

## CHAPTER 31

## Family Income Supplements

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Chapters 16 to 19 above are of general application and apply to Supplementary Benefits and Family Income Supplements as well as Social Security and Child Benefit\*

## CHAPTER 31

# Family Income Supplements

*(In this Chapter 'FIS' means Family Income Supplements: 'Supp Ben' means Supplementary Benefit and unless otherwise indicated, Regulations under the FIS Act are referred to by the descriptive words only in their titles and the relevant year of the Regulations concerned).*

### Part 1: Basic Entitlement

*Sections 1, 8(1), 10(2)(a) to (d) and 17 of the FIS Act 1970 and regulations 5 to 9 of the General Regulations 1980.*

#### **1 Membership of household**

i Where a husband and wife normally were living together and there was no evidence that they did not intend to continue to do in the future, but the husband was temporarily in prison, it was held that his enforced temporary absence was not sufficient to justify treating him as no longer a member of the household and so did not confer on his wife the status of a 'single woman' for the purposes of section 1 of the FIS Act 1970 (paragraphs 1-7 and 9). The Commissioner also noted the contrast between the FIS legislation and that relating to Supplementary Benefit in the treatment of the expression 'members of the same household' (paragraph 4). See also 31.1.1 iii and 31.4.1 iii *below*. R(FIS) 3/83

ii The claimant's made a claim for FIS for a family consisting of themselves, the woman's 2 children, who were living with them, and the man's 2 children, who were living elsewhere with their mother, but to those whose support the man was contributing. The Commissioner agreed with the approach of the High Court in a previous case in regard to the proper construction of section 1(1) of the FIS Act 1970 that, 'By using the word 'household' instead of providing a requirement of 'living with', parliament intended that in appropriate circumstances, if a sufficient tie remained, children should still qualify even if away from home as long as the separation was temporary'. However he held that children otherwise within the scope of section 1(1)(c) are only to be included in a family if they are members of the household, but that in this case they could not be regarded as members of the claimant's household, because the only evidence of a tie with that household was their percentage and the payment of ailment and there was no evidence that their separation was temporarily only. (Paragraphs 5 and 6). R(FIS) 4/83

iii In May 1982 a woman claimed FIS as a single woman on the basis that her husband who normally lived with her was serving a 9 month's prison sentence and so was not able to support her and their son and accordingly had temporarily ceased to be a member of their household within the meaning of s. 1(1) of the FIS Act 1970 in the form in which that section then was. The Appeal Tribunal, in the absence of any definition of 'household' in that Act, applied r.2(3)(d) of the Supp. Ben. R(FIS) 5/85

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\* Chapters 30 and 31 are misplaced because at the time of original construction of this Digest it was not envisaged that it would in due course comprehend also Supplementary Benefits and Family Income Supplement

(Aggregation) Regs 1981 and held that the husband had ceased to be a member of the household. The Commissioner set aside that decision and held that there was no legal support for the contention that the FIS Act should be construed by reference to subordinate legislation under the Supp. Ben Act 1976 ((para 9) and that enforced temporarily absence through a 9 months' period of imprisonment was not sufficient to justify treating the claimant's husband as being no longer a member of the household so as to confer on her the status of a single woman for the purposes of s.1(1) of the FIS Act. (This decision was subsequently upheld by the Court of Appeal on 2 April 1985 *sub nom. Linda Elizabeth Taylor v. The Supplementary Benefit Officer*, see Appendix to R(FIS) 5/85). See also 31.4.1 iii.

(NB, however, s.1(1) of the FIS Act 1970 was materially amended by s.7(1)(a) of the SS Act 1980 with effect from 21.11.83-see SI 1983/1002).

