COLLEGE CHAMBERS

UNDERSTANDING SCHEDULE 1 CHILDREN ACT APPLICATIONS

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Schedule 1 of the Children Act 1989 ("Schedule 1") is a crucial mechanism in the landscape of child financial provision. It allows for meaningful financial support for children in non-marital family breakdowns, particularly where CMS jurisdiction is inadequate or inapplicable.

For children under 18, the court retains wide discretion to meet their needs, including housing and educational costs. For those over 18, the jurisdiction is narrow and focused mostly on dependency arising from education or disability. The evolving case law emphasises the need for careful, fact-sensitive analysis in applying Schedule 1, especially in high-income or international family contexts.

Who can make an application?

Schedule 1, Paragraph 1(1) Children Act 1989 entitles the following persons to make an application:

a) A parent of the child;
b) A guardian or special guardian;
c) An adult child (subject to certain criteria);
d) Any person named in a Child Arrangements Order as a person with whom the child is living[1].

For the purposes of a Schedule 1 application, a parent is any party to a marriage or civil partnership, in relation to whom the child concerned is a "child of the family", which may be a child of one or both parties (other than a foster child)[2]. The child must live with the parent who is making the application[3]. Where the party against whom an application is being made is a step-parent, the court will consider whether that step-parent assumed responsibility for the child, the length of time they assumed such responsibility and their liabilities towards the child[4]. In such an instance, the court must record that the step-parent is not the child's father on the face of the order[5].

Schedule 1 applications may be considered in instances where:

a) The 'parents' have never married, nor are they required to have cohabited; or
b) Where any claims under Section 25 of the Matrimonial Causes Act 1973 have concluded[6]; or
c) In other instances where the parties are in litigation.

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How to make an application:

The party applying for an order must attend a Mediation Information and Assessment Meeting (MIAM) before making a Schedule 1 application. After attending a MIAM or if you are exempt from attending, you may make an application on a Form A (standard procedure) or Form A1 (fast-track procedure for periodical payments)[7]. After issuing the application, the court will fix the first directions appointment, for which a Form E1 and relevant disclosure must be completed[8]. Any application to instruct an expert must be made as soon as possible and no later than the first directions appointment, unless the court orders otherwise[9]. If an expert is sought, proposed questions to the expert should be attached to the application along with a draft order[10]. An application for an expert must be made in accordance with the procedure set out in Part 18 of the Family Procedure Rules 2010[11].

In circumstances where the 'child' has reached the age of 18 by the time an application is made, the child themselves must make the application[12]. The court in such circumstances may only make orders for periodical payments and/or lump sums, not transfer or settlement of property orders[13].

Applications for Children Under 18

For children under 18, Schedule 1 is primarily used to seek financial orders when the Child Maintenance Service (CMS) is either not available due to a lack of jurisdiction or insufficient. This typically includes cases where[14]:

- The non-resident parent lives abroad (and thus outside CMS jurisdiction)
- The income of the non-resident parent exceeds the CMS threshold of £156,000 gross per annum/£3000 gross per week. In such circumstances, the facts may justify a "top-up" order regardless of the existing CMS assessment
- The application involves lump sums, payments regarding school fees/training/education or property transfers, which the CMS cannot order
- The application relates to a child's disability

What Financial Orders are available under Schedule 1 for children under 18?

Schedule 1 provides various means for securing financial stability for a child under 18 by inferring a power on the court to make the following orders:

- **Periodical payments**[15]: Regular financial support to cover the daily needs of a child. The budgets can be broadly interpreted to include necessary elements related to the applicant in their role as a carer.
- **Lump sum payments**[16]: For specific needs like a car, education expenses, furnishing a home, medical costs, and clearing debts.
- **Transfer or settlement of property**[17]: Often this is used to provide housing for the child and resident parent on a trust, licence or lease arrangement during the child's minority, or until conclusion of their tertiary education.

The financial orders made under Schedule 1 must be "for the benefit of the child", not the parent. However, the parent with care may also benefit indirectly, particularly in housing arrangements.

These orders usually terminate once the child attains the age of 17 or once they have ceased full-time tertiary education.

