

A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES

Questionnaire for national informants

Focus of questionnaire

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

Scope

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are 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. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- separated married parents (whether formally divorced or not)
- separated cohabiters
- parents who have never lived together.

Core terms

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

Organisation of questionnaire

The questionnaire is organised in the following way.

- Part One seeks information about the history and general objectives of your child maintenance regime.
- Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.
- Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.
- The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.
- Part Five asks about the interactions of receipts and payments with other policies.

- *Administrative costs and quantitative data on outcomes are covered in Part Six.*
- *Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.*
- *Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance regime.*

There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.

We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.

When we ask for current information, this relates to the situation at 1 July 2006.

TERMS AND DEFINITIONS	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

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PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

This part of the questionnaire seeks a broad overview of your current system.

Please remember that we are interested in three groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.

In Danish law, parents are considered to be equally and jointly responsible for the maintenance of their joint biological child "in accordance with his needs and the circumstances of the parents", as expressed in current law.¹ There is no distinction made between marital and non-marital children. Support is the goods and services that the parent provides in the home--*naturalia*. If for some reason (usually the separation of the parents) one parent is not supporting the child, then the support owed the child can be converted to a monetary sum and paid by the Non Resident Parent (NRP) to the Parent with Care (PWC).

The **primary explicit policy objective** of the Danish child maintenance regime is to ensure that where an application has been made for child maintenance, then parents who live apart contribute financially for their children under the age of 18. The *primary implicit objective* is to ensure that parents (both fathers and mothers) take responsibility to support all marital and non marital biological children until age 18 whether they live with the parent or not. The *secondary implicit objective* is to ensure, through the provision of advance maintenance and other social benefits for single parents, that all children, regardless of parents' economic circumstances, have a minimal subsistence level and thus the same access to health and education as peers in intact families.² A third important, implicit objective is to have a system which is simple and inexpensive to administer.³

1.2 Please explain briefly the history and development of the current regime.

The current child maintenance regime dates from Act on the Maintenance of Children from 1961, with various revisions. Key features of the regime however, such as a standard rate of maintenance and provisions for advance payment, date as far back as the Act on the Maintenance of Illegitimate Children of 1888.⁴

The regime is the complement to social benefits system which is based on universal citizenship rights of individuals to the care and protection of the state. Benefits and services are tax financed and publicly provided and are channelled from state to individual. Thus single parent benefits and child maintenance, while paid to the PWC, by rights belong to the child. Social solidarity is collectively financed and administered and circumvents subsidiary institutions such as family and workplace. It is thus particularly well suited to fluid and blurred family structures. Benefits follow the PWC-child dyad.

Social trends: Marriage is becoming less common and less durable. Therefore many more children

¹ Bekendtgørelse af lov om børns forsørgelse, LBK nr 352 af 15/05/2003 (Gældende)

² Mogens Christoffersen, *Socialforskningsinstituttet* (Danish National Institute of Social Research), 27 July 2006.

³ Lars Thygersen, *Familiestyrelsen* (Danish National Family Council), 27 July 2006.

⁴ (2000) *Betænkning om Børns Forsørgelse* (White paper on child maintenance). Ministry of Justice, Copenhagen, Betænkning No. 1389, p. 66. In Danish.

are affected by the child maintenance regime than before, as divorced, separated and blended families become more common.

Trends in family law: The main movement in family law since 1900 is to treat marital and non marital children more alike. This represents a steady movement away from the family and marital status towards biological parenthood as the framework determining responsibility for children. Today the trend is to grant more rights to biological fathers, both as to the right to establish legal paternity and the right to see the child, regardless of marital status.

The strengthening of the link between *biological* parenthood and responsibility for care is both a part of and a response to these social and legal trends.

Trends in family policy⁵: There is a new rhetoric of

- a) focus on the child and its needs. In practice this means more attention to the child's wishes concerning visitation. It means more recognition that divorce can be hard on children and talk of providing more counseling to families in divorce. It does not mean a new focus on child needs in determining child maintenance.
- b) Private responsibility for children
- c) Increased labour market effort

A word on the administrative structure of the Danish child maintenance regime:

The administrative structure is based on the following institutions:

the *statsamt*, (County Governor's office), a quasi-judicial regional body.

The *statsamt* handles the large majority of divorces and separations, divisions of assets in divorce, child custody, child maintenance, spousal maintenance, paternity and visitation questions. In these cases, where it can bring the parents to agreement, it then can issue divorce, separation, custody and paternity decrees and formalize arrangements. These cases will never go to court.

The *statsamt* has sole authority to assess spousal maintenance and child maintenance (more on this below)

the *kommune* (municipality)

the *kommune* administers, collects and distributes child maintenance (more on this below) and comes to voluntary arrangements in cases of non-compliance

the *Skattecenter* (regional Tax Centre)

the *Skattecenter* enforces collection of child maintenance in cases of formal default/non-compliance (more on this below)

the *domstole* (civil/County courts),

beside their other tasks, they handled divorces, separations, child custody, paternity and visitation where these are contested

The basic design of the system (*statsamt* and *kommune* with Courts being residual) has existed since 1961 and even back to the 1930's. It is given in the *Børnelove* (Children's Acts) of 1937 and 1961 that a payment for child maintenance is due when one parent no longer directly supports the child (for example when he moves out of the home) and that the money, while paid to the PWC is to be used for the benefit of the child and is not regarded as the personal income of the mother.⁶ The division of responsibility between the County Governor's office and the courts is even older and goes back centuries. The reliance on administrative rather than judicial procedures, which characterises public administration in Denmark is thus very old.

The social benefit system is based on the following benefits

These benefits are universal (widely distributed, depend on status and most are not means tested) and very important to single parents. They complement the private transfers of the child maintenance

⁵ www.minff.dk Theme on the family. 25 July 2006 In Danish.

⁶ Lars Thøgersen, Familiestyrelsen, personal communication, 27 July 2006.

system and act as equalizer and safety net.

The social benefit system consists of tiers. The broad base at the bottom is *børnefamilietydelse* (**family benefit**), which is tax free. This is a universal benefit available to ordinary families with children, regardless of marital status or income or whether they are on social assistance. Child benefit is not means-tested. The amount of family benefit varies by the age and number of children.

Next is the *ordinært børnetilskud* (child benefit) payable to single parents. This sum increases with the number of children. Next is the *ekstra børnetilskud* (extra child benefit) also payable to single parents, but as one tranche only. It does not increase with the number of children.

The private payment of *børnebidrag* (child maintenance) is over and above all these benefits. The basic tranche of child maintenance is a fixed monthly sum (more on this below) and is called *normalbidrag* (standard rate of maintenance) and is owed by the NRP.

However, Danish municipalities, at the request of the RWC, can advance the basic tranche monthly to the PWC. They then attempt to recover the advance maintenance from the NRP.

If in addition, the parent is on social assistance (*kontanthjælp*), then they will receive an additional monthly sum which is means tested. However, while on social assistance, the PWC CAN KEEP all the above benefits and is not docked in any way.

Thus, in contrast to the British CSA which is designed to reduce the PWC's dependence on social assistance, the Danish tiered child benefit system is designed to ensure the maintenance of the child.

1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)

Brief answer: there have been no major transfers of responsibilities or major change in approach in the child maintenance regime since 1997.

There is a moderate transfer of administrative responsibility: As of 1 November 2005 the law was changed so that the regional Tax Centres are responsible for enforcement (as opposed to voluntary payment agreements) in cases of non-compliance. Municipalities can no longer stop payments from wages or seize assets of NRP's in default. Only tax authorities can now undertake these measures. Municipalities can still make voluntary agreements with PRC's to pay down arrears in monthly installments and can grant informal stays, for example in cases of sickness.⁷ The changes are not really controversial but there are complaints. Municipalities have a harder time deciding what to do because they regard voluntary agreements and direct enforcement as "as all one."⁸ Now they must decide when to end cooperation and declare the NRP formally in default. Then it is out of their hands. Municipalities complain that arrears have increased and that the Tax Centres are "in ruins" and not up to the job (the Tax Centres are themselves the result of a controversial reform—a major consolidation and centralisation of tax administration).⁹

As of 1 January 2007 there will be a major structural reform of public administration. Both the municipalities themselves and the *statsamter* will be affected. Smaller municipalities are being merged and counties will cease to exist. Counties will be replaced by five regions. The *statsamter* will be replaced by five regional *statsforvaltninger*. Given that the child maintenance regime and social benefits system is based on the "one stop shop" of the local municipality, what effect this consolidation and centralisation will have is unknown but may lead to problems and delays.

⁷ Merete Christensen, Child and Youth Section, Møn Kommune, DK, personal communication, 13 July 2006

⁸ Merete Christensen, Child and Youth Section, Møn Kommune, DK, personal communication, 26 July 2006

⁹ Bjørn Andersen, Kommunernes Landsforening, personal communication 28 July 2006

1.4 Which of the following were explicit objectives of the change?

- ☐ Limiting public expenditures
- ☐ Enforcing obligations to biological children
- ☐ Reducing child poverty
- ☐ Influencing relationship formation and dissolution behaviour
- ☐ Influencing employment of lone parents
- ☐ Increasing voluntary arrangements for maintenance
- ☒ Other (please describe briefly)

The aim of the transfer of enforcement to the tax authorities is to make administration more uniform and more efficient

PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.

2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED**2.1.1 In your country, who has primary responsibility for divorce proceedings?**

- ☐ Courts
- ☒ Other (please list and describe)

The County Governor's office (*statsamt*) a regional, quasi-judicial institution which is authorized by the state to settle family law questions. Most divorces are handled through the *statsamt*

The civil courts (*domstol*) handle contested divorces and determine custody, visitation, and the duration (if any) of spousal maintenance

the probate courts (*skifteretten*) handles the division of assets in *contested* divorces

And last, in cases of (extreme) non compliance in paying child support, the authorities make use of the debt courts (*fogedretten* or "bailiff's court") to seize assets.

2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

OVERVIEW The basic steps are as follows: moving out, separation, divorce, division of assets.

LEGISLATIVE FRAMEWORK

The basic legislative framework of divorce (*skilsmisse*) is the **Act on the Dissolution of Marriage**. Divorce can be granted on with and without fault:

With cause: adultery, violence, bigamy

Without fault: irreconcilable differences (after 6 months of continuous separation if the parties agree, after two years of continuous separation if the parties do not agree).

ADMINISTRATIVE FRAMEWORK

The County Governor's office (*statsamt*) a regional, quasi-judicial institution which is

authorized by the state to settle family law questions. Most divorces are handled through the *statsamt*. The *statsamt* has sole authority to decide how much spousal maintenance and how much child maintenance.