## 2 Engaged and normally engaged in remunerative full-time work

- R(FIS) 2/81 i A claimant for FIS normally worked 37½ hours a week. Then his employers began operating a 3 day week (22½ hours), but for the 2 days a week on which the claimant was no longer required to work his employers paid him a sum equivalent to half the wages applicable to those days. There was no dispute that at the time of the claim the claimant was normally engaged in remunerative full-time work, but the question arose whether he was then engaged in such work within the meaning of Section 1(1)(a) of the FIS Act 1970. The Commissioner held that he was not because he could not satisfy the condition that he undertook activities in the course of remunerative work for not less than 30 hours during the week set out in regulation 5(1) of the General Regulations 1980. The payment of half wages to the claimant for the 2 idle days in each week have no bearing on the matter. (Paragraphs 6 and 19). See also R(FIS) 2/82, paragraph 11.
- R(FIS) 2/82 ii A claimant for FIS normally worked 37½ hours a week but in March and April 1981 he only worked 22½ hours a week because his firm was then working a 3 day week. However the claimant was paid 50% of the wages applicable to the 2 idle days. There was no dispute that he normally engaged in remunerative full-time work within the meaning of section 1(1)(a) of the FIS Act 1970. The question in issue was whether he was engaged in that work within the meaning of that provision in the above circumstances. The Commissioner held that he was not. The mere receipt of remuneration calculated by reference to a number of hours, or being under an obligation to have himself actively available at any time, do not amount to undertaking activities in the course of remunerative work within the meaning of regulation 5(1) of the General Regulations 1980 (the *sine qua non* of being engaged in 'remunerative full-time work') *R. v. Ebbw Vale/Merthyr Supplementary Benefit Appeal Tribunal, Ex parte Lewes* [1982] 1 WLR 420, AC; overruling [1980] SB 35, DC. R(SB) 21/81, recorded under R(FIS) 2/81 considered.
- R(FIS) 3/82 iii A claim made for FIS was dated 18 May 1981. In the previous week the claimant had worked for 32 hours. However, in none of the succeeding 4 weeks had he worked for as much as 4 hours a week. The claim was dated stamped as received in an office of the Department of Health and Social Security on 27 May 1981. The Secretary of State had not been prepared to treat the claim as made on an earlier date (than 27 May) (see regulation 2(2) of the Claims and Payments Regulations 1980) and accordingly the supplement officer had refused to make an award because the claimant had not worked for as much as 30 hours during the week of the claim or in either of the 2 weeks immediately preceding that week or in the week immediately following it (see regulation 5 of the General Regulations 1980). An appeal tribunal allowed the appeal on the grounds that the claimant was normally engaged in full-time work within the meaning of regulation 5(2) of those Regulations. The Commissioner held that the tribunal's decision was erroneous in point of law because it is not sufficient that a claimant is normally engaged in full-time work; he must also be engaged in such work (paragraphs 1 and 4). In referring

the case back for determination by another tribunal the Commissioner said that it would be for that tribunal to determine the date on which the claim was made and what accounted for the fact that a claim dated 18 May did not receive a date stamp in the office (of the DHSS) until 27 May. Also, while doubting by regulation to fix a day on which a claim is made as any later than the date on which it is actually made, he observed that under the general law a claim (in the absence of any provision like section 79(6) of the Social Security Act 1975) is not made until it is communicated to the person to whom it is made (paragraph 7). See R(FIS) 6/83, 31.1.2 iv *below*.

iv The claimant was attending for 39 hours a week a training workshop under the Youth Opportunities Programme. She received a fixed allowance under section 2(2)(d) of the Employment and Training Act 1973. The Commissioner held that the payment received was not remuneration for any work done, but an allowance to enable her to maintain herself while undergoing training (paragraph 5); and that she was not engaged in remunerative full-time work (paragraph 9). Dicta approved in R(FIS) 6/85. See R(FIS) 1/86, 31.1.2 ix *below*, in relation to full-time university student. R(FIS) 1/83

v During the 2½ months preceding date of claim, the claimant was on short time working. The question arose as to whether his short time working (and so his gross income from that work) was normal or abnormal at the date of his claim. The supplement officer had considered as a rule of practice that short time working was not normal until it had been in operation for 6 months. The appeal tribunal had considered the position as at the date of the hearing of the appeal. A Tribunal of Commissioners held that the adoption of a rule of practice as to a particular period being needed before earnings are accepted as normal for the purposes of regulation 2(2) of the General Regulations 1980 are wholly inapt; the statutory provisions clearly contemplate and require an individual appraisal of the circumstances of each individual case (paragraph 15(2); since section 6(2) of the FIS Act 1970 requires entitlement to be determined as at date of claim, the tribunal misdirected themselves in taking account of the continuance of short time working down to date of hearing before them (paragraph 18); the tribunal were not on that account precluded from taking into contemplation whether or not short time working should, at date of claim, have been regarded as likely to continue (paragraph 20); in some cases, where short time working has recently begun, it will be appropriate to make an award for less than 52 weeks under the power conferred by regulation 3(1) of the above Regulations (paragraph 17). R(U) 13/60 distinguished. See R(FIS) 1/84, 31.1.2 vii *below*. R(FIS) 2/83 (T)

