

Making child maintenance regimes work

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Contents

	Acknowledgements	7
<i>chapter one</i>	Introduction	9
	Previous research on child maintenance in Europe	10
	The scope of the project	11
<i>chapter two</i>	A variety of regimes: overview of developments and structures	13
	The obligation to support children	13
	Lone parents in Europe	14
	General structural arrangements in child maintenance regimes	16
	Money transfers and enforcement	21
	Discussion	22
<i>chapter three</i>	Deciding the amount of child maintenance due	24
	Rules and discretion	24
	The beneficiary	24
	Taking account of parents' resources	26
	Formulae and tables	28
	Outcome of maintenance determination	30
	Discussion	36
<i>chapter four</i>	Payment and receipt of maintenance	38
	Making payments	38
	Dealing with non-payment	39
	Levels of compliance with payment	40
	Discussion	42
	Advanced maintenance schemes	42
	Child maintenance within child support 'packages'	46
	Revising child maintenance liabilities	48
<i>chapter five</i>	Appraisal	50
	Research conducted and policy debate	50
	In search of a child maintenance regime which 'works' well	54

<i>chapter six</i>	Developing UK policy 58
	Who makes decisions? 58
	The beneficiary 59
	Rules versus discretion 59
	Maintenance, contact and shared care 60
	The risk of harm 60
	Second families 60
	'Advance' maintenance schemes 60
	Compliance with payments 61
	Final comment 61
<i>appendix 1</i>	Research methods 62
<i>appendix 2</i>	List of national informants 65
<i>appendix 3</i>	Summaries of child maintenance regimes 66
<i>appendix 4</i>	Comparison of the value of advanced maintenance to lone parents in Denmark, Finland, Germany and Sweden 77
	References 78

List of tables

<i>Table 2.1</i>	Lone parents, and key demographic indicators in 10 European countries 15
<i>Table 2.2</i>	Patterns of paid employment among lone parents in 10 European countries 15
<i>Table 2.3</i>	Child maintenance regimes: an overview 16
<i>Table 3.1</i>	Formal determination of child maintenance: a summary of the main features in 10 European countries 25
<i>Table 4.1</i>	Dealing with default in maintenance payments or money owed to public authorities 39
<i>Table 4.2</i>	Characteristics of ‘advance’ maintenance schemes 43
<i>Table 4.3</i>	Child maintenance and taxation 47
<i>Table 4.4</i>	Revising child maintenance determinations 49
<i>Table 5.1</i>	Comparison of how well child maintenance regimes work in 10 European countries 56
<i>Table A3.1</i>	Determination of liability (Austria) 66
<i>Table A3.2</i>	Determination of liability (Denmark) 68
<i>Table A3.3</i>	Düsseldorf Table, valid from July 1996 70
<i>Table A3.4</i>	Determination of liability (Norway) 72
<i>Table A4.1</i>	Comparison of amounts paid in advance maintenance schemes to lone-parent families in four European countries, May 1996 77

List of figures

- Figure 3.1* **Comparison of formal maintenance liabilities: unmarried parents with one child of 2 years; non-resident father with average earning, 1997** 33
- Figure 3.2* **Comparison of formal maintenance liabilities: divorcing parents with two children aged 5 and 9 years; non-resident father with one and a half average earnings, resident parent with half the average part-time earnings, 1997** 34
- Figure 3.3* **Comparison of formal maintenance liabilities: unmarried parents with a child of 4 years; resident parent with less than half the average earnings; non-resident father with average earnings, with 'new' family, 1997** 36
- Figure 4.1* **Relative values of advance maintenance, 1997** 45

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1

Introduction

The breakdown of marriage or cohabitation in families with children means, in most countries, a high risk of financial problems for the parent with whom the children continue to live, usually the mother. Similar problems are faced by women who have never lived with their children's father, and in some countries lone parenthood carries a high likelihood of poverty and deprivation (see Lewis, 1997). For some women, financial tensions are reduced when they find a new working partner, especially if they are themselves working in paid jobs (Ford *et al.*, 1998). For those who continue to bring up their children on their own, paid work is usually the most effective route out of poverty. Those who cannot work, or want to be at home with their children, must rely on financial support available from the other parent or the state. Many lone parents manage on a package of support which combines earnings, child maintenance and social security benefits.

Different countries show different patterns of repartnering, labour market participation and dependence on state support of lone parents. The reasons for the different 'mixes' are complex, including demographic and family change, economic factors and government policies in the field of family support and social security (Bradshaw *et al.*, 1996). Debate about the financial problems of lone parents has often been directed towards finding solutions in the route to employment, or improvement of social security benefits for children and lone parents. In the UK, the debate and policy initiatives have, until recently, attached much less significance to the other strand of financial support, child maintenance.

Until the 1990s, the child maintenance system operated through different tiers of courts, and the offices of the Department of Social Security. Decisions about maintenance were based largely on discretion. The previous government argued (Department of Social Security, 1990) that this regime was fragmented, uncertain and ineffective. Levels of non-payment were high. The government wanted to establish the principle that non-resident parents must be held to financial account and pay as much as they are able for the continuing support of their children. An important policy aim for that government was to reduce the cost to the public purse of the support of lone-parent families

through social security benefits, both by recouping money paid out in benefits, and, through more reliable child maintenance arrangements, by enabling more lone parents to work. It was hoped to achieve these goals with the launch of a new Child Support Agency in 1991.

The UK Child Support Agency has been unsuccessful on almost all counts. There has been a range of administrative inefficiency and failures (House of Commons, 1994; 1996a; 1996b) and little extra money is passing to parents for the care of their children. There is widespread non-compliance with payment among non-resident parents. Those parents who are better-off are seeking ways of avoiding involvement; and the Agency attracts criticism from parents, politicians, academics, lawyers and organisations which represent parents and children (see Bennett, 1997; Davis *et al.*, 1998). The current government is committed to reform of the child support scheme, but does not propose a return to the courts for child maintenance determination and enforcement (Department of Social Security, 1998a).

The Child Support Act, 1991 was hurriedly introduced and there was little public discussion about possible alternative schemes. The Act itself drew on experience in the USA and Australia, and some of the subsequent amendments and reforms have also drawn on experience from the English-speaking nations (Barnes *et al.*, 1998). We might expect the UK to look first at western democratic countries within the same lineage in terms of legal systems. Affinities within the Anglo-American common law countries, in terms of historical background, legal constructs and institutions, and ideology means that comparisons of family law and children's rights in these countries may at first sight seem easier and more meaningful than comparisons with the situation in nations that belong to the continental European civil law lineage. Also, there were similarities between lone-parent populations in the UK and Australia during the 1980s. Barnes *et al.* (1998), however, suggest that there was no formal, systematic basis for selection of the countries studied, at this stage.

There may be much to learn from the experience of child maintenance schemes in Europe. Comparative research on lone parents in Europe (Bradshaw *et al.*, 1996) suggests that child maintenance rarely provides a significant regular income for lone parents, and many

countries share problems of non-compliance and inability to pay. However, there are different models of determination of liability and entitlement, and a variety of judicial and administrative arrangements, including schemes which 'advance' payment of at least a portion of the maintenance due, whether or not the liable parent makes regular payments. In some European countries the general expectation is that parents should take the main responsibility themselves in working out appropriate and acceptable child maintenance arrangements. It also appears that, in some countries, the child maintenance scheme does not attract the same levels of hostility and criticism as in the UK.

The aim of the research reported here is to contribute to the UK policy debate about the child support scheme by providing perspectives from selected European countries.

Previous research on child maintenance in Europe

There is increasing recognition of the opportunities for greater understanding through cross-national research in the social sciences, along with awareness of some of the pitfalls (Hantrais and Mangen, 1996). There are a number of approaches to the development of effective methodologies (Eardley *et al.*, 1996a). A study of child maintenance schemes poses particular methodological problems, in that, as Maclean (1994) points out, the topic lies at the intersection of law and social policy. Achieving meaningful comparisons between countries involves a search for equivalence in terms and concepts across two disciplines in each country. This is bound to compound the problems involved in collecting appropriate data, and in analysing the patterns and typologies within the cultural diversity among the countries represented. Even if valid comparisons of current public policies can be achieved, understanding the reasons for similarities and differences between systems requires exploration of historical and cultural context (Castles, 1993). This is likely to be of particular importance in the area of child maintenance, where cultural values such as family and parental responsibilities, religious influence, and attitudes to sexual behaviour have all played a part (Barnes *et al.*, 1998).

There have been few attempts so far to provide comparative analysis of child maintenance schemes across a number of European countries. Dopffel and Buchhofer (1983) reviewed child support schemes in 12 European countries for German legislative purposes, and Dopffel (1988) updated some of that material for a comparative review of general trends in European countries. Among the patterns Dopffel noted was that despite the trends towards equal rights for all children, inequalities in entitlements to maintenance remained in some countries according to whether or not the child

was born within wedlock. In the early 1980s, in most European countries, decisions about child maintenance lay within the jurisdiction of the courts, and were made on the basis of considerations of parental means, or needs of the child (or both). Dopffel noted a trend towards direct enforcement procedures including attachment of earnings, as the preferred method of enforcement of payment, rather than criminal sanctions for non-support. At the same time, he found a trend towards a societal 'guarantee' of child support, even when liabilities were not being met.

Bradshaw *et al.* (1996) conducted comparative research on policy for lone parents and their employment, including 16 European countries. Their analysis went beyond structural and administrative features to consider the detailed interactions of child maintenance with tax and social security systems, and to consider possible effects on work incentives which might help explain some of the variation in work participation among lone parents in different countries. It proved hard to deal with child maintenance in the quantitative modelling approach because there were problems in presenting standardised data when entitlements were based on discretionary decision-making, or when levels of compliance with payment were unknown.

Further comparative data comes from a recent study of family obligations in 16 European countries (Millar and Warman, 1996) which showed the patterns of regulation of divorce and judicial separation, and explained the obligations of parents for financial support of children after divorce. The authors commented on the scope that now exists for parents to come to their own agreements about financial arrangements for children, with ratification by the courts. When decisions were made by courts or administrative authorities, some countries relied on standard rules or guidelines, while in others each case was dealt with on the basis of discretion. Millar and Warman confirmed that 9 of the 16 European countries studied had some form of 'guaranteed' maintenance payment.

Smaller comparative studies of schemes in one or two other countries alongside the UK have been conducted by Skevik (1998: Norway), and Archbold and Xanthaki (1996: France and Germany). There are also a number of publications in English, describing schemes in individual European countries for example, Filler (1998: Austria); Hobson and Takahashi (1997: Sweden); Hopf (1988: Austria); Knudsen (1988: Denmark); Koch-Nielsen (1996: Denmark); Koren (1998: Norway); Maddens and van Houtte (1992: Belgium); Wiebrens (1988: the Netherlands); Willenbacher and Voegeli (1992: Germany).

A recent review of UK child support policy (Barnes *et al.*, 1998) compares key features of child support systems in eight overseas countries, including Norway, Sweden, France, Germany, Austria and the Netherlands, and looks for lessons which can be learnt in the development of the UK child maintenance scheme.

The scope of the project

It was decided to focus on countries in northern and western Europe which had well-established child maintenance schemes. Apparently few lone mothers in Italy or Portugal receive significant amounts of child maintenance; nor are there official public authorities for collecting child maintenance, which is true also of Greece and Spain (Bradshaw *et al.*, 1996). These four southern European countries were therefore not included in this study. It was important to include some countries whose economic development had reached a similar stage as the UK, such as France and Germany. The composition and characteristics of the populations of resident parents were also considered, for example Norway, Sweden and Austria all have high proportions of single women among their lone parents, whereas Belgium has a high proportion of divorced and separated women. It was important that different patterns of employment among parents, and different types of welfare state were also represented. Denmark has a child maintenance scheme which has been relatively unchanged for many years, whereas there have been major structural and administrative changes in recent years in the schemes in Norway, Sweden and the Netherlands. The Netherlands, along with UK, has no maintenance guarantee scheme. On the basis of these similarities and differences between countries, and the opportunities they provided for learning about different approaches, the countries included in this study were Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden and the UK.

The enquiry was concerned with the child maintenance regime in each country, meaning the overall system under which parents meet their financial liabilities in respect of children with whom they do not live. These financial obligations arise when parents live apart following divorce or separation, or when parents have never lived together. The study was primarily about schemes for regular payments of financial support for children. There are, of course, a number of other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump-sum payments, transfers of property, assets and pension rights. In order to focus the analysis, the study was concerned with these other forms of support only in so far as they affect child maintenance. (It was recognised that it can be hard to make distinctions between parents' and children's components within some forms of support, for example transfer of a family home.) The study was further focused on maintenance arrangements for children living at home with a parent, thus excluding those children whom state authorities maintain in children's homes or other institutions.

The aim was to seek information from each country about the history of the current child maintenance scheme, the general objectives, and the cultural and

policy context. Detailed information was sought about the determination of liabilities and entitlements; procedural aspects of collection and enforcement, and implications of non-compliance. The study sought to investigate the financial effects for parents of receipts and payments of maintenance, and details of schemes to 'guarantee' or 'advance' child maintenance from public funds. Evidence was sought about attitudes to the scheme, any behavioural consequences, and views on the future development of policy in this area.

The scope of the enquiry was thus fairly broad, while encompassing fine levels of detail in respect of the operation of guidelines or formulae for determination of maintenance. The data were collected from a network of national informants, who each provided material about their own country in response to a standard questionnaire designed by the researcher. At the same time, the informants responded to three vignettes – short stories about the characteristics and circumstances of three sets of parents and children, for whom child maintenance determinations might be appropriate. The informants were asked to 'complete the story' in each case, suggesting eventually amounts of child maintenance that might be awarded. The vignette technique was an exploratory attempt to address some of the problems previously experienced by the author in the collection of quantitative data about child maintenance (Bradshaw *et al.*, 1996). The national informants conducted the work during the last three months of 1997, and the information presented relates to the situation in October 1997 unless otherwise stated.

Appendix 1 gives further information about the methods used in the research, including the full text of the three vignettes used in the study. Appendix 2 lists the national informants. Summaries of individual country's child maintenance regimes are presented in Appendix 3. In Appendix 4 are selected findings about child maintenance from previous research conducted by the University of York.

The national informants provided a large amount of material for study, and it is possible to present only part of it here. The analysis has been focused in order to provide pointers for future UK policy development. The informants have been invited to validate and comment on the report, but responsibility for interpretation and any factual errors remains with the author.

The structure of the report reflects the components of a child maintenance regime:

- determination of entitlement and liability
- arrangements for payment or collection
- arrangements for enforcement in cases of non-compliance
- arrangements to 'advance' maintenance from public funds (in some countries)
- opportunities for revision and appeal.

Thus, Chapter Two provides some of the historical and legal background that helps to explain current approaches to obligations for child maintenance in the countries studied. There is an overview of structural and administrative features of the different regimes. The underlying principles in determining entitlements, and the way in which discretionary decisions, formulae and guidelines are used to determine amounts due are explored in Chapter Three, with a comparison of likely outcomes, in terms of amounts of maintenance awarded. Chapter Four is concerned with procedures for payment or collection; compliance with payments and enforcement of liabilities when parents default. Most countries studied incorporate some scheme by which at least a proportion of the entitlement is guaranteed by the state. Such schemes are usually linked with or overlap child maintenance collection, and are included in the discussion. Chapter Four ends by describing arrangements for revision of determinations. The report does not include details of the process of appeal: it was decided that comparison of legal complexities of appeal

mechanisms required a separate study. Recent research in the UK by Davis *et al.* (1998) has focused on the redress of grievance in the Child Support Agency's system of internal reviews, and the child support appeal tribunals.

Chapter Five explores further the advantages, opportunities and problems associated with doing things in different ways. Looking at the research and current policy debate in each country shows which aspects have received attention and which are controversial. The chapter draws on the views and observations of a number of key actors in a child maintenance regime: resident parents (those with whom the children live), non-resident parents, policy-makers, lawyers and campaigning groups and describes a method of comparing the overall performance of the various regimes. The final chapter summarises the key findings that provide pointers for the direction of policy reform in the UK, and reconstruction of a child maintenance regime that 'works'.

2

A variety of regimes: overview of developments and structures

This chapter presents an overview of the various child maintenance regimes studied. The first part explains important aspects of the legal and historical background to the obligations of parents to support their children. The next part describes lone-parent populations in the different countries. The current regime in the UK was developed largely as a policy response to the numbers of lone parents dependent on social assistance. The chapter then goes on to describe the general structural arrangements in the various child maintenance regimes.

The obligation to support children

Parents who have married

In general, in all European countries, parents who are married to each other are legally bound to support their natural children and their adopted children. Married parents share the responsibility for financial support, along with other rights and responsibilities of parenthood, including custody and day-to-day care. This duty of parental support is set out clearly within civil law in those countries in continental Europe whose legal concepts arose originally from Roman law doctrines. In France and Germany, for example, according to the respective civil law, relations have a general duty to support each other, and parents must support their children, a duty which extends to ensuring provision of education. In Belgium, Austria and the Netherlands the legal basis is similar – parents must provide for their children. In the Nordic countries the obligations of parents to support their children were stated in the recodification of family law in the early part of this century.

The body of English family law derived from common law is complex, and while there is general agreement that fathers and mothers have a duty to support their children, obligations are not set out plainly in this way. In the public law domain there are statements of liabilities of parents to support their children within social security law.

In all countries, married parents' duty of support

for their children continues after divorce or separation. The rights and responsibilities of parents regarding custody and care may change after divorce or separation (see Millar and Warman, 1996; Dopffel, 1988) but the same general obligation to provide support remains. Alongside legal constructs of parental responsibilities and duty of support, European legislation regulating relationships between parents and children has increasingly incorporated concepts of children's rights (Therborn, 1993). The Nordic countries have been at the forefront of these developments, as we see later. In Norway and Finland, especially, there is emphasis on the child's right to maintenance.

Parents who have not married

Turning to the obligations of unmarried parents towards their children, in each of the European countries studied all mothers have the same rights and responsibilities to their children, whether or not they are married to the other parent. The same is not true of fathers. At the beginning of this century there were sharp distinctions in all countries between the rights and responsibilities of fathers, depending on whether their children were considered 'legitimate' or 'illegitimate'. Since then there have been major developments towards equal rights for all children, regardless of parents' marital status. Norway and Sweden were the first countries to introduce specific legal formulations of equal parental obligations to children and to establish, as early as 1915, the 'best interests of the child' as the main criterion for custody determination. Children born outside marriage were included within this new approach. But this trend has gone further in some countries than in others (Therborn, 1993).

Current differences which remain are seen mainly in the ways in which unmarried fathers and mothers may share guardianship and custody, the legal relationships between fathers and non-marital children, and inheritance issues (Millar and Warman, 1996). Here, we are concerned with the obligation to provide support. Effectively, in all countries, once paternity has been established, a father

has an obligation to provide support for his children. Developments in legal approaches to the establishment of paternity, what Therborn calls 'the right to a father' have themselves been important in the development of different forms of child maintenance schemes. Therborn provides an historical account of approaches to paternity in European countries. Lefaucheur (1995) also argues that, from an early stage in European history, different kinds of public response to the problem of what to do about 'fatherless children' in societies based on the institutionalisation of marriage have shaped the development of forms of public support, including the regulation of child maintenance.

An historical perspective

A full historical analysis was beyond the scope of this study, but it is useful to trace some of the main influences on the shape of regimes as they have developed during this century.

Systems of public payments which originally developed in response to the poverty and need for support of 'illegitimate' or 'fatherless' families, or families with children 'abandoned' by male breadwinners, were thrown into the spotlight by increases in numbers of lone-parent families, and changes in the composition of lone-parent populations. At the same time, the increasing availability of divorce, and development of different kinds of divorce and judicial separation (for example, divorce by mutual consent), brought greater attention to bear on the financial arrangements made for the children involved.

Developments towards equal rights for all children, regardless of parents' marital status meant, in some countries, initiatives to integrate, or achieve greater consistency between, public arrangements for non-marital children and children whose financial provision was the outcome of divorce proceedings. The regimes which emerged increasingly had to fit the circumstances of children of non-married parents who had previously lived together, and to take account of the circumstances of children in different kinds of reconstituted families.

Problems in dealing with increased numbers and changing family patterns became apparent in a number of the countries studied. There was some sharing of information and ideas about what steps might be taken among those countries which belonged to the European Community. In addition, in 1982 the Council of Europe adopted a recommendation (R(82)2) entitled 'Payment by the State of Advances on Child Maintenance' which recommended that governments adopted systems to 'advance' payments of maintenance when a parent failed to comply with their obligations. There has been some convergence in regimes among countries who belong to the two European bodies, a membership which provides an ongoing means of sharing information and seeking solutions to problems (Brown, 1998).

The 'footprints' from the past can still be clearly seen in some countries, however, and remind us of the importance of historical and cultural contexts in comparing current policies in different countries. For example, the influence of the French Code Napoleon of 1804 – 'The search for paternity is forbidden' (section 340) – was influential in restricting for a long time the possibility of paternity proceedings in France, Belgium and the Netherlands, which in turn has had some influence on the development of child maintenance regimes. The *Regelunterhalt*, introduced for non-marital children in Federal Germany in 1969, has persisted through subsequent developments and extensions of access to child maintenance in Germany.

Also influential in shaping current regimes were the changes in the role of women and their large-scale entry into the labour force. This has acted to sharpen the focus on **children** rather than on lone-parent families (Kammerman and Kahn, 1983), as there are increasing assumptions that most women will work and support themselves, but their earnings may not cover the costs of a child as well.

The earliest systems of advanced maintenance emerged in Scandinavia. Denmark introduced a standardised basic child maintenance in 1888 as a form of public payment of advance support for illegitimate children, and this was extended to all children in 1908. A child maintenance advance scheme was established in Sweden in 1937, available to children of both non-married and divorced women. By 1969, Germany had a system of 'regular support' for non-marital children (according to Dopffel, 1988, this was influenced by the scheme established in Denmark), and this was extended later as a general minimum. Both Finland and Norway had forms of advanced maintenance schemes not long after the Second World War; Austria followed in 1976, and France and Belgium in the 1980s.

Lone parents in Europe

The current child maintenance regime in the UK was developed largely in response to the growing numbers of lone parents claiming income support, most of them women. Table 2.1 brings together data from a number of sources, to compare the lone-parent populations in the countries studied, and key indicators of family formation including births outside marriage, divorce rates and cohabitation patterns.

Table 2.1 shows that in all countries, children whose parents do not live together live with their mothers more often than with their fathers. Most parents who are liable to pay child maintenance are men. This table also shows that most lone mothers were previously married. Thus, determination of child maintenance now is more often associated with the process of divorce or separation, than with the birth of a child to a single woman. This is less marked in Austria, Norway and

Table 2.1 Lone parents and key demographic indicators in 10 European countries

	Lone parent families as proportion of all families 1994 (1)	Lone parents as proportion of all families with dependent children (2)	Lone fathers as a proportion of lone parents (2)	Percentages of different types of lone mothers who are: (3)				Live births outside marriage as percentage of live births 1995 (4)	Total divorce rate 1995 (5)	Cohabiting couple households as a proportion of households with children under 16 years (1)
				single	separated	divorced	widowed			
Austria	n/a	15 (1993)	12 (1993)	49	19*	32	-	27.4	0.38	n/a
Belgium	13.7	11 (1992)	12 (1992)	12	40	40	9	15.0	0.55	8.1
Denmark	18.8	19 (1990)	13 (1990)	25	22	45	8	46.5	0.41	22.2
Finland	n/a	16 (1993)	13 (1993)	25	14	48	7	33.1	0.49	n/a
Germany	12.5	19 (1992)	16 (1992)	23	9	38	30	16.1	0.33	4.4
France	13.0	12 (1990)	14 (1990)	23	15	43	19	37.2	0.38	14.0
Netherlands	10.0	16 (1992)	15 (1992)	17	9	45	29	15.5	0.37	n/a
Norway	n/a	21 (1993)	9 (1991)	43	15	37	6	n/a	n/a	n/a
Sweden	n/a	18 (1990)	15 (1990)	46	9	41	4	53.0	0.52	n/a
UK	19.6	21 (1992)	9 (1991)	39	22	34	5	33.6	0.45	7.4

Notes: * includes widows n/a, data not available

(1) Source: European Community Household Panel Survey 1994, Table 1.17b Ditch *et al.* (1998)

(2) Source: Bradshaw *et al.* (1996) various national sources

(3) Dates and sources as for 2, updated in ongoing work

(4) Eurostat 1997 Table E-4

(5) Eurostat 1997 Table F-19 and F-20. Total divorce rate is the proportion of marriages that would end in divorce, assuming current rates

Sweden, where numbers of single lone mothers approach the numbers of separated or divorced women. It is important to remember, however, that rates of cohabitation without marriage are probably increasing in all countries, such that some of the women shown as single lone mothers in Table 2.1 were originally living with the fathers of their children before relationship breakdown. Cohabitation is hard to compare across countries, because it is largely unregulated, and regarded as a private matter (Ditch *et al.*, 1996). The data about cohabiting couple households presented in the table must therefore be regarded with some caution.

One of the aims of the new child maintenance regime in the UK was to make it easier for lone parents to do paid work (because they would be able to rely on regular child maintenance payments as additional income). Table 2.2 compares patterns of paid work among lone parents in the 10 countries studied. The UK has lower proportions of lone parents in full-time work (and lower proportions of lone parents in any work) than most other countries, while having the highest proportion of lone parents in receipt of social assistance. Only the Netherlands has similarly low levels of paid employment among lone mothers. There, however, a smaller proportion of lone parents depend on social assistance than in the UK.

In 1992, 70 per cent of lone parents in the UK stood to gain nothing financially from child maintenance, even if paid regularly, as all maintenance received was taken

Table 2.2 Patterns of paid employment among lone parents in 10 European countries

	Proportion of lone mothers who are employed	Proportion of lone mothers employed who are employed full-time	Proportion of lone parents receiving social assistance 1992
Austria (1993)	58 ¹	74	n/a
Belgium (1992)	68	76	38 ²
Denmark (1994)	69	86	38
Finland (1993)	65	94	32
Germany (1992)	67	69	10
France (1992)	82	82	37 ³
Netherlands (1994)	40	40	27
Norway (1991)	61	72	n/a
Sweden (1994)	70	59	33 ⁴
UK (1990/92)	42	40	70

Source: Bradshaw *et al.*, 1996, updated in ongoing work

Notes:

1 Excludes 20 per cent of lone mothers who are on parental leave

2 Includes benefits related to sickness or invalidity, unemployment and pensions

3 1993 recipients of Revenue Minimum d'Insertion or Allocation de Parent Isolé; parents of children aged 0-17 years

4 1994 data

n/a data not available

fully into account in assessment of entitlement to social assistance.

Although it is useful to understand these differences in the lone-parent populations in the countries studied, it is also important to remember that many children for whom there are liabilities for child maintenance live in families with two parents, as a result of remarriage or repartnering of the parent with whom they live. The rising cost of lone-parent families in the UK has tended to focus policy debate on child maintenance around lone parents. In November 1997 one in ten of resident parents dealt with by the UK Child Support Agency was living with a new partner. Chapter Four explains what happens to child maintenance entitlements of children who live with a parent who has remarried or found a new partner.

General structural arrangements in child maintenance regimes

This section provides an overview of current child maintenance regimes, in terms of locus of jurisdiction and administrative responsibility, and explains recent changes in the structural organisation and administrative arrangements that have taken place in some countries.

Table 2.3 provides a summary of the different arrangements. We go on to discuss the regimes in greater detail. For purposes of description we start with arrangements for children of divorced and separated parents, and go on to consider any differences in the situations regarding children of parents never married to each other.

Table 2.3 Child maintenance regimes: an overview

Country	Responsibility for divorce proceedings	Determination of child maintenance: in divorce/separation			Different arrangements for children of parents not married to each other	Responsibility for enforcement of payments	'Advanced' maintenance scheme
		by parents	by courts	by agencies			
Austria	courts	yes – ratified by court	yes	no	no	courts and Youth Welfare Office	yes
Belgium	courts	yes – ratified by court	yes	no	no	courts	yes
Denmark	<i>statsamter*</i>	yes – ratified by <i>statsamter</i>	(residual role)	yes – <i>statsamter</i>	no	<i>statsamter</i>	yes
Finland	courts	yes – confirmed by social welfare board	(residual role)	yes – municipal social welfare boards	no	no overall responsibility, but social welfare boards collect what they 'advance'	yes
France	courts	yes – ratified by courts	yes	no *	no	courts (social security administration will assist)	yes
Germany	courts	yes – ratified by courts	yes	no	automatic state guardianship of non-marital children. Involvement of <i>Jugendämter*</i>	<i>Jugendämter</i> and courts	yes
Netherlands	courts	yes – ratified by courts	yes	no	no	<i>LBIO</i> (National Bureau for Recovery of Child Maintenance)	no
Norway	<i>fylkesmann*</i>	yes	(residual role)	yes – local offices of National Insurance Administration	no	Maintenance Contribution Collecting Agency	yes
Sweden	courts	yes	(residual role)	local social security offices assess liability to repay the state	no	courts, and social security administration (Swedish Enforcement Service)	yes
UK	courts	yes – ratified by courts	(residual role)	yes – Child Support Agency	less access to court procedures	courts, and Child Support Agency	no

Note: * the *statsamter* (Denmark) and *fylkesmann* (Norway) are local offices of national government and civil law. The *Jugendämter* (Germany) are local youth authorities

Determining maintenance for children of divorced and separated parents

For many parents, living apart is the first stage in a process that leads eventually to divorce; indeed, in some countries a period of separation may be considered grounds for divorce or evidence that a marriage has broken down irretrievably. There are two forms of judicial separation in France. In Austria and the Nordic countries, there is no judicial recognition of formal separation, as distinct from divorce. In the other countries studied, court proceedings may be used to achieve judicial separations, but these are unusual in the UK, Germany and Denmark. In these countries judicial separation procedures may be as lengthy and expensive as divorce, without offering the finality of divorce. Legal and financial protection to separated spouses can be obtained without going through a judicial separation. In all countries, arrangements for child maintenance during and following separation of married parents are essentially the same as arrangements for children whose parents proceed to divorce. In this chapter, therefore, arrangements described in respect of divorced parents also extend to separated married parents, unless otherwise indicated.