The County Court (*domstol*) is the civil court. There is no family court system. The county court handles contested divorces. They have limited competence. They can settle question of how child custody is assigned/divided, child visitation, and of whether and how long there will be spousal maintenance.

The probate court (*skifteretten*). The probate court handles the division of assets in contested cases.¹⁰

THE PROCESS OF DIVORCE

Moving out

When one spouse moves out, the partners “live apart”, (*bo hver for sig*) but are neither formally separated nor divorced. This state, is usually short but in principle can last for years. The parties are still married and the tax treatment and tax benefits are the same as in marriage. In this state, the PWC, because living alone, can receive the three basic single parent social benefits (more on this below)

Separation (*separation*)

Separation is granted by the *statsamt* (*separationsbevilling*). There is no waiting time for separation. In most cases, questions of child maintenance, spousal maintenance, child custody and child visitation and the division of assets are decided voluntarily at this stage. Terms are agreed between the parents at a special meeting called “negotiation of terms” (*vilkårsforhandling*) presided over by the *statsamt* where the parties are advised on their rights and responsibilities. Separation is a formal legal status with legal and tax consequences. The parties are married but the tax treatment is as if they are not.

If the divorce is not contested, the decree is issued by the *statsamt* (*skilsmissebevilling*). In this case, the terms include voluntary agreements on child custody, child visitation, child and spousal maintenance and the division of assets.

If the divorce is contested, the decree (*skilsmisshedom*) is issued by the civil court. If the decree is issued by the civil court, the terms include spousal maintenance and can include custody, and visitation. Normally they do not include the division of assets or child maintenance, which in contested cases are decided by the probate court and *statsamt*, respectively. Contested custody, paternity and visitation questions can be decided separately by the civil court.

PROCEDURE

The partner who wishes to end the marriage typically applies to the *statsamt* for a separation (direct divorce is possible but certain conditions must be fulfilled ADD DETAIL). The *statsamt* then calls both parties in for what is called *vilkårsforhandling* or the negotiation of child and spousal support and child custody.

Only if the parents cannot agree can one or the other appeal to the FAMILY? court system. The court system has the power to grant a divorce (or in theory, to deny a divorce if the conditions are not fulfilled, in practice this would almost never happen because divorce can always be granted if the parties have lived apart for two years

The steps are as follows: separation, divorce, division of assets.

Division of assets in divorce is handled after the divorce—separately-- in the yet another court

¹⁰ Anja Cordes, family law barrister, personal communication, October, 2004.

system—the estate court system (*skifteretten*)

2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?

Note: the process of determining child support can and often does run parallel to the process for deciding separation and divorce.

The *statsamt*. Whether and how much child maintenance is decided under the auspices of the *statsamt* in both voluntary and involuntary cases. Child maintenance questions are usually decided voluntarily at the “negotiation meeting” at separation and put in writing in the separation decree. If the parties cannot agree, one party must ask the *statsamt* for a decision on whether and how much and this will be based on existing law and regulations (more on this below). This application, when given in when parties are separating is called the Petition for Child Maintenance (*Børnebidrag*, hereafter “Petition”). Whether voluntary or not, the resulting decree on child maintenance is set forth in a document called the Child Maintenance Order (*Afgørelse om børnebidrag*, hereafter “Order”).

2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED

2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.

Parties who live together without being married have fewer legal protections. There is some evidence that rights are increasing, but questions which are easily settled in marriage, such as the division of community property require a civil suit.

Unmarried partners (*samlevende* when they have had children together, *samboende* when they have not) may, if they wish, go to the *statsamt* for a negotiation meeting in which they will be informed of their rights and helped to come to an agreement on who keeps the home, the division of assets, child custody and child maintenance. If they cannot come to an agreement, the limited protection of the law (no community property, no spousal support) applies. Contested questions of visitation and custody must be decided in the civil courts. Contested child maintenance will be decided by the *statsamt* as in divorce, using the same procedures and guidelines (more below)

2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?

See 2.2.1 above

2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.¹¹

Briefly: If couples are living together at birth, but the man denies paternity, then DNA testing will be ordered.

In depth: When couples live together but are not married, the father must take positive action at the time of the birth to be registered as the child’s father. This is done under the auspices of the *statsamt*.

¹¹ Source: www.retsinfo.dk LOV nr 460 af 07/06/2001 (Gældende) (in Danish) see also footnote 4

Either he and the mother can jointly sign a Declaration of Care and Responsibility (*omsørgs- og ansvarsdeklaration*, hereafter “Declaration of Care”) if they wish to share custody of the child, or the man alone can sign an Acknowledgement of Paternity (*anerkendelse af faderskab*) if he wishes to be known as the child’s father, but does not wish to have joint custody. Provided that the man signs either form, the state will not question the decision. That the man lives with the mother means that he will be considered very likely to be the father of the child. However, in certain cases (e.g. the woman was married and not separated from another man within ten months of the child’s birth) the state will require that paternity be established by the court by DNA testing.

However, if the father does not take positive action, the mother is required to say who the father is. If she designates him, then DNA testing will be ordered.

Another point is that either the mother or the father can change their minds within six months of the child’s birth, even though he/they have signed a document. So if the father comes to regret or doubt his paternity, he can have the *statsamt* reopen the question. In this case, he and other possible fathers will be DNA tested.

In cases where another man, outside the partnership, wishes to establish paternity, he faces a challenge. If the man she is living with (A) has signed either a Declaration of Care or an Acknowledgment of Paternity, the outsider does not have standing to start a paternity suit or to insist on DNA testing. And as the state will not itself open the question without cause, the outsider will have no chance to be tested. He can wait until the child turns 18 and then if the child itself agrees, the case can be reopened.

2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER

2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?

The statsamt. See above.

2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father’s name is on the birth certificate.)¹²

The mother has a duty to reveal who the father is. His name is on the birth certificate. However, he must still take action.

Where both parents want joint custody

The mother and father agree on paternity. They agree they want joint custody. There is no dispute and no eligible grounds for doubt. In this case, at the time of birth, both parents sign a Declaration of Care. There is no biological testing. Both parents accept responsibility for the care and upbringing of the child. The man who signs then becomes the “legal” father (*retslig far*). Joint parental custody is automatically established.

Where the parents agree they do NOT want joint custody

If parents agree on paternity but do not wish joint custody, then the father signs an Acknowledgment of Paternity.

¹² Source: www.familieadvokaten.dk, topics 312, 314, 315, 316 and 317 (in Danish)

Where the parents agree about paternity but disagree about custody

Where the parents are unmarried and cannot agree on custody, the mother retains sole custody. The only possibility for the father is to sign an Acknowledgement of Paternity.

2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.¹³

Briefly: the mother reports who the father is or is likely to be before or at the time of birth to the *statsamt*. This is a legal requirement and she can be fined if she does not. The father is called in and DNA tested. If he is the father and accepts the decision then the *statsamt* proceeds to set child maintenance in the usual way. If the father still protests it will go to the civil court but they will judge him the father on the basis of the test. (for detailed information on all the permutations, see appendix)

¹³ Source: www.familieadvokaten.dk , topics 312, 314, 315, 316 and 317 (in Danish)

PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE

Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.

After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.

Please remember that we are interested in three groups of parents:

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

3.1 OVERVIEW

3.1.1 Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabitantes? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.

Yes. All three groups of parents are allowed to make a voluntary agreement, married or unmarried, living together or not.

3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabitantes, and those who have never lived together.)

The rules for voluntary agreements are the same for all three groups of parents.

- 1) Voluntary agreements do not in themselves have to be approved by anyone. They can be oral or written, formal or very informal. They can be about money or about providing equipment or food or paying bills. They can also be agreements not to pay maintenance. Many agreements can be changed because they are formulated "until further notice."
- 2) However, there are three caveats
 - a. either parent at any time can Petition the *statsamt* for a determination of child maintenance (an Order) and if the agreement does not meet the standards of the Act on Responsibility for Children it can be overturned, sometimes with retroactive

- effect depending on the case.¹⁴
- b. The second caveat is that a PWC must present an Order to get advance maintenance from the municipality (more below). Unless the voluntary agreement is submitted to the *statsamt* and confirmed with an Order, no advance maintenance is possible.
 - c. An Order is also necessary to be able to enforce the collection of maintenance through the municipality (see also below).
- 3) If an agreement is challenged by a parent and disallowed, then the *statsamt* makes its own determination according to standard guidelines, possibly with retroactive effect (see footnote 14) and the NRP is only obligated to pay the maintenance so specified
 - 4) 75% of all parents in a survey reported that they had Orders in place (i.e. set by the *statsamt* while 25% had voluntary agreements without Orders i.e. unconfirmed by the *statsamt*.¹⁵

3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role, or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.

Courts play no role in determining maintenance amounts.

3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.

Absent a voluntary agreement by the parents, the *statsamt* is the sole agency that determines maintenance amounts. Where the parents cannot agree, the *statsamt*, determines the amount of maintenance. By issuing Orders, the *statsamt* makes agreements enforceable by the municipalities and makes it possible for PWCs to get advance maintenance.

The role of the *statsamt* in facilitating voluntary agreements in divorce and separation is discussed above.

The other functions of the *statsamt* are discussed above.

3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabitants or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?

The obligation is in the name of the child for all three groups of parents whether voluntary or determined by the *statsamt*.

¹⁴ In general, the rules of proof for are a bit stricter than those for any and they are less binding. Sections 16 and 17 of the Act can be appealed to. The law provides that agreements that are found to conflict with the interests of the child (e.g. zero maintenance), are plainly unreasonable, or where conditions have considerably changed are not binding, e.g. Agreements e.g. not to pay maintenance will be looked at with suspicion unless there is some good cause (e.g. paying housing costs). In general the more the agreement departs from what the *statsamt* would itself award (itself narrow) the more ironclad it has to be. A mere signature is not enough. The *statsamt* may question whether both parties were equally informed, had legal advice, etc. It will consider the surrounding circumstances—when the agreement was made, whether it bears a relation to the earnings of the NRP, etc. There are cases in which agreements formulated at a negotiation meeting were overturned.

¹⁵ Mai Heide Ottosen, (2000) *Samboskab, Ægteskab og Forældrebrud: En analyse af børns familieforhold gennem de første leveår.* (Cohabitation, Marriage and Family Dissolution. An Analysis of Children's Family Relations During the Early Years of Life). Copenhagen, Danish National Institute on Social Research, Report 00:9, p. 145 and 150, quoted in (2000) *Betænkning* p. 49.

