

This information sheet informs you on the most important legal provisions and state benefits.

Clarification of paternity

No matter whether a father is separated from a mother and child or whether he is part of a family with them – The relationship between the father and the child is initially legally unclear without a marriage certificate.

There are only important legal consequences in connection with a paternity which has been declared with legal effect. Maintenance entitlements for the mother and the child and the child's inheritance, pension or health insurance entitlements depend on this.

The mother who has care and custody of the child is therefore responsible for clarifying the paternity of her child. In legal terms, it does not suffice if she knows who the father of her child is. A simple written declaration also does not suffice.

The determination of paternity is a legal act in which the father recognises the paternity and the mother agrees to the recognition, this then being sealed by an official document.

Both of the declarations must be publicly registered. This can be executed by the registrar, a notary public or an authenticating official at the Office for Children, Youths and Families (*Amt fuer Kinder, Jugendliche und Familien*).

If the father should not voluntarily recognise the paternity, this can only be determined by a court of law. The child or the mother can file a suit. The father can also file a suit against the child in as far as the mother does not want the paternity to be clarified or refuses to agree to the paternity recognition.

Maintenance

The question of maintenance is only of interest if the mother and father do not live in the same household.

All legal maintenance entitlements have the following requirements:

- the person liable to provide maintenance is able to pay. i.e. his ability to financially support the entitled person without placing his own reasonable necessities of life at risk, and
- the person entitled to maintenance is in need. This means that she is not able to reasonably maintain herself from her own assets.

Child maintenance

The child is entitled to regular payment of a monthly maintenance from the father does not live in the same household as the child.

The amount of the maintenance entitlement has to be determined from case to case. Among others, it orients itself on the father's average monthly income and is calculated on the basis of the so-called Duesseldorf table.

The amounts which are in the first group of the Duesseldorf Table are those which are stipulated by the German legislator as being the minimum maintenance amounts. They currently (as of 1 January 2010) amount to 317.00€ per month up to the age of 6, 364.00€ per month for the age group 7-12 and 426.00€ per month for the age group 13-18.

Child benefit reduces the child's requirement.

Half of the child benefit is set off against the maintenance payment if the child is living with one parent. The child benefit currently amounts to 184.00€; half of this amount is therefore 92.00€.

The maintenance claim must be asserted immediately after determination of the paternity, as it is otherwise the case that maintenance claims could be lost for the past.

It is also recommended that a voluntary maintenance obligation of the father be recorded or the amount of the maintenance claim be settled by a court of law in case of dispute. This means that the child is issued with an 'enforceable instrument', enabling a levy of execution if required.

The calculation of the maintenance in the table only takes that which is absolutely necessary into account, this therefore mainly being food, clothing, accommodation and education.

It is possible that the child has an additional requirement in the course of time. This can be a *special need or additional need*.

Special need is an irregular extraordinary high need of the child. This means that it must be a need which occurs unexpectedly and in an amount which cannot be estimated.

This also means that an assessment of whether something is to be treated as a special requirement for the application in question is only possible from case to case.

The costs for the initial baby equipment are seen by most of the courts as being a special need.

It is in all cases it is important that evidence is provided of the costs, this means that all of the invoices must be retained. The claim for the special needs must also be asserted with the person obliged to pay maintenance, the claim being subject to a deadline of one year since the costs were incurred.

Additional needs are needs which occur more or less regularly, are of an amount which can be estimated and stated as a lump-sum and which can be demanded in addition to the basic requirement.

This is the case for example if the child requires a special diet or particular treatments due to illness.

Maintenance for caring for a dependant

The mother has her own entitlement to maintenance as a result of the birth.

The father is to pay maintenance to the mother for a period of four months prior to the birth of the child and three months after the birth (even longer in exceptional cases). This is also valid for the costs which are incurred by the pregnancy or the child delivery.

The father can assert the maintenance claims against the mother if he cares for the child.

The claim to maintenance for caring for a dependant is regulated in section 1615 I of the German civil code.

The important thing is that the claim to maintenance for caring for a dependant and reimbursement of the costs incurred by the pregnancy, are immediately asserted against the party having an obligation to pay immediately upon them being incurred.

The Office for Children, Youths and Families will assist you with this if you should wish it to do so. The Office is however unable to assert claims for maintenance for caring for a dependant or for the reimbursement of costs incurred by a pregnancy, before a court of law.

Official assistance

The determination of the paternity and the assertion of the maintenance payments can cause problems if a parent cares for the child alone. It is not less for the well-being of the child that it is important that these aspects are clarified and that is often easier with "neutral assistance".

If you require assistance with this, the Office for Children, Youths and Families is able to offer this free of charge. This is referred to as official assistance.

A person who decides to apply for official assistance, informally and in writing, will find a particular contact person. In addition to consultation, this person also assumes these two tasks, the determination of paternity and the assertion of the child's maintenance claim. He or she also represents the child's interest before a court of law if necessary.

