same time, in the maintenance context, regarded as living together with only one parent, and are thus entitled to both maintenance allowance from the non-present parent and to maintenance support, a benefit intended to be paid out to children who live together with only one parent. As has been mentioned above, it is not even necessary for the children entitled to the multiple child supplement to live together with each other or with the parents that collect the supplement. Since the intended purpose of the multiple child supplement is to provide an extra support to families with multiple children, one might consider the family concept in this case to be very watered down.

The main rule presented above, that maintenance responsibility does not exist outside of marriage, is however not without exception. In the application of the rules of the Enforcement Code regarding execution and collection, two co-habitants are viewed as one economic entity. This view implies that even if one co-habitant cannot be made responsible for the payment of the other's debts, the Enforcement Code presupposes that the debtor's co-habitant will provide for him or her, and also for the debtor's co-habitant children, even though no such civil law support responsibility exists. In the same way the Supreme Administrative Court has held that the right to benefits according to the Social Services Act (1980:620) shall be applied using the economic resources of both the applicant and the co-habitant.¹⁸ In this matter the Supreme Administrative Court has not established any special conditions for such a maintenance obligation to exist, for instance, that the co-habitants must have or have had a child in common or that they have previously been married to each other.

As has been mentioned above, a doubtful evidentiary rule has been introduced concerning the right to a housing allowance. It implies that if a man and a woman live together without being married and have or have had a child in common or are registered at the same address, they shall be considered as married. Apart from the fact that the rule's construction is questionable, it

¹⁸ Supreme Administrative Court Reports 1985 2:1 RÅ 1986: 6.

implies, in the present circumstance, that a person who is a co-habitant has a responsibility for the partner's housing costs but also, indirectly, for his or her overall living expenses. With regard to the housing allowance for households with children, this increases the indirect upkeep responsibility to include also the partner's other children.

The conclusion drawn is that the legislator and the lawmaker increasingly favour a neutral approach to the different forms of cohabitation. Such neutrality is primarily evident in that those who live together outside of marriage are treated the same as those who are married. Problems can however arise in determining social benefits where those who live together outside of marriage may have an interest in denying cohabitation in order to qualify for the benefit or receive a larger allowance. Another issue concerns whether those living together shall be held responsible for each other's welfare. The co-habitants may have separate economies and may have consciously chosen not to enter into marriage in order to indicate their independence and self-sufficiency. In such a circumstance it does not appear wise that society should force on them a maintenance obligation and an internal responsibility that they have sought to avoid. The effort to find a uniform family concept that fulfils both the interests of society and individual persons in different situations seems very difficult to realise.