We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.

3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE

3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?

The *statsamt* mediates voluntary agreements where the parents request it and in connection with divorce and separation. Agreements can be flexible but are made in awareness of the formal guidelines.

Lawyers are not much involved (not much involved in family breakup in general). Nothing would prevent parents from retaining a lawyer to help them reach a voluntary agreement but there is little conflict in the system (see more below) and because the formal guidelines are fairly narrow and can be overturned (see above) when they depart too far from those guidelines, one bargains in the very deep shadow of the law. There is not much room for creativity.¹⁶

3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?

The *statsamt* will determine the amount of maintenance. The PWC must initiate the process by sending the *statsamt* a Petition.

3.3 COURT DETERMINATION OF CHILD MAINTENANCE

This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the Court uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitantes, and parents who have never lived together).

3.3.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Court decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitantes, and parents who have never lived together?

Not applicable

¹⁶ Lawyers have created the popular website www.familieadvokaten.dk. This site explains a wide variety of family law topics in ordinary language and provided do-it-yourself downloadable forms for a small fee. They provide a legal form for voluntary child maintenance agreements (see above) and this is probably as close to a lawyer as most parents will come.

3.3.2 How would you describe the main method of Court determination of the amount of maintenance on the following continuum:

- ☐ Full discretion
- ☐ Mostly discretion, but with informal guidelines
- ☐ Formal guidelines
- ☐ Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

Not applicable

Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.

Not applicable

3.3.3 Is there a minimum amount of maintenance required?

- ☐ No
- ☐ Yes. How much? What are the circumstances in which it is used?

Not applicable

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

Not applicable

3.3.4 These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

Not applicable

A. How much of the non-resident parent's earnings are considered?

- ☐ All
- ☐ Some (explain)
- ☐ None (go to 3.3.4 C)

B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?

- ☐ Gross
- ☐ Net (What is deducted?)

Not applicable

C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?

- ___ All ignored
 ___ All considered
 ___ Some ignored, some considered. Which ones?

Not applicable

D. Are the non-resident parent's basic living expenses taken into account?

- ___ No
 ___ Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
 ___ Yes. Please describe the way in which it affects the obligation.

E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

Not applicable

How?

F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

Not applicable

3.3.5 The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?

Not applicable

B. Is the obligation affected by whether the non-resident parent had prior children? In what way?

Not applicable

C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?

NA

D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

NA

3.3.6 These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.

A. How much of the parent with care's earnings are considered?

- ☐ All
☐ Some (explain)
☐ None (go to 3.3.6 C)

NA

B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?

- ☐ Gross
☐ Net (What is deducted?)

NA

C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?

- ☐ All ignored
☐ All considered
☐ Some ignored, some considered. Which ones?

NA

D. Are the parent with care's basic living expenses taken into account?

- ☐ No
☐ Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
☐ Yes. Please describe the way in which it affects the obligation.

NA

E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?

NA

3.3.7 These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?

NA

- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**

NA

- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

NA

3.3.8 These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?**

NA

- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?**

NA

3.3.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?**

NA

- B. Does the number of children affect the amount of the obligation? How?**

NA

- C. Is there a minimum desirable amount set per child?**

NA

- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

NA

- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)**

NA

3.3.10 These questions deal with the way the obligation is related to other financial

circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.

NA

- B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:

- lump sum payments
 - previous voluntary child maintenance payments
 - spouse maintenance (alimony) or other financial transfers to ex-partners
 - transfer of pension rights
-

3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS

3.4.1 Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.

NA

3.4.2 Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?

NA

3.4.3 When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- child's age/education level
- marriage/cohabitation of child
- any other characteristics of child
- cohabitation/remarriage of parent with care
- cohabitation/remarriage of non-resident parent
- any other characteristics of either parent.

NA

3.4.4 These questions deal with revisions to the amount due.

- A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)

NA

- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?

NA

- C. Can all parents (parents with care and non-resident parents) request an

adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?

NA

3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE

This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabiters, and parents who have never lived together).

3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabiters, and parents who have never lived together?

Lawyers are not usually involved, except where there is a voluntary agreement. If the voluntary agreement is to be modifiable if the circumstances of the parents (especially the NRP) change, then the agreement must be precisely formulated. Otherwise it will be difficult to modify (but not impossible see above).

However forms with the right formulation can be downloaded on the web for a small fee from www.familieadvokaten.dk

3.5.2 How would you describe the main method of Agency determination of the amount of maintenance on the following continuum:

- ☐ Full discretion
- ☐ Mostly discretion, but with informal guidelines
- ☒ Formal guidelines
- ☐ Rules/rigid formulae

If more than one method is used, please describe the circumstances that could lead to different methods.

The regime is characterised by the use of formal guidelines. The guidelines themselves are quite simple and rigid (more below). In law there is always room for some discretion and discretion is exercised in unusual cases, for example, at very high incomes (e.g. DKK 2 million). However, in practice less discretion is exercised than the law allows. For example, in practice the *statsamt* never sets child maintenance higher than DKK 5000 a month (ca. GBP 450) no matter what the father's income.¹⁷

Please report any differences between separated married parents, separated cohabiters, and parents who have not lived together.

There is no difference

¹⁷ LarsThøgersen, Family Agency, personal communication 27 July 2005. FILL IN VELJEDNIG CIRUKULARE HER

3.5.3 Is there a minimum amount of maintenance required?☐ No☒ **Yes. How much? What are the circumstances in which it is used?**

The minimum amount of maintenance in 2006 is DKK 920 + 118=1038 per month per child. The 920 is tax deductible to the NRP. Less can be set in a voluntary agreement but this is the minimum the *statsamt* will set, also for men with zero or negative income (see below).

If there is a maximum, please also provide information on its level and the circumstances in which it is used.

In theory there is no maximum. However, levels above standard +200% are uncommon. The higher the income, the more the individual circumstances are taken into consideration. The *statsamt* never sets child maintenance higher than i.e. DKK 5000 a month (ca. GBP 450), in 2006 standard + 400%, no matter what the father's income.¹⁸

3.5.4 These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**A. How much of the non-resident parent's earnings are considered?**☒ All☐ Some (explain)☐ None (go to 3.5.4 C)**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**☒ Gross☐ Net (What is deducted?)**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**☐ All ignored☐ All considered☒ Some ignored, some considered. Which ones?

All adult social benefits (but not child benefits) and asset income are considered.

D. Are the non-resident parent's basic living expenses taken into account?☒ No Not in setting the amount of obligation☐ Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.☐ Yes. Please describe the way in which it affects the obligation.

¹⁸ LarsThøgersen, Family Agency, personal communication 27 July 2005. FILL IN VELJEDNIG CIRUKULARE HER

- E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?**

No. While there is room on the application form to put down extraordinary expenses, these are not taken into consideration. Debt is not taken into consideration in setting the amount.

How?

- F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?**

No, except where the parents have a *deleordning*, for example half and half (e.g. one week with each parent). Then *if* the parents have joint custody, each parent is considered to be doing his part and no obligation will be set for either.¹⁹

3.5.5 The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?**

The new partner does not matter to the obligation. The new partner's own child does not matter because the NRP is not responsible for its maintenance. However the new partner's income and expenses DO matter when ability to *pay* the obligation is considered. (more on that below)

- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?**

Yes. He is also responsible for maintenance of his other children. The number of children + gross income determines what he owes but he will never owe less than the standard rate **See attached schedule**.

- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?**

Yes. Yes. He is also responsible for maintenance of his other children. The number of children + gross income determines what he owes but he will never owe less than the standard rate **See attached schedule**

However, the new child will only be taken into account and his other maintenance reduced if he sends a new Petition to the *statsamt* and receives a new Order.

- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way? Yes see C. above. Each child of his counts no matter where it lives.**

3.5.6 These questions deal with how the Agency takes account of the parent with care's

¹⁹ Lars Thøgersen, Family Agency, personal communication July 27, 2006.

resources in determining whether there is an obligation and its amount.**A. How much of the parent with care's earnings are considered?**☐ All☐ Some (explain)☒ **None (go to 3.5.6 C)** In practice, none. In very unusual circumstances (e.g. PWC earnings above ca. DKK 1 million) possibly.**B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**☐ Gross☐ Net (What is deducted?)☐ NA**C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**☒ All ignored☐ All considered☐ Some ignored, some considered. Which ones?**D. Are the parent with care's basic living expenses taken into account?**☒ No☐ Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.☐ Yes. Please describe the way in which it affects the obligation.**E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How? No. There is space on the Petition to enter special expenses but these are not taken into account in practice****3.5.7 These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.****A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**

The obligation is not affected by whether the PWC has a new partner. Since 1993 there is no responsibility to provide for the PWC's own children. Stepchildren do not matter.²⁰

²⁰ (2000) Betænkning.

- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way? NO**
- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way? No**

3.5.8 These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?**

The maintenance obligation will be annulled.

- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?**

No.

3.5.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?**

No not at all.

- B. Does the number of children affect the amount of obligation? How?**

Yes. No matter how many children, each child will be awarded the standard amount but the number of children affects whether higher-than-standard amount is awarded. The number also affect how much will be awarded.

- C. Is there a minimum desirable amount set per child?**

Yes, the standard rate of 1038 per month in 2006 is the minimum.

- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

In very rare cases, a child with a handicap can in theory affect the amount²¹ but in practice no individual characteristics are taken into effect when the *statsamt* sets maintenance.

²¹ Source: www.familieadvokaten.dk

E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

When the *statsamt* sets the award, expenses have no effect. A voluntary agreement could provide for school fees.

3.5.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.

Has no effect.

B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:

- lump sum payments
- previous voluntary child maintenance payments
- spouse maintenance (alimony) or other financial transfers to ex-partners
- transfer of pension rights.

Previous voluntary child maintenance payments count. They do not reduce the obligation due in future but, if documented, they count against any maintenance due so far.

Alimony and transfer of pension rights do not count.

Lump sum payments would count if explicitly part of a voluntary agreement. However, if the voluntary payments average less than the standard rate per month, then the PWC can normally Petition to have the *statsamt* set a new award. The Order can be made retroactive if this is a first time Petition made within six months of the original event which established the right to a maintenance payment. But if the lump sum agreement was confirmed in a Previous Order, then the new Order will date from the first due date after it was issued.

3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS

3.6.1 Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.

One problem would be to determine whether there was a voluntary agreement and if one parent has already paid some maintenance, perhaps in kind. The agreement may be oral and the parents, if their versions conflict may have to be called in to a meeting. The parent who alleges there was an agreement has the burden of proof. However, if the NRP can for example show receipts for baby equipment for example, then the PWC then has the burden of proof to show why this should not count as support.