vi A claimant for FIS had at the date of his claim been employed for 3 weeks as a temporary porter for 37½ hours a week. For 3 years before that he had been a mature student at university. He had been offered a place to read for a further degree, but at the date of his claim he had not decided whether to take it up. There was no dispute that he was engaged in remunerative full-time work within the meaning of section 1(1)(a) of the FIS Act 1970. The question in issue was whether he was normally so engaged within the meaning of that section. The claimant argued that it was perfectly normal for a person in his position to take up paid vacation work. The Commissioner held that, unless regulations otherwise provided, right to benefit had to be determined as at date of claim (para 6); that, in determining whether a person is normally engaged in remunerative full-time work, one had to look to see whether at that time it was normal for the person in question to be so engaged; one did not look to see if the way in which he was engaged in the particular work was the way in which people in general engaged in that kind of work, nor to see if it was normal for persons in a similar position to engage in such work (para 7). On the question as to the time scale by which normally was to be judged, he further held that one should not take the long vacation in isolation, but should look to the 52 weeks for which it, under section 6(3) of the Act, FIS payable on determination R(FIS) 6/83

by a supplement officer; the shorter period provided under regulation 3(1) of the General Regulations 1980 was for cases where the available evidence left the determining authority uncertain as to the rate at which benefit should be payable, but satisfied that it should be payable at not less than a certain weekly rate; it was intended to alter after the time-scale for judging whether a person was normally engaged or to justify an award for, say, 12 weeks to a person who had employment for 12 weeks without evidence of prospects of further employment at the end of those 12 weeks (paras 10 and 11). The claimant in this case was held not to have been normally engaged in remunerative full-time work (para 12). R(FIS) 1/82, para 24 followed; R(FIS) 3/82 considered; R(U) 1/72 compared.

- R(FIS) 1/84 vii The claimant was on a 4 year sandwich course leading to a BSc, in quantity surveying. From approximately April to September in the 2nd and 3rd years he was expected to work in an office gaining relevant experience. At date of claim he was in the 2nd year of the course and had begun work for a firm of chartered quantity surveyors. The question arose whether he was normally engaged in remunerative full-time work within the meaning of regulation 5(2) of the FIS (General) Regulations 1980. The Commissioner held that he was not; while section 6(2) of the FIS Act 1970 required that a claim be decided as at the date of claim, the appeal tribunal were not precluded from taking into contemplation what at that date was considered as likely to happen in the near future (R(FIS) 2/83) (paragraph 6); the tribunal were entitled to direct their attention to the fact that the claimant was primarily a student pursuing a 4 year degree course and did not err in law in concluding that the claimant was not normally engaged in remunerative full-time work (paragraph 7). See also R(FIS) 1/86, 31.1.2 ix *below*.
- R(FIS) 1/85 viii A claimant made a renewal claim for Family Income Supplement. Although normally engaged in remunerative full-time work, during the week of the claim and the two weeks before and the one week after it, she was sick and absent from work. The question in issue was whether during those weeks the claimant was undertaking activities in the course of remunerative full-time employment within the meaning of r.5(1) of the Family Income Supplements (General) Regs 1980. The Commissioner held that the fact that the claimant was paid sick did not amount to her undertaking activities in the course of remunerative work within the meaning of the regulation (para 11); and 'undertakes' in relation to 'activities' had to be construed in conjunction with the expression 'being engaged in remunerative full-time work', which had the meaning ascribed to it in *R. v. Eddw Vale and Merthyr Tydfil Supplementary Benefit Appeal Tribunal, ex parte Lewis* [1982] 1 WLR 420, where the concept was described as one of being 'at' work, not just simply as 'in' work.
- R(FIS) 6/85 ix A claimant for FIS worked as a part-time teacher and as a self-employed silversmith. In connection with the latter work, in addition to the hours spent in practical work at her bench, she also had to spend time on visits to and from client, trips to retailers and wholesalers, at the craft centre and Assay Office and in working out ideas for a design competition. The question in issue was whether, in determining whether she was engaged in remunerative full-time employment for the purposes of r.5 of the FIS (General) Regs 1980, those additional hours should be included in the computation. The Commissioner approved the *dicta* in R(FIS) 1/83 that 'remunerative work meant....., where the person concerned was self-employed, work carried out with the desire, hope and intention of claiming a reward or profit' and he agreed with the submission that, amongst other things, activities in the course of remunerative work were not, in respect of the self-employed, restricted only to those activities which were costed and that the activities which the claimant had described were for the most part essential to her self-employment as a silversmith and were therefore carried out with the desire, hope and intention of claiming a reward or profit (para 6).