Millar and Warman (1996) describe arrangements for regulating divorce and separation in European countries. In summary, divorce is fairly freely available in Norway, Sweden and Finland, with no grounds required. In the Netherlands, the only ground for divorce or legal separation is the irretrievable breakdown of marriage, and divorce may be requested by both spouses or one. In Germany and the UK the grounds for divorce are the irretrievable breakdown of marriage, proved by a period of separation, or, in the UK, 'facts' of adultery or unreasonable behaviour. Denmark, France, Germany, Austria and Belgium have systems in which some divorces (and increasing proportions) proceed by mutual consent, while some are contested on the grounds of 'fault'. In Denmark probably as few as 10–15 per cent of divorces are now contested (Koch-Nielsen, 1996), and in Austria around 90 per cent of divorces are effected by mutual consent.

Table 2.3 shows that in most of the countries studied divorce proceedings are a matter for the courts. In western Scandinavia, however, divorces are handled mainly by local branches of national government, the *fylkesmann* in Norway and the *statsamter* in Denmark. In Denmark, both divorce and maintenance determination have been dealt with since 1960 by the *statsamter*, the state county representation of the Directorate of Civil Law. There was a similar situation in Norway until 1992, when responsibility for maintenance determination was moved away from the *fylkesmann*. By the 1980s the number of divorces and children born to unmarried parents had increased to the point at which the workload in determining child maintenance had become

unmanageable by the *fylkesmann*. Determinations were time-consuming, and the process was perceived as ineffective, due to a lack of guiding principles. There was some evidence that the use of unlimited discretion led to regional differences in outcomes for children. As part of a major reform of child maintenance, responsibility for determination of maintenance was transferred to the National Insurance Administration (NIA) in 1992, where it is dealt with at the local level. Granting a divorce, however, usually remains the responsibility of the *fylkesmann* and divorces are dealt with in court only in special circumstances, for example bigamy or cases involving serious abuse of partners or children.

In all countries studied, in cases of divorce or separation of married people, paternity disputes that affect child maintenance decisions are rare.

In all countries in which divorces are handled by the courts, the courts also have some role in the formal determination of child maintenance arrangements, either during or ancillary to the divorce proceedings. However, as indicated in Table 2.3, there is now only a residual role for the courts in child maintenance arrangements in the Nordic countries and the UK.

In the UK, the current regime was a response to a political consensus that the previous court-enforced system was failing to provide for children, and that parents' financial liabilities were being met to an undue extent through increased social security expenditure. Major reform began in 1990, and the Child Support Agency (CSA) was established in 1993 as a government executive agency, dedicated solely to determining and enforcing child maintenance. The government's aim was for the courts to retain only a residual role. The courts in the UK make child maintenance decisions:

- to ratify a voluntary agreement between parents, as part of the court's consideration of matters ancillary to divorce/separation, which may be as a 'consent order'
- where there is no CSA jurisdiction, such as maintenance sought for step-children
- where parents seek additional maintenance, if parental income is high
- where parents seek maintenance to meet the expenses of education or training for a trade, profession or vocation
- where parents seek maintenance to meet the additional costs of a child's disability.

Family lawyers are involved, as part of their work in assisting with the financial affairs of divorcing or separating parents. Parents pay legal fees for these services, but can claim Legal Aid if incomes are low. Court-determined liabilities are discretion based. It appears that most local courts take the CSA formula into account, but it is not clear how much weight is attached

to the formula (Deas, 1998). There were 8,882 determinations of child maintenance made under the Matrimonial Causes Act 1973 in the year April–March 1996–97, for those undergoing divorce and separation. The CSA does not keep statistics based on marital status. However, the Agency cleared 357,350 cases in mainland Britain in the year ending March 1997.

In Sweden, only a small minority of maintenance determinations are made by the courts, possibly fewer than 5 per cent. The normal procedure is for parents to come to arrangements themselves, and make a contract which may be ratified by the court. Sweden has a long-established system by which a fixed amount of child maintenance support may be advanced, on application by the resident parent. The social security office then determines the amount of child maintenance support which the non-resident parent owes to the state, using a standard formula. Under this system, the courts are left to determine child maintenance mainly in cases of conflict, or where it would be in the child's interest to petition the court for levels of maintenance higher than available from child maintenance support. When the courts do make decisions, they consider each case individually, but generally use as a starting point a standard formula calculated by the National Board of Health and Welfare, and take into account the child's needs and the resources of both parents.

In the small number of maintenance determinations made by the Norwegian courts, the courts follow the same rules as the NIA. It was believed that in Finland, also, only around 5–6 per cent of decisions about child maintenance for divorcing parents are made by the courts. As in Sweden, it is the responsibility of divorcing parents to make their own arrangements, and the court is usually involved only in cases of conflict.

The courts have a greater role in maintenance determination in cases of divorce or separation in Germany, the Netherlands, France, Belgium and Austria, although procedures may incorporate or build upon preliminary voluntary arrangements made between parents. In Germany, family courts make decisions on all financial matters associated with divorce, but private agreements made prior to court hearings often form the basis for court proceedings about child maintenance. Where there is conflict, or parents' suggestions appear not to reflect their obligations, courts make their own decisions, and standard tables are almost universally adopted, as described in the following chapter. In the Netherlands, the District Court judge must be satisfied that adequate financial arrangements have been made for children before the divorce can proceed. A written voluntary agreement may be passed to the Child Protection Agency for an opinion, but if there is no conflict or dispute, the agreement is likely to be ratified. Where there is disagreement, a decision is made by the court.

In France, Belgium and Austria, judges must ratify all agreements about maintenance between parents who are seeking divorce on grounds of mutual consent. Where there is conflict, or the suggestions made are believed not to be in the child's best interests, and in cases of divorce based on grounds of fault, the judge takes responsibility for deciding child maintenance. In Austria, the child's legal representative (usually a parent) may seek help from the Youth Welfare Office to represent the child's interests.

Voluntary agreements between parents

As is now clear, agreements reached voluntarily by divorcing parents form an important part of some of the regimes described. In the UK, one of the main criticisms of the CSA regime is that it overrides or prevents private arrangements. Parents outside the jurisdiction of the CSA may frame an agreement, with legal advice, which may be considered by the court during proceedings ancillary to divorce, and they may apply for judicial authority for their agreement, as a 'consent order'. The parties to a consent order may not then apply to the CSA for an assessment unless the resident parent claims an income-related benefit; if there is such a claim, the consent order is overridden. It is clear, therefore, that there is limited scope, or motivation, for lower-income parents in the UK to work out child maintenance arrangements together. Parents at income levels high enough to consider a 'consent order' will probably have to pay for the legal advice and court fees, because only people at very low income levels are now entitled to Legal Aid.

The situation is different in other European countries, and it is worth looking at this in greater detail. Where divorce is fairly freely available in the Nordic countries, without any need to prove grounds for divorce, there is an expectation that divorcing parents will take primary responsibility for deciding what happens to their children. During a waiting period, they are expected to use the counselling and advice services available to come to an agreement about arrangements for financial support of their children. Written versions of agreements or 'contracts' are generally preferred by the courts or civil authorities involved in regulating divorce. In Norway, mediation is compulsory for parents seeking divorce, and may include child maintenance arrangements. In Finland the parents' agreement must be confirmed by the social welfare board to be in the child's best interests. There are well-developed systems in these Nordic countries to provide parents with the help and advice necessary in order to reach agreements, and this is available free of charge. In Finland, for example, parents can seek free advice from the municipal child welfare supervisor, from the court-based divorce mediator, or from municipal agencies offering legal help. Parents who need to seek additional legal

advice from lawyers may apply for legal aid to meet the fees, as in all the Nordic countries.

In the Netherlands, where divorce is also available on request, parents increasingly try to work out their own arrangements for children, with lawyers, help from family and friends, or counsellors. There is growing interest in the process of mediation, with an increasing number of solicitors specialising in divorce mediation. However, the cost of a specialist mediator is high, and many couples cannot afford the additional expense. Most parents still divorce with the aid of two solicitors, for which legal aid may be claimed. Within this system, where the court requires a written 'contract' of agreement, but advice and help in framing an agreement is not freely available, there is not the same level of expectation as in the Nordic countries that parents will make their own arrangements.

In the remaining countries, voluntary agreements are acceptable and, indeed, required in cases of divorce through mutual consent in France, Belgium and Austria. The agreements must be ratified by the courts. Help and advice comes mainly from lawyers, who charge fees, which may be reduced through legal aid in France and Austria, or by using *pro bono* lawyers in Belgium. In Austria, most parents seek advice and support from the Youth Welfare Office, whose staff will help parents record an agreement that is legally enforceable. As explained previously, there are new developments in family mediation services in Austria but the services are not available yet to all parents. In Germany parents may seek free advice from staff in the *Jugendämter*, the local offices of the Youth Agency.

There was general recognition among national informants of advantages that may flow when divorcing or separating parents come to their own agreements about child maintenance. In all countries, the feeling was that agreement is always better than conflict in helping to maintain relationships between previous family members. In some countries, court decisions about family matters may be unexpected, and not always acceptable. Parents who have taken responsibility themselves for their financial commitments may be more likely to honour their agreements. Working out together the needs and expenses of the children may also lead parents to realistic financial outcomes that take account of individual circumstances. The process may be cheaper, both for parents themselves and for the public purse, by reducing the need for expensive legal fees. There may be greater flexibility, if parents can renegotiate agreements without lengthy formal proceedings when circumstances change, as in Denmark.

Disadvantages were recognised as well, however. Parents may need considerable help to understand the legal requirements that govern child maintenance, and the legal implications of their decisions. Decisions made may reflect the same imbalances of power that existed within the marriage. It may be hard for people to

co-operate constructively at times of emotional hurt or conflict. Some people will find it hard to make the financial calculations necessary, or understand the implications, especially if there are complicated interactions between maintenance payments and social security or tax regimes. Some parents may use the financial agreement as a way of achieving other aims, for example as bargaining power in restricting or encouraging relationships with children. If parental agreements are hard to revise, as in France, this can be a disadvantage. In Norway, the fact that, there, voluntary agreements cannot be legally enforced, was seen as a disadvantage.

From a policy perspective there is a risk, in leaving decisions about maintenance mainly to the parents themselves, that they might agree only low levels of payment which would reduce children's living standards, or increase public expenditure if resident parents then apply for social assistance or guaranteed maintenance from public funds. Structural arrangements which act towards preventing such situations include the legal requirements on courts or judicial authorities granting divorce to be satisfied that parents' voluntary agreements are in their children's best interests and in line with the law. In Austria, if for some reason the parental agreement does not reflect the legal entitlement of the child, the parental agreement may be revised quite easily, usually with the support of the Youth Welfare Office. Beyond the divorce process itself, as we might expect, there are usually further controls when voluntary decisions would have clear implications for the public purse, for example at the point of application for income-related benefits, or advance maintenance. In Norway, Denmark and the UK, if resident parents claim income-related benefits, there must be a formal assessment of entitlement to child maintenance by the government agencies concerned, which overrides any previous voluntary arrangements. Applications for advanced maintenance also usually involve an independent assessment of the non-resident parent's liability. Thus, in Norway, if resident parents apply for advanced maintenance then decisions of the 'maintenance bailiff' (NIA) override any private arrangements. Sweden has recently (1997) introduced legislation to avoid what was believed to be the inflation of expenditure on advanced maintenance as a result of low levels of maintenance voluntarily agreed between parents. If the resident parent applies for child maintenance support (advanced maintenance) the social security office now determines how much the non-resident parent owes the state, removing previous financial incentives to agree low levels of maintenance. In Denmark and Finland also, parents know that an application for the maintenance support means that the non-resident parent will be independently assessed.

An additional feature of regimes which lay major responsibilities on parents themselves is the availability

of professional advice and help, free of charge. Parents have access to, and are expected to use, agencies which help and encourage them to make responsible decisions in their children's interests. For some parents, the process may be one of reaching agreements themselves 'in the shadow of the law', a term used by Mnookin and Kornhauser (1979) to describe a framework in which divorcing couples themselves decide their responsibilities and assert rights, influenced by the advisor's knowledge of norms and expectations, and counselled away from inappropriate agreements, and maintenance lower than they can afford. Norway and Sweden are examples here. The emphasis, in Denmark, is very much that of informing parents about their rights and responsibilities, and explaining the guidelines about 'normal maintenance'. It remains possible in Denmark for parents to agree on no maintenance, however. The *statsamter* must acknowledge such an agreement, but has the authority to intervene if such an arrangement is felt not to be in the interests of the child. In Denmark, anxiety about the possibility that maintenance arrangements may be agreed in order to maximise parental incomes is more of a tax fraud issue than a matter of inflated social security expenditure. There is anecdotal evidence of formal agreements between some parents for high maintenance payments in order that non-resident parents may benefit from tax deduction, and then receive back monies paid in maintenance. In Austria, it would be unusual for parents to reach a maintenance agreement without prior legal counselling, including a presumptive assessment of legal entitlement through the Youth Welfare Office or court.

It is hard to make comparisons between countries in respect of the proportions of divorcing and separating parents who make arrangements about child maintenance by agreement between themselves. Relevant statistics are not always available. In addition, the nature of 'voluntary arrangements' may be substantially different across countries, according, for example, to the level of professional help and influence received, and procedural aspects of the divorce process. There is no doubt, however, that throughout Europe, increasing numbers of child maintenance arrangements accompanying divorce or separation are based primarily on a process of parental negotiation and agreement 'in the shadow of the law', with or without direct legal or counselling advice. In France, it was believed that this would apply to around half of divorce and separation cases involving children; in Austria, Belgium, Sweden and Finland, more than 90 per cent. Private arrangements were reported as relatively unusual in Norway however, at around 10 per cent of all maintenance agreements. It was suggested that this might be linked to the fact that while there were no formal ratification procedures for voluntary agreements, maintenance could not be advanced unless an administrative decision had been made.

As to whether parental agreements tend to lead to higher or lower amounts of child maintenance than awards determined by courts or agencies, there was little statistical data. There were mixed views among national informants in our study. In Norway it was believed that child maintenance arrangements made privately were generally higher than those publicly determined but this may just reflect the higher incomes of those parents who make private arrangements. In Finland it was the other way round: court decisions were believed to lead to higher maintenance than voluntary arrangements. Decisions made in court in Austria are usually the same as those recorded at the Youth Welfare Office, however, and there is close co-operation between the courts and welfare office personnel, in order to achieve consistency in outcome. It is not clear, in the UK, how financial outcomes of arrangements made between parents through 'consent orders' compare with determinations made by the Child Support Agency.

Determining maintenance for children of parents never married to each other

An additional factor, in child maintenance regimes for children of parents never married to each other, is the establishment of paternity. The first part of this chapter explained how different historical approaches to paternity issues had influenced development of child maintenance regimes in some countries. This section looks in greater detail at current determinations of maintenance for non-marital children.

In the Nordic countries, arrangements for determining child maintenance are essentially the same for all children. Paternity is established mainly through voluntary acknowledgement. Judicial decisions may be sought but paternity disputes are relatively rare. For example, during 1996 there were only 129 lawsuits involving disputed paternity in the whole of Finland. There is, in these countries, a relatively high rate of cohabitation of unmarried parents and when such unions break up, fathers have already acknowledged or recorded their paternity of the children. If young women living on their own have a child, there is encouragement from social welfare authorities to identify the father or suggest who he might be. Thus, in Norway, Sweden, Denmark and Finland child maintenance determinations are made in the same way as already described for children of divorced parents, with few problems of disputed paternity. Parents make their own arrangements, or maintenance is determined by the courts, the NIA (Norway) or the *statsamter* (Denmark) using the procedures described.

In Germany, very few mothers do not co-operate in identifying the father. There is an automatic state guardianship of non-marital children (*Amtspflegschaft*) and an official of the *Jugendämter* has responsibility for

the legal affairs of the child, investigation of paternity and ensuring rights to maintenance. The *Jugendämter* is also the agency with responsibility for advancing maintenance. If voluntary maintenance arrangements are not made (and ratified by the court) the mother is encouraged to go to court for determination, with legal representation from the *Amtspflegschaft*. This system has developed as part of the continuation of the privileged status of marriage within the German legal system, which at the same time is committed to equality of rights of all children. West German family law was introduced into the new *Länder* of the former GDR in 1990, with a similar structure for determination of maintenance by family courts and youth authorities.

In Austria, also, there was a system of automatic legal guardianship of non-marital children by the Youth Welfare Office, until 1989. Since 1989, however, it is the responsibility of the resident parent to establish paternity, and decide what to do about child maintenance. As Table 2.1 shows, Austria has a relatively high number of non-marital births. In most cases, fathers acknowledge paternity at the Youth Welfare Office, or at court, and, along with acknowledgement of paternity, parents make arrangements about child maintenance which are formally ratified. Relatively few paternity disputes are taken to court.

In France, there is increasing recognition of paternity of children born to parents who are not married to each other. By 1991, fathers acknowledged paternity at the time of birth in 70 per cent of births out of wedlock, rising to 93 per cent before the child's fifth birthday. Voluntary child maintenance arrangements may be made, which are not usually formally ratified. If a parent seeks a court judgement about maintenance, there is the same discretionary decision-making process as for divorcing parents. Continued receipt of the social security benefit for lone parents, which is effectively a form of 'advanced maintenance' (see Chapter Four), after a period of four months, depends on there being a family court maintenance judgement, although some parents opt to maintain voluntary arrangements and not claim the benefit.

In the Netherlands and Belgium, arrangements are similar to those described for divorced parents. Parents who are not relying on voluntary arrangements seek court determinations, which are individually based.

In the UK, the CSA is the main agency for determination of child maintenance for children of non-married parents (who also have access to residual court procedures, but under more restricted legislation than divorcing parents). In contrast to the situation in the Nordic countries, the identification of fathers for purposes of assessment of liability for child maintenance has become a contentious and problematic policy issue. The CSA has developed elaborate procedures for encouraging women to identify to the Agency the fathers of their children. Failure to do so 'without good cause'

can lead to a benefit penalty for mothers claiming income-related benefits. From October 1996 this penalty was a reduction from benefit of an amount equal to 40 per cent of the adult personal allowance component in income support (social assistance). The Agency intervenes actively in paternity disputes, and in the year ending March 1997, had referred nearly 16,000 cases to court for paternity determinations.

The government believed that by 1998 some 70 per cent of lone mothers claiming income support were initially seeking to avoid making a child maintenance application (Department of Social Security, 1998a). The women concerned were influenced by a number of factors, but for some these included the fear of violence or retribution from their children's father (Provan *et al.*, 1996). The Secretary of State issues wide-ranging guidelines to CSA staff who must decide whether the requirement to co-operate must be imposed. In some cases, this involves decisions about the 'risk of harm or undue distress' that would be caused to children if the resident parent authorised action to recover child maintenance. This aspect of policy in the UK is problematic and controversial.

This study did not provide detailed information about the way in which other regimes approach problems such as resident parents' fear of abuse or retaliation in pursuing entitlements to child maintenance. It seemed that this area attracted less attention in other countries, but we do not know why.

Money transfers and enforcement

When parents agree to transfer money privately between themselves, for example through bank accounts, post offices or cash transfers, and the maintenance due is paid regularly, there is no need for formal intervention. All countries, however, have arrangements for dealing with default. Table 2.3 shows that in Austria, Belgium, France, Sweden and the UK, the courts retain overall responsibility for enforcing maintenance originally determined as part of court proceedings. In France, parents may ask the social security administration to assist. In Denmark and Germany, overall responsibility for enforcement lies with the *statsamter* and *Jugendämter*, that have long been involved in the determination of awards. In the UK, the CSA can arrange enforcement of child maintenance payments, and the courts are also involved. New agencies with special responsibilities for enforcement have also recently been established in the Netherlands, Norway and Sweden. In the Netherlands, enforcement of maintenance was, until 1995, the business of 19 local offices of the Child Welfare Authority, but there were various problems, including non-compliance with payment. Laws to introduce a new government agency, the *Landelijk Bureau Ouderhoudbijdragen (LBIO)*, were enacted between 1992 and 1995 and the new arrangements came into force in

January 1997, with the *LBIO* located in Gouda. In Sweden, the Swedish Enforcement Service is part of the reformed child maintenance support scheme, and operates at the level of the local social security office. In Norway, the public body responsible for enforcement is the Maintenance Contribution Collecting Agency, a central agency of the National Insurance Administration.

In countries with some form of 'advance' maintenance scheme there are often connections between enforcement systems and the advance payment system. For example, if advanced maintenance is paid in Austria, the Youth Welfare Office becomes legally authorised to enforce child maintenance. Schemes of advance maintenance are discussed in Chapter Four. Table 2.3 shows that all countries except the Netherlands and UK have some scheme for advancing maintenance to at least some parents who do not receive their child maintenance entitlements from the liable parent.

In addition to arrangements for enforcement of payments when private transfers fail, and arrangements for advancing a portion of maintenance due, some regimes include a collection service, whereby payments are routinely transferred between parents via an agency. This kind of 'third party transfer' may be incorporated within enforcement arrangements for parents who have patterns of default. Some parents who meet their liabilities regularly may also choose to use a collection service, however, for convenience or to avoid direct communication with the other parent. A collection service may also function to divert maintenance payments to state agencies, if they are repayments to the state for advanced maintenance, or are reclaimed to balance expenditure on social assistance for resident parents. This is discussed in Chapter Four.

Discussion

So far, this chapter has been largely descriptive, explaining the emergence and development of child maintenance regimes, and presenting an overview of the current structural and administrative arrangements in the different countries. This sets the background for further analysis of policy issues. We have seen a pattern within all countries of developments towards equal treatment for children in respect of child maintenance, irrespective of the marital status of their parents. There has also been increasing emphasis on the rights of the child, with the Nordic countries in the forefront of this approach.

Within the UK, the policy emphasis within the CSA regime has been primarily on parents' responsibilities. However, some observers (for example, Maclean, 1998) have argued that the recent child support legislation has indeed marked the emergence of the child's right to financial support from both parents, from what was previously a claim for support, which could be debated

and need not be prioritised in claims for resources during divorce and separation.

Across the countries studied, decisions about whether and how much child maintenance is payable are made variously by parents themselves (with or without help), court judges or officials, or administrative staff in social security or welfare offices. Agreements made between parents themselves now form an important part of several regimes, especially where couples seeking divorce by consent are now expected to take major responsibilities for settling matters relating to their children, and to look for resolution by third parties only where there is dispute or conflict. The advantages perceived included the positive impact on parents and children of co-operation and negotiation rather than conflict and dispute; greater understanding of the real needs and resources of the parties involved; increased likelihood of honouring arrangements made voluntarily; and practical advantages, such as reduced expense and greater control over the timescale of the negotiations.

Parents often need professional help or advice to reach their own agreements however, and in all countries where there are expectations of parental agreement on child maintenance, there is some mechanism whereby low-income families can also have access to skilled help. It is hard, or impossible for some parents to make agreements between themselves, especially where there is much bitterness or anger, and all countries which expect parents to make decisions recognise the need for third-party resolution in some cases. There is also a need for some checks on parental agreements, to protect the interests of children and vulnerable parents and to maintain a balance between private and public expenditure. Different ways of inserting such checks include requirements for formal ratification of voluntary agreements, expectation of 'minimum' levels of child maintenance or insisting on formal determination when parents depend on social benefits. None of these checks are problem-free. Nor is it the case that such checks are only necessary in the case of parents at the lower end of the income scale. The children of rich parents may also need protection from the financial impact of conflict and bitterness between their parents. The lesson from Denmark, also, is that checks may be necessary to prevent manipulation of tax regimes.

Third party resolution is variously located. In countries in which decisions are made in a court setting, there was general acknowledgement that the environment and procedure could be experienced as intimidating and formal. Court procedures were perceived as expensive, and there could be privileges for better-off parents who could afford to buy access to more or better advice and attention. Legal aid schemes which ensure equal access for parents at all income levels impose heavy costs on the state. Despite developments towards less formal procedures in special

family and domestic court settings, the judicial process may encourage argument and confrontation, and the representation of one parent's interests against those of the other. For parents (and children) who associate the court environment and legal procedures with wrongdoing and criminality, decisions about child maintenance may be associated with humiliation and stigma.

On the other hand, several advantages of court settings were generally recognised. Where courts deal with other relevant matters such as divorce, judicial separation, custody and residence orders for children, and paternity proceedings, child maintenance can be included within or alongside these proceedings, enabling an overall picture of the family situation and the legal context wherein to decide the child's best interests. The attention of judges or court officials can bring authoritative knowledge and experience. The court setting can serve to emphasise the importance of the decisions made, and the responsibilities of the parents concerned, which may help to maintain compliance. If parents perceive judges and court officials as well-informed, authoritative, objective and independent this may lead to greater satisfaction with the outcome of determinations and greater likelihood of compliance.

Turning now to advantages of locating decision-making within local social security or social welfare offices, informants from Finland, Denmark, Norway and Sweden pointed to the fact that local offices were accessible to parents, and less formal than court settings. There could be flexibility in managing procedures and bringing parents together. Staff were available with specialisms in dealing with low-income families and the practicalities of looking after children on constrained budgets. Parents could be helped to think about other relevant matters, such as opportunities for work, when they discussed their child maintenance determinations. There were fewer financial costs for parents, and administrative decision-making was perceived as generally less costly for the state than legal proceedings. The *Jugendämter* in Germany are also

locally accessible, within the municipalities, as are the Youth Welfare Offices in Austria, which were reported to reach high standards of advice and decision-making in a relatively informal way.

Within the countries studied all the new agencies which have emerged during the 1990s to manage aspects of the child maintenance regimes have been located within benefit regimes (the Netherlands, Norway, Sweden and the UK). This association is easy to understand since, in these countries, defaults in payment are closely linked to expenditure on social assistance and/or the development of comprehensive advance maintenance schemes funded through social insurance budgets. There were no suggestions from the informants that there might be advantages of a location within or alongside the tax regime, as in Australia.

One of the differences between the UK CSA and the non-court determining agencies in other countries is that in the latter countries, these agencies operate at a local level. The UK CSA has experimented with different levels of central and local administration, but still depends largely on postal and telephone access. The experience of many clients is that it is remote, and effective communication is difficult (Davis *et al.*, 1998; Hutton *et al.*, 1998).

Whether third party determinations are dealt with by the courts or by specialist agencies, however, a key finding is that across Europe, at least in the case of divorce and separation, large numbers of maintenance determinations incorporate or build on agreements worked out by the parents themselves. In countries where parents are required to behave in this way, there are arrangements for advice, help or mediation, and much of this is free of charge. Recent policy developments in the UK, including restrictions on legal aid and CSA procedures which exclude parental discussions or indeed cut across preferred private arrangements, appear to be heading in the opposite direction compared with these other European countries.

3

Deciding the amount of child maintenance due

In the previous chapter we saw that decisions about amounts of maintenance are made in a number of different ways: by parents themselves; by court officials and judges; or by staff in social security or welfare offices. This chapter looks more closely at the way in which formal determinations of child maintenance are made in legal and administrative settings, and in particular at the rules, guidelines or 'rules-of-thumb' that are used. Where such rules exist, as we saw, they are likely also to influence decisions made primarily by parents, especially when parents receive advice or guidance in coming to their decision.

In all countries, the main determinants of amounts due are the parents' resources and the children's needs. Resources and needs are interpreted and dealt with in a number of different ways. These differences arise partly from aspects of the legal and historical background to the obligations of parents to support their children, described in the previous chapter. They also depend on factors such as different traditions of labour market participation of lone parents, and the extent to which maintenance determinations have become integrated within schemes for advancing maintenance from public funds, or are linked to social security entitlements. An additional factor is whether determinations are made in accordance with rules or guidelines, and how far decision-making is a discretionary process.

Details of the way in which formal determinations are made in individual countries are presented in Appendix 3. This chapter brings together some of the main features of those schemes, for comparative analysis. Some countries have more than one formal scheme, for example in Sweden and the UK there are residual court procedures, in addition to the main formal schemes administered, respectively, by social security staff and the CSA. The rules governing the residual schemes in Sweden are described in Appendix 3. Court procedures in the UK are explained on page 17. This chapter is concerned with the main formal schemes in operation in each country.

Table 3.1 provides an overall summary of features of these formal determinations and the chapter goes on to consider these in detail.

Rules and discretion

The first column in Table 3.1 reminds readers that formal determinations are still largely a matter for the courts. Where responsibility lies with a judge in a family or divorce court in Belgium and France, each case is dealt with individually with no authoritative general rules or guidelines. Judges in the German and Dutch courts may also make discretionary decisions, but they are usually strongly influenced by the formal guidelines which have been developed by legal associations in each country. The guidelines most frequently used by German courts, the Düsseldorf Table, are based on legislative minimum maintenance entitlements of non-marital children (*Regelunterhalt*). Less authoritative guidelines, developed by the courts of appeal, inform the decisions made by judicial officers who deal with maintenance matters in Austria and are also applied by the Youth Welfare Office, which advises parents, formally records agreements reached by non-married parents, and brings cases to court to resolve child maintenance when unmarried parents cannot reach agreement. Unofficial 'rules-of-thumb' are often used in France.

In the Scandinavian countries and the UK, when formal determinations take place outside court settings, administrative staff have clear rules and guidelines, with legislative basis, or the authority of government regulation. Only in Finland are discretionary decisions made outside the court setting by staff who use relatively rudimentary 'rules-of-thumb'.