Criteria to be Applied by the Court

When the court is faced with an application for a financial order, the child's welfare is not a paramount consideration[18], however, it must be a 'constant influence on the discretionary outcome' despite what Schedule 1 states[19]. Schedule 1, Paragraph 4(1) of the Children Act 1989 states that the court shall have regard to all the circumstances, including:

1. *the income, earning capacity, property and other financial resources which each relevant person has or is likely to have in the foreseeable future;*
2. *the financial needs, obligations and responsibilities which each relevant person has or is likely to have in the foreseeable future;*
3. *the financial needs of the child;*
4. *the income, earning capacity (if any) and other financial resources of the child;*
5. *any physical or mental disability of the child; and*
6. *the manner in which the child was being, or was expected to be, educated or trained*[20].

The standard of living during the relationship does not, by virtue of statute, carry significant weight in all cases. However, it has been held that a child is "entitled to be brought up in circumstances which bore some sort of relationship to the father's current resources and the father's present standard of living"[21]. In so-called "big money" cases, the standard of living before the breakdown of the relationship is therefore likely to be a highly material factor.

Duration of Orders and Exceptions

The term of an order for periodical payments must not, in the first instance, extend beyond the child's 17th birthday unless the court considers it is right in the circumstances of the case to specify a later date[22]. If a later date is specified by the court, it cannot extend to later than the child's 18th birthday, subject to two exceptions:

a) Where the child is, will, or would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation[23];
b) There are 'special' circumstances which justify making an order which extends beyond the child's 18th birthday[24].

Precisely what constitutes special circumstances is at the discretion of the court. Any assessment will hinge on there being evidence of the young person's circumstances generating an ongoing financial dependency[25]. Typically, this will involve cases where payments are sought in connection to a young person's disability[26].

In relation to applications for children over the age of 18, the court may only make orders for periodical payments and/or lump sums, not transfer or settlement of property orders.

In the context of adult children attending university, it has been held that provision may be made for a young adult's university costs, including accommodation and living expenses, provided the parents have the means and it is consistent with their previous intentions and conduct.

Disability

Section 8 (8)(a) and (b) of the Child Support Act 1991 makes clear that the court may grant an order for maintenance regardless of whether an allowance is paid to or in respect of the child pursuant to Part 4 of the Welfare Reform Act 2004 or Disability Living Allowance, providing the application is for periodical payments to meet some or all of the child's expenses attributed to their disability[27].

Section 6 of the Equality Act 2010 defines a person with a disability as someone with a "*physical or mental impairment and the impairment has a substantial or long-term adverse effect*" on their ability to carry out daily activities[28]. Section 8(9) of the Child Support Act 1991 however, imposes upon the court the following definition for disabled when considering

Schedule 1 applications: "*blind, deaf or dumb or is substantially and permanently handicapped by illness, injury, mental disorder or congenital deformity or such other disability as may be prescribed*"[29]. Notwithstanding the dire need for reform to replace offensive terms in the definition in Section 8(9) Child Support Act 1991, the court has recently been reluctant to apply an exemption due to the child's disability.

It is not uncommon for a party to apply for an order under Schedule 1 seeking a top-up provision for payment of a Household Expenditure Child Support Award ("HECSA") and/or for payment of the applying parent's debts as opposed to payments in relation to the child's disability. Mr Justice Cobb in *Re Z (No.4) (Schedule 1 award)* [2023] EWFC 25 stated that although he was not invited to order a payment in relation to the child's disability the "*physical or mental disability of [Zoe] and her corresponding 'financial needs' are the magnetic factors*" in the case[30]. In this case, the child had Williams Syndrome, which was a lifelong condition likely to affect the child's developmental needs as she became older.

Mr Justice Cobb held in that case that the child's standard of living, although not a statutory principle in Schedule 1 applications, should bear some resonance and not be 'out of kilter' with the standard of living enjoyed by the father[31]. It was ordered that the father provide £3.65 million for a property for the child until she reached the age of 18 or ceased tertiary education. The father was also ordered to pay a total lump sum of £169,950.26 for fixtures/fittings, conveyancing costs, a moving fund, monies to clear the mother's debt and a HECSA award. It is clear that the courts favour an outcome where a series of orders can be made for a child, as opposed to just periodical payments attributable to the child's disability.