x A claimant following a full-time degree course at university as a mature student was not engaged in remunerative full-time work for the purposes of section 1(1)(a) of the FIS Act 1970. Although the work involved was in a general sense full-time it was not remunerative; the LEA grant was a contribution to the maintenance of the claimant and his family and not a *quid pro quo* for the work undertaken. Working for a degree was not analogous to self-employment, which involved working with the desire, hope and intention of claiming a reward or profit. Description of 'remunerative work' in R(FIS) 1/83, 31.1.2 iv *above*, adopted; that description in accordance with *Perrot v. Supplementary Benefits Commission* [1980] 1 WLR 1153 and *R. v. Ebbw Vale and Merthyr Tydfil Supplementary Benefit Appeal Tribunal ex p. Lewis* [1981] 1 WLR 131. R(FIS) 1/86

xi A claim for FIS was made when the husband's employers changed his hours of employment from 40 hours a week and 20 in alternating weeks. In practice he worked or was credited with some additional hours. The Commissioner held that it was not permissible to average the hours worked when deciding whether a person was normally engaged in full-time remunerative work for the purposes of Regulation 5 of the FIS (General) Regulations 1980; the term 'normally engaged' was not synonymous with 'on average'. Also held that it was the hours actually worked which were the test, not the number intended to be worked. R(FIS) 3/87 (T)

### **3 Receipt of prescribed benefit which precludes persons from being a family for purposes of 1970 FIS Act, Regulation 1A**

i After an award of FIS the claimant's husband applied for and was awarded unemployment benefit from a date prior to the FIS award. The adjudication officer reviewed the award of FIS and decided it was not payable and that the overpayment was recoverable. The Commissioner held that the exclusion of persons being a family operates from when one of the claimants is actually receiving a specified benefit not when entitlement begins, therefore, a family is still a family, for the purposes of the Act. [para 14] (FIS General Regulations [SI 1980 No 1437] Regulation 1A). See also 17.6.4 xii *above*. R(FIS) 1/89