Another problem can be gathering income information in exceptional cases, as where the NRP frequently changes jobs, works free lance without a regular employer, is self employed, etc. or if he lives abroad or the employer refuses to cooperate with supplying pay slips. In this case, the *statsamt* goes to the PWC and asks her how much she thinks the NRP makes. The *statsamt* then writes a letter to the NRP saying that unless he documents otherwise, they plan to set the obligation based on the income level the PWC has reported.

3.6.2 Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?

In simple cases, the goal is six weeks or less. In complicated cases, the goal is 11 weeks or less. This informant knows of cases where it took 16+ weeks. The national average is 5,6 weeks.²²

3.6.3 Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.

In general, no.

3.6.4 When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- **child's age/education level** age 18, if educational maintenance is awarded (rare, only if the child has no educational grant from the government), age 24
 - **marriage/cohabitation of child** if the child marries
 - **any other characteristics of child** if the child dies
 - **cohabitation/remarriage of parent with care** no effect
 - **cohabitation/remarriage of non-resident parent** no effect
 - **any other characteristics of either parent.**
- 1) the money follows the child. If the PWC no longer has the child in care (for example the child goes to foster care or an institution) the PWC is no longer entitled to maintenance. If the child moves in with the other parent (this is controversial and depends on who has custody)
 - 2) However if a grandparent or other private person not a parent takes over care, he or she must personally seek a new Order granting him or her maintenance.
 - 3) If the child has a steady income of more than 3 x standard maintenance (DKK 3200), the obligation ends if the NRP petitions for a new Order
 - 4) If the child has a steady income of more than approx. 2,5 standard maintenance (DKK 2300) the obligation can be reduced if the NRP petitions for a new Order

3.6.5 These questions deal with revisions to the amount due.

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)**

The only automatic adjustment is an indexing which takes place each year.

- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed? There is no regular review.**

- B. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

²² Folketingsvar (Answer to Question in Parliament), Justice Minister Lene Jespersen minister, Ans. No. 3693, 14 June 2004.

All parents can request an adjustment. The *statsamt* will gather information and determine a new obligation if any and then issue a new Order.

Note: The NRP has no obligation to inform the PRC or authorities of a change in income that might result in an increase.

If any change is due to higher income, the new order will date from the first due date after the Order is made.

If the change is due to a lower income, the Order may be reduced retroactively (but never reduced to less than the minimum) for example if drop in income is due to unemployment.

The PWC does have an obligation to inform the municipality of any change that might cause the obligation to be reduced, e.g. to report the child's earnings. The municipality will then report this to the NRP so the NRP can "protect his interests" be aware that he can petition for a reduction.

This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.

3.7 REVIEW AND SUMMARY

3.7.1 Please review all your answers in Part Three, "The Determination of Child Maintenance Due." Please summarize the key differences in the ways in which separated married parents, separated cohabitantes, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?

There is no difference in treatment.

3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?

The perceived advantage is that a higher amount can be agreed than would be set by the *statsamt*, and it will be tax deductible to the NRP.²³

But if the NRP simply pays more than an Order without a previous agreement confirmed by the *statsamt*, then the difference will *not* be tax deductible.²⁴

Government believes that being able to come to voluntary agreements means less conflict after divorce or separation, which means compliance (e.g. through automatic electronic bank transfer) is more likely, which eases the burden of administration.²⁵

3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?

Courts do not set maintenance

²³Maria Larsen, Statsamt Storstrøm, 26 July 2006, personal communication. Within reason, persons on social assistance giving up 50% of their income have had their tax deduction disallowed on the ground that the amount is unreasonably high.

²⁴ Statsamt Århus, October, 2004

²⁵ Grethe Madsen, Statsamt Storstrøm, 26 July 2006, personal communication.

3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?

- Simplicity and efficiency. The relatively uniform system of awards means that parents know what they will be awarded. This appear to reduce conflict between parents and eases the administrative burden of the system.²⁶
- Income protection for the PWC and child: an agency-based agreement can be made when the parents cannot agree. Further the Order gives access to advance payment of the standard rate and also the right to help from the municipality in collecting maintenance over the standard rate.

The perceived disadvantages are that

- The system is rigid and there is very little room for discretion or individual consideration.²⁷ No account is taken of the child's former way of life and policy does not try to preserve it.²⁸ PWC can be dissatisfied when the agency award makes it impossible to maintain e.g. private school enrollment or residence in the family home.
- The Justice Ministry, in its white paper on Child Maintenance (2000), expressed satisfaction with the functioning and administration of the system but dissatisfaction with the standard award levels of DKK 1000 per month (GBP 90) which are notably low by international and Scandinavian standards.²⁹

3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?

Arrangements are the same for all parent groups.

The *statsamt* can formalize voluntary agreements. The parents can prepare and sign an *aftale om børnebidrag* (agreement on child maintenance).

When voluntary agreements break down the PWC sends an *Ansøgning om Børnebidrag* (Petition for Child Maintenance) to the *statsamt*. They will recalculate unless they have already issued an order based on a voluntary agreement which is not worded to allow for change. Then they can only change the agreement if it is plainly unreasonable and against the interests of the child (e.g. the obligation is set at zero).

The PWC can, in the Petition, ask for the standard rate, the highest possible rate, or another rate (i.e. less than the highest possible rate or less than even the standard rate). Thus the petition makes it possible to introduce flexibility to the system. However, if the Agency alone determines the rate, then the determination is quite inflexible (see answers above).

²⁶ Ottosen (2000), p 145.

²⁷ Maria Larsen, Statsamt Storstrøm, personal communication, 26 July 2006.

²⁸ Lars Thøgersen, Family Agency (*Familiestyrelsen*) personal communication, 27 July 2006. This is in contrast to the USA, where for example, an explicit policy goal in California divorce law is that the child's daily life be preserved as far as possible.

²⁹ _____ (2000) *Betænkning om Børns Forsørgelse* (White paper on child maintenance). Ministry of Justice, Copenhagen, Betænkning No. 1389, p.18.

PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE

This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.

4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE

4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.

The NRP can always choose to pay maintenance directly. This is encouraged.

4.1.2 Are these direct payments monitored, and if so, how?

No.

4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?

The PWC sends an *Ansøgning om udbetaling/afkrævning af underholdsbidrag* (Application for maintenance) to her municipality. She delivers her copy of the *Afgørelse om børnebidrag* (Child Maintenance Order) to them. They forward the papers to the father's municipality and which creates a file. If he is on social assistance, they will raise the amount he gets to the level for a provider and then begin to dock the amount owed immediately for a sum which will be current payment plus a proportion of debt.

If the NRP is not on social assistance, the NRP's municipality will, on the basis of the Order and the amount owed, send the father an *Opkrævning af børnebidrag*. (Demand for child maintenance) with the amount owed and a copy of the Order, and a bank transfer card. He is given a certain number of days to react and is told he may object in writing if he feels the demand is wrong. If he does not react they send a *rykkerbrev* (reminder letter). If he still does not pay, he may be called into a meeting.

4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.

The municipality is not involved, which they prefer. Voluntary agreements are perceived as less conflictual by some who work in the system.³⁰ It is becoming more common for parents to agree to automatic electronic monthly transfers, especially when child maintenance is agreed in connection with the *vilkårsforhandling* (negotiation of terms), a meeting held, as part of the separation process, under the auspices of the *statsamt*.³¹

³⁰ Merete Christiansen, Møn Kommune 13 July 2006, personal communication.

³¹ Grethe Madsen, Storstrøms Statsamt, 26 July 2006, personal communication.

4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE

4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.

Yes, the NRP's municipality.

Yes the collection is done by a different organisation. The *statsamt* sets the amount and, if the parents cannot arrange subsequent payments between themselves, the municipality will, on application from the PWC, overtake the collection and payment of maintenance. (see 4.1.3).

4.2.2 Please provide information about the administrative and procedural arrangements for collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabiters and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.

The scheme is the same for all parents. See 4.1.3 above.

4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).

Payment is never automatically withheld unless the NRP is on social assistance. NRP social assistance will be increased because of the Order (he is now a provider) and also automatically docked to pay the maintenance owed. In no other cases will wages be docked without evidence of a problem.

4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?

Once the PWC asks for help collecting, the municipality will attempt to collect all amounts due over and above the standard rate but will NOT advance these amounts. Depending on whether the father objects and resists paying, the time to receive extra payment will range from several weeks (the process of demanding payment, arranging for a meeting, making a voluntary arrangement to pay back maintenance in instalments, etc.) to months or years (the father does not cooperate, cannot pay, changes jobs, leaves the country, it goes to the tax authorities and the bailiff, etc. etc.). The municipality will promptly forward the monies as soon as it receives them. Monies collected go first to the PWC not the debt owed for advance payments.

4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?

Research indicates that parents seem to prefer the security that comes with having the municipality take responsibility.³² Only 6% report that problems with maintenance led to personal conflicts.³³

Both the advantages and the problems have to do with the system's simplicity and efficiency, predictability and security.

³² Mai Heide Ottson (2000), p. 150.

³³ Mai Heide Ottosen (2000), p. 145

The advantages of simplicity and efficiency, predictability and security:

- The simplicity and predictability come from a policy of few or no exceptions and the use of administration rather than courts. The security comes from the system of social benefits and advance payments that protect PWC's from having to depend on NRP's.
- The efficiency comes from both the use of administration rather than courts and the fact that both advance payments, collection and social benefits are provided by the one-stop shop of the municipality.

This simple and coherent administrative structure is made possible by three key characteristics of the system

- a) universal benefits
- b) the extensive registration of all individuals with ID nos . Individuals are required to register wherever they live or move and there is an extensive system of linked nation wide databases. Municipalities use the same IT system (kommunedata) to report and communicate between themselves, internally and between different levels of government.
- c) Municipalities are a "one stop shop"

The disadvantages are precisely the same—

Simplicity means few or no exceptions and little room for the consideration of individual circumstances (except for NRP's in default see below).