The courts have often been cautious in disguising a top-up maintenance order, particularly where the party applying for an order has not sought an exemption relating to the child's disability pursuant to Section 8(8) of the Child Support Act 1991[32]. In *SP v QR* [2024] EWFC 57 (B), however, the court found that the exemption provided for a child with disabilities did not assist in a case where the parties had modest assets[33]. His Honour Judge Hess found that the child's disabilities meant that the child's need for secure accommodation prevailed over either party's need for housing[34]. The court held that given the father was in a stronger position to rent, that the mother should remain in the flat with the child, subject to her provided undertakings to pay the mortgage and indemnify the father, and in return, the F provided an undertaking to facilitate this arrangement until the end of the child's secondary education. No lump sum orders were made. Section 8(8) of the Child Support Act 1991 did not assist the court in this instance as there were no savings, debts or pensions of either party.

Key Differences: Under and Over-18 Applications

Feature	Under-18	Over-18
Applicant	Parent, guardian, or person with care	Child
Jurisdiction	Excludes cases where the CMS has jurisdiction	Limited to adult children in education/training or special circumstances that generate a financial dependency i.e. disability
Relief available	Periodical payments, lump sum payments, transfer and settlement of property	Periodical payments, rarely lump sums
Leading cases	J v C [1990][35]; Re P [2003][36]	DN v UD [2021][37]; J v L [2021][38]; Siddiqui v Siddiqui [2021][39]; G v G [1998][40]

Final Thought

Schedule 1 offers a vital safety net for children—especially in cases involving more complex needs of a child or high-income families. Schedule 1 applications are particularly **fact-sensitive**, requiring careful legal strategy. Whether your client is seeking help for a minor child or a university student, understanding how and when this route can be used is imperative to securing financial provision.

[1] Schedule 1, Paragraph 1(1) Children Act 1989
[2] Section 105(1) Children Act 1989
[3] Section 105(1) Children Act 1989
[4] Schedule 1, Paragraph 4(2)(a)-(c) Children Act 1989
[5] Schedule 1, Paragraph 4(3) Children Act 1989
[6] Section 25 Matrimonial Causes Act 1973
[7] Family Procedure Rules 2010, Rule 9.18
[8] Family Procedure Rules 2010, Rule 9.18
[9] Family Procedure Rules 2010, Rule 25.6(d))
[10] Family Procedure Rules 2010, Rule 25.7(3); Rule 25.7(2)(b)
[11] Family Procedure Rules 2010, Rule 25.7(1)
[12] ChA 1989, Sch 1, para 2
[13] ChA 1989, Sch 1, para 2(2)
[14] CSA 1991, s8
[15] ChA 1989, s15, Sch 1
[16] ChA 1989, Sch 1, paras 1(2)(c), 2(2)(b)

[17] ChA 1989, Sch 1, para 1(d)-(e), 1(5)(b)
[18] *J v C (Child: Financial Provision)* [1999] 1 FLR 152
[19] *Re P* [2003] EWCA Civ 837, [44]
[20] Schedule 1, Paragraph 4(1) Children Act 1989
[21] *Re P* [2003] EWCA Civ 837
[22] ChA 1989, Sch 1, para 3(1)(a)
[23] ChA 1989, Sch 1, para 3(2)(a)
[24] ChA 1989, Sch 1, para 3(2)(b)
[25] Section 55 Child Support Act 1991; Schedule 1, Paragraph 2(1)(b); *FS v RS and JS* [2020] EWFC 63; *C v F* [1998] 2 FLR 1; *UD v DN* [2021] EWCA Civ 1947
[26] Section 8(8) Child Support Act 1991
[27] Section 8 (8)(a) and (b) of the Child Support Act 1991
[28] Section 6 Equality Act 2010
[29] Section 8(9) of the Child Support Act 1991
[30] *Re Z (No.4) (Schedule 1 award)* [2023] EWFC 25, [49]
[31] See: *Hussein v Maktoum* [2021] EWFC 94 [91]; *Re Z (No.4) (Schedule 1 award)* [2023] EWFC 25, [50]
[32] Section 8(8) Child Support Act 1991
[33] *SP v QR* [2024] EWFC 57 (B), [11]
[34] *SP v QR* [2024] EWFC 57 (B), [16]
[35] *J v C (Child: Financial Provision)* [1999] 1 FLR 152
[36] *Re P (Child: Financial Provision)* [2003] 2 FLR 865
[37] *DN v UD* [2021] All ER (d) 79
[38] *J v L* [2021] EWFC B104
[39] *Siddiqui v Siddiqui* [2021] EWCA Civ 1572
[40] *G v G (Periodical Payments)* [1998] Fam 1