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## Part 2: Resources

*Section 4 of the FIS Act 1970; Regulation 2 of the General Regulations 1980.*

### 1 Resources/Normal gross income

- R(FIS) 1/81 i The discretionary period for the calculation of normal gross income under Regulation 2(2) of the General Regulations 1980 is only for use where the normal rule of thumb (5 weeks or 2 pay-months prior to date of claim) would produce an inaccurate result as at the date of claim (paragraph 17). See also 31.4.1 *i below* for fuller summary of case.
- R(FIS) 1/82 (T) ii A claim was made for FIS within a week of the claimant becoming self-employed as a solicitor. He subsequently submitted accounts showing a net loss for the first month of that employment. The adjudicating authority was not satisfied that the accounts represented his normal income from his occupation and made no award. The appeal tribunal considered his accounts for the first 12 weeks of the employment. This also showed a net loss. The tribunal dismissed the appeal because 'at the time of application the figures quoted did not reflect a true picture of the trading position, particularly as part of the expenditure should be equated to a longer period than indicated'. A Tribunal of Commissioners held that, in the case of persons who have just started a gainful occupation, the period chosen for the calculation of their normal gross income will not be confined to a backward look from the date of claim, but may look backwards or forwards or (no doubt more usually) backwards and forwards as appropriate and in such a case the question as to the right to FIS is not determined as at the date of claim (paragraph 20). Further, in a scheme such as FIS which is intended to adopt a 'broad brush' approach, it is undesirable to attempt any elaborate apportionment of expenses which usually cover a longer period than that to which the accounts relate (paragraph 24). See also 17.2.2 ii, 17.3.7 ix, 17.4.1 v, 17.5.3 ii *above*, 31.3.1 i, 31.4.1 ii *below*, R(SB) 26/83, 30.3.1 x *above*, and R(FIS) 6/83, 31.1.2 vi *above*.
- R(FIS) 5/83 iii A claimant for FIS was self-employed as a child minder for 47½ hours a week. Her gross earnings were £23 a week; her net earnings, i.e. after deduction of expenses were £7 a week. The amount of her earnings depended upon how many children she minded at any one time, what fee she agreed with each parent and how often the children were kept at home - eg. for periods of sickness and holidays etc. The question in issue was whether the claimant's earnings should be assessed at the gross or net amount for the purposes of determining her entitlement to FIS and this in turn depended upon whether those earnings constituted 'salary, wages or fees related to a fixed period' within the meaning of Regulation 2(3) of the FIS (General) Regulations 1980. The Commissioner held that they did not and that only the net earnings should be taken into account.
- R(FIS) 2/85 (T) iv A man and his wife claimed FIS. At the date of claim the man had been on strike with no earnings for over a month and on an overtime ban for some 5 months before that. He himself had no other income. The question in issue was whether under r.2 of the General Regs 1980 the man's gross income for the purpose of s.4 of FIS Act 1970 was nil, that being his earnings immediately preceding the date of claim and, if not, whether his earnings should be calculated over the period immediately preceding the strike or over the period immediately preceding the overtime ban. A Tribunal of Commissioners held that the man's normal gross income from his gainful occupation was not nil and that in the circumstances of this case it was imperative to select some period other than the 5 weeks preceding the claim; but that it was not necessary in this case to determine the man's normal gross income with or without overtime, because on any footing it was sufficient to extinguish

entitlement as at date of claim. The Tribunal also held that r.3(1) of the above Regs allowed an award to be made for a period shorter than 52 weeks where the determining authority was satisfied that the benefit should be payable at least at a certain (minimum) rate, but it did not enable the period of payment to be shortened where the determining authority was satisfied or believed that the rate fixed might become too high at some future time (e.g. by the end of the strike). (Paras 8, 9 and 11). (Decision upheld by Court of Appeal (see Appendix to decision) *sub nom. Lowe and another v. The Adjudication Officer* [1985] 1 WLR 1108; R(FIS) 2/85, Appendix). See R(FIS) 1/87, 31.2.1 viii *below*, where wife was on unpaid maternity leave.

- v A Church of England clergyman was paid a monthly stipend divided into two elements: taxable and non-taxable allowances for heating, lighting, cleaning and garden maintenance. It was claimed that, in assessing his family's gross income for FIS, other expenses which he necessarily incurred should be allowed, e.g. travelling, maintenance of robes and secretarial services, all of which had in fact been allowed by the Inland Revenue. The Commissioner held that payment to cover exclusively expenses incurred in the course of performing the duties of his office or employment did not enter into the computation of normal gross income either under r.2(3) or 2(4) of the General Regs 1980 and ought not be taken into account at all (para 9); payments which were expressed to be for expenses that went beyond reimbursement of expenses incurred in connection with the duties of the employee constituted part of a person's earnings, subject only to such deductions (if any) as were allowable under FIS law (para 9); in the first limb of r.2(3) the word 'thereof' related to 'a person's earnings', not to 'salary, wages or fees' (para 11); in that regulation 'gross' meant before the deduction of tax, but after deduction of expenses which were allowable in arriving at the taxable sum; expenses did not include those payments which were in reality ways of spending income which happened to be allowed as deduction for income tax purposes (such as mortgage interest), but only money which had to be expended to make the earnings (para 12); the claimant's right to occupy his house rent free did not fall to be included in the family's resources (para 13); the appeal was accordingly allowed (para 1). (Decision upheld by Court of Appeal, *sub nom. The Chief Adjudication Officer v. Hogg* [1985] 1 WLR 1100, R(FIS) 4/85, Appendix). See also R(FIS) 2/88 (T), 31.2.1 xi *below*. R(FIS) 4/85
- vi A husband and wife were each running a separate business on his or her own account. The husband was trading at a profit, the wife at a loss, but she was in receipt of an Enterprise Allowance. The question in issue was whether the full amount of the allowance should be added to the husband's net business profit in assessing the family's normal gross weekly income for the purposes of FIS. The Commissioner held that it could not be; Enterprise Allowance payments were receipts of business which they were paid to set up and accordingly fell to be treated under r.2(3) of the General Regs 1980 as part of a person's earnings from any gainful occupation which did not comprise salary, wages or fees related to a fixed period; expenses had to be deducted from receipts (which included the allowance) when ascertaining the net profits of the business, in the usual way (para 10). R(FIS) 7/85
- vii Periodic payments made by a claimant for FIS, who was in business on his own account, to a bank in repayment of a loan made by the bank for the purpose of capital equipment for the claimant's business were held by the Commissioner not to be payments which could be taken into account in calculating the claimant's net profits from his business, or accordingly for the purpose of calculating the family's normal gross income'. See also R(FIS) 1/88. R(FIS) 8/85
- viii At the time of the claim for FIS the claimant wife was on maternity leave, which was then unpaid following a period of 12 weeks on half pay. The question was whether her 'normal gross income' for the purposes of FIS claim was her income from employment during the two months immediately preceding the claim. The Commissioner held that a woman on maternity leave is not, while not receiving her usual pay, earning her 'normal gross income' and therefore her average weekly wage cannot be calculated R(FIS) 1/87