Efficiency permitted by the interlinked data and ID registration permits a concentration of power in the hands of authorities. While the system contains checks and balances, the higher authorities are more scrupulous. There are frequent complaints that local municipalities ignore and bend the rules. There are few sanctions for those that do. Concentration of administrative power can mean the humane consideration given to of a sick NRP who is given an informal sixth month stay of payments. On the other hand, municipalities can use the rules to their own advantage. For example, one municipality interviewed alleged that they *never* made allowances for individual circumstances in determining low wage fathers' ability to pay. They used *træktabeller* (deduction tables) based on income alone. This is technically legal. The law says that the authorities must evaluate ability to pay *på begæring* i.e. if the NRP specifically demands. This particular municipality claimed not to know of these rules.³⁴ All fathers were docked. However the tax authorities to whom they referred defaulters had very different practice. Not only did they know of and conduct individual evaluations, all their letters to NRP's contain the table of percents and instructions on how to appeal for an individual evaluation, together with a budget scheme.³⁵

4.3 NON-COMPLIANCE

4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen?

- ☒ **Attachment of earnings**
- ☐ **Deductions from bank accounts/savings/pensions**
- ☒ **Deductions from benefits**
- ☒ **Recovery through tax**
- ☒ **Seizing and selling assets**

³⁴Merete Christiansen, Møn Kommune, 26 July 2006, personal communication.

³⁵Marianne Simonsen, Skat Næstved, 26 July 2006, personal communication.

- ☐ **Driving licenses revoked**
- ☐ **Passport confiscation**
- ☒ **Criminal prosecution** not in practice
- ☒ **Imprisonment** never in practice
- ☐ **Interest charged on debt**
- ☐ **Other**

4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)

The above measures can, as of 1 November 2005 only be undertaken by the tax authorities. This requires the breakdown and misuse of voluntary agreements to pay back support. Sending a case to the tax authorities is a last resort.

The most likely is the deductions from benefits which is automatic for those on social assistance (see elsewhere for more detail). The second most likely is recovery through tax (i.e. the retention of surplus tax). The third most likely is the attachment of earnings. However, informal reports are that some tax people hesitate to attach earnings because it can be self defeating. The employer is required to deduct earnings before they are paid out and some employers are irritated and fire the employee, who then loses his ability to pay. Also approaching the employer can be bad for the image of the employee.³⁶

4.3.3 When parents with care and their children do not receive the child maintenance due to them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)

4.4 GUARANTEED MAINTENANCE PROGRAMS

4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?

- ☒ **Yes (continue)**
- ☐ **No (go to Part Five)**

4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an

³⁶ Mogens Christoffersen, Danish National Institute of Social Research, 27 July 2006.

income test? Is this available only for those with certain court or agency agreements, or can those with voluntary agreements also participate?

All parents with care are eligible, provided: they have custody, the child lives with them, the child is not 18, and the child is alive.

There is no income test. Only those who can present an Order are eligible, however voluntary agreements can qualify provided the *statsamt* has formalized the obligation by issuing an Order. This is often the case in connection with separation, when most parties agree terms before the separation decree is issued by the *statsamt*.

4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?

The amount guaranteed is the standard maintenance or the amount agreed, whichever is less. The amount is adjusted for inflation every year. The PWC can Petition the *statsamt* to adjust the lower amount (the result of a voluntary agreement) to be adjusted up to the standard amount.

4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?

The guaranteed maintenance is in addition to other benefits and is intended to supplement them.

4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?

The program is administered by the local municipality where the mother lives. The municipality where the father lives is responsible for recovery.

4.4.6 What are the perceived advantage and disadvantages of the scheme?

The perceived advantages of the scheme is that it guarantees all children and the PWC a minimum support amount, regardless of the father's economic circumstances, willingness to pay or the number of other children the father may have. It is also considered to be an advantage that it is simple and effective to administer because all PWC get the same amount in advance per child. Recovery is also quite effective.

It usually takes about 2 weeks from the presentation of an order to advance payment but it can be longer.

Municipalities do their computer "runs" once a month and if the PWC misses the run, she will not lose the right to the money but she will have to wait another month.³⁷

³⁷ Maria Larsen, Storstrøms Statsamt, 28 July 2006, personal communication.

PART FIVE: FINANCIAL INTERACTIONS

This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.

5.1 TREATMENT OF MAINTENANCE RECEIVED

5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).

Yes and no. All maintenance is tax free to the PWC. The standard rate of 920 + 118 per month is tax free to the child also. Any supplementary maintenance is taxable to the child.³⁸

5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.

No they do not affect any social benefits of parent or child. No maintenance is retained by the government. It belongs to the child.

5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?

No, maintenance does not affect the taxes of the parent. It does affect the taxes of the child (see above). There is no effect on other liabilities or entitlements.

5.2 TREATMENT OF MAINTENANCE PAID

5.2.1 How does child maintenance paid interact with the tax system, in both central and local tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).

Child maintenance specified in an Order is fully tax deductible for the NRP with the exception of the monthly sum of 118. Child maintenance paid after age 18 (for example, the special education

³⁸ Each child under 18 receives a personal tax deduction (ca. DKK 27,000) in which the only tax owed on the first 27,000 is the 8% labour market contribution (*ambi*) and is otherwise free of tax. This sum is called the *frikort* (free card). Supplementary maintenance above the standard rate counts against the free card. This means that the child pays more tax on after school earnings relative to children with both parents at home. It does not matter whether the maintenance was agreed voluntarily. The current marital status of the PWC does not matter.

maintenance is *not* tax deductible.

5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?

Yes. If the NRP is ordered to pay maintenance, and is on social assistance, then his social assistance will be increased to the level for a provider, and the maintenance due automatically deducted.

5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?

No.

PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.

6.1 COSTS OF THE CHILD MAINTENANCE REGIME

6.1.1 If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.

Data on the administrative costs of the child maintenance regime are hard to find.³⁹ The total administrative costs of the municipalities are aggregated and it is not possible to break out the amount used to enforce or administer maintenance. As far as I know no disaggregated data exists on the costs of assessing maintenance in the *statsamter*.

The regime serves 214,000 children. The number of cases handled annually by the *statsamter* is 32,000.⁴⁰

6.1.2 If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.

NA

6.1.3 If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.

NA

6.1.4 If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.

³⁹ Danmarks Statistik, 27 July 2006.

⁴⁰ *Betænkning* (2000), p. 57.

Data exist for monies collected and disbursed as part of the advance maintenance system.

ADVANCED MAINTENANCE DISBURSED AND COLLECTED, DENMARK, 2005 (sums in DKK)

No of PWCs entitled to advance maintenance	113539
Advanced by the municipalities	1806985026
Paid in by NRPs	1584514562
Total owed the municipalities at the end of the year	3627495230

6.1.5 Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)

No costs.

6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.

NA

6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE

In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.

6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabitantes, and parents who have never lived together, please do so.

Survey data indicate that 75% of PWC have agency agreements. 25% have voluntary agreements.⁴¹ 0% have court agreements. I do not have information on disaggregation for the three groups.

6.2.2 What is known about the main reasons a parent with care would not have an agreement?

They might have an unregistered informal voluntary agreement, particularly if they were never married and living together. They might not know who the father was. Some parents may not wish to have anything to do with the father and therefore refuse to reveal his identity because once paternity is established, he will be granted visitation rights and the PWC can get advance maintenance from the municipality.

⁴¹ Mai Heide Ottosen (2000), p. 150 reported in *Betænkning* p. 49.

6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.

Municipalities collected a total of DKK 1,584,514,562 from NRP's in 2005. Information on amounts by those paying anything, the full amount due and part due are not readily available.⁴²

6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?

In general information is hard to find.

- a. A table in the White paper on Child Maintenance shows results of all Maintenance Orders for unmarried and married for six *statsamter* in 1999⁴³. These represent half of all Orders issued in 1999.

Of the Orders for ordinary child maintenance (not special awards for confirmation, education etc) the breakdown by married and unmarried is as follows:

Orders for child maintenance by marital status, 6 statsamter, Denmark, 1999

CASES	higher	%	standard	%	lower	%	Total	%
<i>Married</i>	1162	22	3713	69	502	9	4716	100
<i>Unmarried</i>	557	12	4075	86	84	2	5377	100
TOTAL cases	10093							
<i>% married</i>	53							
<i>% unmarried</i>	47							

Source: in house calculations

This shows that a large majority of all orders are for standard maintenance, but that there are differences in outcomes based on whether the parties were married. 86% of unmarried have standard orders whereas only 69% of formerly married do. 12% of unmarried have orders higher than standard or increased (not clear which) while nearly twice as many 22%, of married have higher than standard orders. However, 9% of married have reduced or lower orders while 2% of nonmarried do. Why this is the case cannot be determined from the data.

It does suggest that formerly married NRP's may earn more on average. They may possibly go into new partnerships at a higher rate which might account for them having reduced orders. Another possibility is that their orders are reduced at the start because of voluntary agreements to pay other bills, however Ottosen showed that voluntary agreements tend to be for more than standard, not less.⁴⁴

- b. The main source of information is a study by Mai Heide Ottensen (2000).

Parents who pay *more* than required through a voluntary agreement also see their children

⁴² Gitte Knudsen, Danmarks Statistik, July 27 2006, Mogens Christoffersen, Danish National Institute for Social Research, 27 July 2006, Anette Hummelshøj, Family Agency, 28 July 2006, Marianne Simonsen, Næstved Tax Centre, 26 July 2006, Jens Bjørn Christiansen, Kommunernes Landsforening, 27 July 2006, Mariane Neerup Møn Kommune 28 July 2006, Trine Jakobsen, Social Ministry, 28 July 2006, all personal communication.

⁴³ *Betænkning* (2000) p. 190.

⁴⁴ Ottosen (2000) p. 150, cited in *Betænkning* (2000), p. 49.

more, are likely to earn more and be more highly educated. This implies that willingness to pay in part follows education and earnings levels as well as a positive commitment to cooperation after breakup.⁴⁵

- a. Indirectly, the criteria of the deduction tables reveal who would be freed from making payments. Those making less than DKK 86000 a year after tax are freed of the obligation to pay unless they are on social assistance (see above). Someone making 86000 after tax would typically be unemployed or working part time.

6.2.5 Is there data available on the proportion of cases in which children spend roughly equal time with both parents? What is known about the types of cases that have this type of arrangement?

See Mai Heide Ottosen (2000).

6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?

About 25%. See Mai Heide Ottosen (2000).

Please provide references to any sources you consulted for this part of the questionnaire.

References are footnoted

⁴⁵ Ottosen (2000) p. 145 cited in *Betænkning* p. 49.

PART SEVEN: THE OVERALL CONTEXT

In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.

7.1 TOPICS OF DEBATE AND RESEARCH

7.1.1 Consider the following potential topics of research:

- the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children
- the impact of your child maintenance regime on 'new' relationships or marriages, or stepchildren
- the impact of child maintenance on the labour market behaviour of parents with care
- the impact of child maintenance on the labour market behaviour of non-resident parents
- (if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance
- (if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?