The beneficiary

Column 3 in Table 3.1 shows that the legal beneficiary is usually the child, in his/her own right. In the UK, child maintenance is awarded to the resident parent.¹ In France child maintenance is usually awarded to the resident parent, and this is also true in the Netherlands for younger children, although older children in the Netherlands may receive child maintenance in their own right. If child maintenance is considered to be part of the household income of the resident parent, this has implications for their entitlement to social assistance, as explained further in the following chapter. When child maintenance is awarded to the child, actual payment may be made to the

Table 3.1 Formal determination of child maintenance: a summary of the main features in 10 European countries

Country	Locus of responsibility (1)	Method of determination (2)	To whom awarded (3)	Taking account of parents' resources								Taking account of child's needs	
				Non-resident parent							Resident parent (11)	Is age considered? (12)	Is minimum desirable amount set? (13)
				Earnings (4)	Other income (5)	Basic living expenses (6)	Additional personal expenses (7)	Expenses of 'new' families					
								'New' partners (8)	Own children (9)	Step children (10)			
Austria	judicial officer, court procedure	discretion, with guidelines	child	net, in guidelines	yes	discretion	discretion	guidelines take account of married partners	in guidelines	not in guidelines	not usually	yes, in guidelines: 4 age groups	no
Belgium	court judge	discretion	child	gross	yes	discretion	discretion	discretion	discretion – strict approach	discretion	by discretion	yes, by discretion	no
Denmark	staff in <i>statsamtet</i>	guidelines	child	gross	yes	not in guidelines	not in guidelines	not in guidelines	not in guidelines	not in guidelines	not usually	no	yes
Finland	staff in social welfare offices	discretion, with 'rules-of-thumb'	child	gross	yes	discretion	not usually	discretion	discretion	discretion	by discretion	yes, by discretion	no
France	court judge	discretion, with 'rules-of-thumb'	usually resident parent	gross	yes	discretion	discretion	discretion	discretion	discretion	by discretion	yes, by discretion	no
Germany	court judge	guidelines, based on legislative minima (Düsseldorf Table)	child	net	yes	fixed amount, includes housing	work expenses; cost of sickness; debts	tables take account of married partners	in tables	not in tables	earnings count	yes, in table: 4 age groups	yes
Netherlands	court judge	guidelines (TREMA tables)	resident parent	net	yes	fixed amount, plus housing costs	work expenses; cost of sickness; study costs; contact with child	in tables	in tables	in tables	no	yes, in tables: 5 age ingroups	yes
Norway	social security staff	guidelines (NIA)	child	gross	yes	discretion, only at low incomes	not in guidelines	not in guidelines	in guidelines	not in guidelines	not usually	no (unless over 18 years)	no
Sweden	social security staff	rules (CMS)	child	net	yes	fixed amount, includes housing	not in rules	not in guidelines	by rules	not in rules	no	no	yes
UK	CSA staff	rules (CSA formula)	resident parent	net	yes	fixed amount; plus housing costs for some people	disability; travel to work; long-term illness; debts; contact with child	by rules	by rules	by rules	yes	yes, in formula: 3 age groups	yes

Note: the columns are numbered for purposes of reference from the text.

resident parent. We did not investigate whether resident parents are asked to account for monies received on behalf of children, however.

The current UK Government believes that perceptions among non-resident parents of whether child maintenance meets the needs of the child or those of the resident parent may affect levels of compliance. There are proposals in the 1998 Green Paper to remove from the current formula the component intended to provide for the child's need for adult care (the carer allowance) in the hope that non-resident parents will be more inclined to pay. There is no consideration in the Green Paper about any advantages there might be in making the child the legal beneficiary. There is scope for at least some further discussion around this issue.

In most countries, child maintenance remains due until the eighteenth birthday or the end of the child's need for financial support, for example through the period of education. In countries such as Austria, Finland, Germany and the Netherlands this includes university education. In the Netherlands, parents are obliged to maintain children who need financial help up to the age of 21 years, even if not in education, although in practice many maintenance arrangements end when the child reaches 18 years. By comparison, the UK CSA is unusual in having a limit for support based on the sixteenth birthday, with extensions up to 18 years for some forms of education.

There appears to be some inconsistency in UK policy. Child maintenance due to resident parents is withdrawn at a comparatively early stage: when the child reaches 16 years, or up to 18 in some kinds of education, but not through university education. At the same time, in education, housing and social security policies parents are being expected to maintain financial responsibility for their children further into adulthood than was previously the case. This raises issues of equity between children, and between parents who live apart. If parental support is now expected to extend into early adulthood, then there is an argument for extending the period of liability of some non-resident parents, accordingly.

A further corollary of the emphasis in the UK on parents' responsibilities, rather than children's rights, is the relative invisibility of **children** in published statistics from the CSA. Currently, entitlements and liabilities are reported with reference to numbers and characteristics of parents. This restricts analyses and debate within the UK, and makes quantitative comparisons with other countries difficult.

Taking account of parents' resources

Deciding how parents' resources are to be distributed requires decisions about the components of income and wealth that are to be made available, and which expenses or prior financial obligations are to be allowed for.

Non-resident parents' resources

In all countries, maintenance determination depends on an assessment of the resources available to the non-resident parent, and income is the main indicator used, primarily earnings. In the UK, assessments are made on the basis of net earnings (gross earnings less tax and National Insurance contributions), but column 4 in Table 3.1 shows that it is not unusual for countries to take gross earnings as the basis for further computations. Research in the UK shows that the measurement of earnings from self-employment raises a number of conceptual issues, and has proved problematic (Boden and Corden, 1998).

In all countries the expectation is that income other than earnings should also be assessed (column 5). Thus, income from capital or savings, and rent from property or land may also be included in the non-resident parents' assessable resources, either by rules or discretionary treatment, and pensions and social security benefits are also taken into account.

Where maintenance is decided on an individual basis, non-resident parents may make representations about personal expenses which they believe should be taken into account in assessing their resources. Thus in Austria, Belgium, Finland and France, the levels of income to be retained by non-resident parents depend on discretionary decisions although, in Austria, within tight margins. The 'rules of thumb' or guidelines operating in most of these countries use percentage of income formulae which assume that not all the resources of the non-resident parent are available for child maintenance.

In schemes governed by rules or guidelines, there is usually a mechanism to ensure that a non-resident parent retains a protected amount of income to meet basic living expenses, such as food and housing, as shown in column 6 in Table 3.1. Social assistance minima provide measures for this purpose in the schemes in the UK, Germany and the Netherlands. As additional capping mechanisms to protect non-resident parents' income, in the UK 70 per cent of net income may always be retained, and in Norway, 30 per cent of gross income. Only in the Danish scheme is there no such protected income level for the non-resident parent. However, Danish social security provision is such that even people on unemployment benefits are assumed to be able to afford to pay the *normalbidrag* amount of child maintenance.

Rules and guidelines in Germany, the Netherlands and the UK allow additional specific personal expenses to be taken into account, including work expenses and additional costs of long-term illness. The Netherlands and UK allow some of the costs of contact with the child; Norway identifies costs of contact as a component for discretionary treatment only if parents share custody (discussed in Chapter Five).

There are considerable differences between countries in the way that financial obligations towards 'new families' are acknowledged in the treatment of non-resident parents' resources, as shown in columns 8, 9 and 10 of Table 3.1.

The UK child support formula acknowledges that non-resident parents may have financial obligations, under social conventions, towards second families, that is, 'new' partners, children of 'new' relationships or step-children. The current UK situation is partly due to the historical legacy of divorce arrangements prior to the Child Support Act 1991. Divorce lawyers and judges frequently took into account the availability of state benefits to provide some income for the resident parent and child, when negotiating financial arrangements (Smart, 1984; Davis *et al.*, 1998). This process, along with the prioritisation of security of accommodation for the child and resident parent, may have encouraged some non-resident parents in the belief that they could afford to support new families. The experience of many men was that they could take on the breadwinner role in second families, and that children from previous relationships would be provided for, if their own maintenance payments were low or irregular.

The extent to which such 'new' relationships are acknowledged by the UK formula is not matched in many other countries. There is general agreement in all countries that all biological children of the non-resident parent have equal rights to financial support, but in practice, in Finland, the birth of a subsequent child to a non-resident parent might lower the maintenance payments for older children. Belgian courts are particularly reluctant to allow the obligations to 'new' children to reduce maintenance obligations to children of prior relationships (see column 9).

Only in the Netherlands tables is there the same specific acknowledgement of financial obligations to 'new' spouses and step-children as in the UK child support formula. In Denmark, the *normalbidrag* scheme takes no account of new partners, subsequent children or step-children, and in neither Norway nor Sweden do the rules and guidelines specifically allow for new partners or step-children. In Germany and Austria financial obligations towards a new **married** partner are recognised, but there are no legal financial obligations towards step-children.

Where determinations are made individually, much may depend on the representations of the parties concerned, and the levels of resources available for distribution.

Having looked at how non-resident parents' available income is derived, we turn now to assessments of resources of the parents with whom the children mostly live.

Resources of resident parents

In all countries, the parents with whom the children live are recognised as meeting some of their responsibilities to the maintenance and upbringing of their children by the care and support which they provide directly. In the determinations made on an individual basis in the French and Belgian (but not Austrian) courts, and by the Finnish social welfare boards, incomes and resources of the resident parent are always taken into account in consideration of all relevant circumstances. Where resources of resident parents are formally included in the maintenance determination, their own financial liabilities and commitments are also considered, usually by discretionary decisions.

The UK is the only country in which a full assessment of resources of the resident parent is incorporated within standard rules or guidelines generally used. The resident parent's assessable income may (but will not always) affect the level of liability of the non-resident parent in the UK. In Denmark, Germany and Norway, discretionary decisions may be made in the case of resident parents with higher incomes, and in Germany, courts will often 'balance' the incomes of both parents, if both have earned income, so that child maintenance is determined by the shortfall between the resident parent's income and that of the non-resident parent. In Sweden, higher earning parents might settle maintenance outside the Maintenance Support scheme, or through the courts. In the Netherlands, incomes of resident parents are not directly assessed in the *TREMA* scheme, but there is an assumption that the parent with whom the child lives will contribute towards the support of the child and can apply for social assistance if income available to her is below the social minimum.

The needs of the child

While commercial accounting traditions provide ways of quantifying and measuring parental resources, for purposes of determination of child maintenance, it is more difficult to decide how to take account of the needs of the child. Minimum support requirements exist in social assistance scales, which provide some measure for comparison of living standards, but these are not helpful at higher income levels, when parents can afford to pay more than social minima.

A further complication is how far economies of scale should be taken into account when assessing needs of groups of children to whom a non-resident parent has responsibility. Questions also arise about how to take account of extra financial needs of a sick or disabled child. Where civil codes impose obligations on parents to contribute according to childrens 'talents', or 'possibilities of development' it is not easy to decide exactly how this is to be done.

Individual approaches, such as the Austrian,

Belgian and French court-based determinations, and the Finnish discretionary scheme, have greater scope for consideration of the special needs of children associated with their ill-health or disability, or additional expenses associated with educational and developmental needs. In the UK, court procedures are necessary for a maintenance determination to reflect these special needs; in the rules-based schemes in Denmark and Norway, additional discretionary decisions are necessary.

The different guidelines and tables which attempt to quantify the child's needs (as in Denmark, Germany, the Netherlands, and the UK) set a basic starting point which (except in Denmark) varies with age (see columns 12 and 13 in Table 3.1). Amounts then increase as parental incomes rise. In Denmark, the basic amount was originally related to the cost of foster care. This connection is now severed, but the *normalbidrag* is the same amount as the supplementary child benefit paid to lone-parent families. In Germany the basic amounts were originally set in legislation in 1969, and have been regularly adjusted, in statutory instruments, based on recommendations of the Federal Bureau of Statistics. The Netherlands minimum amounts are based on research originally conducted in 1993 by the Netherlands Institute for Budget Control and the Central Bureau for Statistics. The UK relies on social assistance (income support) scale rates. In all four countries, minimum amounts are regularly updated.

Guidelines and rules-of-thumb which do not include fixed minimum amounts for basic support for individual children usually quantify entitlements by share of parental resources in relation to the numbers of children supported (Finland, France, Norway and Sweden), and (in Austria) to the ages of the children.

The child's own income is usually taken into account in maintenance determination only if it is high, and such cases are fairly unusual.

Formulae and tables

As well as looking at the way in which parental resources and children's needs are taken into account, it is useful to consider how different formulae and tables are construed. Compliance and co-operation among parents, acceptability of schemes, and the propensity for challenge or dispute are all likely to be affected by how easy it is for parents to understand how maintenance obligations are worked out. Simple and straightforward guidelines may also help administrators and court officials to process maintenance determinations more quickly. On the other hand, it might seem to some parents that a simple, broad-brush approach does not take proper account of their particular circumstances.

Among the six countries in which most decisions are made according to standard rules and guidelines (Denmark, Germany, the Netherlands, Norway, Sweden

and the UK) the Danish scheme is probably the simplest. In effect, most non-resident parents pay the standard amount, which is the amount advanced by the state authorities, and only parents with higher incomes pay more, in a series of three 'steps' which are simply related to the standard amount. The scheme takes no account of the resident parent's income or any other financial obligations of the non-resident parent, and there are few grounds for discretionary decisions. As we might expect, decisions are made quickly, most within two months.

The basic schemes administered by social security agencies in Norway and Sweden are also relatively simple, based on percentages of incomes of non-resident parents due to each child, which in turn depend on the total number of children for whom there are liabilities. The Norwegian scheme incorporates a number of discretionary decisions affecting mainly low-income parents. Again, decisions are made quickly in these two countries. In 1996, the Norwegian target time for final or interim decisions by the *bidragsford* was two months, and most final decisions were made in 3-4 months. In Sweden, repayment liabilities are usually assessed within three months.

Compared with the rules in the three Scandinavian schemes described, tables and formulae used in Germany (for married parents and non-married parents in court proceedings), the Netherlands, and the UK must be considered complex. The basis is net income in all three cases, which requires rules for the treatment of the various components of income (earnings, pensions, income from capital). Then a number of expenses are allowed against net income, in all three cases, requiring further rules or discretionary criteria. The German and Dutch schemes are further complicated by the inclusion of theoretical components to take account of non-resident parents' financial liabilities to previous spouses. Where resident parents have relatively high incomes themselves, there are further rules or discretionary components for dealing with such situations. The UK formula is of unparalleled complexity.

Both the Dutch and UK schemes are complicated by mechanisms to maintain work incentives and not to create new dependency on social assistance. The Dutch scheme also incorporates a number of tax adjustments at various stages. Collecting and processing so much detailed information can be a lengthy process, especially if contested. In the Netherlands, if divorcing parents have come to some agreement before going to court, maintenance determination is likely to take at least two months, but can take much longer. In Germany, there is no information about the time taken by courts in deciding child maintenance, but in 1995 one-third of all divorce and marital proceedings cases were completed within six months and two-thirds within 12 months. In the UK in 1997 around half of CSA determinations took at least six months from referral to assessment, and some much longer.

In the court-based discretionary schemes in France, Belgium and Austria, the time required for maintenance determination varies considerably. In Belgium, ratification of parental decisions or judges' decisions can be made very quickly although court judgements for children of parents not married to each other usually take much longer, especially if there are paternity issues to resolve. In France however, court judgements about child maintenance for children of parents not married take between one and six months, whereas divorce procedures generally take a minimum of nine months. In Austria, if parents are not co-operative in helping the court with its enquiries, it is likely to take at least six months for the court to make a final decision about child maintenance. However, 'preliminary maintenance' may be decided fairly quickly in summary proceedings, to ensure basic living conditions for the child in the interim period. Decisions are made more quickly if parents assist the court with its enquiries. Ratifications by the Austrian court of agreements reached by parents, or recordings of agreements at the Youth Welfare Office may be made quickly.

In Finland, maintenance determination is seen as an urgent matter, and speeded up by the rules-of-thumb used by the Social Welfare Boards. In some cases, if there is no need to seek further information, a maintenance determination based on help from the Board can be made within a week, and the Boards expect to conclude matters for divorcing parents, anyway, within a month. For non-married parents, paternity issues may slow matters down, but the mean processing time for all family matters taken into court in Finland was around four months in 1995.

So far, in this section, our approach has been largely descriptive, explaining the different components of the way in which maintenance is determined. We now go on to look at some of the advantages and disadvantages of doing things in different ways, as perceived within the countries concerned. We look, in particular, at the balance between rules and discretion.

The introduction of a rules-based system in the UK was highly controversial, and there is continued debate, especially among solicitors, welfare rights advisers and associations representing parents, as to whether the greater discretion available in the previous scheme was an advantage that has been lost (see Bennett, 1997). Davis *et al.* (1998) discuss how formula-based and discretionary models of resource allocation are each concerned with achieving different kinds of justice, drawing on work by Eekelaar (forthcoming).

The country in which the balance between rules and discretion in formal determinations is furthest towards rules is probably Denmark. The Danish informant reported that the transparency and simplicity of the basic rules-based approach was generally perceived as an advantage, for understanding and acceptance among parents, encouragement of

compliance, and ease and speed of operation. At the other end of the balance between rules and discretion are Belgium and France where the courts do not use formal guidelines, and generally applied rules-of-thumb have not emerged. Advantages are seen in that all relevant circumstances can be taken into account and dealt with as perceived appropriate. However, the Bar Association in Belgium believes that some problems do arise for judges who have to make determinations without any objective guidelines or formulae to guide decision-making, especially when conflict arises between parents. The discretionary framework in which the French judges work was also reported to lead to some inconsistencies and inequalities. Even when legal knowledge and practice results in a certain amount of harmonisation, the impression for some French parents is one of arbitrariness.

Informants reported that where there are no general rules or guidelines, in cases of conflict between parents, courts tend to make decisions based on the demands of one party against the representation of assets and incomes of the other party. Under such circumstances decisions may be made more in accordance with what the liable parent argues he can afford than in accordance with the needs or the real costs of the child. Indeed, in Finland, it was believed that a discretionary approach led to pragmatic decisions made on the basis mainly of the liable parent's means, which were sometimes not within the spirit of the Maintenance Act, and had little to do with the child's rights as prescribed in law (Gottberg, 1995). Parents sometimes experienced such decisions as inconsistent and arbitrary.

In the other countries studied determinations are based around firm rules, or authoritative guidelines, with varying amounts of discretionary consideration. The Swedish CMS scheme for determination of repayment due to the state for advanced maintenance has reduced the availability of discretion to a minimum level, however. Resident parents in Sweden are reported to appreciate the simplicity of the CMS system, but non-resident parents argue for more discretion, and administrative staff (some of whom have experience of the previous discretionary system) also express a need for more discretionary powers to enable them to make decisions.

Problems in using a rules-based approach within the German system, as perceived by German lawyers, arise from the fact that the Düsseldorf Table (Table A3.3 in Appendix 3) only provides a point of reference and does not have legislative authority. Although the table is widely applied, each case is still considered individually, and legal decisions form precedents. The Düsseldorf Table is not the only set of guidelines used, either; different courts have different preferences and some of the advantages of having general guidelines are thus lost. Complex legal arguments develop around issues,

and family lawyers must constantly monitor legal journals and professional publications to understand developments. It is hard for the lay person to be well-informed. By contrast, the simple percentage-of-earnings guidelines operating in Austria were believed to be widely understood among the general population, and were easy to handle, even by people with no specific educational background or legal knowledge. Some Austrian parents, however, report that the relatively high maintenance liabilities that result from the percentage guidelines make it hard for non-resident fathers to form new families.

Norway, Sweden and the UK share the experience of having recently moved from a discretionary system to one more firmly grounded in rules. The Norwegian and Swedish governments believe that the new systems are easier to administer, and, in Sweden, harder to deceive. However, at the time of data collection the Norwegian Ministry of Children and Family Affairs had issued a consultation document suggesting changes to the current system. There were a number of proposals, to meet some of the criticisms raised against the new scheme. An organisation representing the interests of non-resident parents in Norway (F2F: Foreningen 2 Foreldre), argued strongly that the percentage of income system was too rigid, and that consideration was needed of the liable parent's ability to pay, and the costs of contact. The suggestions were to introduce compulsory components which must be dealt with by discretion – a reintroduction of greater discretion.

In the UK, there are feelings among some liable parents that the imposition of rules has brought greater unfairness in treatment, and lawyers see an over-centralised administrative system that is hard to understand.

In all the countries in which determinations are based largely around guidelines or rules, some issues have proved hard to deal with without the use of some discretion. There appears to be a core group of issues which all such countries acknowledge as relevant in deciding maintenance, but still deal with by discretionary decisions. Such issues include: increased costs of sickness or disability of the non-resident parent; very low incomes of non-resident parents; substantial imbalances of income and resources between resident and non-resident parents; parents or children living abroad and people with refugee status, and missing or suspicious information. Additional issues, which are not taken into account in all countries but, where they are, often include some discretionary element, are: increased costs of sickness or disability of the child; housing costs; costs of contact and shared care; maximum liabilities; resources and/or needs of 'new families' and earnings of children for whom maintenance is due.

For the individual parents concerned, the above elements may seem very important in assessment of their resources and responsibilities. There is little

information, from most of the countries studied, as to whether they believe a discretionary approach to be appropriate.

It is inappropriate to look for the 'best mix' of rules and discretion among the different countries studied, because this will differ between countries according to the balance required between the needs of children, resident parents, non-resident parents, tax-payers and politicians. A scheme based on a few simple rules might be simple and cheap to administer, but be unacceptable to parents. What seems 'fair' to most parents may be impractical to administer. Concepts of equity and fair treatment may also differ, according to culture, political background and the principles of the regime. In the UK, for example, the original assumption of the CSA regime was that fair and equitable treatment for parents meant different levels of liability according to differences across a range of circumstances of both parents and children. The fine-tuning required to achieve this in a rules-based scheme inevitably implied a fairly complex scheme. In Denmark, however, a regime which results in the majority of liable parents paying similar relatively low amounts of maintenance is perceived as fair and equitable. It is much easier to achieve this kind of equity using simple rules.

The 1998 Green Paper proposes a much simpler formula for the UK, reducing the extent to which individual circumstances are taken into account.

Outcome of maintenance determination

The introduction of the CSA in the UK would, it was hoped, increase the levels of child maintenance paid by non-resident parents. What is paid depends not only on the levels of the liabilities determined but also on compliance among non-resident parents in paying what they are assessed as owing. The following chapter discusses compliance with payment in the countries studied. This chapter continues by considering amounts that parents are required to pay.

Levels of awards

In November 1997, the average overall maintenance assessment among current cases dealt with by the CSA was £21.13 per week. Forty-three per cent of assessments were for 'nil' liability, however, often associated with low income and/or liabilities to current families. Among non-resident parents with earnings from employment as an employee the average maintenance assessment was £39.64 per week and among parents with earnings from self-employment, £24.09 per week (Department of Social Security, 1998b). There are no separate published figures according to marital status of parents.

It is not easy to make direct comparisons of outcomes of maintenance determinations across countries. Statistics about awards decided in local courts are often not collated at a national level; and no data could be provided about general levels of child maintenance awards in Austria, Belgium, Germany or the Netherlands. In some countries collection of statistics about maintenance liabilities is focused on amounts advanced and the repayments due to the state rather than the overall liabilities of parents, especially where many maintenance agreements are private arrangements. It is not always clear how 'nil' awards are dealt with in the statistics available, and some indicators were not directly comparable with the UK figures if presented as 'average per child' rather than average per liable parent. The data available did not enable useful comparison of average maintenance awards.

Examples of awards, using vignette material

Some comparison of outcomes of determinations is possible by using material provided by informants in the vignettes which they supplied. As explained in the introduction, informants were asked to discuss how their child maintenance regimes would deal with three sets of parents, and their children. From the information provided, we can show the likely outcome of determinations of maintenance due in each country, for each set of parents and children.

There are a number of limitations in this approach. Assumptions have to be made by the informant where real determinations would involve discretionary decisions. The 'pictures' of parents and children were drawn from a UK policy perspective and fitted real-life situations in some countries better than in others. Some informants adjusted criteria or circumstances in the pictures according to the situations that would be relevant in their own country, and some provided greater levels of detail and explanation than others. The vignettes included a limited number of variables, while real people's lives are complex. We do not know the prevalence of the types of families in the vignettes across different countries.

Despite the limitations, we believe that this approach can offer a useful insight into how parents and children fare under the different regimes. What follows in this chapter is an exploratory analysis. The findings are useful in their own right, but the material also illustrates the potential of this approach, which might be developed in further research.

The national informants each received three vignettes, the full texts of which are presented in Appendix 1. The informants responded with their commentaries and suggestions for development of the 'stories', explaining what would be likely to happen in

the determination of child maintenance in each case, and the amount of the award.

In the following account, we take each vignette in turn. First, we present a short summary of the original vignette; and then go on to discuss the case from the UK policy perspective. The amount of child maintenance which informants thought likely to be due are then compared, and discussed.

Vignette One: Unmarried parents without 'new families'; neither parent with paid employment

Unmarried parents, in their mid-twenties, have a two year old daughter. The parents have never lived together but maintain a friendly relationship. The father has had some spells of temporary low-paid work, but is currently unemployed. He has no other children and currently lives with his own parents.

The mother has not had paid work since the birth of their daughter, and lives on the benefits available to her and her child. Her own parents provide some financial help, and the non-resident father makes occasional financial contributions to the household, by paying some of the bills, buying clothes for his daughter, paying for a few days holiday, or doing painting and small repairs in the flat in which the mother lives with their child.

The mother decides to seek a formal child maintenance assessment.

In the UK, the number of lone parents dependent on income support (see Bradshaw and Millar, 1991) has been a key influence on the development of the child maintenance regime. The first vignette considered by the national informants represents the circumstances of one such parent. This mother has depended on social assistance (income support) since the birth of her child, without seeking a formal child maintenance assessment. Mothers claiming social assistance in the UK often preferred not to seek formal maintenance through the CSA, as this would be deducted pound for pound from their benefit, and bring no financial gain (Clarke *et al.*, 1998). Indeed they might lose the informal support that the non-resident fathers provided, if the men could no longer afford what they had previously paid for (such as gifts and a holiday in this vignette). The mother in this vignette would have been encouraged to co-operate with the CSA in authorising an assessment, but in the picture painted, had found ways of avoiding this until her child was two years old. Now she has decided to seek a formal assessment for child maintenance.

In this vignette, the non-resident father has not worked regularly, has had some temporary low-paid jobs but is currently unemployed. As he has not had the

opportunity to build up a contributions record, he depends on social assistance. The circumstances depicted match the characteristics of many of the parents assessed by the UK CSA. In November 1997, 47 per cent of non-resident parents assessed by the CSA had no earned income, and 69 per cent of resident parents claimed social assistance.

In the UK, this father's liability for child maintenance was assessed as £5 per week. In most other countries studied, liability was also low. Informants from Belgium, France and the Netherlands reported that the liability would be 'very little', and in Norway probably 'nil'. In Sweden, liability would be lower than in the UK. In Finland, insurance-based unemployment benefit includes a 'child increase' for people with dependent children, which the father would be expected to pay in maintenance, but as the father in this vignette was receiving only non-contributory social assistance, it was unlikely that there would be a formal assessment of liability until he was able to start work.

Countries in which the father's liability was higher than in the UK were Austria, Denmark and Germany. The Austrian father was liable to pay 16 per cent of his social assistance income. Using purchasing power parities² this was equivalent to around £37 per month. In Denmark, the liability was equivalent to £56 per month, which the father would probably have been able to pay from his out-of-work income. In Germany, the minimum entitlement of the child remains, at the equivalent of £116 per month. If the father had income higher than his protected amount, he should pay as much of that entitlement as he could. In the circumstances described in the vignette, the German father probably would not be able to pay any maintenance to his daughter. However, if the mother received advance maintenance for her child, the authorities might seek to recover the accumulated debt from this father when he resumed work. This is recognised as a problem in Germany, creating disincentives to men in such situations to move into formal, regulated employment (discussed further in Chapter Five).

This vignette illustrates the problems, in most child maintenance regimes, of dealing with liable parents who have no earnings or very low income. If they are required to make regular payments of maintenance from social assistance entitlements, then unless social assistance is relatively generous as in Denmark (see Eardley *et al.*, 1996b) or unemployment benefits include allowances for children to whom there are maintenance obligations, poverty among non-resident parents may be increased. If, however, liabilities are reduced for those with low incomes, this can act as a disincentive to take paid work, which may be enhanced if debt accumulates. Expectation that non-resident parents should pay something from low incomes, even if a small amount, may be of symbolic value, and help to establish patterns of payment for future periods of higher income, but it

may be costly to collect small amounts of money from non-resident parents with low incomes (Barnes *et al.*, 1998).

Informants were also asked what would happen in Vignette One, if the father managed to regain employment.

The father subsequently retrains, and finds employment at average earnings. All other circumstances remain the same.

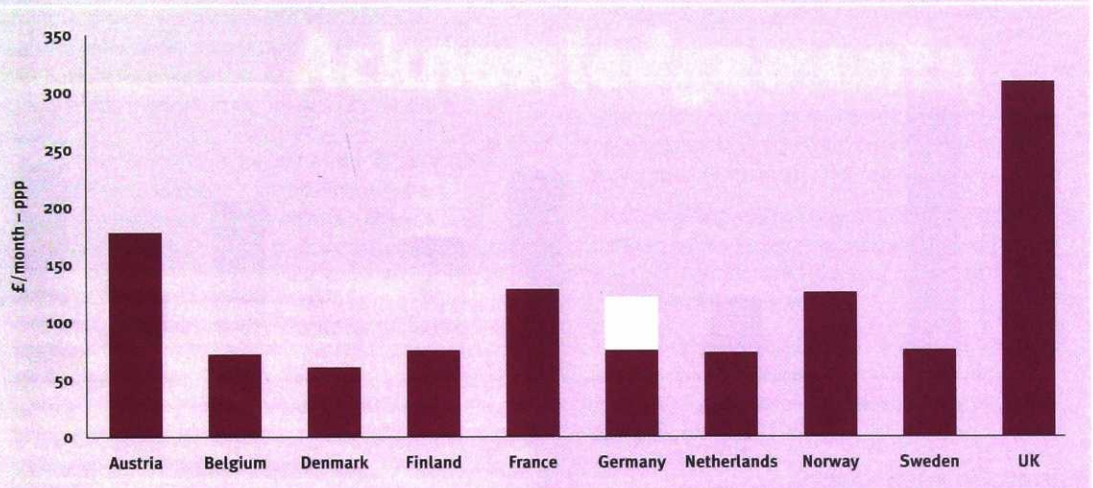
Informants in some countries pointed out that, in view of his age and previous history of temporary, low paid work, it was unlikely that the particular man previously described would be able to move directly onto average earnings. This is true, but it is still useful to compare child maintenance liability of a non-resident father with average earnings, living with his own parents, whose two-year-old daughter lives with her mother, who does not do paid work. The assumptions made are that the mother applies for maintenance through the usual formal procedures, and the parents, who have not been married and never lived together, co-operate with the requirements.

Figure 3.1 shows the likely child maintenance award in each country, using purchasing power parities.

The relatively high level of the maintenance liability determined by the UK CSA, in comparison with other countries, is striking. In the UK, this father is expected to pay more than twice as much maintenance as in most other countries studied. What is also interesting is the similarity in the amounts of money required from the fathers in France, Germany and Norway, despite the great differences in the ways in which this is worked out (individual, discretionary approaches with rules-of-thumb in France; tables with a fixed minimum amount in Germany, and a percentage of gross income in Norway). In Figure 3.1, Denmark appears as the country requiring the lowest level of payment – approximately one-sixth of the UK maintenance requirement.