under regulation 2(2) of the Family Income Supplements (General) Regulations by reference to any period when she is on maternity leave. *Lowe v. The Adjudication Officer* (R(FIS) 2/85, Appendix) considered. See also R(FIS) 2/87, 31.2.1 ix *below*.

R(FIS) 2/87 ix A second claim for FIS by the same claimant, and in the same circumstances, as in R(FIS) 1/87 (31.2.1 viii *above*) was disallowed because, on the basis of the wife's earnings before her maternity leave, the resources of the family exceeded the appropriate prescribed amount. The Commissioner reaffirmed his findings in R(FIS) 1/87 and held that it was correct to base the decision on the wife's earnings for the last complete month before she started maternity leave.

R(FIS) 1/88 x The claimant, a self-employed tax driver, was purchasing his car under a hire purchase agreement. The claimant contended that the whole of the monthly instalments under the agreement were deductible in ascertaining the net profit and that 75% depreciation should be allowed for the first year as the Inland Revenue would allow that for tax purposes. The Commissioner held that:-

1. in calculating the net profit of the business the interest due in respect of a hire purchase agreement was deductible as an expense, but the repayment of capital was not (paragraph 7).

2. there was no provision in the family income supplement legislation requiring the computation of profits to be on a like basis to that used for tax purposes and there was no reason to reject the computation of depreciation (25%) made by professional accountant.

R(FIS) 2/88 (T) xi The claimant, a 'single parent', claimed family income supplement for a family consisting of herself and 2 children. In order to make herself available for work she placed the children with a child minder at a cost of £25 per week. The claimant contended that the child minding expenses should be deducted from her earnings in order to determine her normal gross income. The Tribunal held that:-

1. following the Court of Appeal's decision in *The Chief Adjudication Officer v. Hogg* [1985] 2 All ER 897, 'the gross amount' in regulation 2(3) of the Family Income Supplement (General) Regulations meant a person's earnings before the deduction of tax but after deduction of the expenses that were allowable in arriving at the taxable sum (paragraph 6);

2. accordingly, 'the gross amount' meant the person's taxable earnings, that is, the gross figure less any expenses wholly, exclusively and necessarily incurred in order to perform the employment in question - it did not allow for those matters which depended solely on a person's personal circumstances and had no connection with his particular occupation (*Halstead v. Condon* (1970) 46 TC 289) (paragraph 7). For another synopsis of this decision see 19.2.13 i *above*.

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## Part 3: Claims and payments

*Section 5 and 10(2)(e) to (g), (ii) and (j) of the FIS Act 1970 and regulations 1 to 7 of the Claims and Payments Regulations 1980.*