On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.

On the effect of the regime on relations between parents

(2000) Heide Ottosen, Mai:

Samboskab, ægteskab og forældrebrud. En analyse af børns familieforhold gennem de første leveår (Cohabitation, Marriage and Family Dissolution. An Analysis of Children's Family Relations During the Early Years of Life). København, Socialforskningsinstituttet

The main conclusion is that the payment of maintenance is conflict free. Only 6% gave payment of child maintenance as a source of tension and conflict. The rest reported that it was never a source of tension, or that it was paid through the municipality. 75% of parents chose to have maintenance set by the statsamt and only 25% had voluntary agreements.

Other research:

1999 Anne Corden

Making Child Maintenance Regimes work. Family Policy Studies Centre & Joseph Rowntree Foundation ISBN 1-901455-35-1.

Book comparing child support schemes in 10 European countries, including Denmark. With tables.

2000

_____, *Betænkning om børns forsørgelse: delbetænkning afgivet af Justitsministeriets Børnelovsudvalg* (White paper on the maintenance of children). Betænkning nr. 1389, Ministry of Justice, Copenhagen. In Danish.

The main conclusions are that the Danish regime is conflict free and simple to administer, that it is uniform and predictable, that the awards are well suited to the ability of NRP's to pay at average incomes, and that the award level themselves are notably low, compared to other countries including Sweden and Norway. Levels are around 3-6% of NRP incomes as opposed to levels of 11-36% elsewhere.

Note: A Commission on Family and Work Life under the auspices of Family and Consumer Affairs Minister Lars Barfoed is expected to report in the spring of 2007. Mai Heide Ottosen is a member of this commission.

7.1.2 What are the current main topics of interest and debate about your child maintenance regime?

Topics of debate in the popular press are the effects of maintenance payments on NRPs and the injustice of having to continue to support children where the PWC has a new partner with a high income.

Other current topics of debate in family policy are indirectly related to the child maintenance regime: visitation (to what degree should child wishes be respected when deciding visitation), e.g. whether there should be a "visitation deduction" for parents who have the children less than 50% of the time but more than usual.

7.1.3 Please describe any impending changes in legislation, or policy developments that are likely to affect your child maintenance regime in the coming five years.

The existing statsamter will be merged into 5 new regional *statsforvaltninger* in connection with a major municipal reform, in which municipalities are to be merged into much larger "big municipalities" (*storekommuner*).

No *policy* changes are likely to affect the system although a commission on family and work life has been recently established. Its commission is carefully formulated to stress parental responsibility and labour market flexibility.⁴⁶

7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.

positive

7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.

No opposition

7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME

⁴⁶ www.minff.dk, Tema om familiepolitik "theme on family policy" Ministeriet for Familie- og Forbrugsanliggender. 25 July 2006.

This section provides several criteria that one might use to evaluate the child maintenance regime as a whole. We ask for your expert assessment of areas that your regime is working well and not working well.

7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.

- a. Maintenance is regularly provided to children and/or parents with care
- b. Children who need (or desire) maintenance have a formal entitlement
- c. Maintenance policies do not negatively influence relationships between children and their non-resident parents
- d. Those in similar circumstances are treated similarly
- e. Those who need more child maintenance, receive more
- f. Parents easily understand how amounts of maintenance are calculated
- g. Child maintenance obligations are determined promptly
- h. Parents with care feel the amount of maintenance is adequate
- i. Nonresident parents feel the amount of obligation is affordable given their costs of living
- j. The child maintenance regime is administered efficiently and effectively
- k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs

Select one or two of these in which your assessment is that your regime is performing well. (If your assessment is that your regime works well on multiple criteria, please select the most important one or two.) In one paragraph, explain.

Denmark performs very well on almost all criteria.

Denmark performs especially well on **a** and **b**. All children who need maintenance can have a formal entitlement and the system of advance maintenance ensures that all PWC and children can receive some maintenance.

7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.

Denmark performs somewhat less well on **e**. The simplicity and effectiveness of the system derive in part from the fact that no consideration is taken of PWC's or child's circumstances.

At the same time, the amounts awarded are low and bear little relation to the actual cost of living or of raising a child. At PPP, Denmark scores 1.31 for living costs in the EU-15, the highest in Europe. However, parents seem to be largely satisfied and there is a system of social benefits which compensate for low support levels.

7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.

Denmark does particularly well in ensuring children a minimum level of support regardless of adult behavior

The consideration of individual circumstances that does take place has the effect of protecting the economic interests of NRP's. Lower earning NRP's are protected in practice by procedures which take ability to pay into account. Higher earning NRP's are protected by the criteria used to set the amount of the obligation itself.

This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:

The Danish child support system draws characteristic implicit boundaries between the financial responsibilities of state and families which are somewhat different than the boundaries in e.g. the UK. While parents are responsible for the maintenance of their children, the state is more concerned directly to secure the child's subsistence level by benefits targeted at the PWC. Thus in Denmark, as in other Nordic welfare states, the principle of subsidiarity (the family coming before the state) is less marked, while the principle of solidarity ("society's concern for its citizens") is more marked. The maintenance regime buffers the influence of family. "children get their basic needs met regardless if the father has 17 other children" At the same time, the system does not recognise the principle that children should be able to continue their childhood unaffected, at least materially, by divorce. "Rich fathers get off very cheaply in the Danish system".⁴⁷

In practice, the Danish perception of "fair" as a narrow space between floor and ceiling means that children and former spouses have a claim to a minimal standard of living, but not a claim to their former standard of living. That a child is born into a high standard of living does not entitle him. This is in sharp contrast to practice in UK and USA.

Put another way, the Danish concepts of what is fair and reasonable imply a universal right to a modest standard of living rather than on the individual right to private transfers. This implies however, reliance on transfers and reliance on the state.

The government is, however, explicitly concerned to redraw general boundaries between private and public so that there are more public/private partnerships in solving social problems.⁴⁸ It is concerned to reduce dependence on the state for the solution of social problems. Trends in Denmark, as elsewhere are to encourage greater reliance on work and less reliance on public transfers. In family policy, this is more rhetoric than reality. Public expenditures on the family more than doubled per child between 1984 and 1995.⁴⁹

Redrawing the boundaries between public and private presents the Danish government with a family and gender policy dilemma. Danish women have a high employment rate⁵⁰ and a very high labour force participation rate. They are fully mobilized into work. Nevertheless, far from meaning less reliance on public transfers, this has meant more reliance on public transfers. Denmark is a "woman friendly welfare state"⁵¹ because women rely on the state. They rely on it for social benefits, for public services like child care, and also for employment under the favourable terms and conditions available in the "soft labour market" of the public sector. Thus an attempt to reduce public expenditure will affect women disproportionately, and can weaken their position relative to men, both in public and in private.⁵²

⁴⁷ Personal communication, Camille Puuggaard Pedersen, Child Maintenance Coordinator, Storstrøms Statsamt, 20 July 2006. "langt de fleste børn får normalbidraget...man kan sige, at den danske system er designet således at de fleste børn har det basale og moderen kan få penge af kommunen, uanset om han har 17 andre børn" "Rig får slipper meget billigt i det danske system"

⁴⁸ Ministry of Social Affairs, 1999, *Social Tendencies*, p. 7 quoted in Wehner and Abrahamson, 2003, Welfare policies in the context of family change: Policy: The Case of Denmark. See also the description of the Commisiorium for the Commission on Family and Work Life, www.minff.dk

⁴⁹ 2000, *Betænkning*. Table 13, p. 162. Expenditures between 1984 and 1995 increased from an average of DKK 18,200 per child per years to 37,100 per child per year in 1993 kroner.

⁵⁰ Source: Eurostat

⁵¹ Leira, xxxx

⁵² Gøsta Esping Andersen.

PART EIGHT: VIGNETTES

In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.

8.1 BASE CASE 'A': MISS FIELD AND MR HILL

Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.

Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.

He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. 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 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, she thinks it might be sensible to make a formal arrangement regarding child maintenance.

8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.

Miss Field has sole discretion as to whether she will seek child maintenance. This is true for all mothers, whatever their circumstances, whether employed, receiving unemployment benefit (*dagpenge*, for the insured unemployed), social assistance (*kontanthjælp*, for the uninsured unemployed) or invalidity benefit (*fortidspension*). Being unemployed, Miss Field might either be on unemployment benefit or social assistance (there is no way to tell from the scenario but it makes no difference to child maintenance).

However, if she does not seek child maintenance, the municipality may take this into consideration if she applies for extra assistance from them, for example they might deny an application for help with the cost of glasses for her child, on the grounds that she can seek child maintenance instead but has not.

A. If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?

She has one option, to contact the *statsamt* and ask them to establish a formal obligation (*at sætte en far i bidrag*). It will take up to six weeks to establish the obligation by issuing a Child Maintenance Order. In the meantime, she must make do with the social assistance and benefits she has. The likely timetable is six weeks or less because it will be straightforward.

The procedures are as follows:

Miss Field obtains a Petition form from her municipality and fills it out by hand, or gets a copy on line and fills it out on line with an electronic signature. On the form she can ask for standard maintenance, *normalbidrag*, the highest possible maintenance or fill in a different amount (for example less than the standard) if she wishes. She also reports her income (although this would only be taken into consideration if she earned an extremely high salary, for example a million kroner a year). She sends the application to the *statsamt* of her region because Mr. Field also lives there.

The procedures are as described above and Mr. Hill is ordered to pay the standard rate of maintenance for one child because of his low income. A copy of the *Afgørelse om børnbidrag* ("Order") is sent to him and a copy to Miss Field.

B. If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.

Not applicable.

Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.

Before any obligation to pay maintenance can be formally established, the fatherhood of the child must be legally established (see above). In a case like this, where Miss Field and Mr. Hill are unmarried, is that Miss Field, upon the birth of the child, says who the father is. Mr. Hill signs an Acknowledgement and he is registered as the father.

In the case here Mr. Hill he will owe the standard rate. That is the minimum set by the *statsamt*. The fact that he has very little money is no hindrance to establishing the *obligation*.

In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.

Miss Field must observe the deadline for sending the Petition to the *statsamt*. Miss Field will need to establish of a formal obligation to pay within 6 months of the baby's birth in order to be entitled to maintenance from birth.

There would be no complications in setting the fact of or the amount of the obligation. Mr. Hill cannot deny the obligation on the grounds that he has no money. Mr. Hill is liable for at a minimum the standard rate of maintenance no matter what his current circumstances.