The non-resident parent in this vignette lives with his parents. Recent research on non-resident fathers (Bradshaw *et al.*, 1999 forthcoming) shows that a third of non-resident single fathers were living with family or friends and the majority of these were living with their own parents. Under the UK CSA regime there is no allowance for the housing costs of a non-resident parent who makes payments to a member of the same household. We might expect, therefore, a relatively high child maintenance liability. We adjusted the scenario so that the UK father pays average rent for a bed-sitting room: £49 per week, in 1997 (Rhodes and Kemp, 1998). This reduces the level of his maintenance obligation by only £8 per month. If he rented a one-bedroom flat in the private sector, at average rent for Britain, his

Figure 3.1 Comparison of formal maintenance liabilities: unmarried parents with one child of 2 years; non-resident father with average earnings, 1997



Notes:
 Two levels of liability are shown for the German parent. The higher amount is that due; the lower amount is that which the parent will actually have to pay if the child allowance is paid to the resident parent. Appendix 3 explains this.
 ppp purchasing power parity (see note 2, p37)

maintenance would be around £200 per month, which is still high in comparison with the other countries. (Ascribing costs for privately rented accommodation might also reduce liabilities in other countries, for example the Netherlands, but informants were not asked to do this in Vignette One.)

Vignette Two: Divorcing parents, non-resident father with above average earnings

Divorcing parents have two school children of five and nine years. The mother has remained in the family home with the children and the father has moved to a small rented flat. The couple were previously buying the house together.

The father earns one and a half times male average full-time earnings: the mother average female part-time earnings. In order to go to work, she must pay for 12 hours child care weekly.

When the couple separated, the father made a lump sum payment to his wife. He has since maintained the mortgage payments on the family home, and paid his wife's child care expenses. He collects both children every other weekend, cares for them in his new home, and pays for everything they need while they are in his care.

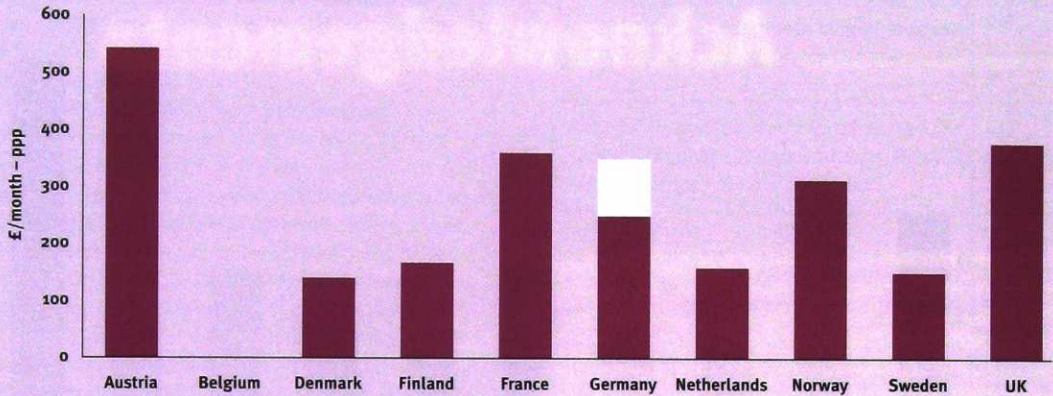
The father wants to maintain contact with his children. The mother wants to stay in the family home with the children. The couple are in dispute about financial arrangements.

In the UK, the parents described in Vignette Two are not obliged to use the CSA, as the resident parent does not claim income-related benefits. They may choose to do so, and in the situation described the conflict between them makes it unlikely that they would come to an agreement directly or through their solicitors. Currently, around 15 per cent of assessments dealt with by the CSA are for 'non-benefit' parents. In this scenario, in Sweden, maintenance would be determined in court, and **not** via the CMS system.

Informants first explained the situation in respect of the owner-occupied house in which the family originally lived. In the UK, under the current CSA regime, property settlements are taken into account in determining child maintenance only if they were made before 1993. In effect, UK parents can no longer 'trade off' the family home against regular child maintenance liabilities. Under the previous UK regime however, security of accommodation for the parent with care and children was usually seen as a priority (Davis *et al.*, 1998). Then, generous arrangements on the part of the non-resident parent to enable the previous partner and children to go on living in the family home were often reflected in lower liabilities for subsequent regular maintenance.

Currently, in the Belgian and French courts this kind of arrangement is possible. Indeed, under the French civil code free use by the children of the conjugal home can be sufficient, in itself, as a form of child maintenance (*usufruit*) although this is not widespread. In Austria, divorce courts would seek to make financial arrangements to enable the resident parent to remain in

Figure 3.2 Comparison of formal maintenance liabilities: divorcing parents with two children aged 5 and 9 years; non-resident father with one and a half average earnings, resident parent with half the average part-time earnings, 1997



Notes:

Information not available for Belgium.

Two levels of liability are shown for the German parent. The higher amount is that due; the lower amount is that which the parent will actually have to pay if the child allowance is paid to the resident parent. Appendix 3 explains this.

ppp purchasing power parity (see note 2, p37)

the family home. There is no legal basis for the non-resident parent to continue making payments for the children's home. However, Austria has a well-developed, generous child support scheme, and the family allowances and payments due from the Family Burden Equalisation Fund would help the resident parent maintain payments herself for the family home.

In most of the Nordic countries arrangements for disposing of jointly-owned family homes are seen as separate from the determination of regular child maintenance. In both Germany and Sweden, it would be possible for the father in this vignette to continue paying the mortgage on the previous family home, and have such payments taken into account in liabilities for regular maintenance. In the Netherlands system, such arrangements are also allowed, but here the mortgage payments count against liability for **spouse** maintenance and not child maintenance.

Figure 3.2 shows the regular child maintenance obligations of the divorcing fathers in the scenario in Vignette Two, as determined through the formal procedures that would be used in each country. We have assumed that the resident parent wanted to go on living in the jointly owned family home with the children, and that this has been resolved in the way that would be likely in each country. Where there are implications for the maintenance determination, these have been taken into account. Thus, for example, the UK mother has taken over the mortgage herself; the German parents have sold the house and shared the value. In the Netherlands and Sweden, the mother remains in the house with the children and the non-resident father

continues to pay the mortgage: the Dutch mother receives no spouse maintenance as a result, while the Swedish mother is assessed as having no housing costs, for purposes of maintenance determination. The Austrian mother also remains in the house with the children; she can pay the mortgage herself from the household income of family allowances, child maintenance and her earnings.

In this scenario, UK no longer stands out as making relatively high demands on non-resident parents. Rather similar levels of maintenance are required as in France and Germany, albeit under such different regimes. The lowest levels of maintenance are still those awarded in Denmark, but levels in Finland, the Netherlands and Sweden are similar to those under the Danish regime. The highest level of maintenance is that determined in Austria, where the non-resident parent is expected to pay 32 per cent of his net income. There are maximum amounts of child maintenance payable in Austria (see Appendix 3), but these have not yet been reached at this income level.

This scenario was varied, in order to investigate the effects of, first, cohabitation of the resident mother with a wealthy new partner, and, separately, cohabitation of the non-resident father and subsequent birth of a child to him and his new partner. Only in Germany was it reported that the cohabitation of the resident parent might, in practice, lead to reduction in child maintenance liability. If the new partner was willing to take over financial responsibility for the children, the non-resident father might argue for a reduction in his maintenance liability. This approach is consistent with

the German principle that policies should not privilege cohabitation relative to marriage. The legal aspects of cohabitation are not codified in Germany, and there are no rules to govern such situations, however. Cases are dealt with individually. In principle, the biological father is responsible for child maintenance, but what happens in practice may depend on the representations of the parents.

The birth of a child to the non-resident parent and his new partner in Vignette Two did have an effect, however. In most countries this divorced father's child maintenance liabilities now went down, in recognition of his additional financial responsibilities for another child and the need for redistribution of resources. The Belgian courts were reported to be strict, however, in ensuring that the financial situation of the children in the first family must not deteriorate. In the French courts matters would be considered on an individual basis, and maintenance would not always be reduced. There would also be no reduction in liability in Denmark. In the UK, the CSA reassessment allows for the father's added costs in two ways. The formula allows an increased 'exempt income' and a higher 'protected income'. In money terms, the reduction in his obligation would be around £24 per month.

The second vignette has been useful in various ways. It has shown that, for some family situations, the UK CSA assessment of liability is rather similar to amounts that are required from non-resident parents in a number of other European countries, namely France, Germany and Norway. It is important to remember, however, that the father depicted in this vignette is hardly 'typical' of those non-resident parents dealt with by the CSA. His higher than average earnings mean that he is among the top 10 per cent of non-resident parents, in terms of net income of those dealing with the CSA during 1997.

The vignette has also illustrated some of the problems in making valid comparisons between outcomes of different regimes. In real life, this divorcing couple would have to make important decisions about what happened to the family home, and in some countries there could be implications for maintenance liability, according to decisions made. Patterns of tenure and housing costs are especially hard to deal with in comparative studies (see Bradshaw *et al.*, 1993), and we did not try to standardise the housing decisions made by the divorcing parents in Vignette Two. The values of the liabilities represented in Figure 3.2 are not therefore strictly comparable. In order to compare the real value of the amounts shown, we would also have to consider how the maintenance was dealt with in each country's tax arrangements. We did not attempt to do this, in this study, but further work of this kind would be useful.

Vignette Three: Unmarried, separated parents moving into 'new families'

Unmarried parents with a child of four years have previously lived together.

The mother has a small, home-based business with profit less than half average female full-time earnings, and her earnings come irregularly. The father has average male full-time earnings.

The father has moved away to live with a new partner, whom he plans to marry. The new partner has two children, aged four and seven years, from a previous relationship.

The father would like to 'make a new start' with his new family; the resident parent applies for a formal child maintenance determination for her four year old child.

The third vignette includes the kind of lone parent whom UK policy-makers are keen to encourage to increase their working hours and move towards financial independence. This mother has a small self-employed business which generates only modest earnings. The earnings can be boosted with income-related family credit, however, making her better off financially than she would be on income support. Regular receipt of child maintenance may be critical in her ability to maintain her work and avoid returning to income support.

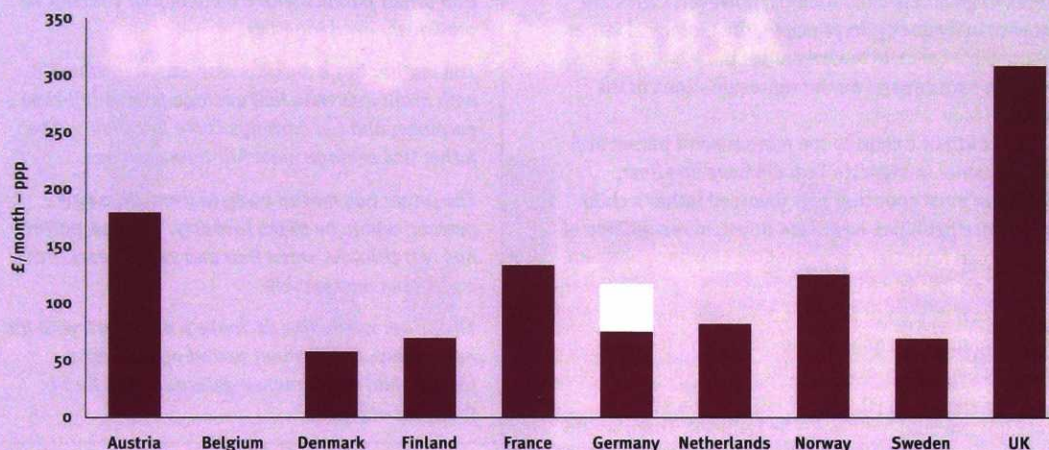
Among UK policy-makers, the father in Vignette Three might fit those referred to in respect of 'the difficulty that many young men have in meeting their obligations' (Department of Social Security, 1998a, Chapter Three) and at risk of joining the '40 per cent of fathers [who] lose all contact with their children within two years of separating' (Department of Social Security, 1998a, Chapter Two).

Figure 3.3 shows how much maintenance the non-resident father is expected to pay, and compares this amount with liabilities determined in similar circumstances across Europe.

The picture is, essentially, the same as that in Vignette One, and illustrates how, in general, child maintenance determinations do not usually acknowledge the financial responsibilities that non-resident parents may take on if they form new families, without marriage.

In the UK regime, the child maintenance formula acknowledges this father's new family situation, and his 'protected income' does include components for the new partner and her children. At this earnings level, however, and because he has no major housing costs, the 'protected income' rule has no effect. His liability would start to reduce if he and his partner were paying typical rent or mortgage payments. Among the other countries with rules and guidelines for determination of

Figure 3.3 Comparison of formal maintenance liabilities: unmarried parents with a child of 4 years; resident parent with less than half the average earnings; non-resident father with average earnings, with 'new' family, 1997



Notes:

Information not available for Belgium

Two levels of liability are shown for the German report. The higher amount is that due; the lower amount is that which the parent will actually have to pay if the child allowance is paid to the resident parent. Appendix 3 explains this.

ppp purchasing power parity (see note 2, p37)

maintenance, the Netherlands is the only one in which there would probably be some adjustment to acknowledge the non-resident parent's financial responsibility to the new, unmarried partner (but not her children). The adjustment would be small, and is not included in Figure 3.3, however.

The very low earnings of the resident parent are unlikely to affect the maintenance liability, in any of the countries studied.

In the UK, some non-resident parents who take on financial responsibilities for new families find it hard to understand that their child maintenance obligations take little or no account of their current social obligations, and their wish to form new families. Under the CSA regime, officials might explain to the non-resident father that his current partner's children are not legally his responsibility, and that their total household income might be increased if his new partner sought child maintenance herself from the father of her own children. However, the intention of the recent child support legislation, to achieve a 'culture change' in the traditional balance between the claims of first and second families on the resources of the non-resident parent, has proved slow to develop, and led to anger and dissatisfaction among non-resident parents (Hutton *et al.*, 1998).

Policy across the European countries studied, however, reflects a strong principle of continuing responsibility to all children, throughout subsequent changes in adult relationships, and changing family situations.

Discussion

It is important to remember that the vignette approach was exploratory. Some of the problems have been discussed. Scenarios presented in the vignettes sometimes did not capture the way that people actually lead their lives, for example in some countries it would be unusual for the resident parents depicted not to have paid employment. We knew at the outset that there would be problems in trying to set standard housing circumstances, across countries, and our informants did not expect to make detailed enquiry about rent levels or mortgage repayments, for this study. The housing circumstances depicted thus reflected our need for simple comparisons. In fact, in the UK, research on the housing movements of divorcing people shows that the first main move of fathers is into the home of other people, usually their parents, (McCarthy, 1996) and non-resident parents who live with their parents are attributed no housing costs in the CSA formula. So the housing circumstances depicted were not atypical in the UK, but the effect on maintenance determinations is important; and this must be borne in mind in considering the comparison of financial outcomes.

We do not know how typical the families depicted were, across countries. By choosing non-resident fathers who had average, or above average earnings, we were **not** depicting typical men who dealt with the UK CSA. However, regimes in some other European countries deal with populations of parents in which greater proportions have paid work, and we wanted to

incorporate this consideration. Some of the European guidelines are designed specifically around **earnings**.

Despite the problems described, the vignettes proved a helpful tool in this comparative study. The accounts provided by the informants helped the author understand how regimes worked, and assisted interpretation of various data in the questionnaire, for example highlighting situations in which discretionary decisions might be made in a rules-based system. They threw light on how parents might react to the processes involved, and the expectations of unmarried parents regarding financial support of their children; where there are cultural differences.

In terms of the results from the comparisons made here, the UK CSA regime does seem to stand out as imposing relatively high demands for child maintenance on the non-resident parents depicted at average earnings levels, although it was not so far ahead of other countries in the case of the non-resident father at higher than average earnings levels. (Bradshaw *et al.* (1998) have conducted some preliminary analyses of levels of child maintenance liability according to the Government's proposals for reform.)

We believe that findings about levels of maintenance liabilities in individual family circumstances provide a useful way of comparing data in different regimes, and that this study has demonstrated how it is possible to do this, using appropriate techniques. There

is scope for considerable development of this technique, looking at families at different income levels (including lower than average earnings, and wealthy parents), and different personal circumstances, paying attention to different housing arrangements and costs. The characteristics of the children concerned might be varied, for example depicting disabled children, or children whose education was paid for privately. The method is relatively time-consuming, however, and in some countries requires application of complex rules and schedules; detailed knowledge of court proceedings and outcomes, or familiarity with the approach of decision-makers to the use of discretion.

Notes

- 1 Some children in Scotland who have reached 12 years of age can apply themselves to the CSA for a maintenance assessment. The Child Support Act 1991 is a UK measure, and the regime described in this report applies to England, Wales, Scotland and Northern Ireland. Some provisions apply only to Scotland – the main difference being the right of a qualifying child aged 12 years or more to apply for an assessment. Thomson (1993) provides an overview of the Scottish perspective.
- 2 This is a method of comparing the actual value of a currency in terms of purchasing power. The purchasing power parity (PPP) converts amounts of national currency into a common monetary denominator, in this case the equivalent to £1 sterling. The purchasing power parities used here have been developed by the OECD. There is a fuller account of the use of purchasing power parities in this way in Bradshaw *et al.* (1993).

4

Payment and receipt of maintenance

The previous chapter described how liabilities for child maintenance were determined, and provided some comparison of the amounts of money due from non-resident parents in similar circumstances but in different countries. The child maintenance regime is effective only in so far as monies due actually reach resident parents and children, however. This chapter therefore considers how maintenance is paid, or collected and forwarded, and how the different regimes deal with default in payments. We look at the sanctions and punishments that accompany persistent non-payment, and what happens to those resident parents and their children who do not receive their entitlements to child maintenance. Child maintenance is only one component in the overall 'package' of financial support for children in each country, and we look at interactions between child maintenance, tax and social assistance. The chapter ends by describing how child maintenance is updated, and how the amounts due may be varied in response to changes in circumstances.

Making payments

None of the European countries studied had gone down the path chosen in Australia (Millar and Whiteford, 1993) and USA (Meyer and Bartfield, 1996) of automatic withholding of child maintenance from income (rather than waiting for the parent to miss a payment before imposing immediate withholding). Rather, in most countries studied here, the usual way of paying child maintenance is through private arrangements between parents involving cash or bank transfers, and such private arrangements are not generally officially monitored. Official schemes for collection of payments and forwarding money to resident parents generally come into action when the resident parent complains about defaults in payment; when public authorities look to recoup expenditure on resident parents and their children, by way of maintenance paid out in 'advance' schemes or social security benefits, or when circumstances such as difficult relationships between parents or ill-health mean that private arrangements are problematic. This is the case in Austria, Belgium, Denmark, Finland, France and Germany, although detailed information about the proportions of parents in

these countries who pay maintenance through private transfers was not available.

In Norway and Sweden, however, where recent developments in the schemes for advancing payments mean that the majority of parents with liabilities/entitlements are now incorporated, only a minority of child maintenance payments are made directly between parents; most go via the collecting agency. In Norway, in 1997 it was estimated that only 10 per cent of payments were now being made directly to beneficiaries. Policy initiatives to increase the proportion of payments made privately are currently under consideration in Norway, as described in Chapter Five. In Sweden, only around 20 per cent of payments are made directly, and while it is recognised that it would be easier for some parents and cheaper for the state if more parents negotiated payments between themselves, this is balanced against the anticipated advantages of the new scheme (greater consistency in awards, greater compliance by liable parents and more security for resident parents).

In the UK in 1997, some 18 per cent of non-resident parents assessed by the CSA were making direct payments to the resident parent by cash, cheque or automatic bank transfer. Others with liabilities made payments via the Agency's collection service, paying the CSA by post office or bank orders or through direct deductions from wages or income-related benefits.

There were only four countries – Austria, the Netherlands, Norway and the UK – in which a parent outside any 'advance' scheme might request a collection and forwarding service when there had been no arrears of payment. In Austria, if the legal guardian of the child has entrusted the Youth Welfare Office with determination and enforcement of child maintenance, the agency may collect and forward the payments, with no charge for this service. In the Netherlands, the liable parent is charged for such a service from the *LBIO* at 10 per cent of the monthly maintenance liability. In Norway, the resident parent may at any time ask the Maintenance Contribution Collecting Agency (MCCA) to take over collection of maintenance due. She may do so even if the maintenance was determined privately, and she does not first have to apply for forwarding from public funds. In the UK, the CSA collection service is usually available to either parent, on request, where the

determination has been made by the CSA. No fees are currently charged in Norway, and the same is now true of the UK where an initial charging scheme was suspended in 1995 (for new cases) when it proved time-consuming and expensive to operate and led to considerable hostility among parents (House of Commons, 1994).

Dealing with non-payment

Informants in all countries reported that there were problems of non-payment of child maintenance. There is greater policy emphasis in all countries on recovering arrears and re-establishing regular payments than on imposing punishment, although there can be severe penalties for persistent non-payment. Table 4.1 summarises what happens when the payments due are not received.

All formal maintenance determinations are legally enforceable if they were agreed or ratified either in court or during the quasi-judicial administrative proceedings governing child maintenance in the Nordic countries, Austria and the UK. In addition, voluntary agreements are enforceable in some countries. Thus in Sweden, a written contract signed by two witnesses is accepted as executive power for the Swedish Enforcement Service in cases of non-payment. Chapter Two explained which agencies had responsibility for enforcing payments, in each country.

When a resident parent reports non-receipt from the liable parent of child maintenance due, the first line of action of the enforcing authority may be to try to

contact the liable parent directly, to talk things through, make enquiries about circumstances, and use persuasion and encouragement to restore regular payments. This is particularly the case in countries where the matter is dealt with at a local administrative level, as in Austria, Finland and Germany, or where specialist agencies have been established to improve compliance, such as the Netherlands, Norway and the UK.

When payment patterns cannot be restored, the next preferred option is an attachment of earnings, whereby payments and arrears are deducted from wages and salaries by employers and forwarded to the enforcement agency. The ease and speed by which such arrangements are set up varies. Austrian courts move swiftly to enforcement on the basis of the agreement recorded at the Youth Welfare Office or the court. Where complaint is made initially to the courts, and additional court orders must be sought for attachment of earnings, the process may be relatively slow. For example, a Belgian resident parent with a court order for maintenance, or an authenticated maintenance agreement, can approach the courts to make an attachment of earnings as soon as one payment has been missed. If no formal agreement already exists, it is necessary to establish one first, which slows down the process of recovery. In France, as soon as there is any unpaid child maintenance, the resident parent can send to the court usher a copy of the formal determination, and within eight days the court usher imposes

Table 4.1 Dealing with default in maintenance payments or money owed to public authorities

	Resident parent complains about unpaid maintenance to:	Action possible for recovery of monies owed by non-resident parent	Punishment for persistent non-payment
Austria	Youth Welfare Office Court	attachment of earnings	criminal prosecution: possible imprisonment
Belgium	Court	attachment of earnings	criminal prosecution: possible imprisonment
Denmark	<i>Statsamtet</i>	attachment of earnings; deductions from pensions; recovery through tax; distraint of assets	possible commitment to prison
Finland	Social welfare board	attachment of earnings; recovery through tax; distraint of assets	confiscation of passport
France	Court <i>Caisses d'allocations familiales</i>	attachment of earnings; deductions from bank accounts, savings, pensions, benefits; distraint of assets; recovery through tax	criminal prosecution: possible imprisonment; loss of exercise of parental authority
Germany	<i>Jugendämter</i>	attachment of earnings; distraint of assets; recovery through tax	criminal prosecution: possible imprisonment
Netherlands	<i>LBIO</i>	attachment of earnings; distraint of assets	possible commitment to prison
Norway	Maintenance Contribution Collecting Agency	attachment of earnings; deductions from pensions, benefits; distraint of assets; recovery through tax; recovery from estate	confiscation of passport; criminal prosecution: possible imprisonment
Sweden	Court (if outside CMS)	attachment of earnings; distraint of assets	interest charged on debt; debt may be notified to other institutions, resulting in loss of credit facilities
UK	CSA Court (if outside CSA jurisdiction)	attachment of earnings; distraint of assets; recovery from property sale	possible commitment to prison

deductions from earnings or bank accounts. In the Netherlands, the *LBIO* may start enforcement procedures immediately on complaint of a missing payment, as long as this happened during the previous six months. In theory, the UK CSA can move quickly to deduction of arrears from earnings, but in practice, as a result of administrative and resource issues, some resident parents complain that the process is lengthy (Knights *et al.*, 1998).

It is not always possible to make arrangements for deducting maintenance from earnings, for example in the case of self-employed people, or people whose employers fail to co-operate or cannot be contacted. The French courts have wide powers to deduct child maintenance owed from bank and savings accounts; through pensions or benefits; through distraint of assets and even through the tax system. The Norwegian collecting agency has similar wide powers. Using the tax system to enforce payments is easiest in countries where tax refunds are normally payable at the end of the accounting period. Refundable tax can be diverted to meet child maintenance arrears.

In terms of penalties for arrears, most courts attempt to pass on at least some of any costs of enforcement, in fees charged to the liable parent, but few details were available. Outside court procedures, parents in arrears of child maintenance faced financial penalties in Austria, the Netherlands and Sweden. If advance maintenance is paid and has to be reclaimed in Austria, there is a lump sum fee of one half the monthly advance. Dutch parents are charged 10 per cent of maintenance due per month (or a minimum of 25 Hfl) if the *LBIO* intervenes to collect monies due. In Sweden, costs of the Swedish Enforcement Service are charged to the non-resident parent, and for parents within CMS, interest is charged on arrears of repayment. Under Swedish law, the child maintenance debt has priority over other debts, including tax arrears, credit card debt and arrears for utility payments. At the time of data collection, the child maintenance scheme in Finland was under revision and one of the proposals was to charge interest on defaulted repayments if the other parent received advance maintenance. In the UK an initial scheme for charging interest on overdue accounts was suspended in 1995 (along with collection fees, see page 39) although the power remains to enforce interest on arrears due from the period up to 1995.

In terms of punishments, the ultimate possibility for non-payment in several countries studied is a period of imprisonment. People cannot pay arrears while they are in prison, of course, and in most countries if prison sentences are imposed these are often suspended, with agreement of payment arrangements. In Norway and Finland, persistent non-payment could lead to the confiscation of a liable parent's passport, especially if there was reason to believe that a person might seek to leave the country to avoid their financial responsibilities.

In France, people who resolutely avoid paying their maintenance liabilities face severe penal procedures, which may include loss of exercise of parental authority for the child concerned until readiness to meet obligations has been demonstrated through regular payments. Under the Austrian Penal Code there is also a possibility of prosecution of a parent who fails to pursue employment which would enable compliance with maintenance obligations.

Levels of compliance with payment

One of the main aims of the UK CSA was to increase the levels of compliance with payment of child maintenance. A national survey of lone parents conducted in 1989 had shown that only 29 per cent of lone parents responding received regular child maintenance and only 39 per cent had ever received any (Bradshaw and Millar, 1991) and the government hoped that the new scheme would result in more parents meeting their liabilities. The CSA has had difficulty in raising levels of compliance, however. In November 1997, some non-resident parents on income support were having a small contribution to child maintenance deducted from their benefit. Among other non-resident parents who should have been paying child maintenance to the CSA 30 per cent were making no payments at all and another 30 per cent were only making partial payments of what was due.

It is hard to make direct comparisons between the different countries of levels of compliance with payment. Data is not collected in comparable ways, and not all collected data is published. In some countries there is greater policy interest in, and better data about, levels of recovery from liable parents of repayments for maintenance 'advanced' from public funds. However, even where advance maintenance is available, not all resident parents who might apply do so, and advance maintenance is not always available to all resident parents who do not receive the payments due, so data about recovery by authorities does not provide the full picture of compliance.

The general picture, however, is that in all countries studied, a considerable proportion of non-resident parents do not pay the child maintenance due, and that while this proportion is reduced by formal interventions which seek to enforce payments, some countries have limited success. Since the available data is in such different forms across countries, we have not attempted any tabular comparison. Rather, we take each country in turn and report what evidence there is about levels of compliance.

In Austria, the Advance on Maintenance Act, 1976 specifically addressed the problem of non-compliance with maintenance payments. Advance maintenance is granted by the court when liable parents have not met

their legal obligations. One measure of the problem of non-compliance is the cost of the advance scheme, and this was about 1.0 billion ATS in 1997, of which only just over 40 per cent was recovered from liable parents.

There is little recent statistical information from Belgium, although it is known that there are problems of non-compliance, believed to be associated with low incomes of liable parents, and non-co-operation and poor relationships between parents. An early study by Maddens and van Houtte (1992) in which 593 divorced women with entitlement to child maintenance were interviewed in 1987 showed that nearly one-third received only occasional payments or nothing at all. Levels of receipt were higher among women after divorce by consent than after fault-based divorce.

In Denmark, we know that 14 per cent of all children live in a one-parent family and 10 per cent in a step-family (Koch-Nielsen, 1996). In 1996, around 14 per cent of all children received advance maintenance, which is available when liable parents have missed maintenance payments due. These data suggest that, before enforcement, many parents with child maintenance liabilities default on payments. There is some evidence that voluntary compliance may be higher in rural areas than in urban areas (Statistics Denmark, 1997). After intervention in the form of advance payment and recovery procedures, compliance increases, as we see in the next part of the chapter.

The informant in Finland described a considerable problem with non-payment, and suggested that a common reason for default was inability to pay from limited incomes, although arguments between parents about access and custody were also often associated with non-payment of maintenance. It was reported that in 1997 the municipal authorities, which can intervene to advance and recover maintenance, were currently collecting maintenance arrears from between 25 and 40 per cent of all liable parents.

