

3.11 Orders for children of the family

Secured and unsecured periodical payments, lump sum orders and property adjustment orders may be applied for on behalf of any child of the family under **s23(1)(d), (e) and (f)** and **s24 MCA 1973**. Lump sum orders will usually only be appropriate in certain limited circumstances, for example, where a child has special needs (such as a disability) or where there are considerable resources available to the payer. Although property adjustment orders **are** available for the benefit of children, it would be unusual for the court to make such an order.

The **Child Support Act 1991 (CSA 1991)**, as amended by the **Child Support Act 1995 (CSA 1995)**, limits the court's power to make or vary maintenance orders to or for the benefit of children, whether under **MCA 1973** or otherwise. The limited circumstances in which the court has jurisdiction are as follows.

(1) Discharging a previous order: parents have in some cases applied to the court for an existing maintenance order to be discharged, to enable an application to be made for a Child Support Agency maintenance calculation, in the hope that this would provide a higher maintenance figure. In ***B v M (Child Support: Revocation of Order) [1994]*** a father appealed against a District Judge's decision to revoke a 1986 maintenance order of £41 per week. The appeal was upheld by a County Court Judge.

(2) Where the parties have entered into a written agreement for the non-resident parent to make periodical payments to or for the benefit of a child and the maintenance order which the court makes is, in all material respects, in the same terms as that agreement: **s8(5)(a) and (b) CSA 1991**.

It is important to be aware, however, that because of the provisions of **s4(10) CSA 1991**, as amended, the jurisdiction of the Child Support Agency is only excluded for one year after which either parent may seek the discharge of the maintenance order and apply for a maintenance calculation to be carried out.

(3) Orders to cover the cost of education: for example, if a child is to receive training or education at a fee-paying institution such as a private school: **s8(7) CSA 1991**.

(4) Disabled children: where the child is blind or disabled and the order is made *solely . . . to meet some or all of any expenses attributable to the child's disability*: **s8(8) CSA 1991**.

(5) Non-qualifying child: this will apply where the child makes his home with both parents, or is over 18 years but in full-time education or training, or is between 16 and 18 years and in *advanced education*, or is under 18 years but is divorced: **s55(1) CSA 1991**.

(6) If the non-resident parent lives outside the jurisdiction: **s44(1) CSA 1991**.

(7) Step-parents: if the child in question is a **child of the family**, an order can be made for child maintenance against a former spouse who is not the child's natural parent.

There are important restrictions on the making of orders which are expressed to benefit children over 18 years of age. With various exceptions, no order can be made in favour of a child who has reached 18 years of age (**s29(1) MCA 1973**).