N.B. The fact that Mr. Hill gives gifts and buys equipment can affect the amount of debt he runs up with the municipality. It does not reduce the total *liability* but it counts against the *debt*. If Mr. Hill, upon receiving the warning letter from the *statsamt*, protests, and claims that the equipment, etc. he bought was part of an agreement between him and Miss Field that this indeed would be his contribution to the maintenance of the child, then the *statsamt* must take this into account. The amount he had spent would count as maintenance already given and his debt to the municipality will be correspondingly reduced.

However, there are a number of conditions which must be fulfilled. The first is to establish whether there was indeed an agreement between the parents that the gifts would count as maintenance. If Mr. Hill claims the gifts counted as child support, then the burden of proof is on him and he must be

prepared to show receipts for items purchased. The *statsamt* then asks the mother whether it is indeed true that she had an agreement with the father that this would count as maintenance. If she says yes, then the *statsamt* asks the father to present the receipts establishing the amount. The *statsamt* then notes this information on the Child Maintenance Order. As stated before, copies of the Child Maintenance Order are sent to the mother and the father. If and when Miss Field comes to the municipality requesting advance maintenance, they will deduct the noted amount from the money they transfer to her account.

If Miss Field denies that there was any agreement, then the *statsamt* must make its own assessment based on “best judgment” (*skønsmæssig bedømmelse*). It can be difficult to judge because in law oral agreements between the parents are as binding as written ones. They may be called to a meeting and questioned. I rather had the impression from the civil servant I interviewed at the *statsamt*, that if the father can present receipts for things such as a baby carriage or other equipment, that they would probably accept this as evidence of support.

8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.

Yes there would be a formal obligation under all circumstances (see above) and the amount would be set, in this case, at the minimum, the “standard rate of child maintenance”. In 2006 this is, for a child of three months, DKK 1018 per month of which 920 is tax deductible for Mr. Hill.

8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?

As soon as the Order is issued, a copy will be sent to Miss Field and Mr. Hill. Miss Field will fill out an Application for Payment and submit it to the municipality along with her copy of the Order. The municipality will pay her child maintenance due since the baby’s birth. It will take between 2 and 4 weeks to receive depending on whether the computer has just done a benefit run or not.

The municipality will know where Mr. Hill lives. Mr. Hill is probably on social assistance as only has had casual jobs. If Mr. Hill is on social assistance, they will raise the amount of his social assistance to a maximum of DKK11,625 a month (before tax) (his earnings will be deducted except for DKK 12 an hour) and they will then automatically dock the standard rate of 1038 a month from his benefits.

8.1.4 If Mr Hill does not pay, what would happen?

Mr. Hill is docked so he pays automatically. Given that the municipality paid 4 months maintenance to Miss Field, they will deduct a little extra each month from Mr. Hill’s social assistance until he is caught up. However, as his income after tax is at or less than DKK 86000 a year, even with the higher rate, they may not take any extra.

In the meantime the municipality is advancing the maintenance to Miss Field, transferring it electronically to her designated bank account .

8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT

We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).

The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.

8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.

Mr Hill earns between DKK 256,000 and 322,000 gross a year.⁵³ No, the obligation would not change. In Denmark 75% of median full time male earnings is not enough to move him into a higher obligation band. Mr. Hill would have to earn more than DKK 330,000 a year gross before he will have to pay more.⁵⁴ The standard rate is designed to apply to average earnings.

However, it is worth noting that Miss Hill can always send in a new Petition to the *statsamt* requesting a reevaluation of his obligation. The statsamt will go through the same procedures, requesting copies of his 2005 tax return and the last three months pay slips from his employer. With this evidence of his income, they will see where he fits in the bands. If he had fallen into a new band they would send Mr. Hill and Miss Field a new Child Maintenance Order. Mr. Hill would then be expected to pay the new amount.⁵⁵

Note: If the obligation DID change, it could only date from the date of submission, because Miss Hill is applying for a second time and for an increase. Only a first application can awarded back maintenance and only when the application receipt deadlines are met (6 mos from the event or 2 mos from the determination of paternity, whichever is later).

8.2.2 Would any other outcomes likely differ? Please explain.

If he does not pay, the procedures are different because Mr. Hill is not on social assistance. The municipality will send an *Afkrævning* or Demand. If he protests that he cannot afford it, the municipality will, evaluate his ability to pay. They may use the deduction tables rather than undertake an individual evaluation. At this salary level they will not reduce his obligation in any way. They will try to set up a meeting with him in which they come to an arrangement or *betalingsordning*. They will expect him to pay the current plus a certain amount past due up to the percent indicated on the table for his net income. If he still refused to pay, then the case would be referred to the tax authorities. They would decide the amount owed based on the tables. If he protested, they would conduct an evaluation (more below for Mr. Coast). Mr. Hill will have to pay. The sums owed will be deducted from his wages before they are paid out. The tax authorities will contact his employer.

⁵³ Figures for median male wages are not readily available. Data for median male earnings are not readily available. The range is based on (low) .75 x median hourly wages for men+ benefits/hour worked * (average hours – vacation) to (high) .75 * average monthly earnings for salaried men *12.

The range from 256000 to 322,000 makes no material difference to the case. The cut off is 330,000.

⁵⁴ _____, (2006) *Vejledende Intægtsgrænser m.v. for 2006 i sager om børnebidrag og ægtefællebidrag* (Guidelines for income limits in child and spousal maintenance cases). Ministry of Family and Consumer Affairs, Copenhagen.

⁵⁵ With one child to support, this will be the case if Mr. Hill earns more than DKK 330,000.

8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER

We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.

Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.

8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.

Mr Hill earns between DKK 256,000 and 322,000 gross a year.⁵⁶ When Miss Hill hears of his new circumstances, she can send a new Petition to the statsamt to reevaluate Mr. Hill's obligation. See above. No the obligation will not change.

8.3.2 Would any other outcomes likely differ? Please explain.

No.

8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER

We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.

Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.

8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.

Mr. Field's obligation will not change. The mother's income is not taken into account when setting his own obligation. Only his personal income is taken into account.

8.4.2 Would any other circumstances likely differ? Please explain

NOTE In Denmark, Miss Field's new part time earnings would not be likely to improve her ability to support the family. They might well worsen it. Miss Field, at 20 hours a week, would earn between

110,000 and 137,000 a year depending on whether her hourly wages were a typical low wage of 120 kroner an hour or median hourly wages for women (no part time figures available).⁵⁷ This is less than the social assistance level of 139,500 for a provider. Mr. Hill has no grounds for thinking her situation is better.

Working gives Miss Field some advantages in that she would, with a child over a year old, be otherwise offered activation or workfare full time. With part time work she will be worse off materially but will have more free time. Neither her earnings nor her social assistance affect her other family and child benefits.

⁵⁷ www.danmarksstatistik.dk Statistikbank. Løn.

Miss Hill: range from 20*DKK 120/hr * 46 weeks a year = 110,400 to median female hourly wages + benefits/hour worked * 37 hours/week * 46 weeks per year (vacation excluded) = 137,485./yr. Social assistance for a provider is 139,500/yr.

8.5 BASE CASE 'B': MR AND MRS COAST

Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both children attend school.

Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.

Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.

Mr Coast 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 (100km 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 believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) 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 does not want 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.

8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.

Brief summary

Mr. Coast earns between DKK 513, 000 and 645, 000 a year.⁵⁸ Mrs. Coast earns between 110,400 and 137, 485.⁵⁹

The *statsamt* will decide the amount of maintenance. It is the only option for formalising arrangements where the parents do not agree, as here. The timescale is likely to be rather long, 11 weeks after receipt of the Petition, because the setting of child support is complicated by the fact that Mr. Coast earns a good salary, which means that the *statsamt* will have to undertake an individual evaluation, collect documentation on his earnings, etc.

The divorce and the Petition for maintenance can run concurrently.

The procedure is that Mrs. Coast sends the *statsamt* a Petition. It will be some weeks before she can receive any maintenance (advance or otherwise) but in the meantime the municipality can help her get single parent benefits.

Discuss the criteria considered in reaching decisions, referring to the information you have

⁵⁸ Mr. Coast: Data for median male earnings are not readily available. The range is based on (low) 1.5 x median hourly wages for men+ benefits/hour worked * (average hours – vacation) to (high) 1.5 * average monthly earnings for salaried men *12.

⁵⁹ Mrs Coast. See Miss Hill above for calculations of earnings.

already provided in the questionnaire about guidelines or discretion.

The criteria are exactly as discussed above in Case A. The amount of obligation will be set depending the number of Mr. Coast's children (2) and his before tax income.

The amount of visitation Mr. Coast has is in fact standard in Denmark and will have no effect on his obligation. The visitation is likely to be confirmed. The costs involved, including the car, will not be taken into account. As the parent with visitation rights, he is expected to fetch and bring the children to his home. Only if he were utterly unable to pay the costs of transport could he apply to his municipality for financial help with visits.

The fact that he does not want to be divorced is of no consequence.

In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.

In this case the *statsamt* will require a copy of Mr. Coast's previous year's tax return and his three most recent pay slips. The *statsamt* would send a letter to Mr. Coast requesting this information. If he does not send it, then they will send a reminder letter. If he refuses, they will ask Mrs. Coast what she thinks he earns. Then will then send Mr. Coast a letter saying that they rather thought to set the maintenance at the level Mrs. Coast indicated and if he objected he must send documentation of his actual salary.⁶⁰

Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.

The *statsamt* will make the decision on child maintenance retroactive to the day Mr. Coast moves out if she acts promptly to send the Petition. However it appears some months have gone by. At this point, the obligation will date from the date the *statsamt* received it. She has probably lost some months of support.

8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.

Yes there will be a formal obligation. Mr. Coast earns 1½ time male median earnings. This is about DKK 513--644,000 a year.⁶¹ At 513000, with two children, he will be on the border between standard plus 100% and standard + 200%.

Standard + 100% = 1958 per child per month (GBP 180) kicks in at DKK 430,000 a year. If he earns 513,000 he will pay this.

Standard + 200% = 2878 per child per month (GBP 260) kicks in at ca 6-700,000. Mr Coast may have to pay this if he earns 644,000 a year.

8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr Coast? How would the money be transferred to Mrs Coast or the children?

Exactly as in Case A above. Mr. Coast will be encouraged to set up an automatic monthly transfer (current policy is to have parents pay monthly in advance). By the time Mr. Coast receives the Child Maintenance Order, he will probably also owe three months of back support and will need to pay that down as well.

⁶⁰ Maria Larsen, *Storstrøms Statsamt*, July 26 2006, personal communication.