Several research studies in France have illuminated the problem of non-receipt of child maintenance. At the end of the 1970s, two important studies (Valetas, 1978; Mème, 1980) demonstrated that many of the non-resident parents studied who had child maintenance arrears felt unable to afford to pay what was due, and there was an association between non-payment and poverty among non-resident parents. Following the introduction of the ASF, a form of advance maintenance for lone parents, research was conducted for the CNAF, in 1985, which showed that one-third of child maintenance was never paid. Non-payment was higher when the resident parent was younger (half of lone mothers under 25 years old were not receiving child maintenance due); when the liability was low; when the number of children was higher, and when the liable parent was unemployed (Festy, 1988; Renaudat and Villac, 1991). Non-compliance is mainly attributed to financial problems of non-resident parents, especially

when their circumstances change and the effects of, for example, unemployment, are not taken into account quickly in their assessment of liability.

Little appears to be known about levels of compliance with child maintenance in Germany, and there are no published statistics. However, socio-legal studies on spouse maintenance due to divorced/separated wives have shown that relatively low proportions of women with entitlements actually receive what is due. Different studies suggest proportions between 18 and 40 per cent (Scheiwe, 1996; Willenbacher *et al.*, 1987). We do not know how far this low compliance rate for spouse maintenance is reflected in payments of child maintenance. Willenbacher and Voegeli (1992) assert that the compliance rate for child support increased during the 1980s; is higher in higher income groups, and is paid regularly and fully in 75 per cent of cases, but the source of this information is not described.

The Netherlands has experienced considerable problems of non-compliance with payment of child maintenance. As in the UK, resident parents who have insufficient financial resources may claim social assistance, and unpaid child maintenance inflates social assistance expenditure. One of the aims of the new *LBIO*, which became effective in 1997, was to improve compliance with maintenance liabilities. Statistics about the new agency's performance during the first year of operation are becoming available, but there are no figures so far which indicate general levels of compliance with child maintenance in the Dutch population.

In Norway the figures produced by the MCCA about the prevalence of maintenance arrears among its clients provide a good indication of what is happening in the country, because the MCCA deals with 90 per cent of all child maintenance cases in Norway. Only one-third of the non-resident parents dealt with by the MCCA in 1996 had no arrears. There is no direct research evidence on the reasons for non-compliance. However, it was suggested that although some non-payment was associated with inability to pay, other factors influencing non-compliance included reluctance to assume responsibility among parents who have not lived with each other; acrimonious relationships between divorced partners, especially after custody disputes, and reluctance of men to pay child maintenance when the other parent finds a new partner and becomes financially comfortable.

In Sweden, as in Norway, only a minority of child maintenance payments are made privately; most go through the collecting agency. So the number of non-resident parents in arrears to the state provides some indication of the problem of non-compliance. In 1994, 65 per cent of non-resident parents dealt with in the Child Maintenance Advance system (which covered 75 per cent of parents not living with their children) had arrears to the state for child maintenance. Since the introduction of the new CMS scheme in Sweden, the

number of non-resident parents dealing with the Swedish Enforcement Service in respect of payments of debt has increased (but under the new scheme, a higher proportion of non-resident parents are required to make payments, since fewer have 'nil' liability).

Discussion

The general finding is that in all the countries studied there were problems of non-compliance with payments of child maintenance, although there is rather little research and reliable data on this issue in most countries. Levels of arrears to collecting agencies give some indication of the problem in those countries in which most maintenance is paid through such agencies. However, care must be taken in using this kind of data, because it is recognised that some arrears to formal collecting agencies may be created by the agencies themselves. Administrative procedures in dealing with non-resident parents, for example office routines or delays, can themselves lead to the build-up of arrears which do not reflect the reluctance or inability of the parent to pay what is due. This is recognised in the UK, as well as in Norway and Sweden, and we return to this issue in Chapter Five.

Reasons for non-payment of liability appear to have received little attention in several of the countries studied. Where this has been investigated, low incomes are recognised as contributory factors – parents perceive inability to afford what is due, especially when circumstances change. Arrangements whereby parents can apply for review or reassessment are therefore likely to be important in maintaining compliance, and we look at this later. Non-compliance also reflects problems in relationships, however, and in all countries it is recognised that disputes, conflicts, bitter feelings and resentments between parents are sometimes worked out in their management of the financial support considered to be due to their children. In the UK context, research by Bradshaw *et al.* (1999 forthcoming) shows how the legal liabilities of non-resident fathers sometimes do not match the way they perceive their personal obligations. The way they behave, in meeting the maintenance obligations imposed, or seeking to avoid payments, may depend on normative guidelines influencing the way they live. Chapter Five discusses further how fathers introduce their feelings about reciprocity in relationships into their willingness to pay maintenance, for example in terms of the arrangements for contact with their children.

Advanced maintenance schemes

One criticism of the child maintenance regime in the UK is that child maintenance is an unreliable income source for those resident parents not claiming income support, and budgeting problems and low living standards for families can result from missing or irregular maintenance

payments. This may act as a disincentive for lone parents who might try to move off social assistance into paid work but who value income security. This situation has led lobbying groups to argue for some form of guaranteed or advanced maintenance scheme, so that all resident parents with entitlement to child maintenance can rely on regular receipt of at least a part of what they are due.

Among the countries studied, the Netherlands is the only other country where there is no specific scheme to advance maintenance, outside the general social assistance regime. In the other countries, access of parents to advance maintenance varies and the nature of the arrangements differs considerably. Table 4.2 summarises the main features of the advance schemes.

Advance schemes originally emerged in response to the poverty and low standards of living of women caring for children on their own, many of whom were not receiving maintenance from the fathers of their children. Such schemes emphasise and demonstrate the right of the child to parental support, or support from the state, when parental support is not forthcoming. They acknowledge the rights of a child, whose parent is unknown, missing, too poor or unreliable, to at least a basic minimum in comparison with what other children can expect. They afford the child some protection against poverty and provide some financial security. Such security may be important in helping the resident parent to make decisions about taking paid work alongside providing care for the child.

The most comprehensive schemes, in terms of coverage of populations of child maintenance cases, are those in Norway and Sweden where there is strong support for the schemes. Here, all resident parents may apply to the social security authorities to forward a standard fixed amount of child maintenance and take over responsibility for collecting the payments due, thus bearing the brunt of missing payments or arrears. In other countries, this facility is usually only available after formal or ratified child maintenance agreements have broken down, although resident parents with no formal agreement may apply for *normalbidrag* in Denmark. The Danish scheme has been established for many years and is administered by the municipal authorities. This scheme recovers most of the money advanced; and is reported as administratively efficient and acceptable to parents. The amounts advanced are not high (approximately £14 per week per child, in purchasing power parity), but are the same amount as paid in additional child benefit for a lone parent. The scheme is reported as relatively trouble free.

While resident parents in Denmark, Finland and Germany may apply for advance immediately a maintenance payment has been missed, parents in France, Austria and Belgium have to wait longer, as shown in Table 4.2. Austrian parents must wait until civil recovery procedures have failed over a period of at least

Table 4.2 Characteristics of 'advance' maintenance schemes

	Accessible to	Administered by	Funded by	Amount awarded	Resident parent means-tested?	Responsibility for recovery	Rate of recovery*
Austria	all resident parents after default of payments determined/recorded by courts or Youth Welfare Office; and after failure of civil procedures for at least 6 months	courts	Family Compensation Fund	as original determination, with upper limit	no	Youth Welfare Offices	40 per cent of costs
Belgium	divorced parents, after 2 defaults in 12 months of court determined/ratified payments	Public Centres for Social Welfare	central and municipal funding	as original determination, with upper limit	yes	Public Centres for Social Welfare	not known – probably very little
Denmark	all resident parents, after default of payment registered with <i>statsamter</i>	<i>statsamter</i>	state reimbursement of municipal expenditure	fixed amount <i>normalbidrag</i>	no	<i>statsamter</i>	97 per cent of total advanced
Finland	all resident parents, after default of registered agreement	municipal social welfare services	state subsidy of municipal expenditure	fixed amounts at two rates for: – child in lone parent family – child in two parent family (lower)	no	municipal social welfare services	12 per cent of total cumulative debt of unpaid maintenance, in the advance scheme
France	lone parents, after 2 defaults in payment and after undertaking civil procedures	<i>Caisses Allocations Familiales (CAF)</i> (social security agencies for family matters)	social security fund (contributions from earnings)	fixed amount (<i>allocation de soutien familial ASF</i>)	no	<i>CAF</i>	possibly less than 10 per cent of cases
Germany	all resident parents, after default of registered agreement, in respect of children under 12 years. Available for maximum of 6 years	<i>Jugendämter</i>	50 per cent federal funding and 50 per cent <i>Länder</i>	fixed amount at two rates for: – child up to 6 years – child aged 7–12 years (higher)	no	<i>Jugendämter</i>	possibly 25 per cent of cases
Netherlands	no advance scheme						
Norway	all resident parents, by request	MCCA	National Insurance central budget	fixed amount	no	MCCA	80 per cent of total advanced in 1997
Sweden	all resident parents, by request	social security offices	National Insurance central budget	fixed amount	no	social security office	77 per cent of money owed by liable parents in 1997
UK	no advance scheme						

* These rates are not directly comparable, but provide indicators of levels of recovery.

six months. Belgian parents can take forward an application only after there have been two defaults in monthly payments during a 12-month period. The Belgian scheme is accessible only to divorced or separated parents. In France, divorced resident parents applying for *ASF* are expected to have already undertaken civil procedures at court, to enforce maintenance, and unmarried resident parents are expected to do this within four months to continue their eligibility for receipt of advance. There are further

restrictions in Germany, where advanced maintenance is only available to children below 12 years old and for a maximum of six years, and in France, where advanced maintenance is available only to lone parents.

The administration of the advance schemes is generally a matter for the municipal or social security authorities which are involved in determination of maintenance, but in Austria the courts, in close collaboration with the Youth Welfare Offices, retain responsibility for administration and payment. At least

some part of the cost falls on central government in all countries, through reimbursement or subsidy of municipal/provincial funding or the social insurance budget.

The amounts forwarded are usually standard rates, which are reviewed and updated. The German standard rates equal the minimum maintenance for a non-marital child (from the Düsseldorf Table), see Appendix 3, Table A3.3. The Danish rate is the *normalbidrag* (NOSOSCO, 1997). Two standard rates are set in Finland and Germany, distinguishing, respectively, entitlement of children in lone-parent families and two-parent families, and entitlement of younger and older children. The Austrian and Belgian advances are not standard rates but based on the original determination, with upper limits which are revised.

Only in Belgium is the entitlement means-tested according to the resources of the resident parent, and here the scheme was reported as stigmatising and unpopular. This, along with the required waiting time, is probably associated with the low numbers of parents who use the advance scheme. Although the number of children covered increased ten-fold during 1989–93 there were only 3,328 children within the scheme throughout Belgium in 1993 (Eardley *et al.*, 1996b).

If resident parents apply for advance payments, they are usually expected to co-operate as far as possible in order to enable recovery of the monies advanced from the non-resident parent. There are strict requirements about this in France, Austria and Belgium. In Norway, however, a resident parent may choose to withhold the name of the other parent and still receive the advanced maintenance. In Denmark, children whose paternity has not been established receive an equivalent amount of money, but this is paid as a special child allowance from a different budget (Nordic Statistical Secretariat, 1987).

In terms of rates of recovery achieved, it is hard to make comparisons, as in some countries, such as Norway and Sweden, not all maintenance forwarded is supposed to be recovered, for example if payment due from liable parents is very low, or nil. In Norway, in 1997, approximately 80 per cent of the total costs of forwarding advance maintenance were recovered, of which 83 per cent came from non-resident parents, and 17 per cent from those lone parents in receipt of transitional allowance. Currently, approximately 11 per cent of non-resident parents with liability in Sweden are not required to repay any of the maintenance advanced and 77 per cent of money owed is recovered. In Belgium, the Public Centres for Social Welfare may attempt to recover advanced maintenance only if liable parents' income remains above the minimum income after maintenance is reclaimed (Eardley *et al.*, 1996b). Often, there is no attempt at recovery.

There is also the problem, in comparing rates of recovery, of dealing with accumulated debt, some of which is very old. In Norway, in 1997, total debts were

almost twice the forwarding costs. By the end of 1997, only 35 per cent of all parents paying maintenance had no debt at all.

The high rate of recovery of advanced maintenance from liable parents in Denmark, around 97 per cent, may be linked with the relatively low levels of payments required, but also with the fact that children whose paternity has not been established are dealt with in a separate scheme (Nordic Statistical Secretariat, 1987). This high rate of recovery is not matched in any other country. Finland, France and Germany, in particular, have great difficulty in recovering advanced maintenance. There are current proposals for the revision of the scheme in Finland, introducing interest payments on arrears, and time limits to liabilities, in an attempt to increase recovery rates. In all three of these countries, it is believed that part of the problem is that large amounts of arrears are unrecoverable, due to low incomes or the personal circumstances of the non-resident parents. In France, in 1992, as much as 64 per cent of ASF was believed to be *non-recouvrable*. (In the UK, in 1997, around 38 per cent of the total arrears among CSA clients was believed to be unrecoverable, for similar reasons.)

The recovery problem might be even greater in France if there was higher take-up of ASF among lone parents. Research in the mid-1980s (Festy, 1988; Renaudat and Villac, 1991) suggested that take-up of ASF and the benefit *allocation d'orphelin* which was replaced in 1985 by ASF was only around 50 per cent. Potentially eligible women were not applying, because they did not understand ASF or thought the low amount available not worth the effort.

In both France and Germany, the strong policy commitment to maintaining standards of living for children despite low levels of recovery of the advance payments means that, in effect, these payments are now perceived largely in terms of a form of social assistance. In fact, in Germany access to the advance was widened in 1993, by increasing the length of entitlement and raising the children's age limits. Although there are currently policy initiatives to reduce public welfare expenditure in Germany, the spotlight has not yet fallen on the advance maintenance system.

In France, the debate about ASF has centred around the apparently low levels of take-up, and the implications for living standards. Another strand to the French discussion is the possibility that non-resident parents may perceive less responsibility for their children, if their obligations originally dealt with by juridical procedures are eventually transferred into the realm of social security administration. Alongside this must be set the advantages for the resident parents and children of the reliability of the advance.

Commitment to the advance maintenance scheme is also strong in Austria, where it is perceived as one major instrument in securing reasonable standards of living for children. The scheme strengthens government

efforts to prevent lone parents (mostly mothers) sliding into poverty and disadvantage, and is perceived as helping to meet the needs of such families.

Although there are problems with advance maintenance schemes in some countries, none of the informants from countries which had such advance schemes reported any arguments or suggestions for abolishing such schemes. The Norwegian and Swedish schemes have both been reformed in recent years, in the search for more efficient administrative mechanisms to guarantee to all children their right to maintenance. There was a comprehensive investigation in 1993 of the previous Swedish scheme (SOU, 1995) but it is too early yet to evaluate the new Swedish CMS scheme, which now covers more than 75 per cent of parents with maintenance determinations. The new Norwegian scheme is again under review, as described already. All parents may apply for advance maintenance, but maintenance may not be forwarded unless determinations have been mediated by the MCCA. The advance scheme has proved popular, and the MCCA is currently involved in around 90 per cent of all maintenance arrangements. In principle, however, maintenance is a private responsibility, and one of the aims of the proposals for change put forward by the Norwegian government is to encourage more people to make private arrangements. Norwegian policy-makers believe that there is likely to be greater commitment towards arrangements made privately, and people will take more responsibility for honouring arrangements they have made themselves. There is also a belief that administrative determinations with advance payments, once set up, are less flexible than private arrangements,

and may take longer to adjust when circumstances change. A further disadvantage of the wide coverage of the MCCA and advance payment scheme is that public resources may be being used for unnecessary administrative work. Although non-resident parents have a strong voice in current debate about child maintenance within Norway, the same is not true for resident parents. The Norwegian informant observed that many such parents now think of child maintenance entitlements as part of the general support from the state to their children. The author observes that parents may be disempowered by such perceptions, unaware of the implications of proposed changes.

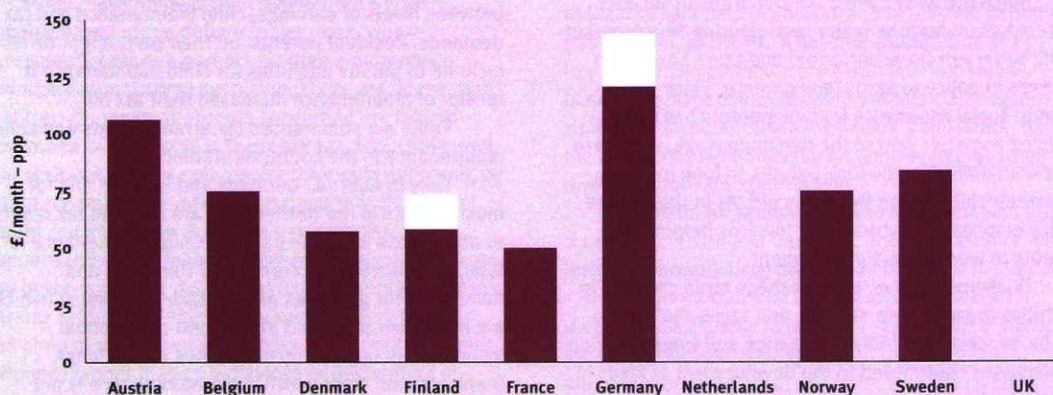
Figure 4.1 shows the relative values of the advance maintenance paid in the different countries.

Amounts paid in advance are generally between £50 and £150 per month, in purchasing power parity, with less difference between countries than we found in the previous comparisons of maintenance awards for the parents in the three vignettes. Germany and Austria pay the highest amounts of advance maintenance; in other countries amounts are rather similar.

Appendix 4 offers an additional perspective on the comparative value of advanced maintenance in Denmark, Finland, Germany and Sweden, using data collected by the European Observatory for National Family Policies.

Neither the UK nor the Netherlands has an advanced maintenance scheme. In the UK, the fact that social assistance is paid at standard rates taking into account any maintenance payments effectively acts as a form of maintenance guarantee for lone parents claiming social assistance. Throughout the early 1990s around two-thirds of lone parents have claimed social

Figure 4.1 Relative values of advance maintenance, 1997



Notes: There are no advance maintenance schemes in the Netherlands or the UK. Amounts shown are fixed rates for 1997, except in Belgium and Austria. In Finland, the higher rate is paid for children in lone parent families and the lower rate, in two-parent families. In Germany, the higher rate is paid for a child 7-12 years old and the lower rate, 0-6 years. In Belgium, the maximum payable in 1996 is shown; in Austria, the average payment for 1996. Note that in Austria, amounts actually advanced are based on the original determination, with upper limits which are age-related, as explained in Appendix 3.

ppp purchasing power parity (see note 2, p37)



assistance. This effective 'guarantee' of maintenance in social assistance, and its absence from family credit, an income-related benefit for lone parents in paid work, has been criticised as undermining work incentives. There is a £15 disregard of any child maintenance received, in assessment of entitlement of resident parents to family credit. However, if non-resident parents stop paying the maintenance, or pay less than was taken into account, there is no adjustment in the family credit until the reassessment of entitlement of the resident parent. Family credit lasts for six months, regardless of any change in circumstances. There is no form of guaranteed maintenance for lone parents, or repartnered resident parents, who do not claim social assistance. This is likely to attract greater attention in view of the current policy intention to encourage more lone parents to take work. There is some evidence that the proportion of lone parents claiming social assistance is now declining in the UK (Bradshaw, 1998).

In the Netherlands, as in the UK, the income-related social assistance scheme is the only form of 'guarantee' of minimum income to resident parents entitled to child maintenance. Until recently, the Netherlands had very low labour market participation by all mothers. Bussemaker *et al.* (1997) describe how schemes for financial support for lone mothers arose within an 'extreme breadwinner-caretaker' regime. Until 1996, lone mothers had access to general social assistance at a level of 90 per cent of the net national statutory minimum wage. Child maintenance received was taken into account, but earnings could be disregarded for two years, at a rate of 30 per cent of gross earnings up to a maximum. Within this regime, lone mothers were characterised primarily as 'mothers', and there was an assumption that the state would provide assistance to those who had no breadwinner.

Since the early 1980s, the Dutch social security system has undergone major restructuring (Bussemaker *et al.*, 1997; van Oorschot, 1997) and there have been changes in policy towards lone parents. Since 1996, general social assistance for lone parents has been reduced to 70 per cent of the minimum wage, and there is now an obligation on lone parents to look for work, once their children are five years old. As in the UK, the policy emphasis is increasingly towards helping lone parents to work in paid employment.

Bussemaker *et al.* discuss these rapid changes in attitudes towards lone parents, and argue that by the 1990s, processes of individualisation and fragmentation of life styles contributed to the development of ideas in the Netherlands that lone motherhood was a self-selected lifestyle which no longer required social protection. The current government sees labour market participation as the best guarantee of social protection (van Oorschot, 1997). Within this emphasis in socio-economic policy, policy development regarding child maintenance has been in the direction of more effective

enforcement. The new agency to collect and enforce child maintenance, the *LBIO*, has only been fully operational since 1997, and it is too soon for a full evaluation of its effectiveness, although it is generally believed to be effective.

Child maintenance within child support 'packages'

Child maintenance payments form only one component of the overall package of child support measures in each country. Detailed interactions of components of child support packages have been described in a previous study (Bradshaw *et al.*, 1993). Here, we consider the interface between child maintenance, taxation and social assistance.

Maintenance and taxation

The interaction between child maintenance and taxation has received rather little attention in the UK policy debate. Different fiscal arrangements, in effect, reflect different forms of state subsidy for child maintenance, in that tax reliefs or allowances on maintenance due is a form of 'tax expenditure' by government.

There might also be effects on parents' behaviour of different tax treatments. Fiscal arrangements affect the real value of maintenance paid and received, and parents may respond, according to their perceptions of the situation. Put simply, if liable parents perceive opportunities for tax breaks in paying maintenance, they may be more inclined to pay higher maintenance, or maintain regular payments. If they perceive tax treatment of liabilities as punitive, or unfair, they may be less inclined to comply with demands. There might also be effects on work incentives depending on interactions between levels of earnings, child maintenance and tax demands. Resident parents, on their part, might be less inclined to pursue liabilities for child maintenance if receipt of maintenance increased their tax bill.

Table 4.3 summarises tax arrangements and child maintenance in the countries studied.

Only in Austria,¹ Germany and Sweden and for most parents in the Netherlands are there no tax reliefs or allowances for liable parents. Child maintenance is fully tax deductible in France and Denmark, and deductible for purposes of local taxes in Norway (which are estimated at around 28 per cent of 'personal income', that is gross income minus deductions). (Central taxes, from which child maintenance is not deductible, are paid only by higher earners in Norway.) A small standard deduction from taxable income is made in Finland, but this has not been uprated for several years, and is of little significance. Eighty per cent of maintenance paid is tax deductible in Belgium.

Tax allowances, as opposed to tax deductions, are unusual. In the UK, this applies only if parents are or

Table 4.3 Child maintenance and taxation

	Liable parents: maintenance due		Resident parents: maintenance received
	Tax deduction /relief	Tax allowance	Included in taxable income
Austria	no	no	no
Belgium	80%	no	80%
Denmark	all	no	no: <i>normalbidrag</i> yes: additional maintenance
Finland	small flat rate deduction	no	no
France	all	no	yes
Germany	no	no	no
Netherlands	no	not usually	no
Norway	all: local taxes no: central taxes	no	yes
Sweden	no	no	no
UK	no	married parents	no

were married, when the non-resident parent makes tax payments gross and claims relief at 15 per cent up to the level of the married couple's tax allowance (£1,830 in 1997–98). Relief ends if the ex-spouse remarries. The only other example of a tax allowance was reported from the Netherlands, where although this is not generally available, there is an allowance for child maintenance paid for a child without formal affiliation (an unusual situation).

It is not possible to comment on the real value of the various tax breaks without a full analysis of the different tax systems, which was beyond the scope of this study. Taxation and child maintenance is an important part of the debate in Denmark, where agreements between parents for high maintenance payments attract some suspicion. There are suggestions that the non-resident parents concerned are taking advantage of the fact that these are tax deductible, and that resident parents collude, for their own purposes, by returning part of the inflated payment that the liable parent reports. There is no firm evidence that this happens, however. Indeed, there is little evidence, from any of the countries studied, as to how far non-resident parents understand their situation regarding taxation and child maintenance payments, or whether this does influence labour market behaviour or declaration of income for taxation.

Turning to how child maintenance **received** is dealt with for purposes of taxation of resident parents or their children, in Austria, Finland, Germany, Netherlands, Sweden and the UK child maintenance received is not considered taxable income. In Belgium, 80 per cent of child maintenance is taxable, either as parental or child

income, for purposes of both central and local taxation. However, if it is dealt with as the child's income, which is acceptable, liabilities will be considerably reduced. In Denmark, the *normalbidrag* is tax free. The additional maintenance is taxable, but it is the taxable income of the child and thus usually falls below the tax threshold. In France child maintenance received is usually taxable income, but the French tax thresholds for families with children are fairly high anyway. The situation is similar in Norway: child maintenance is taxed as part of the income of the resident parent until the child is 17 years old, but there are a number of important tax allowances anyway for resident parents. For lone parents with only transitional allowance and advance maintenance, liability for tax is nil. At 17 years Norwegian children have responsibility for their own tax, but are allowed deductions for child maintenance received, in order not to destroy work incentives.

In general, therefore, among the countries studied the taxation of maintenance received seems unlikely to be a strong influence on decisions taken about work by resident parents.

Child maintenance and social assistance

For non-resident parents at the lower end of the income scale, effects of maintenance liability on entitlement to social assistance may be of greater personal relevance than taxation policies. In Chapter Three, discussion of the first vignette illustrated what happened in the different countries to non-resident parents at social assistance level in respect of their maintenance liabilities. In summary, in most regimes non-resident parents claiming social assistance are assessed as having very low or nil liabilities, but previous arrears (before a period of social assistance) are held in abeyance until the next period of employment. In the UK, a flat-rate contribution of £5 towards child maintenance is deducted from weekly benefit payment of non-resident parents claiming income support or income-related job-seeker's allowance, unless the parent has responsibility for another family, when he is exempt from any contribution.

The main exceptions to these arrangements are those in Denmark and Germany. Social assistance and levels of *normalbidrag* are such in Denmark that a non-resident parent claiming social assistance would probably still be able to pay the regular *normalbidrag*. In Germany, the formal obligation to the minimum maintenance remains, in principle, for parents claiming social assistance. It is recognised that they are unable to afford to pay this amount, and depending on circumstances the balance of the debt accruing during a period on social assistance may be reclaimed by the collecting authorities which have advanced maintenance, when the income of the non-resident parent rises.

In none of the countries studied was the approach one of increasing the social assistance entitlement of liable parents to enable continued payment of child maintenance assessed on previous higher incomes. Rather, the approach was to reduce or suspend the current maintenance liability, if this could not be afforded. Increasing social assistance entitlement of liable parents would be a way of protecting commitment to the child. However, increases of social assistance to parents liable for child maintenance could create disincentives to work, or incentives for parents to live apart, and would create problems of inequity for children living in intact families which depend on social assistance. (In some countries, for example Finland, insurance-based unemployment and sickness benefits do include child increases which are available to non-resident parents. We did not look at this comprehensively, in this study.)

Of critical importance to some non-resident parents whose employment circumstances change, and those who take on new family responsibilities, will be how quickly and easily determinations of child maintenance liabilities can be adjusted to reflect the new financial situations. In the last part of this chapter, we look at arrangements for revising and changing assessments of liability.

Turning to the interaction between child maintenance and social assistance for resident parents, in all the countries studied, child maintenance counts as income in the assessment of the resident parent and child for entitlement to social assistance. As we saw earlier in Table 2.2, the UK has by far the highest proportion of lone parents receiving social assistance among the countries studied. One criticism of the current regime in the UK is that if resident parents on social assistance see no financial advantage from payments made by non-resident parents, they will be less inclined to co-operate with the CSA, while some non-resident parents will be more reluctant to make payments. To address these criticisms, a 'bonus' scheme was introduced to allow £5 per week to accumulate for resident parents on social assistance for whom maintenance payments were made regularly, to be payable as a lump-sum 'bonus' when the resident parent moved off benefit into work. In addition, the means-tested in-work benefit, family credit, has a maintenance disregard of up to £15 per week.

There are few examples among the other countries studied of any disregards of maintenance in assessment of entitlement to social assistance or any other mechanisms of the kind described for the UK. In Norway, however, child maintenance is co-ordinated with transitional allowance, the most important benefit for lone parents, in an attempt to smooth the pathway to financial independence. The whole of the advanced amount is disregarded, for purposes of transitional allowance. However, if maintenance is received additional to the advanced amount, 70 per cent is claimed by the state. In effect, the interaction between

income from work, transitional allowance and child maintenance means that a low-paid job offers little financial advantage, but maintenance offers an additional incentive to get off transitional allowance completely (in order to keep the entire maintenance paid). There is little evidence as to how far such incentives are understood and acted upon in Norway.

In France, where child maintenance counts against all means-tested family benefits, even if a potential beneficiary of *ASF* has not applied for this, an amount equivalent to the calculated potential *ASF* entitlement may be ascribed when assessing entitlements for family benefits.

There is little evidence from research as to how far parents understand and act on any of the theoretical incentives or disincentives resulting from interactions between social assistance and child maintenance. Some non-resident parents are believed to be reluctant to take work because maintenance deductions will be made from earnings in both Belgium and Finland, and in Germany there is also the prospect of high debts from accrued maintenance facing people who move into work. In the UK it is suggested that some liable parents move out of work to avoid high maintenance payments. However, there is little reliable evidence about the extent to which non-resident parents actually behave in this way. In both Norway and the UK, some resident parents are believed to be reluctant to move into low paid work because of disincentives: little financial gain in Norway and loss of income security in the UK. Again, it is hard to know how many people do perceive these disincentives and respond to them.

Revising child maintenance liabilities

In most countries there are structural mechanisms which help to maintain the real value of child maintenance in existing awards, and Table 4.4 shows an interesting variety of different approaches. French court determinations may anticipate the need for reassessing original awards by having juridical insertion clauses in maintenance agreements, for example with commitment to annual revaluing. In Denmark, Finland, Germany, the Netherlands and Sweden final determinations are automatically reviewed in accordance with price indices, usually on an annual basis, and may be adjusted accordingly. Standard social assistance scale rates which are used for calculating needs or expenses in tables and formulae in the Netherlands and UK are also indexed to reflect changes in the cost of living.