The official assistance terminates upon the child coming of age at the latest. Should the assistance no longer be necessary before the child comes of age, due to the paternity being determined or

maintenance payments being received regularly for example, the person having care and custody can apply for the termination of the official assistance in writing at all times.

The parental care and custody is not restricted as the official assistance is only provided for the child for the stipulated tasks and only in addition to and in close cooperation with the single parent.

Custody

If both of the parents agree to joint custody, they can make a so-called 'custody declaration.' This is also possible if they do not live together.

The custody declarations made by the mother and the father can either be recorded together or separately. This recording is only possible before a notary public or the authenticating official at the Office for Children, Youths and Families and can also be executed before the child is born. The father's custody is always in connection with the bindingly declared paternity.

If the parents should make the custody declaration, they have joint custody.

If a parent wishes to be granted sole custody at a later date, this must be decided upon by the family court. This is also the case if the parents are in agreement.

The mother will be granted sole custody if the parents should not make a custody declaration and they are not married.

A person who has sole custody requires proof of this in order to apply for a child's identity card, for example. This proof which is also referred to as a **negative confirmation** is issued by the Office for Children, Youths and Families.

Custody upon the death of a parent

The surviving parent would be granted sole custody if the parents had made joint custody declarations.

If the parents were not married to each other and had not made a custody declaration, the family court must decide on who is to be granted custody for the future. If the mother dies for example, the court checks whether there is a personal relationship between the father and the child and whether granting custody to the father would be in the child's interest.

Right of access

The child has his or her own right of access to his or her parents. The parents are both entitled and obliged to accessing their child. Grandparents, siblings and step-parents also have a right of access if this is in the child's interest.

The mother and the father must do all in their power to desist from all actions which would interfere with the relationship between the child and the other parent or which impedes the upbringing of the child more difficult.

How parents organise the access is not stipulated in legal stipulations. It is the responsibility of both of the parents to arrange this among themselves.

Should difficulties be incurred in this regard, advice and support can be obtained from the Municipal Social Services (*Kommunaler Sozialdienst*) department at the Office for Children, Youths and Families in Muenster, telephone: 492 5601.

The family court makes a decision if an agreement is not possible.

Inheritance rights

A child whose parents are not married to each other has the same inheritance rights as the legitimate children. This means that he or she is a co-heir if there are numerous heirs of the same degree.

Child's surname

If the parents have joint custody, they can agree on whether the child is to have the father's surname or the mother's surname as his or her name at birth. This is in the form of the making of a declaration to the registrar.

If one parent has sole custody (this would normally be the mother at the time of birth), the child is given this parent's surname.

The parents can also reach agreement on the surname of the other parent even if they should not have joint custody.

The father and mother have to make corresponding declarations to the registrar in this case.

State Benefits

Parental benefit

The parental benefit replaces the former child-raising benefit and is payable for children born after 1 January 2007.

Young parents no longer receive a lump-sum payment, but earnings-related allowances.

Each parent can apply for parental benefit who interrupts his or her employment after the birth in order to care for the child or who reduces his or her hours of work to 30 per week.

Parental benefit normally amounts to 67% of the last net income – up to a maximum of 1,800.00 € per month. If the net salary paid up until then was less than 1,000.00€ per month, the allowance rate can be much higher than 67%. The minimum allowance of 300.00€ is also paid to those who only had low earnings or did not earn at all before the birth.

Single parents are entitled to parental benefit for a period of 14 months if they have sole custody.

Couples are normally paid parental benefit for 12 months. Two additional 'partner months' are also possible if the parents share the baby break.

You must make an application with the Amt für Kinder, Jugendliche und Familien, Elterngeldstelle, Hafestraße 30, 48153 Muenster. You can also receive detailed information from there.

Child benefit

Child benefit amounts to 184.00€ per month each for the first and second child, for the third child 190.00 € and 215.00€ per month for each additional child.

Child benefit is basically paid until the child attains the age of 18.

You can obtain information from the Familienkasse des Arbeitsamtes, Dutumer Straße 5, 48431 Rheine (*Family Section of the Labour Exchange*). The child's birth certificate is to be presented when making the application.

Advance maintenance payments

If the other parent of the child does not make any maintenance payments or makes insufficient payments, you can make an application to the Office for Children, Youths and Families for advance maintenance payments.

The requirement for this is that the child is under 12 years of age.

The maximum payment as from 1 January 2010 is 3171.00€ for children under 6 and max. 364.00€ for older children. Orphans' benefits and maintenance payments made by the other parent are set-off. The child benefit of 184.00€ is also deducted.

The support is for a maximum duration of 72 months, either as a single period or in partial period.

The entitlement exists, independent of whether the single parent is unmarried, divorced or widowed or is living permanently apart. The entitlement is however excluded if both of the child's parent live together (whether married or not) or if the single parent (re)marries.

Advance maintenance payments are not income and assets-based.

You can apply for advance maintenance payments at the Amt für Kinder, Jugendliche und Familien, Hafestraße 30, 48153 Muenster.