⁶¹ In Denmark, aggregated data for median male earnings are not readily available. Danmark's Statistik cannot supply the data required without doing a special run.

Data on earnings are collected separately for private sector, municipal sector and state sector employees. Data are not divided into quartiles (with the exception of figures for total compensation per worked hour) but given as averages only.

8.5.4 If Mr Coast does not pay, what would happen?

The procedures are exactly as in Case A above. As soon as Mrs. Coast has a copy of the Order she sends an *Ansøgning om udbetaling/afkrævning af underholdsbidrag* (Application for payment) to the municipality.

She will receive advance maintenance backdated to when the Petition was received by the *statsamt*.

Because she is getting higher maintenance, the procedures are more complicated. The municipality advances her standard maintenance backdated to the receipt of the Petition at the *statsamt*.

The 100% or 200% owed above the standard rate will NOT be advanced to her. Her municipality will try to *collect* it for her, however.⁶²

The procedure for collecting the extra 100/200% from NRPs is the same as for collecting any maintenance. Her municipality sends her a Application and Order to Mr. Coasts municipality. They will send him the Demand for the total owed. If he protests, then they can evaluate his ability to pay and try to arrange a payment plan (*betalingsordning*).

How much he must pay will depend on the evaluation. At these income levels, there is no chance they will forgive the amount.

If Mr. Coast still refuses to comply, his municipality will declare the debt to be in default and forward the case to the regional tax authorities. At this point there are no more voluntary arrangements to repay. They will send him a letter with the deduction table and budget scheme. If he wishes he can protest. However, at his income, the deduction tables will apply. If his income were low, a full evaluation would take many things into account in determining his ability to pay (see below).

If Mr. Coast stills refuses to pay, then the tax authorities will contact his employer and require him to withhold the prescribed amount from his wages.

In extreme cases, the tax authorities can even impound and sell off, in theory, his property and possession (*fogedretten*) but he would always be allowed to retain sufficient furniture and equipment for a modest home.

Mr. Coast's opposition to the divorce and his expenses with seeing the children etc are of no consequence. NRPs are responsible for fetching and delivering their children and bearing the costs of transport.

8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY

We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).

The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each

⁶² Until and unless the additional monies can be collected from Mr. Coast, Mrs. Coast will have to live on the social benefits she is entitled to as parent (Family Benefit) and as single parent (Ordinary and Extra Child Benefit and standard rate of Child Maintenance for each child). In addition, since Mrs. Coast lives in rented accommodation and has a low income, she will be able to apply for housing benefit. With two minor children in the house, the calculations (complicated) for housing benefit will be more favourable. If her part time earnings are still insufficient to live on, she can apply to the municipality for supplementary social assistance. The municipality will then supplement her income up to the base social assistance level for a parent caring for minor children (currently DKK 11,625 a month before tax).

She is unlikely to qualify for supplementary unemployment benefit sufficient to increase her income. To receive that, she must previously have worked full time and paid corresponding unemployment insurance premiums for at least 52 weeks.

parent, alternating one week with Mrs Coast and one week with Mr Coast.

8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.

Yes. If the parents share joint custody, then maintenance neither will owe maintenance.⁶³ In this case, because the children spend one week with each parent, who pays for expenses while there, no obligation will be set at all. Each parent is considered to have fulfilled their obligation by sharing equally in the maintenance of the children.

8.6.2 Would any other outcomes likely differ? Please explain.

No the change in travel costs and time make no difference.

8.7 BASE CASE 'B', CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER

We now explore how your system would deal with a change in Mrs Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.

Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.

8.7.1 How would Mr Coast go about trying to change the obligation?

Mr. Coast can Petition his *statsamt* for a revised Child Maintenance Order.

8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.

There will be no change at all. Mrs. Coast's new partner is not financially responsible for her children.

8.7.3 Would any other outcomes likely differ? Please explain.

If Mrs. Coast has been receiving alimony, then Mr. Coast can apply to the *statsamt* to end spousal maintenance.⁶⁴

8.8 BASE CASE 'C', CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER AND NEW CHILD THREE YEARS LATER

We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been

⁶³ Lars Thøgersen, Family Agency, 27 July 2006, personal communication.

⁶⁴ _____ *Vejledning om opkrævning og inddrivelse af børnebidrag og æstefællebidrag* (Guidance on collection of child and spousal maintenance) 31.okt 2005. J.nr. 05-5013-00043

set at the amount you have described in 8.5.2.

Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact 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.

8.8.1 How would Mr Coast go about trying to change the obligation?

He petitions the *statsamt* where he lives as above.

8.8.2 What would result -- is it likely the obligation would change? To what? Please explain.

His obligation will change. Because he now has three children, according to the guidelines, he will pay standard plus 100%. The limit for 200% with 3 children is 700,000.

8.8.3 Would any other outcomes likely differ? Please explain.

No, they would not change change.

However, his new situation can illustrate the workings of the collection system. If Mr. Coast refuses to pay, and is declared in default, and claims the right to have the tax authorities fully evaluate his income, then they will, according to the *retsplejelovens* § 508, consider the following.

If the debt dates from after he has a new partner, his ability to pay will depend on

His income

His partners income

Child support received

(housing benefit and all family and child benefits are ignored)

From these are deducted

Taxes

Debt service for furniture and student debt

Child support owed

Household expenses from a prescribed list including heat, rent, etc.

Mr. Coast should have 7900 kroner left per month to cover food clothes insurance etc for himself and his new partner, plus 1280 for his baby (would be more if baby were over 2 and still more if over 7)

Therefore, that his new partner does not have paid work could indirectly affect the outcome by affecting the size of his allowable expenses relative to his income.

In practice, Mr. Coast makes a good income and will have to pay.

This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here:

Mrs. Coast could apply for spousal maintenance. The rule of thumb would be that the difference between his and her income is divided by five. She would receive 20% of the difference, subject to a floor and a ceiling. The floor is what Mr. Coast needs to support himself and in practice is 18.000 a month. He can retain this. The ceiling is around 260,000. With maintenance and child support, her income cannot exceed 260,000 a year, so if the 20% brings the total higher it will be reduced. She will need to go to civil court to be awarded spousal maintenance. Having been married 10 years she would be awarded perhaps 2 to 3 years of maintenance.

APPENDIX 1**Income Guidelines Child Maintenance Denmark 2006**

Standard maintenance as of 1. January 2006

Ministeriet for Familie- og Forbrugeranliggender har oplyst, at normalbidraget pr. 1. januar 2006 er forhøjet til 12.456 kr. årligt (yearly), svarende til 6.228 kr. halvårligt og 1.038 kr. om måneden.(per month).

Normalbidraget består af et grundbeløb og et tillæg, der i 2006 udgør følgende:

- Grundbeløbet udgør 11.040 kr. årligt (5.520 kr. halvårligt og 920 kr. om måneden).
- Tillægget udgør 1.416 kr. årligt (708 kr. halvårligt og 118 kr. om måneden).

Ved fastsættelse af højere børnebidrag end normalbidraget i 2006 bør der tages udgangspunkt i følgende vejledende indtægtsgrænser:

Normalbidraget med tillæg af	1 barn	2 børn	3 børn	4 børn	5 børn
25 %	ca. 330.000 kr.	ca. 350.000 kr.	ca. 385.000 kr.	ca. 430.000 kr.	ca. 490.000 kr.
50 %	ca. 350.000 kr.	ca. 385.000 kr.	ca. 430.000 kr.	ca. 490.000 kr.	ca. 560.000 kr.
100 %	ca. 385.000 kr.	ca. 430.000 kr.	ca. 490.000 kr.	ca. 560.000 kr.	ca. 660.000 kr.
200 %	ca. 5-600.000 kr.	ca. 6-700.000 kr.	ca. 7-800.000 kr.	*	*
300 %	ca. 0,9-1,1 mio. kr.	ca. 1,1-1,4 mio. kr.	ca. 1,3-1,5 mio. kr.	*	*

APPENDIX 2:
CHILD SUPPORT LIST OF TERMS DENMARK

- *børnefamilietrydelse* (family benefit)
- *ordinært børnetilskud* (regular child benefit)
- *ekstra børnetilskud* (extra child benefit)
- *børnebidrag* (child maintenance)
- *normalbidrag* (standard maintenance)
- *forhøjet bidrag* (supplementary maintenance)
- *statsamt*
- *kommune* (municipality)
- *skattecenter* (regional tax centre)
- *Familiestyrelsen* (Family Agency)
- *Ministeriet for Familie- og Forbrugeranliggende* (Family Ministry)
- *Ansøgning om udbetaling/afkrævning af underholdsbidrag* (Application for payment/collection of maintenance, hereafter "Application for payment")
- *Ansøgning om fastsættelse af børne- og ægtefælle bidrag* (Petition to determine child- and spousal maintenance, hereafter "Petition")
- *Afgørelse om børnebidrag* (*Child Maintenance Order, hereafter "Order"*)
- *Afkrævning af underholdsbidrag* (Demand for payment of maintenance, hereafter "Demand")
- *Betalingsordning* (hereafter Arrangement to pay, hereafter "Arrangement")
- *Aftale om børnebidrag* (Agreement on Child Maintenance, hereafter "Agreement")

APPENDIX 3**CHILD SUPPORT LIST OF LAWS DENMARK****(Children's Act)***Børnelov*

LOV nr 460 af 07/06/2001 (Gældende)

Senere ændringer til forskriften

[LBK Nr. 352 af 15/05/2003](#)[LOV Nr. 133 af 02/03/2004](#)[LOV Nr. 446 af 09/06/2004](#) § 8[LOV Nr. 542 af 24/06/2005](#) § 23**(Act on Recovery of Maintenance Payments)***Bekendtgørelse af lov om inddrivelse af underholdsbidrag* 10.10.05 in force 1.11.05

Ingen senere ændringer pr. 27.7.06

(Act on Child Benefits and Advance Payment of Child Support)*Bekendtgørelse af lov om børnetilskud og forskudsvis udbetaling af børnebidrag*

LBK nr 909 af 03/09/2004 (Gældende)

Senere ændringer til forskriften

[LOV Nr. 431 af 06/06/2005](#) § 27**(Act on Financial Responsibility for Children)***Bekendtgørelse af lov om børns forsørgelse*

LBK nr 352 af 15/05/2003 (Gældende)

Senere ændringer til forskriften

[LOV Nr. 446 af 09/06/2004](#) § 7[LOV Nr. 430 af 06/06/2005](#) § 24[LOV Nr. 542 af 24/06/2005](#) § 24