Other kinds of mechanisms for automatic adjustment of current awards are those in Norway, the Swedish child maintenance support (CMS) and the UK CSA, where there are procedures for automatic regular review of individual cases. This happens once a year for the Swedish CMS repayments, once every two years by

Table 4.4 Revising child maintenance determinations

	Automatic adjustment of existing awards	Adjustment on request	Uprating of 'advance'
Austria	no	application to court or Youth Welfare Office	amount advanced must be reviewed after 3 years; upper limit reviewed annually in line with pensions
Belgium	no	application to court: annual revision possible	maximum not regularly uprated during the early 1990s
Denmark	<i>normalbidrag</i> indexed to prices	application to <i>statsamter</i>	<i>normalbidrag</i> indexed to prices
Finland	awards indexed to cost of living	application to Social Welfare Board (or court)	indexed to cost of living
France	juridical indexation clauses in agreements	application to court	ASF indexed to prices
Germany	awards adjusted in line with various indices	application to court or <i>Jugendämter</i>	reviewed in line with cost of living indices
Netherlands	awards reviewed annually in line with various indices	application to court	–
Norway	NIA review every three years each case outside the advance scheme	application to NIA	annual review, in practice linked with price indices
Sweden	(i) court determination: indexed to prices (ii) CMS repayments: recalculated every 12 months	application to court application to social security office	not indexed
UK	court determinations: no CSA: (i) standard components of formulae indexed via social assistance rates (ii) each case reviewed every two years	application to court application to CSA	–

the CSA in the UK and at least once every three years in Norway, for determinations outside the advance scheme.

People who seek a review outside the automatic procedures for regular adjustment may request a reassessment by the original determining authorities. The process is simple in Denmark; at any time parents may approach the *statsamter*, explain a change in circumstances and agree a new maintenance arrangement (Lund-Andersen *et al.*, 1996). In other countries, returning to court to vary an order may be a lengthy business, and there were indications from some countries that procedures to seek revision of existing determinations were not trouble-free, even if dealt with at a local level by social security or welfare administrators. There are sometimes restrictions in the access to revision, to control the amount of administrative work that might build up. Thus in Norway, the NIA will make adjustments to existing maintenance determinations only if there is some new information, and if the revision would result in a difference of 10 per cent at least in the value of the award. The UK CSA will administer an adjustment for change of circumstance only if the result would be a 'significant' change, and the amount varies according to different criteria.

Most flat-rate 'advance' payments are regularly reviewed in line with cost of living or general price indices, and adjustments are made in order to maintain the value. In Sweden, however, the decision taken in the recent maintenance support legislation **not** to index the advance payment was seen as an important part of the

attempt to reduce high costs for the state in supplementing payments made by parents. In Austria, where the amount advanced depends on the original award, up to a maximum, the upper limit is adjusted annually in line with pensions. Advance payments expire after three years, when they must be reviewed, in simplified proceedings, and may be renewed for another three years. Otherwise, parents who seek adjustment in maintenance due to changes in circumstances must approach the Youth Welfare Office or court for amendment of the original agreement.

There are arrangements in all countries for formal appeal or challenge of decisions made about child maintenance, but we did not seek full details in this study. In the UK, a two-stage grievance procedure was established by the Child Support Act 1991. Challenges by either parent to decisions made by a child support officer are dealt with, first, by an internal specialist reviews section in the CSA. There is a right of appeal against a refusal to conduct such a review, or against the outcome of such a review, and this appeal is to a child support tribunal. On the basis of recent research, Davis *et al.* (1998) are critical of current procedures in these means of redress.

Note

- 1 A recent ruling of the Austrian Constitutional Court (October 1997) that tax payers with child maintenance obligations should enjoy some tax exemption has focused new interest on the situation within Austria.

5 Appraisal

So far, we have compared the different structural and administrative components of the 10 European child maintenance regimes, against the background of legal and historical contextual material. We have explained some of the different perspectives on financial obligations of parents who do not live with their children; discussed why child maintenance regimes have developed in different ways and looked at some of the effects of the regimes for families and governments. The aim of the study was to go beyond a descriptive, comparative account, however, to see what worked well, in what circumstances, and to look for any lessons that might inform the development of child support policy in the UK. Similarly, understanding what has not worked well, and where other European countries currently face problems in their child maintenance regimes might help the UK avoid making further mistakes in the task of reconstruction of a child support policy.

In July 1998 the Government published a Green Paper *Children First: A New Approach to Child Support* (Department of Social Security, 1998a) setting out proposals for the reform of the existing system of child support. In the foreword to the Green Paper the Prime Minister says:

The Child Support Agency (CSA) has lost the confidence of the public. For reform to work it must have the support of the nation as a whole ...

The system of child support we inherited is a mess: it is failing our children, 1.8 million of whom receive no maintenance from their fathers. It is failing parents – the mothers on Income Support who see every penny of maintenance go straight to the Exchequer – and the fathers who lose contact with their children. It is failing the taxpayer who is picking up the bill for the non-resident parents who don't support their children.

The system needs urgent reform.

Responses to the proposals in the Green Paper were invited by the end of November 1998 and following this consultation process will be a long period of planning, legislation and implementation before the new scheme begins to operate in April 2001. The results of this

research will help to inform the debate and the process of reform.

This penultimate chapter draws together findings from the study to gain understanding about what makes child maintenance regimes work. Our approach is two-fold. First, we asked our informants to examine their country's literature and research on child maintenance, alongside the focus of their current policy debate, and to report on the views and experiences of various different actors: policy-makers, resident parents, non-resident parents, lawyers, academics, politicians and campaigning groups. This forms the first part of the chapter, and shows which aspects of the child maintenance regime have been the focus of attention, and what are the areas of current concern.

Next, we describe a method of comparing the overall performance of the various regimes, and discuss possible explanations for 'better performance' observed in some countries.

Research conducted and policy debate

In most of the countries studied, apart from the UK, there appears to be rather little in the way of a body of literature and research that combines conceptual and theoretical thinking about the purpose and objectives of child maintenance policies with an analysis of outcomes. Similarly, outside the UK, there is not a substantial body of research on the experience of parents and children within child maintenance regimes, nor the administrative and procedural aspects of putting the schemes into operation.

Child maintenance was reported as largely absent altogether from current mainstream policy debates in Austria, Belgium, Denmark and France. In Denmark, the focus within policies for families and children during the past decade has fallen on issues of caring and material resources (Siim, 1997) but child maintenance has rarely featured. The current policy debate in Denmark around court decisions about custody of children rarely 'spills over' into discussion about child maintenance. In France, there is also current debate and research about relationships between fathers and children, and the

sharing of parental authority. Issues about child maintenance arise within this, but are marginal. Fagnani (1998) has suggested that the fact that child maintenance has not emerged as a key issue is linked with the high proportion of lone mothers who do paid work. There have been French studies of reconstituted families during the 1990s, but the issue of child maintenance has hardly arisen (Le Gall and Martin, 1990, 1991; Théry and Dhavernas, 1991; Blöss, 1995). There is, however, a longer history of policy research on non-payment of child maintenance, referred to in the previous chapter. There is growing concern about the low incomes of lone parents in France, and non-take-up of *ASF* does emerge as an issue within research on poverty and low living standards.

There has been considerable research on the economic situation of lone parents in Sweden, with an emphasis on employment and social assistance, but child maintenance has not been a primary focus in this work. Current research interests on parents and children who live apart centre around relationships, conflicts, resulting violence and custody disputes, and child maintenance is not a key issue. One focus of current research interest is the effect on the child's self-image of loss of contact with a parent. There have been, however, a number of government investigations of the Swedish advance maintenance schemes, which have resulted in the transfer of responsibility to the social security offices (for example, SOU, 1995). At the time of data collection, a new scheme had been in operation for only nine months, and there was little current debate about it.

The Norwegian informant reported little current direct research interest or policy debate on child maintenance. It is hard to find any Norwegian research on child maintenance, apart from papers written by Koren (1998) and Skevik (1998). Proposals for major change in the current Norwegian regime had been put forward by the Ministry of Children and Social Affairs in 1996 in a discussion document. Proposals included the assessment of the income of custodial parents, reducing liabilities for parents who spent time with their children and introducing a fixed minimum liability. Effectively, the percentage of income assessment would be less rigid, with a greater amount of obligatory discretion. The suggestions received much criticism. Nothing happened in this arena during 1997, but the new Government began revising the proposals in 1998.

Child maintenance was under review in 1997 in both Finland and Germany. A proposal was before parliament in Finland for revision of the Security of Child Maintenance Act, to address the problem of non-compliance with payment and accumulation of debt to the state. There has been research in Finland on different models of determination, the boundaries of public and private responsibilities, and economic problems of reconstituted families (Gottberg, 1995; Kaisto, 1994), and at the time of data collection it was reported that

there was considerable interest and debate, mainly around enforcement. In Germany in 1996, the federal government had proposed new legislation to introduce equal treatment between marital and non-marital children, and to reduce the complexity of procedures on child maintenance. The aims included increasing compliance, by reducing some parents' liabilities and widening options for enforced collection. These proposals were widely debated during 1997. There is, in Germany, a considerable body of research on lone-parent families (Neubauer, 1988; VAMV, 1997a), the socio-economic consequences of divorce and the economic circumstances of low-income families (Eggen, 1994a, 1994b; Stutzer, 1994) which includes findings about child maintenance. There has also been significant research on non-married cohabiting couples (see, Maydell, 1989; Bundesminister für Jugend, Familie, Frauen und Gesundheit, 1985). However, there has been no German research which directly addresses the impact of the child maintenance regime.

Our informant from the Netherlands reported that receipt or non-receipt of child maintenance was an issue which had often emerged in research on lone parents, particularly in respect of their position in the labour market and receipt of social security, but that there was little current direct research interest or policy debate on child maintenance. Nor has child maintenance often featured in Dutch research on marriage breakdown and divorce. There had so far been no studies of the impact of the new *LBIO*.

Findings from the above European literature and research do throw some light on problems and issues arising in other countries, although child maintenance is often a marginal issue, and there are almost no direct evaluations of schemes. It is interesting to see that in several countries, child maintenance arises as an issue (albeit marginally) within policy debate and research on relationships between parents, and between fathers and children, and aspects such as custody, care and contact. In the UK, researchers such as Burgess (1998) have argued for less public policy attention in child support issues to be paid to aspects such as assessment and enforcement, and more towards initiatives which support and enrich relationships between fathers and children.

Links between child maintenance liabilities and contact or custody

In the UK one of the most controversial aspects of determination of liabilities has been the expenses incurred by liable parents in keeping in touch with children, and for some parents, sharing the care of those children. Parents have argued that the regular maintenance payments set by the CSA have not taken into account all the costs incurred when a non-resident parent spends time with children. By discretion, some

costs of travel in order to maintain contact with children may be acknowledged in a 'departure' from the formula. Non-resident parents who have their children to stay overnight or take care of them at weekends have argued that the necessary expenditure on meals, bedding, laundry, heating the home, or equipment for babies and toddlers is ignored, unless they meet the formal definition of 'shared care' for purposes of CSA determinations. The UK child support formula and regulations acknowledge situations of 'shared care' when more than one person has day-to-day care of the child. This is currently defined in terms of care provided in the ratio of at least 104 nights in 12 months. If the parents' arrangements are such that the care provided by the non-resident parent meets this definition, the standard formula is adjusted, and the maintenance liability may reduce, proportionately.

There is growing understanding of the ways in which fathers make links between paying maintenance and maintaining a relationship with their children (Bradshaw *et al.*, 1999 forthcoming; Davis *et al.*, 1998). The ways in which parents perceive such links and the arrangements they wish to make do not always fit the definitions used by the CSA, in distinguishing costs of 'contact' and 'shared care'.

The issue is further complicated by the links made by some non-resident parents between their responsibilities for paying maintenance and their rights as parents. Legally, these are separate matters in the UK, but dissatisfaction with the CSA has brought the two issues under the same spotlight. There has been representation from liable parents who have problems in securing access to their children, that their financial liability should be reduced if they are prevented from seeing their children. Some non-resident parents feel that they are unjustly excluded from their children's lives by the other parent who will not co-operate in helping to arrange contact. They argue that their role is then only provision of money, which is unacceptable to them. These are different kinds of arguments, but together they lead to a situation in the UK in which some liable parents argue that their regular maintenance liabilities should be reduced because of the costs of their contact with their children, and the fact that they are meeting their responsibilities, while others argue that their liabilities should be reduced because they are denied contact or care.

This study showed that the significance of keeping in touch and sharing care is also emerging as an issue in child maintenance regimes in other European countries, along with changes in family and parenting patterns, changes in family law in respect of parental authority and custody, and greater understanding of children's psychological and emotional needs. It is hard, in some countries, to go back to the original principles in civil codes and definitions of duties of parental support, for guidance about how the costs of contact or shared

parental care should be incorporated.

As previously explained, in the UK liable parents may apply for a discretionary decision to take into account the travel costs of contact with the child. Among the countries studied, the Netherlands is the only country in which the rules for assessing parental liabilities specifically include costs of contact with the child (*Kosten omgangsregeling*). This was not a main focus of debate in the Netherlands, where there is more interest in the issue of whether maintenance should be reduced for liable parents who are denied access to their child.

The Norwegian and Swedish rules recognise the expenses of shared care, rather than contact and keeping in touch. The Norwegian NIA rules identify shared custody as a situation in which maintenance is determined by discretion, defining shared custody as a minimum of five months in twelve. In these circumstances, both parents have an obligation to pay maintenance and this will result in the better-off parent making a net payment. If they choose, both may claim the advanced amount and both may be required to pay the full repayment. Organisations representing non-resident parents in Norway criticise this arrangement and argue that it provides an incentive for mothers to deny shared custody to fathers, for entitlement to higher child maintenance. The organisation *F2F* also argues that the level of maintenance should vary with the contact with children, because contact involves 'costs' which pass to the children. Payments, it argues, should stop if custodial parents 'sabotage' contact arrangements. The Norwegian government's consultation paper, issued in 1996, did propose that liable parents who spent time with their children (without shared custody arrangements) should pay lower maintenance. The Norwegian Lawyers' Association warned against linking payments with contact, pointing out that custodial parents may not want a high level of contact, whereas the non-resident parent may seek extensive contact arrangements, sometimes in order to reduce liabilities. If the non-resident parent then fails to fulfil the contact agreements and at the same time has low liabilities for payments, the child may lose out in both ways. The Children's Ombudsman in Norway is also wary of linking maintenance with levels of contact, pointing out the potential for increased conflict, and suggesting that, if there was such a link it should, at the least, go in both directions so that parents who sought no contact should pay extra maintenance. The Norwegian informant, on the basis of the Norwegian debate, points out that if contact is a key to maintenance determination, it can always be argued that non-resident parents should pay less: if the non-resident parent cannot exercise a right to contact, he should not have a duty to pay so much; but if he does have contact, he is fulfilling his parental role and incurring expenses, and should not have a duty to pay so much.

The Swedish Maintenance Support Act, which regulates the advance maintenance in that country, allows for shared care arrangements in that the standard monthly advance paid to the applicant is reduced by the amount of repayment which would have been due from the other parent if he was not sharing care. There is one main organisation representing non-resident fathers in Sweden, and their main focus is currently securing increased rights of contact and custody. Currently, around 2 per cent of children for whom child maintenance support is paid live, at different times, with each of their parents. The number of conflicts between parents with such arrangements appears to be growing, and may be linked to the financial arrangements. In general, however, arguments for links between maintenance liability and contact or shared care have not emerged as strongly in Sweden as in Norway and the UK.

In the German scheme, the Düsseldorf Table (see Appendix 3, Table A3.3) makes no specific provision for costs of contact with children, or shared care. However, links between maintenance and contact with children is expected to attract increasing attention. A reform in German child law came into force in July 1998, establishing a common right to care for both parents, and strengthening the rights of the child to have contact with a non-resident parent. The main lone parent organisation in Germany, VAMV, believes that if there is an increase in the amount of contact and shared care, non-resident parents will be less inclined to meet their formal liabilities for child maintenance (because of the perceived additional expenditure on children). The lobbying group 'Action for the Right of the Child to both Parents' in Austria (Aktion Recht des Kindes of beide Eltern) campaigns for links between payment of child maintenance and rights to contact and access to the child. However, ideas about linking child maintenance with levels of contact are firmly rejected by the Austrian Government, the courts and the Youth Welfare Offices.

Discussion about links between child maintenance and contact in the French environment has raised the important issue of the traditional role of a father as breadwinner for his family. There is concern that if low-income fathers cannot afford to make financial provision for children with whom they do not live, it is hard to maintain a role as a 'father'. There is a perceived problem of legitimacy of role for a 'father' who wants to continue seeing his children and contributing to their development, if he cannot also afford to pay.

In the UK, recent developments in family law, in the Children Act 1989 and the Family Law Act 1996, emphasise the continuing responsibility of each parent towards their child, and the paramount importance of the welfare of the child. Findings from this study suggest that 'the maintenance of as good a continuing relationship with his parents as possible' (Section 11, Family Law Act) is more likely to be achieved if there are

adequate financial arrangements, and agreement between parents about child maintenance, following divorce or relationship breakdown. It appears essential that policy concerning child maintenance is developed in close association with current developments in family law, so that maximum opportunities are taken to develop co-ordinated strategies which strengthen the support available to parents and children living apart, and encourage (or, at least, do not undermine) positive relationships between children and parents.

The risk of harm

At the same time as growth in understanding of the value of maintaining and strengthening relationships between parents and children who live apart has come, in the UK, growing recognition of the extent to which parents can be physically and emotionally abusive, and violent towards each other and towards their children. There is some evidence that this continues after separation of parents. A study of domestic violence and child contact arrangements in the UK and Denmark (Hester and Radford, 1996) concluded that trends towards parental agreements and mediation processes could actually obscure domestic violence. Some fathers used contact with children, following divorce and separation, as a route for further abuse.

The UK has recognised that a child support regime has to strike a balance between encouraging and enforcing appropriate financial responsibilities, and minimising the risk of harm to vulnerable parents and children. This is a controversial issue in UK child support policy. The procedures developed remove the obligation on some resident parents who would otherwise be required to co-operate with the CSA, if there are grounds for believing that this might lead to 'harm or undue distress' for themselves or their children. The welfare of any child likely to be affected must also be considered. The elaborate procedures have attracted criticism. Policy-makers believe that some parents use these rules inappropriately.

This study did not provide systematic information about the way in which risk is perceived and dealt with in other European child maintenance regimes. The questionnaire did not ask informants directly about this, as there were limits to the amount of detail we could expect. Few informants mentioned issues of violence or risk when they reported on aspects of policy which were currently debated. However, the research on domestic violence in Denmark referred to above (Hester and Radford, 1996) suggests that levels of domestic violence in some European countries may be similar to those in the UK. It is likely that in all countries some parents and children face risk as a result of child maintenance arrangements. It would be useful to look at this in greater detail.

In search of a child maintenance regime which 'works' well

It was not the intention of this study to identify components of European child maintenance regimes that might be substituted within or bolted onto the UK scheme to improve current arrangements. Nor did we expect to identify another country's scheme which might be 'imported' in entirety, to sweep away altogether what is currently done by the courts and the CSA. We did hope, nevertheless, to make some summary comparison of the overall performance of the various regimes.

One such approach might be to try to measure the performance of the 10 regimes, on a number of criteria, by assessing and rating different aspects of the schemes. We might, for example, try to compare the different regimes directly in terms of relative monetary value of maintenance awarded; proportions of children and parents who receive monies due; proportions of parents who pay the assessed liabilities; levels of outstanding debt; administrative costs; time taken to process determinations and levels of satisfaction or complaint among parents. We might then try to order the regimes in terms of their achievements. This is an approach which has proved useful in a number of comparative social security studies at York, using scales and matrices to compare, for example, packages of support for children and families (Bradshaw *et al.*, 1996; Ditch *et al.*, 1998), incentive structures facing married women engaged in housework (Shaver and Bradshaw, 1995), lone parents (Whiteford and Bradshaw, 1994), and social assistance schemes in OECD countries (Eardley *et al.*, 1996a).

In this study, appropriate quantitative information in the form required for such measures was not available. We have already pointed to the lack of general statistical information about the numbers and value of agreements/awards of child maintenance, and the numbers of payments of monies due actually received. Where quantitative information was available it was rarely directly comparable. For example, there was data on 'administrative costs' from several countries, but wide differences in what these included. In most countries apart from UK, there is little systematic information about perceptions, attitudes or experiences of parents, children and administrators.

What was possible in this study was an overall comparison which incorporates some of the qualitative data available, and the commentaries, observations and judgements of the informants.

Our approach was as follows. First, we make an assumption that a child maintenance regime which works well acknowledges the requirements of all participant groups: children; parents in general (and their advisers), and within this group, resident parents and non-resident parents separately; and tax-payers, who pay for administration, and make up shortfalls in financial support for children.

Next, for each of these groups, we identify key criteria, which are likely to influence whether the regime 'works well' for them. Our suggestions here are that a child maintenance regime works well:

- for **children**, if it:
 - delivers a regular financial contribution towards the needs of all children with a formal entitlement
 - does not have a negative influence on their relationship with non-resident parents
- for **parents in general, and their advisers**, if:
 - it is transparent, so that it is understood
 - determinations can be made speedily (once all information is provided)
 - it is responsive to significant changes in circumstances
- for **resident parents**, if:
 - it does not constrain decisions to take paid work
- for **non-resident parents**, if:
 - liabilities are affordable
- for **tax-payers**, if:
 - it does not introduce disincentives to work, or perverse incentives, such as fraud
 - administration is efficient and inexpensive
 - public expenditure is not significantly inflated by non-payment by liable parents.

The judgements made on each of these criteria are drawn from the data, including material from the vignettes which showed each regime working in practice, and the explanations and observations of the informants themselves.

There are limitations to this approach. Other groups of participants might have been included, such as lawyers or administrators. Other criteria might have been used for making judgements about what works well, for example effects on relationships between parents. Our list of criteria is not designed to be comprehensive; it is compiled from the UK policy perspective and represents some of the key criteria which are likely to influence participants' experience of the regime.

At another level of limitation, informants may not have had full information on which to base their observations. The author has not herself read relevant publications which are not written in English. One of the strengths of the approach, however, is that it deals with some of the cultural and contextual differences which make direct comparisons difficult. For example, the same actual length of time taken to achieve a determination might be experienced as 'lengthy' in a country in which

administrative decision-making is usually prompt, but 'speedy' in a country in which legal and administrative proceedings are often long drawn out. This approach allows for such differences. What we are comparing is the experience of each regime from within that country, rather than imposing objective measures.

What we have developed here is a tool for using the data available to us. Using this tool enables us to make some overall comparison of how well child maintenance regimes are working. Table 5.1 presents this comparison.

In terms of the criteria used, the regime in Denmark stands out, without major problems or negative outcomes for any participant groups. The only disadvantage perceived was the possibility of tax fraud on the part of non-resident parents, for which there was little evidence. We have already suggested possible contributory factors to the relative success of the Danish regime: the length of establishment, the simplicity of the scheme, the local administration. The fact that liabilities are relatively low may encourage compliance by non-resident fathers. The fact that low entitlements have not emerged as a major issue in policy debate about the economic circumstances of lone mothers may be associated with women's high labour market participation, and the general aim of Danish social policies to increase economic support to all families, during the 1980s (Siim, 1997). Thus, levels of child maintenance have not been a focus of attention, when better educated lone parents can earn high wages, and those with low pay or not in work can raise incomes with social benefits. In the Danish universalist welfare state, support for lone mothers from the fathers of their children has historically been perceived as less important than support from the labour market and the state. Mothers, in general, are expected to do paid work, and there are high quality public services, such as child care, to support them.

The position of the Nordic countries in respect of the criteria used in Table 5.1 illustrates the emphasis in those countries on the rights of the child to parental support, or equivalent support from the state to give protection against poverty, and maintain standards of living. The table shows the schemes in Finland, Norway and Sweden giving high priority to delivering regular maintenance, or equivalent support, to all children with a formal entitlement. It was not easy for the informants in Norway and Sweden (and Denmark) to contribute views about the extent to which public expenditure is inflated by non-compliance of liable parents. This debate is familiar in the UK context, but issues around child maintenance are not conceptualised like this in Scandinavian countries. There, the emphasis on children's rights and welfare is based on a strong assumption of the importance of public expenditure to support parents' own resources and obligations.

Table 5.1 shows that the child maintenance

regimes in the Nordic countries are 'working well' on some of the criteria chosen: transparency of determinations and responsiveness to change in circumstances (Denmark, Norway and Sweden); speed of determinations and absence of constraint on resident parents' decisions to take work (Denmark, Finland, Norway and Sweden). However, we see that these countries share with most others the problem that liability for child maintenance may introduce work disincentives for non-resident parents. In all countries in which non-resident parents can expect higher assessments of liability in paid work than when unemployed, some may feel it is not worth moving into work. Among the other countries, the Austrian scheme appears to work well on some of the criteria set, but the advance maintenance scheme, which is relatively generous in the availability and level of payments, has proved costly, and there is a problem in recovering monies owed. The Belgian scheme is apparently implemented efficiently and relatively inexpensively, but it is important to remember here that, overall, the Belgian scheme seeks to achieve less than those in some other countries.

The comparatively poor performance of the current UK CSA regime is not unique, on the criteria chosen for Table 5.1. Other countries with longer established regimes, France and Germany, both experience major problems and disadvantages. At the time of data collection, there were impending changes in German legislation to reduce the complexity of procedures and increase compliance with payments. These proposals had attracted much criticism, however, on the grounds that the needs of the child were being superceded by the needs of the liable parent. In France, there is agreement that the discretionary framework for determination leads to inequalities, but no standardised system of evaluation has ever been considered. The second main problem in France is non-compliance which is perceived to be associated with the social and economic problems facing parents and children who live apart.

Lack of transparency in the determination process is a disadvantage in a number of countries, including Belgium, Finland, and the Netherlands, and public expenditure is also inflated by non-compliance in Finland and the Netherlands.

Table 5.1 shows that in all countries, except Denmark, affordability of the maintenance obligation is perceived as a problem for some non-resident parents. Informants acknowledged that there will always be some non-resident parents who think they have to pay too much, no matter what the actual amount. The problem was recognised to be deeper than this, however, and to reflect real economic hardship for some non-resident parents. In Germany, where obligations are relatively high, and are maintained through periods of unemployment, this is a major problem. Austrian non-resident parents who have liabilities for more than one

Table 5.1 Comparison of how well child maintenance regimes work, in ten European countries

	For children		For parents, in general, and their advisers			For resident parents	For non-resident parents	For tax payers		
	Delivers regular maintenance to all with formal entitlement	No negative influence on relationships with non-resident parents	Transparency of determination	Speedy determinations (once all information provided)	Responsive to changes in circumstances	Does not constrain decisions to take work	Liabilities are affordable	No disincentives to work, or perverse incentives	Efficient and inexpensive administration	Public expenditure not significantly inflated by non-compliance
Austria	yes – with delay for some	not known	yes	yes	yes: if requested	yes	problems for some, especially with 2 or more children	possible disincentive to work for some non-resident parents	yes	no: advanced maintenance is costly
Belgium	no	conflicts arise	no	yes	yes: to major changes, if requested	yes	problems for some	possible disincentive to work for non-resident parents	yes	not known
Denmark	yes	yes	yes	yes	yes: to major changes, if requested	yes	yes	suggestion of tax fraud by non-resident parents	yes	not debated in these terms
Finland	yes	conflicts arise	no	yes	no	yes	problems for some	possible disincentive to work for some non-resident parents	no	no: advanced maintenance is costly
France	no	conflicts arise	no	no	no	not known	problems for some low-income parents	yes	no	no: costly effects of non-compliance
Germany	no	not known	no	no	court revision can be a lengthy process	no	problems for many parents	possible disincentive to work, or incentive to work in irregular economy for non-resident parents	no	no: advance maintenance is costly
Netherlands	no	no: conflicts arise	no	no	yes, but can be lengthy process	no evidence	problems for some parents	yes	no	no: social assistance inflated by non-compliance
Norway	all within the advance system (90% parents)	not known	yes	yes	yes	yes	problems for some parents	possible disincentive to work for some non-resident parents	yes	not debated in these terms
Sweden	all within the advance system (75–80% parents)	some conflicts arise: possibly an increasing problem	yes	yes	yes	yes	problems for some parents	possible disincentive to work for some non-resident parents	yes	not debated in these terms
UK	no	conflicts arise	no	no	yes, but can be lengthy process	some evidence of constraint on decisions	problems for some parents	possible disincentive to work for non-resident parents, or to work in irregular economy	no	no: social assistance inflated by non-compliance

child can also face severe budget constraints. Several informants put the problem in simple terms when they observed that, increasingly, one person's income and resources does not stretch to two households.

Increasingly, concern about relationships between parents, and between parents and children is entering the debate about child maintenance. All countries are learning more about the damage done to children by conflict and dispute between parents about money, and how these arguments can influence the contacts between non-resident parents and their children. Such conflicts were once rarely reported in Sweden. There, however, the recent reform of child maintenance support has brought more non-resident parents into liability for repayment, and meant higher levels of liability than before, for others. Conflicts and disputes seem to be increasing.

To conclude, information about current policy debates in the countries studied, and the direction of arguments and formal proposals for change provide pointers to aspects of regimes that cause concern and raise controversy. It is useful to know how problems are perceived and dealt with, because there may be lessons for the search for solutions in the UK context. It is important, however, not to assume that when child maintenance has not been identified as a subject for specific study or research in a country, or there is little in the way of current policy debate, things must be working fairly well. Injustice and maladministration can remain invisible within regulatory regimes that are apparently trouble-free (as has been learned from issues such as child abuse).

6

Developing UK policy

This final chapter summarises the key findings from the comparative study, which provide pointers for UK policy development.

Who makes decisions?

- The current UK CSA has no procedures for encouraging parents to discuss child maintenance, or to try to work out arrangements together. Rather, the approach is to keep parents apart, and impose administrative decisions. In the European countries studied, the trend is to encourage parents as far as possible to work together and take responsibilities for their children, with decisions imposed by third parties only where there is conflict or dispute, or failure to pay child maintenance has implications for public expenditure. This trend is particularly marked in developments in the way divorce is now handled in the European countries, but is increasingly seen as appropriate in the case of separating non-married parents.

Similar developments are starting in Australia. Recent proposed changes in the Australian child support scheme (Funder, 1997) aiming to encourage parents to move off the formal scheme are based on commitment to principles of self-regulation by parents.

The current CSA regime may be preventing parents from deciding themselves how to move forwards, and the advantages that this offers. In August 1998, 15.4 per cent of resident parents dealing with the CSA were not claiming income-related benefits and thus were not obliged to authorise the CSA to pursue child maintenance on their behalf. However, there may have been no other way for them to achieve an enforceable child maintenance agreement. There is an argument that these parents, at least, should have an opportunity for reaching an agreement about child maintenance which can be formally ratified, using advice, information and help which is easily available and free of charge, as in many of the European countries studied. The proportion of resident parents dealing with the CSA who do not claim income-related benefit appears to be increasing gradually, and this is

likely to continue if more lone parents are encouraged to do paid work, under the New Deal initiatives.

There appear to be no firm proposals in the 1998 Green Paper to encourage parental agreements which can be formally ratified, and this may be a lost opportunity.

- In most of the countries studied, during divorce or separation of married partners, matters concerning custody or residence of the children, child maintenance and other issues such as division of property, or spouse maintenance are all considered alongside or in conjunction with a judgement for divorce. It is unusual for initial determination of parental liability for maintenance (rather than liability for repayment to the state) to be handled quite separately outside the divorce proceedings, and where this does happen (Finland) the agency concerned is the Social Welfare Board, where many supervisors are lawyers or social workers who have training in law and counselling. The UK CSA regime is unusual among this group of European countries in that initial child maintenance determinations are conducted quite separately from divorce proceedings, by relatively junior administrative staff in a centralised agency of the Department of Social Security.
- In comparison with similar agencies in Europe, which advise parents about maintenance and engage in determination of liabilities, the UK CSA appears relatively inaccessible to parents, who have generally been expected to communicate by letter and telephone. In Austria, Denmark, Finland, Germany, the Netherlands, Norway and Sweden parents can personally visit or telephone a local office to discuss aspects of their child maintenance entitlement or liability, or problems that have arisen. Again, the current CSA may be preventing advantages there may be in having accessible, personal and responsive services at a local level.

The CSA has recently started to make use of Benefits Agency services to make direct contact with some resident parents. The 1998 Green Paper includes a commitment to personal, localised services, and for

most parents, it is proposed that the first stage in the decision-making process will be conducted by telephone. At this stage, there are no firm proposals regarding a new organisational structure.

The beneficiary

- In several countries studied child maintenance is due to the child, in his or her own right, rather than the resident parent, as in the UK. The more child-centred approaches are those in which there has been greatest development of maintenance advance schemes, to guarantee the child's right to maintenance. There is scope for further discussion and consideration of possible advantages (and disadvantages) of transferring entitlement to child maintenance in the UK to the child, rather than the resident parent.
- In comparison with other European countries, child maintenance in the UK is withdrawn at a comparatively early age, when the child reaches 16 years or up to 18 years in some forms of education. At the same time, parents are expected to maintain financial responsibility for their children further into adulthood than was previously the case. There is inconsistency in approach here, and a need to reconsider the ages and circumstances at which children cease to qualify for child maintenance in the UK.
- Analysis and debate within the UK, and comparisons with other countries, is restricted by the fact that published statistics from the CSA report entitlements and liabilities with reference to numbers and characteristics of parents, but not children. There is a need for official statistics about child maintenance and the CSA which locate *children* within policy implementation and outcome.

Rules versus discretion

The move from the court-based discretionary approach to the rigid formula of the CSA was controversial and has proved problematic. The Government proposes to move to a simpler formula. Findings from Europe are:

- When formal determinations are dealt with entirely on an individual, discretionary basis, advantages claimed by policy-makers and lawyers are that this enables all relevant circumstances to be taken into account appropriately. Disadvantages are recognised, in that decisions can be unpredictable; can seem arbitrary and inconsistent, and may reflect the power of parents' representations rather than the needs of the child.
- Unofficial rules-of-thumb which have emerged in the absence of formal guidelines have tended to reflect a

search for pragmatic solutions in situations of conflict between parents, rather than the needs of the child. Formal rules or guidelines provide an opportunity of tailoring the scheme to fit the first principles and objectives of the child maintenance regime.

- There has been a trend among European countries towards development of rules and guidelines to direct decision making. Policy-makers and administrators perceive advantages in greater consistency in treatment, greater transparency and ease of understanding. These advantages, in turn, are believed to contribute to efficient administration and encouragement of compliance. (This did not happen in the UK move from discretion to rules.) Norway and Sweden have also both moved recently from a more discretionary scheme to one grounded further in rules, and results from these two countries will be important. Finland is currently reviewing the regime, and reform may include a move towards rules, so it will be useful to follow developments in that country.
- The legislative status of the rules or guidelines can be important. Differences in application or interpretation, where guidelines do not have full legal authority, can lead to problems of understanding for parents and complex and costly legal arguments.
- Using simple rules inevitably means a fairly broad-brush approach, with little differentiation between the circumstances of parents and children. This is apparently acceptable in Denmark, although the fact that liabilities are generally relatively low in this country, and the advance is generally available, may also be a strong influence on acceptability. The relatively simple broad-brush approach recently introduced in Norway is already under review, and has been criticised as being too rigid. In Austria, there is some criticism that the broad-brush percentage-of-earnings approach does not take sufficient account of desires of non-resident parents to found a new family, with children. In regimes which aim towards more 'fine-tuning' to individual circumstances (the Netherlands, Germany and the UK) rules are generally more complex or there are additional discretionary components (or both). The disadvantages of complex rules or guidelines include lack of transparency, which is generally believed to discourage compliance among parents; more costly and time-consuming administration; and more opportunities for evasion and administrative error.
- Where there is currently representation for greater discretion within rules-based schemes, this is usually strongest among non-resident parents and associations representing their interests (Norway, Sweden and the UK) who argue that the levels of liability imposed do not properly reflect their personal circumstances.

Maintenance, contact and shared care

- Trends towards shared parental responsibility and rights after divorce and increasing rights of unmarried fathers are sharpening the focus on the role and experience of fathers, especially fathers who do not live with their children all the time. The links between payment of child maintenance and different kinds of contact and residence arrangements will increasingly come under the spotlight, and are likely to be hard to resolve.

Within this debate, different groups of parents currently express different views and expectations about perceived links between maintenance and maintaining relationships, and these do not always reflect their legal rights and responsibilities. There is a need for policy-makers to focus firmly on the **child's** welfare and the **child's** need for financial support.

Distinctions between 'contact arrangements' and 'shared care', although currently important in the UK policy approach, are not perceived as so clear-cut by parents themselves. Rather, there is a continuum of different ways of maintaining relationships.

- There is a major opportunity available to the current Government, to develop a child maintenance regime which fits alongside the aims of recent developments in family law.

The risk of harm

- There is a need for detailed systematic information, from other countries and the UK, about the way risk to parents and children is perceived and experienced within child maintenance regimes; measures taken to address this problem, and the outcomes.

Second families

- Currently, the CSA formula acknowledges financial obligations of the non-resident parent to 'second families' to an extent which is unusual among the other countries studied. There is general agreement in the other countries that biological children have equal rights to parental support, but obligations of non-resident parents to 'new' partners or step-children are less generally recognised.
- The principle of equal rights of biological children to parental support espoused in the UK Green Paper 1998 is in line with the principles in nine other European countries studied.
- The UK has a particular problem in trying to put such a principle into practice. This is due partly to the legacy of past practice in child maintenance

arrangements and social security policy, and the influence of this in social expectations.

- Finding an appropriate 'balance', in the current UK situation, between what is due to children of 'biological' and 'social' parentage is likely to be hard. For the 'balance' to be socially acceptable, to encourage compliance, it would be helpful to have clear, simple rules, based on sound arguments, so that those concerned can understand policy direction, and participate in informed debate to contribute to policy development. Development of consensus within the general population is likely to depend on a wide number of factors, outwith the influence of a child maintenance agency. Policy-makers will be looking, for example, at aspects of employment, education, and service provision.

'Advance' maintenance schemes

- Schemes which advance child maintenance ensure the regularity of at least a portion of the maintenance entitlement. It can be argued that countries which guarantee at least some of the legal entitlement of children and resident parents, mostly women, demonstrate a higher ultimate commitment to the child's right to parental support, or support from the state if parental support is not forthcoming, than countries without such a guarantee.
- None of the informants from countries which had an advance scheme reported any suggestions to abolish such schemes. Rather, the direction of developments has been towards improving the schemes and increasing administrative efficiency. There is, in general, strong support for the contribution made by such schemes to the maintenance of living standards for children and their protection from poverty.
- Problems perceived in advance schemes, among informants from countries which have such schemes, include:
 - non-take-up, which may contribute to poverty and low living standards;
 - over-readiness to participate among resident parents who have a choice, which can inflate costs and bureaucratise what might otherwise be private matters;
 - high expenditure, as a result of non-recovery of repayments from liable parents, or lack of resources of non-resident parents;
 - shifts in parental perceptions about the nature of child maintenance, and financial obligations.

Some of the perceived problems may be amenable to solution, for example commitment to increasing take-up, improving administrative efficiency or more

rigorous efforts to recover money. Other problems, such as high expenditure, are sometimes related to low levels of resources of some non-resident parents.

- It would be useful to model the effects of the introduction of an advance maintenance scheme for the UK. Using schemes with varying characteristics, projections of numbers and characteristics of the parents and children involved, and different assumptions of probable levels of recovery, the models would inform discussion about the possible advantages and disadvantages of having an advance scheme within the UK child maintenance regime.

Findings from such a modelling exercise would be a useful contribution to the current UK discussion about the possibility of paying family credit gross of any maintenance, with automatic government collection of maintenance due. While such arrangements might be helpful to some resident parents, they are limited in scope. Family credit is soon to be replaced by a tax credit for working families, and at the time of writing there were no firm proposals for this limited form of 'guarantee' of maintenance.

Compliance with payments

- All regimes have problems of non-compliance with payment of child maintenance due. There is some statistical information from agencies which are involved in collection of monies due and/or recovery of arrears, but it is hard to gain an overall picture of the extent of compliance among all parents with any liability for child maintenance, in any country. Reasons for not complying with liabilities, suggested from several countries, include poor relationships between parents; disagreement and dispute about the level of the requirement; perceived inability of parents to afford levels of payment demanded; reluctance to face responsibilities; unrealistic ideas about the cost of a child; demonstration of dissatisfaction with administrative procedures; and perception that a resident parent who claims social assistance does not benefit directly from any

maintenance paid. There are also some non-resident parents whose liability is not determined, or not enforced because of the resident parent's fear of violence or retribution.

- Default in payments has other explanations, as well as those grounded in the perceptions and behaviour of the parents involved. Administrative procedures can themselves contribute to non-compliance, through error or delay.
- There is a need for further investigation of the various influences on compliance with payments due, in order to inform policy about ways of encouraging compliance and reducing non-payments.
- There are penalties and sanctions for non-payment in all countries, but more detailed data would be required for comparative analysis of relative utilisation or effectiveness of different kinds of penalties.

Final comment

There is now a major opportunity for reform of the UK child maintenance regime. We believe that this study has brought to the debate about the UK child maintenance regime valuable perspectives from nine other European countries. Our findings have highlighted important issues that require attention in order to 'make the child maintenance regime work' in the UK. Some of the information required is currently missing, in particular, evidence about the influences on compliance with payments and living standards of non-resident parents. Published statistics that focused on **children** within the UK regime would be helpful. Further research might include the impact and possible advantages of introduction of an advance payment system, using some of the European models. Our own belief is that making the child maintenance regime work in UK will depend to a considerable extent on how it is to be linked with impending changes in the practice of family law and divorce procedures, and there is much to learn here from European neighbours.

National informants were recruited through personal contacts in the research community, and data were collected by means of a questionnaire and responses to vignettes.

The questionnaire

The main research instrument was a questionnaire, sent to each national informant seeking detailed information about the child maintenance regime in their country.

The information sought included:

- Development of current child maintenance regime, including recent changes in law and policy context.
- Determination of child maintenance due:
 - general framework of divorce and separation
 - voluntary agreements between parents
 - court-based determinations
 - agency-based determinations.
- Collection, payment and enforcement of child maintenance:
 - structural and administrative arrangements
 - compliance
 - ‘guarantee’ or ‘advance’ schemes.
- Effects of receipts and payments:
 - tax and social security implications.
- The overall context:
 - research evidence
 - the policy debate.

After providing answers to the questions, informants were asked to respond to three vignettes.

Vignettes

Vignettes, as described by Finch (1987) are ‘short stories about hypothetical characters in specified situations, to whose situation the interviewee is invited to respond’. They present real-life situations, in social and personal

circumstances that are meaningful to the respondents, and enable observation and interpretation within cultural context. The use of vignettes in cross-national social research is described by Soydan and Stål (1994); Soydan (1996) and Warman and Millar (1996). Vignettes have been used successfully in previous research on child support, and family obligations (Jackson *et al.*, 1993; Clarke *et al.*, 1996; Millar and Warman, 1996; Maclean and Eekelaar, 1997).

This comparative study provided an opportunity to explore and develop the application of this technique within written discourse.

Three vignettes were used, describing characteristics and circumstances of parents which had particular relevance for the UK policy debate. Each vignette described the personal and financial circumstances of a resident mother and child(ren), and a non-resident father. Informants were asked to explain how their child maintenance regime would deal with each situation, and to suggest an outcome in terms of the amount of child maintenance due to the child(ren) and repayment liabilities of the non-resident father.

In order to guide national informants about the amount of detail required in answer to the questions, and how to approach the vignettes, the fully completed UK questionnaire and vignettes were also sent.

The information provided by the national informants was complemented by published information from other sources cited in the text.

Full texts of vignettes

Vignette One

Miss Field

(i) Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is two years old. Miss Field lives with Susan in a small rented flat in the town centre.

Susan’s father, Mr Hill, is 27 years old. He has never lived with Miss Field, but has kept in touch since the birth of his daughter. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter and maintains a friendly

relationship with Miss Field, although they do not want to set up a home together. He sometimes takes temporary, low-paid work but also experiences long periods of unemployment. He is currently unemployed and depends on out-of-work social security income. He lives with his own parents, to whom he gives one half of his income, as a contribution to housekeeping costs. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.

Miss Field has not had paid work since Susan's birth, and has brought up Susan on the social security benefits and allowances available to a person in her position. Miss Field's parents give her some financial support; her mother sometimes buys groceries or clothes for Susan, and her father is sometimes able to help with big bills. Mr Hill bought baby clothes and equipment when Susan was born and paid for Miss Field to take her for a cheap holiday for a few days in the summer. He occasionally does painting or small repairs in Miss Field's flat, and pays for this himself.

Miss Field has never been dissatisfied with the financial support offered by Mr Hill, as she knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, it would be sensible to make formal arrangements regarding child maintenance.

- (ii) After the decision has been made about a formal child maintenance arrangement Mr Hill completes a training course, and gets a job at average full-time male earnings. All other circumstances are the same as before.

Vignette Two

Mrs Coast

- (i) Mrs Coast is seeking a divorce from her husband, to whom she has been married for 10 years. The couple are in their early 40s, and have two children, Anne aged five years and John, aged nine years. Both children attend school.

Mrs Coast has remained in the family home with the children, while Mr Coast has moved away to another town where he rents a small flat. The couple were buying their house together, with a mortgage loan. There are two options for the couple: selling this house to clear the mortgage, and finding cheaper, smaller accommodation for Mrs Coast and the children; or, making arrangements to continue to pay for the original house so that the children can stay in their own home.

Mr Coast has a secure job, and earns one-and-a-half average male full-time earnings. Mrs Coast has a part-time job, earning average female part-time earnings, and in order to go to work, must pay for child care for 12 hours each week.

When the couple separated Mr Coast made a lump sum payment to his wife, equal to one-third of his gross annual salary. Since then he has been paying weekly voluntary contributions to his wife at an amount equal to her child care expenses. He has been maintaining all the monthly mortgage repayments. In addition, he collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car of 100 km each way. While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.

Mrs Coast has been arguing with her husband about money. She feels that his weekly contribution is insufficient, and that most of the additional expenditure made by Mr Coast (on clothes and toys) for the children only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.

Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He believes that Mrs Coast could re-arrange her hours of work in order to reduce child care expenses. He never wanted to be divorced anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties. He has two elderly parents, who will both soon need nursing home care, which will be a further expense.

- (ii) Mrs Coast tells her husband that a man friend has moved into the house. Mr Coast knows the man personally, and knows he has high earnings. He feels that the arrival of this wealthy new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce. All other circumstances remain the same as previously described.
- (iii) Mr Coast has formed a new relationship with a younger woman and they have a 10-month-old child. He wants to maintain the contact arrangements with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself. All other circumstances remain the same.

Vignette Three

Miss Croft

Miss Croft and Mr Shore are both 34 years old and have lived together for five years. They have a child, Rob aged four years. They have been living in a small rented house in a village.

Mr Shore has recently left the home, to live with a woman whom he says he now plans to marry. The woman, Miss Pool, has two young children, aged four and seven years. Mr Shore, Miss Pool and Miss Pool's children now live in Miss Pool's house, which she owns and has paid for. Miss Pool intends to give up her job when she marries, and be at home, caring for the two children. Mr Shore intends to support his new family from his earnings. Miss Pool receives no child maintenance herself from the father of her two children, is not in touch with him, and is unwilling to contact him, or ask him for any financial support.

Mr Shore has secure full-time employment, with average male full-time earnings.

Miss Croft earns money at home by designing and making knitwear. She is formally a self-employed person. She believes that her annual business profit is less than half average full-time female employee earnings. Her earnings do not come in regularly, however, and she is not efficient in keeping business accounts. She feels that her earnings are insufficient to support herself and Rob, and there are no prospects of other paid work in her village.

Miss Croft wishes to make formal arrangements for child maintenance from Mr Shore, in respect of Rob. She believes that Mr Shore has lost interest in Rob. She had hoped that her previous relationship with Mr Shore would lead to marriage, but now she is angry and disappointed.

Mr Shore wants to 'make a new start' with Miss Pool, and is finding it hard to think about any responsibilities to Miss Croft and Rob.

List of national informants

The national informants who provided information about the child maintenance regime in their country were:

Austria

Mr Ewald Filler
Austrian Federal Ministry for the Environment, Youth and the Family
Division for Children's Rights
Vienna

Belgium

Ms Gerre Verbist
Centre for Social Policy
University of Antwerp

Denmark

Dr Peter Abrahamson
Department of Sociology
University of Copenhagen

Finland

Dr Sirpa Taskinen
National Research and Development Centre for Welfare and Health (STAKES)
Helsinki

France

Mr Antoine Math
Caisse National des Allocations Familiales
Bureau de la Recherche
Paris
and
Mr Claude Martin
Institut d'Etudes Politiques
University of Rennes

Germany

Dr Franz Rothenbacher
Mannheim Centre for European Social Research
University of Mannheim

Netherlands

Professor Paul Vlaardingerbroek
Department of Law
Tilburg University

Norway

Ms Anne Skevik
NOVA – Norwegian Social Research
Oslo

Sweden

Professor Antoinette Hetzler
Department of Sociology
Lund University.

Summaries of child maintenance regimes

Austria

Principles

Under the Austrian Civil Code all parents must contribute to the maintenance of their children, in accordance with their means and standard of living. Both parents must 'to the best of their ability' contribute *pro rata* to meet the needs of the child 'as appropriate to their standard of living, taking into account the child's talents, abilities, inclinations and possibilities of development'. In the case of parents who do not live together, the resident parent is assumed to meet responsibilities through the care provided, but the non-resident parent must make financial payments.

Determination of liability

Divorcing/separating parents are encouraged to come to an arrangement out of court, and may approach the Youth Welfare Office for help, or the mediation services available. If parents cannot come to an agreement, the resident parent applies to court for a determination, and a judicial officer usually deals with the assessment in non-litigious proceedings. Non-married parents, after establishment of paternity in front of the Youth Welfare Office, or in court, usually establish a formal agreement on child maintenance. Disputes are resolved in court.

Child maintenance is awarded to the child, in his/her own right. The court officers and the Youth Welfare Office use a simple formula as a guideline in working out the liability, according to the child's age and the income of the non-resident parent:

Table A3.1 Determination of liability (Austria)

Child's age	Percentage of average monthly net earnings due
	%
up to 6 years	16
6 – 10 years	18
10 – 15 years	20
over 15 years	22

Discretionary decisions are made in order to deal with situations in which the non-resident parent has maintenance obligations to more than one child, or a

partner without income, usually by reducing the above percentages by one to three points, depending on the ages of the children.

The measure of net earnings is based on earnings from employment, pensions and benefits and revenue from savings and investment. Annual earnings of employees are based on fourteen twelfths of annual salaries/wages, to take account of the two additional monthly payments per year, for Christmas and holiday expenses.

Discretionary decisions may be made about additional expenses incurred by the resident parent, including child care; or if the child has his/her own income. Discretionary decisions may also be made to take account of the costs of accommodation of the liable parent, if he left the family home.

There are maximum amounts of child maintenance payable (so-called 'luxury maintenance'). The guidelines limit child maintenance to 2.5 times the monthly *average consumption needs* of children of various ages, which are calculated as:

child up to 3 years	1,970 ATS
child aged 3–6 years	2,520 ATS
child aged 6–10 years	3,220 ATS
child aged 10–15 years	3,700 ATS
child aged 15–19 years	4,370 ATS
older children, up to 28 years	5,500 ATS

If parents are not co-operative, court judgements about child maintenance usually take at least six months, but 'preliminary maintenance' may be determined in summary proceedings to ensure at least basic living standards for the child in the interim. Decisions are made more quickly if parents co-operate. Ratification by the court of agreements reached by parents, or agreements recorded at the Youth Welfare Office may be made quickly.

Collection and enforcement

Parents usually make their own arrangements for private money transfers. If the legal guardian of the child (usually the parent) has formally entrusted the Youth Welfare Office to determine and enforce maintenance,

the agency may collect the payments. In case of default, the court or Youth Welfare Office enforces the payment through the bailiff.

Advance maintenance

The Advance Payment Law (*Unterhaltsvorschussgesetz*) was created in 1976 and amended in 1985. The court can authorise an advance on maintenance if the liable parent is no longer living in the common household and does not meet his/her legal obligations. A formal maintenance agreement must have been recorded, by the court or the Youth Welfare Office, and efforts to enforce maintenance by means of court orders and bailiff action must have been implemented for at least the previous six months.

The Austrian advances are based on the original determination, with age-related upper limits of:

1,326 ATS for child up to 6 years	(£66 purchasing power parity)
2,652 ATS for child aged 6–14 years	(£133 purchasing power parity)
3,978 ATS for child aged 14 years or over	(£200 purchasing power parity)

Belgium

Principles

Under the Civil Code all parents, whether married or not, are responsible for the support of their children, in accordance with their means and their own standard of living. During divorce, parents must reach an agreement about child maintenance for ratification by the judge, who checks that decisions made are in the child's interests. Otherwise, the judge makes a ruling about child maintenance. Parents not married to each other may, similarly, make an agreement, authenticated by a notary public, or request a court determination.

Child maintenance is awarded to the child, in his/her own right, but normally paid to the resident parent.

Determination of liability

Each case is dealt with individually, and there are no general guidelines. The judge is concerned that the children are provided for in accordance with the standard of living of both parents. In order to assess that standard, the resources and assets of both parents are taken into account, with their current financial commitments. The family home has special protection, and the resident parent is likely to be awarded the right to continue living in the family home, even when this is owned by the other parent. If either parent has a new partner, or step-children, their financial commitments to these people should not affect the maintenance determination, as this would be seen as reducing the

standard of living of the child concerned. However, in practice, judges deal with each situation as it arises. If a resident parent has a new married partner, the financial responsibilities of the new partner towards the step-children can free the non-resident parent from some of his own financial responsibility.

In cases of divorce, ratification of parental agreement about maintenance or judge's decisions can be made very quickly, and provisional arrangements can be made, anyway, in the meantime. Court judgements for children of parents not married to each other usually take much longer, especially if there are paternity issues to resolve.

Collection and enforcement

Parents make their own arrangements regarding payments. On default, the resident parent may apply to the court for an attachment of earnings. A parent who persistently fails to make payments due can be prosecuted for dereliction of family duty, a criminal offence.

Advance maintenance

A divorced parent who does not receive child maintenance due may apply to the Public Centre for Social Welfare for an advance payment, if there have been at least two missed monthly payments during the preceding year. Eligibility for an advance payment is means tested on the resources of the resident parent and child. The amount advanced is that agreed on divorce, with a maximum amount allowed. The Public Centres for Social Welfare are responsible for any recovery that is attempted.

Denmark

Principles

The principles of child support are derived from very early legislation covering advance support for non-marital children (late 19th century) which were later extended to marital children (early 20th century). The original principles were that the amount should cover the costs of care for a child in a good foster home, and that both parents should pay: the father three-fifths and the mother two-fifths of the amount. Current legislation is based on statute on the legal position of children, laid down in 1960 and amended in 1995; and statute governing child benefits and advanced maintenance, laid down in 1986.

Determination of liability

The connections with the actual costs of foster care have disappeared, but the concept of 'normal maintenance' (*normalbidrag*) has persisted. Parents are expected to

make arrangements for child maintenance, taking into account the level of the *normalbidrag* and the schedule which is used to determine liabilities by the *statsamter* (State County representation of the Directorate of Civil Law). The *normalbidrag* is fixed by the Directorate of Civil Law and is reviewed and updated each year. In October, 1997, the base amount was DKK 8,700 per annum for each child.

Child maintenance is payable to the child. The rules state that maintenance shall be fixed according to the parents' means and capacity to pay. Guidelines are issued by the Directorate of Civil Law, indicating four levels of payment, according to the paying parent's income and the number of children with entitlement. This is a simple schedule, which is well-known. In effect, maintenance is generally set at the level of the *normalbidrag*, which is the amount advanced by the state authorities, and only parents with higher than average incomes pay higher amounts.

No maintenance is due to children who have their own income of more than three times the *normalbidrag*.

Table A3.2 Determination of liability (Denmark)

Non-resident parent's annual income up to:	Non-resident parent's responsibility to each of:		
	1 child	2 children	3 children
263,000 DKK	<i>normalbidrag</i>	<i>normalbidrag</i>	<i>normalbidrag</i>
263,000 DKK	<i>normalbidrag</i> +25%	<i>normalbidrag</i>	<i>normalbidrag</i>
277,000 DKK	<i>normalbidrag</i> +50%	<i>normalbidrag</i> +25%	<i>normalbidrag</i>
302,000 DKK	<i>normalbidrag</i> +100%	<i>normalbidrag</i> +50%	<i>normalbidrag</i> +25%
341,000 DKK	<i>normalbidrag</i> +100%	<i>normalbidrag</i> +100%	<i>normalbidrag</i> +50%
384,000 DKK	<i>normalbidrag</i> +100%	<i>normalbidrag</i> +100%	<i>normalbidrag</i> +100%

The resident parent's income has no effect, nor the non-resident parent's financial obligations to subsequent children in second families; the obligation to the children of the earlier relationship remains unchanged. If there are circumstances in which the child has a special need, for example a period of sickness, additional maintenance may be arranged.

Decisions are normally made within two months.

Collection and enforcement

Parents make their own arrangements for payments. On default, the resident parent may approach the *statsamter* for help, through an attachment of earnings. The resident parent may also apply for advance maintenance from the *statsamter*, which then take over authority for enforcement. In addition to attachment of earnings, the *statsamter* may arrange seizure of goods or

property, deductions from tax refunds or a pension, or, ultimately, imprisonment.

Advance maintenance

Since the early 1960s, all resident parents are entitled to advance maintenance if liable parents do not make payments on time. The amount forwarded is the *normalbidrag*. If the actual entitlement is higher than this, the *statsamter* will help in the enforcement, as described above, but do not forward the additional part.

Finland

Principles

Before 1975, legislation governing child maintenance was different for children born in and out of wedlock. Reform of the law abolished this discrimination, and the current legislation is based on the Child Maintenance Act, 1974, and the Security of Child Maintenance Act and Security of Child Maintenance Decree, 1977. The principles underlying the legislation are that every child has a right to receive from his/her parents the satisfaction of their material and spiritual needs, including care and education and the resulting costs. All parents are responsible for supporting their children, in accordance with their abilities.

Determination of liability

The main responsibility lies with the parents, who may seek help from the municipal Social Welfare Boards. Advice from the Social Welfare Boards is influential in most cases.

In principle, all decisions about maintenance should be individual. According to the Maintenance Act, criteria taken into account should include:

- age of both parents
- their ability and opportunity for earned income
- assets available to both parents
- other maintenance responsibilities
- their own basic needs.

There are no official guidelines. However, research suggested (Tuomi, 1991) that child welfare supervisors often used the following rule-of-thumb:

- 10–15 per cent gross income of paying parent for one child
- 8–10 per cent gross income for each of two children
- 7–8 per cent gross income for each of three or more children.

In addition, most supervisors were taking into account:

- housing costs
- income of resident parent
- special needs of child
- debts (for housing, costs of study).

In a small number of cases, courts determine maintenance awards, and these should also be made individually, in accordance with the Child Maintenance Act criteria outlined above. In practice, when decisions are made against the demands of the other party, it is usually only the incomes and assets of the paying parent that are taken into account. An unofficial but frequently used rule-of-thumb is to base the award on 8–12 per cent of the gross income of the paying parent for each child.

Maintenance determinations are seen to be urgent matters in Finland. The mean processing time for all family matters taken into court was around four months in 1995, while the Social Welfare Boards expect to conclude matters for divorcing parents within one month. In some cases, if there is no need to seek further information, a maintenance determination based on help from the Board can be made within a week. However, for non-married parents, paternity investigations may slow matters down.

Collection and enforcement

Parents make private arrangements about payment. If payments are not made, the resident parent may approach the Social Welfare Board, which takes over responsibility for enforcement. Procedures may include attachment of earnings, deduction from tax refunds, or distraint of assets. Non-payment is not a criminal offence, but a persistent non-payer may lose his passport. If wrong information has been provided about means, to avoid payment, this is an offence which can lead to a fine or imprisonment. The resident parent may apply for advanced maintenance, if liabilities are not met.

Advance maintenance

If child maintenance liabilities are not met, the Social Welfare Board may pay the child a monthly maintenance grant. In 1997, this was 637 FIM per month per child in a single-parent family and 518 FIM per month per child of remarried or cohabiting parents. The amounts are reviewed annually and uprated in line with the cost-of-living index.

France

Principles

Under the Civil Code, married parents have an obligation to feed, educate and rear their children: *obligation d'entretien des parents a l'egard de leurs enfants*. This obligation extends to unmarried parents, if paternity is juridically recognised. The obligations of fathers of children of no established filiation is recognised by the *obligation aux subsides*, under which mothers can apply for child maintenance from putative fathers.

Determination of liability

The child maintenance regime in France has changed little since the early 1980s, when specialised judges (*Juges des affaires familiales*) were introduced to deal with all kinds of family law, including divorce and child maintenance, and efforts were made to improve enforcement of maintenance payments through the social security system. Effectively, divorcing parents come to agreements about child maintenance, which the judge checks to be in the child's interests, or the judge makes a decision. Arrangements are similar for unmarried parents: child maintenance is arranged by voluntary agreement, or decided by the family judge.

Child maintenance is normally awarded to the resident parent (although theoretically a child may pursue a right to maintenance in the court). Courts decide each case individually, taking into account a variety of factors. The most influential are the children's needs and the parents' resources. **Children's needs** are assumed to differ according to age, type of school and social circumstances. **Parents' resources** include income and essential living expenses such as housing costs. Although there are no guidelines, in practice most decisions are between 500F and 4000F per month per child, and represent around 15 per cent of the non-resident parent's gross income if there is a liability for one child; around 20 per cent, for two children and around 30 per cent for three children.

All circumstances may be taken into account, and may also be affected by judgements about the share of assets and property at divorce, and the financial situations of new family groupings.

Divorce procedures generally take a minimum of 9–12 months, but interim maintenance arrangements are usual. Court judgements about child maintenance for children of parents not married to each other are rather quicker, taking between one and six months.

Collection and enforcement

Parents make their own arrangements about payment. In case of non-payment, the resident parent seeks help from the court. There are a number of civil procedures for

recovery of monies owed. *Paiement direct* is the simplest and quickest, and can be used to recover maintenance unpaid during the previous six months. The court arranges attachment of earnings, deduction from bank account or pensions. *Saisie des rémunérations* enable the resident parent to collect unpaid child maintenance from longer than the previous six months. After enquiry, the court makes an attachment of earnings that can transfer the debt to the employer. Other types of *saisies* can be used for distraint on assets. If all other procedures fail, *recouvrement par le Tresor public* may be used for recovery by the tax administration.

The *Caisses d'allocation familiales* may also help resident parents to collect child maintenance.

Advance maintenance

A lone parent who does not receive maintenance due may apply for *allocation de soutien familiale (ASF)*, a non-means-tested benefit administered by the *Caisses d'allocations familiales*. In 1997 the amount due was 471.63 F per month per child. The lone parent must have a court determination, be due at least two monthly payments and have already tried civil recovery procedures. (Lone parents without a court determination may receive ASF for four months only.)

Take-up of ASF is believed to be low.

Germany

Principles

The principles underpinning the child maintenance regime in Germany are set out in the Civil Code and Basic Law. Parents have an obligation to support their children, and must share their income with them. Although this is primarily a private matter, the state intervenes where a parent cannot or will not meet these responsibilities, by helping to establish paternity and enforcing legal responsibility. The level of maintenance considered adequate varies according to the financial needs of the child, but the child has a right to maintenance from parents until the completion of education or training. Children of parents not married to each other have the same rights as those of married parents.

Determination of liability

Child maintenance is awarded to the child in his/her own right. Different child maintenance regimes have evolved for children of unmarried and married parents, however, within a legal system which privileges marriage and family against other forms of living. In the first case, the amount of maintenance is set down in legislation (*Regelunterhaltsverordnung*) – the standard maintenance decree. In the second case, maintenance is

decided by a family court, and is individually based, although in practice most family judges use schedules; most frequently, the *Düsseldorfer Tabelle*, which was based on the *Regelunterhalt* and has been influential since the late 1960s.

The table is based on monthly maintenance liabilities towards a previous spouse and two children. Minimum requirements of children in three age groups are set in the *Regelunterhalt*, and the Düsseldorf Table (Table A3.3 below) builds on these, increasing the amounts due according to the net income of the non-resident parent; adding an additional age group for children older than 18 years, and incorporating an amount to be retained by the liable parent for basic needs. The table shown below indicates lower and middle incomes only.

Table A3.3 Düsseldorf Table, valid from July 1996

Net income of non-resident parent	amount of child maintenance due to child in age group:				minimum income for own needs
	DM per month	up to 7 years	7-12 years	13-18 years	
up to 2,400	349	424	502	580	1300 (unwaged) 1500 (waged)
2400-2700	375	450	530	610	1600
2700-3100	400	480	565	650	1700
3100-3600	435	525	615	705	1800
(and so on)					

Figures in bold represent the regular amounts for non-marital children from the *Regelunterhalt*. If the non-resident parent has liabilities to only one, or three or more children, this is dealt with by using lower or higher rows in the table, respectively. There is also a maintenance liability to a married spouse of three-sevenths of the remaining net income after deduction of total child maintenance due. If there is insufficient left for distribution according to the table and formula (a case of *Mangelfälle*) then the distributable amount left after deduction from net income of own minimum basic needs is divided between the beneficiaries proportionally, according to the level of their basic needs.

In the above calculations, **income** includes net earnings, pensions and benefits and imputed value of living in an owner-occupied house, less work expenses (up to a maximum) and extra expenses of sickness. The liable parent can also claim the cost of supporting his own children living in his household, and mortgage interest on a house built during a marriage. If the resident parent has income substantially higher than the non-resident parent, this may be taken into account and reduce the maintenance liability.

The child allowance is then split: if paid to the resident parent, it reduces the maintenance due by half the allowance; if paid to the non-resident parent, the maintenance due increases by half the allowance.

There is no information about the time taken by courts in deciding child maintenance, but in 1995, one-third of all divorce and marital proceedings cases were completed within six months, and two-thirds within 12 months. Provisional maintenance arrangements are possible while waiting.

For children of non-married parents, there is a fixed formula which lays down the minimum amount of maintenance. The amounts are shown in bold in the Düsseldorf Table (Table A3.3), and refer to children in the old Länder. In the new Länder, amounts are slightly lower, reflecting the different economic conditions: 314 DM per month for children up to 7 years, 380 DM for children 7–12 years, and 451 DM for children 13–18 years. If the non-resident parent has sufficient income, the standard amount must be paid. If the resident parent seeks court proceedings, the courts, in practice, use the Düsseldorf Table in cases of parents with higher income.

Collection and enforcement

Parents make arrangements for private payments. If payments are missed, the resident parent usually applies to the *Jugendämter*, the local youth agencies in the municipalities. Some parents return to court for help. The non-resident liable parent is located by the *Jugendämter*, and if the resident parent has applied for advance maintenance, he/she is obliged by law to help find the other parent. Procedures for enforced collection include attachment of earnings or collection through the tax system.

Advance maintenance

If the liable parent does not or cannot comply, the resident parent may apply for advance payments. Within the German legal system this payment is seen as a social benefit. It is available to children under 12 years old, for a maximum of six years. The amounts paid are the same as those laid down in the regular maintenance decree (*Regelunterhalt*). The scheme is administered by the *Jugendämter*, which take over responsibility for recovery of monies due.

Netherlands

Principles

Under the Civil Code, parents have a duty of support to all their children. The legal consequences of divorce include maintenance obligations for the ex-spouse (alimony) and for the children (child maintenance). Parents themselves can make arrangements about child maintenance, but in the case of divorce or legal

separation, the divorce court has to be satisfied that adequate financial and other arrangements are made for the children. In cases of divorce and separation involving children, there is either a written contract between parents, ratified by the court, or a court determination. Similarly, unmarried parents make their own arrangements, or apply to the courts for a determination.

Child maintenance is payable to the resident parent (not children in their own right).

Determination of liability

Court determined liabilities are discretion-based. However, where relevant, the courts use a child support formula laid down by the *Nederlandse Vereniging voor Rechtspraak (NVVR)*: Dutch Association for Jurisdiction) and published annually in the magazine *TREMA (Tijdschrift voor de rechterlijke macht)*: Magazine for the Judiciary). This is referred to as the *TREMA* formula. The *TREMA* scheme is complex, and covers a wide range of criteria, as the courts have wide powers to take into consideration a variety of circumstances and situations. The general principle underlying the formula is that the liable parent's income should not drop below the social minimum, and that the liability should not be a disincentive to work. Income available for maintenance should be allotted equally to all people to whom there is a responsibility, although in practice, child support has priority over spouse support. The following summarises the approach taken:

1. The non-resident parent's monthly **net income** is calculated, including net earnings, pensions, benefits, five per cent of holiday pay, rent from property and income from savings.
2. The non-resident parent's monthly **expenses** are calculated, including:
 - basic living expenses (standardised to the social assistance minimum for a two-parent household, a single-parent household, or a single person)
 - minimum housing costs (rent standardised against social assistance housing scales, or mortgage interest) and a proportion (excess over a standard contribution) of expenses such as local and water taxes, and fire insurance
 - health insurances (standard allowances)
 - disability insurances
 - funeral insurance
 - expenses in respect of access to children
 - other exceptional expenses
 - work expenses
 - costs of study

- interest on and repayments of debt
 - cost of equipping a new home after divorce.
3. Net income less expenses, as calculated above, gives the **capacity to pay**. The assumption is that a single person should make 70 per cent of this amount available for maintenance, and a person with a new family (a partner, at least), 50 per cent.
 4. The latter fraction of available income is distributed first, among all the liable person's children, according to their **individual needs**, and then, what is left is available for payment as alimony to a previous spouse. (There are some tax adjustments in this calculation).

The **individual needs** of the children are worked out according to a scheme developed by the NIBUD (Netherlands Institute for Budget Control) and the CBS (Central Bureau for Statistics), from research in 1993 which showed that the costs of one, two or three children represent, on average, 17, 25 and 32 per cent respectively of total household budget, and the costs of a child rise with age. The NIBUD tables produce amounts that represent the standard minimum contribution towards the costs of each child, according to:

- net income of liable parent
- age of child
- number of children in household.

The assumption is that this level of minimum contribution from a non-resident parent, plus the family allowances available, plus the resident parent's contribution towards support, will meet the total costs of bringing up the child. If the income available to the resident parent remains below the social minimum level, social assistance may be claimed from the municipal social service office.

If divorcing parents have already come to agreements before going to court, maintenance determination can be achieved relatively quickly, but usually takes at least two months. Contested cases can take much longer, but provisional provisions for child maintenance may be made in the meantime.

Collection and enforcement

Parents make their own arrangements for payment of maintenance due. If the resident parent does not receive monies due, the maintenance can be collected and enforced by the *Landelijk Bureau Inning Onderhoudsbijdragen (LBIO)*, which forwards monies collected to the resident parent, or the social security office if the resident parent claims social assistance. Enforcement measures include attachment of earnings and distraint of property and assets. The *LBIO* will intervene if at least one payment has been missed

during the previous six months. Other parents can request the collection service, and a fee of 10 per cent of maintenance due is charged. The *LBIO* is a new agency, and came fully into effect in January 1997.

Advance maintenance

There is no scheme for advancing maintenance in the Netherlands. A resident parent with insufficient resources may apply for social assistance.

Norway Principles

The underlying legislation is the Act on Parents and Children, 1981, which replaced former legislation which dealt separately with children born in and outside marriage. The main principle in the 1981 Act is that all parents have an obligation to support their children, according to their financial ability, whether they are married or not. A parent who does not live with a child should pay regular contributions for living expenses and education.

The maintenance payment is awarded to the child in his/her own right.

Determination of liability

Parents are encouraged to make their own arrangements, but payments should not be below the level of advanced maintenance. In cases of disagreement, maintenance is determined by the *bidragsfogd*, the Maintenance Contribution Collection Agency at the National Insurance Administration, which is administered at a local level.

Involvement of the *bidragsfogd* is compulsory:

- if the resident parent receives benefits as a lone parent
- if the resident parent applies for advanced maintenance
- when parents did not live together at the time of birth and have not reached an agreement.

Regulations set out a simple schedule for determining the liability of the non-resident parent, based on percentages of gross income:

Table A3.4 Determination of liability (Norway)

Number of children with right to maintenance	Percentage of gross income due as maintenance %
1	11
2	18
3	24
4 or more	28

The maintenance due is split equally between children; thus, if a parent has two children but one lives with him, he pays 9 per cent of gross income to the resident parent. In this way, the non-resident parent's children with new partners are accounted for, but not step-children.

Maintenance is determined by discretion in some situations, including:

- for a child aged 18 years or more;
- if a parent has such low income that 11 per cent is less than advanced maintenance. Parents receiving income-related social assistance will usually be assessed as having nil liability;
- if a resident parent has much higher income than the non-resident parent;
- if the non-resident parent would be left with less than 30 per cent of gross income, and this is insufficient for his/her needs;
- if there is missing information;
- if a non-resident parent appears to have an 'unreasonably' low income, given education and abilities;
- where parents share custody (each caring for at least five months).

In a small number of cases, maintenance is determined by courts, but they must use the above schedule and percentages, which are set out in governmental regulations.

The government target for the time in which a final or interim decision should be made by the *bidragsfogd* was two months in 1996, and most final decisions were made in 3–4 months.

Collection and enforcement

Parents may make private arrangements about payments due, unless the resident parent receives advance maintenance or transitional allowance (a benefit for lone parents), when the Maintenance Contribution Collecting Agency (MCCA) must be involved. The MCCA is an Agency of the National Insurance administration, at local level. All resident parents may use the MCCA to take over collection of maintenance due, and in involving the public body, resident parents may or may not apply for advance maintenance. The MCCA enforces payment through attachment of earnings, deductions from benefits, distraint of assets, deductions from tax refunds or recovery from estate.

Advance maintenance

Any resident parent may apply for the *bidragsforskott* (advance maintenance) a fixed amount set at NOK1.050

per month per child in 1997. This is forwarded by the MCCA which in turn reclaims the money from the liable parent. Advance payment is paid even in cases where the liable father, or his whereabouts, is unknown. In 1996, paternity was not established for about 5 per cent of all children in receipt of advanced maintenance.

Sweden

Principles

Under Civil Law parents are responsible for the support of their children, either by caring and supporting them or by paying child maintenance. Liability is divided between parents according to the child's needs and the parents' capacities to provide support, and children are entitled to a standard of living congruent with that of the parents.

Determination of liability

Under public law, child maintenance support legislation guarantees a certain level of support to all children of parents who live apart. The scheme was introduced in 1937, in response to the poverty and low living standards of children of divorced and unmarried mothers, and was broadened in further legislation in the following two decades. In 1964, the Law on Maintenance Advance effectively guaranteed child support, indexed to prices, to children who did not live with both parents. What had become, more or less, a social security benefit, proved very expensive, and was open to manipulation by parents who wanted to take advantage of the state finance available. A new Law on Maintenance Support was introduced in 1996, and implemented in February 1997, transferring to social security offices the administrative responsibility for assessment of the financial liabilities of non-resident parents of children receiving maintenance support from public funds.

For both married and never-married parents, responsibility for deciding how much child maintenance shall be paid lies primarily with themselves. If they are in disagreement, the courts will decide. The social security office determines the amount of child maintenance support (CMS) that the non-resident parent must repay to the State if the resident parent receives advance maintenance. (Around 75–80 per cent of parents with child maintenance arrangements are within the CMS system.) The different way in which parents' liabilities for financial support are handled by the courts and by the social security offices thus reflect different objectives.

Court determinations

The courts determine amounts of child maintenance payable by non-resident parents by considering the child's individual needs, and the capacities of both

parents to contribute to financial support:

$$\text{child maintenance} = \text{child's needs} \times \frac{\text{non-resident parent's economic surplus}}{\text{sum of both parents' economic surplus}}$$

The **child's needs** vary according to:

- age
- standard of living.

A standard formula (calculated by the National Board of Health and Welfare and indexed to prices) provides a starting point as the basic cost of a child, in three age groups. This is increased by the costs of day care, and decreased by the general child allowance and any substantial regular income of the child. Discretionary decisions govern further adjustments to take account of additional needs or customary standard of living.

The **economic surplus** of each parent is calculated, starting from the gross income, with allowances for the following:

- tax
- work expenses
- own basic living costs (standardised against price index)
- additional living costs (for example, costs of sickness)
- allowance for living costs of spouse without own income (standardised against price index)
- allowance for living costs of other children cared for (such as children of new relationships)

and, finally

- reasonable housing costs (with reference to annual norms published by the National Board of Health and Welfare).

Only a minority of first-time child maintenance determinations are made by the courts – probably around 2 per cent of divorced or separating parents.

Assessment by Social Security Offices

Around 75–80 per cent of parents with child maintenance liabilities are within the CMS system, and since 1997 assessments for repayments by non-resident parents have been dealt with by social security offices, using the following rules.

In 1997 maintenance support payment was 1,173 SW KR per month, and the non-resident parent must pay this back in part or entirely. Repayment liability is determined as a simple percentage of income (based on financial information in the last income tax demand).

Assessable income is:

- net earnings, less work expenses including travel to work

- income from capital, less interest on debts
- income taxed according to special provision for seamen
- study grants (but not study loans)
- one per cent of taxable wealth greater than 800,000 SW KR
- profit from self-employment

less 24,000 SW KR (to meet own basic living costs).

The percentage of assessable income which must be paid, up to a maximum of 1,173 SW KR per month for each child, depends on the total number of children of the non-resident parent (including children with new partners):

1 child	10.00%
2 children	6.24% for each child
3 children	5.00% for each child
4 children	4.00% for each child
5 children	3.40% for each child
6 children	3.00% for each child
7 children	2.71% for each child
8 children	2.50% for each child

Assessments of repayment liabilities would usually be completed within three months.

Collection and enforcement

As described above, 75–80 per cent of parents are within the CMS system, in which maintenance support is paid by the social security office, and responsibility for collecting repayments due is taken over. In the case of non-payment, the case is filed with the Swedish Enforcement Service and collection is enforced by attachment of earnings or seizure of assets. Once the enforcement service has taken over, costs of collection are charged to the liable parent and interest is added to the debt.

Advance maintenance

The social security office pays a child maintenance support payment after application by the resident parent, if state intervention is necessary to guarantee that a child receives sufficient maintenance. The payment was 1173 SW KR per month per child in 1997. If advance payments are made, the social security office has responsibility for determining levels of repayment due (as explained above) and collection and enforcement.

United Kingdom

Principles

The principle underlying the legislation that led to the Child Support Agency (CSA) is that parents are financially responsible for their children. The policy aims of the new regime were to enforce parental liability for child maintenance; to reduce the cost to the state of children not living with both parents; to ensure greater consistency in decision-making about liabilities, with greater effectiveness in delivering money to resident parents.

Determination of liability

The CSA makes determinations in all cases in which the resident parent claims an income-related benefit, and in other cases when a resident parent applies to the Agency. Child maintenance is awarded to the resident parent. The assessment is based on a rigid, complex formula, set out in algebraic form in the Child Support Act, 1991. The basic formula has five steps, which are summarised as follows:

1. The **maintenance requirement** for each child represents the minimum needed to support a child, plus an element acknowledging the costs of care provided in a family, and an element acknowledging the costs of the resident parent (known as the 'parent as carer' element). These amounts are based on age-related income support allowances.

In the standard cases, the non-resident parent pays 50 per cent of his available income until this basic level of income is met, and then a smaller proportion of remaining available income.
2. The **exempt income** is calculated, for each parent. This represents the amount each parent needs for their own basic living costs, and is again based on income support allowances, with additional standardised allowances for housing costs, and high costs of travel to work.
3. The **assessable income** of each parent is calculated. This represents the income available after the exempt income has been taken into account. It is net income from earnings, plus benefits and pensions, income from capital, plus the child's own income (included as parental income, according to which parent provides care) minus the exempt income as calculated in the previous step.
4. The **proposed maintenance** is the amount which the non-resident parent is liable to pay, unless it is reduced by the protected income calculation in the last step of the formula. A second formula applies in calculating the proposed maintenance.

If the resident parent claims income support or income-based job-seeker's allowance, only the non-resident parent's income is taken into account in meeting the maintenance requirement. If the non-resident parent claims either of these benefits, there is a maintenance liability of £5.

If **both** parents have assessable income (from step 3) these are added together to give the joint assessable income. If 50 per cent of the joint assessable income is less than, or equal to the maintenance requirement (from step 1), then the proposed maintenance is half the non-resident parent's assessable income. If, however, 50 per cent of the joint assessable income is more than the maintenance requirement (from step 1), then there is an additional element in the proposed maintenance to take account of the higher income available, based on the number of children involved. The proposed maintenance represents the level of liability of the non-resident parent, unless reduced, as follows.

5. The **protected income** level of the liable parent is a mechanism for ensuring that the liable parent and any new family retain a minimum level of income for their needs. There are two levels of protection. First, there is a 30 per cent cap, such that the most any non-resident parent is expected to pay is 30 per cent of total net income (as calculated in step 3). The second mechanism considers the position of a new family (partner of the opposite sex, and any children for whom they take responsibility). The new partner's income is taken into account in this mechanism, and another formula prevents the family falling below income support levels as a result of paying child maintenance. The actual maintenance liability, in these circumstances, is then lower than the proposed maintenance arrived at in step 4.

Either parent may apply for 'departure' from this rigid formula, when discretionary decisions may be made on a number of criteria.

In 1997, around half of CSA determinations took at least six months from referral to assessment, and some much longer.

There is a residual role for the courts, in jurisdiction on child maintenance issues which are beyond the scope of the child support legislation. Court determined liabilities are discretion-based, but there is a duty to give paramount consideration to the welfare of the child. Where relevant, the courts may use the CSA child support formula in decision-making. However, the approach has traditionally been that a wider view is appropriate, prioritising the need to secure accommodation for the child(ren) and caring parent, and taking into account overall obligations and commitments of both parents, and their employment prospects.

No information is available about the usual length of time necessary to conclude court-determined child maintenance liabilities.

Collection and enforcement

The usual arrangement is that parents make private payments, under both CSA and court procedures. In the case of CSA procedures, if the non-resident parent claims income support or income-based job-seeker's allowance the payment is deducted from benefit by the Benefit Agency and passed to the CSA.

The CSA offers a collection service, which is usually available at request of either parent.

There are nearly always initial arrears on an assessment made by the CSA, due to administrative delay. In cases of non-payment the CSA arranges attachment of earnings, or applies to the court for a liability order to enable further action, including distraint of assets, or registration of debt in a County Court (damaging the person's credit rating).

The court uses its own powers to enforce child maintenance determined under court procedures, including attachment of earnings, distraint of assets and charges on property sales.

Advance maintenance

There is no advance maintenance scheme in the UK. Resident parents may claim social assistance if they have insufficient income, and any child maintenance paid counts as income for the means test.

Comparison of the value of advanced maintenance to lone parents in Denmark, Finland, Germany and Sweden

Using the 'model family matrix' method developed in previous comparative studies by the Social Policy Research Unit and data collected for the European Observatory for National Family Policies, it is possible to conduct further comparisons of the value of advanced maintenance to lone parents.

The model family matrix method is described elsewhere (Eardley *et al.*, 1996a; Ditch *et al.*, 1995). The Observatory has comparative data on advanced maintenance from Denmark, Finland, Germany and Sweden. Austria, Belgium and France do not include data on advanced maintenance in their national returns to the Observatory, on the grounds of the discretionary elements involved (Austria); low take-up (Belgium and France) and the residual and stigmatised nature of the scheme in Belgium.

Table A4.1 presents a comparison, based on the model family matrix, of the absolute value of the

advanced payments to lone parents, and their value as a proportion of gross and net incomes. The data refer to the situation in May 1996, the latest data available.

Table A4.1 shows the variation in absolute value of advance maintenance by age of the child in Germany. Denmark has the lowest, and Germany the highest absolute amounts. In each country, amounts paid for two children are double those paid for one child. The table shows the amount of maintenance for one child, as a percentage of gross national average male earnings, to be six per cent in each country except Denmark where it is three per cent. The final row of the table also estimates maintenance as a proportion of the post tax income of a single non-resident father (on average earnings) which varies from 6 per cent in Denmark to 11 per cent of net income in Germany for one child. Note this is not necessarily what he would be required to pay through normal procedures.

Table A4.1 Comparison of amounts paid in advance maintenance schemes to lone-parent families in four European countries, May 1996

		Denmark	Finland	Germany	Sweden
Advance maintenance for lone parent and one child under 3 years per month, (ecu ppps)		79	101	115	111
Advance maintenance for lone parent and one child aged 7 years per month, (ecu ppps)		79	101	149	111
Advance maintenance for lone parent and two children of school age per month, (ecu ppps)		158	201	299	223
Advance maintenance for lone parent with children of school age (%)					
as proportion of gross average male earnings	one child	3	6	6	6
	two children	7	11	12	12
as proportion of post-tax income	one child	6	9	10	10
	two children	12	17	21	20
as proportion of post-tax and benefit income	one child	5	7	9	9
	two children	9	12	16	15
as proportion of post-tax income of single non-resident father on national average male earnings	one child	6	9	11	10
	two children	12	17	22	20

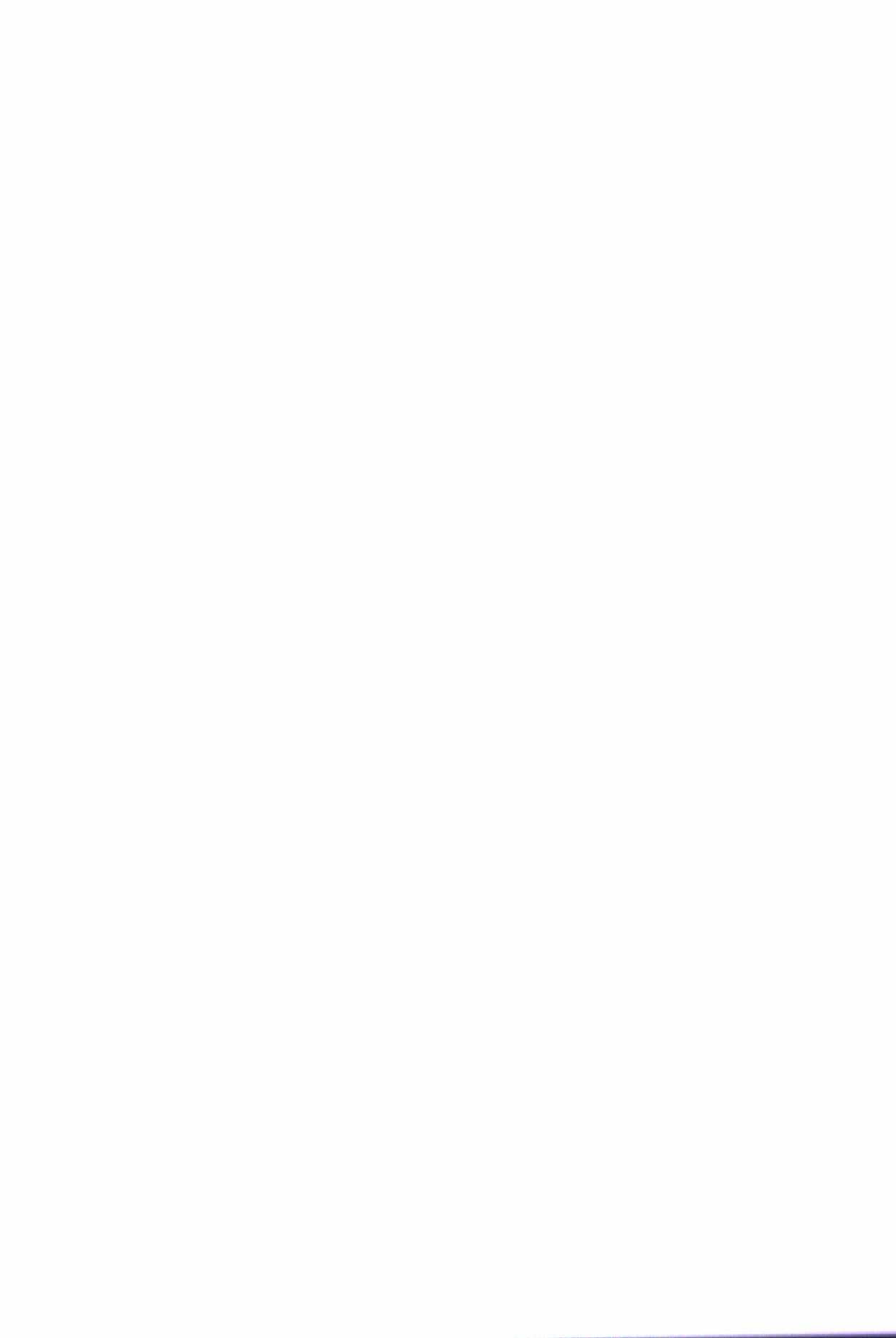
1 ecu = £0.71 in ppp terms

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The breakdown of marriage or cohabitation in families with children means, in most countries, a high risk of financial problems for the parent with whom the children continue to live, usually the mother. Similar problems are faced by women who have never lived with their children's father. As a consequence, in many countries lone parenthood carries a high likelihood of poverty and deprivation.

Debate about the financial problems of lone parents has often been directed towards finding solutions in the route to employment or improved social security benefits. In the UK, until recently, much less significance has been directed to the other strand of financial support, child maintenance. The balance has shifted in the 1990s, however. The 1991 Child Support Act launched a new Child Support Agency. Policy goals were to establish the principle that non-resident parents must be held to financial account for their children, and to reduce the cost to the public purse of financial support for lone-parent families. The Agency has been unsuccessful on almost all counts, and a policy review is underway.

The aim of the research reported in this volume is to contribute to the UK policy debate by providing perspectives from child maintenance regimes in selected European countries (Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden and the UK).

Drawing on information provided by national informants the study compares the different structural and administrative components of the 10 European child maintenance regimes, explains the different perspectives on the financial obligations of parents who do not live with their children, and looks at some of the effects of the regimes for families and governments. Important aspects include the interaction of child maintenance with tax and social assistance, and what happens when child maintenance is not paid. The author then looks not just at what works well, in what circumstances, (and at the lessons that might inform the development of child support policy in the UK), but considers whether understanding what has not worked well might also help the UK avoid making further mistakes in the task of reconstructing a child support policy.

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