### 1 Claims

i The date of claim for the purposes of section 6(2) of the FIS Act 1970 is the date on which it is received in an office of the Department of Health and Social Security (regulation 2(2) of the Claims and Payments Regulations 1980) [except where an exception in sub-paragraph (a) or (b) of that regulation applies]. (Paragraph 24). See also 17.2.2 ii, 17.3.7 ix, 17.4.1 v, 17.5.3 ii, 17.6.4 xii above, 31.2.1 ii, *above* and 31.4.1 ii *below*, R(FIS) 6/83, 31.1.2 vi *below*, R(SB) 26/83, 30.3.1 x *above*. R(FIS) 1/82 (T)

ii A claim for FIS was dated 18 May 1981. It was date stamped as received in an office of the Department of Health and Social Security on 27 May 1981. The Secretary of State was not prepared to treat the claim as made on an earlier date (a matter which could have been crucial to the claimant's entitlement to FIS). In referring the matter back for determination by an appeal tribunal, the Commissioner, while doubting the authority by regulation to fix a date of claim as made any later than on the date on which it is made, observed that under the general law, in the absence of any provision like section 79(6) of the Social Security Act 1975, a claim is not made until it is communicated to the person to whom it is made (paragraph 7). See also 17.3.7 ix and 31.1.2 iv *above* and R(FIS) 6/83, 31.1.2 vi *above*. R(FIS) 3/82

### 2 Payments

*(At the time of going to print there was no recorded decision on this matter)*

### 3 Effect of death and persons otherwise unable to act

*(At the time of going to print there was no recorded decision on this matter)*

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## Part 4: Determination of questions

(See Chapter 17.2)

### *Regulation 3 of the General Regulations 1980*

#### **1 Commencement and duration of awards**

R(FIS) 1/81 i FIS was awarded for 52 weeks from date of claim. The award did not take account of the expected birth of a child to the claimant's wife during that period nor of her consequent loss of earnings. The appeal tribunal reduced the period of the award to 6 months because the expected change of circumstances could be foreseen at the time of the award and so that a fresh claim could be made after the birth of the child and the loss of earnings. The Commissioner held:-

1. the tribunal had no power to make such a reduction or in particular to take into account any change of circumstances, unless there is a specific regulation allowing them to do so. The only regulation bearing on this particular set of circumstances was regulation 3(1) of the General Regulations 1980 and that regulation did not enable an award to be made for less than 52 weeks unless at the time when the matter was considered there was doubt as to the rate at which benefit was then payable. It did not apply where the doubt was as to the rate of benefit which would be payable if a claim were made later in the 52 week period (paragraphs 7 and 11). (Compare R(FIS) 1/82, 31.4.1 ii below).

2. the benefit officer was correct in assessing the wife's earnings over the 5 weeks prior to the date of claim. The discretionary period is only for use where the normal rule of thumb (5 weeks or 2 pay-months prior to claim) would produce an inaccurate result as at the date of claim (paragraph 17).

R(FIS) 1/82 (T) ii A claim was made for FIS shortly after the claimant became self-employed as a solicitor. He ultimately submitted accounts showing a net loss over the first 12 weeks of that employment. An appeal tribunal dismissed his appeal against the rejection of his claim on the grounds that they were satisfied that at the time of application [when in fact only one month's accounts had been submitted, also showing a net loss] 'the figures quoted did not reflect a true picture of the trading position particularly as part of the expenditure items should be equated to a longer period than indicate'. A Tribunal of Commissioner held that the primary purpose of FIS is to make provision for children of low income families. The manifest intention of the FIS Act 1970 and the regulations under it is that benefit should be quickly awarded to maintain the income of a family with children which falls below the prescribed amount. In order to provide rapid relief the question as to the right to FIS is normally determined as at the date when the claim for FIS is made. The usual award is made for 52 weeks and cannot be altered by change of circumstances. Under reg 3(1) of the General Regulations 1980 if the determining authority is satisfied that benefit is payable at not less than a certain weekly rate, though there is doubt as to the rate at which benefit should be paid, an award may be made for a period of less than 52 weeks, but not less than 4 weeks. Regulation 3(1) when referring to there being a doubt as to the rate at which benefit should be payable has in mind the rate at which it should be payable over the 52 weeks period. The purpose of that regulation is to enable awards to be made for shorter periods than 52 weeks because of doubt as to whether an award for the relatively long period of 52 weeks can properly be made at a rate which would be appropriate for a shorter period. In the present case the award should be over the period from date of claim (see 31.3.1 i *above*) to the end of the period covered by the accounts submitted. (Paragraphs 19 and 24). See also 17.2.2 ii, 17.3.7 ix, 17.4.1 v, 31.2.1 ii, 31.3.1 ii *above* and compare R(FIS) 1/81, 31.4.1 *above*. See also R(FIS) 6/83, 31.1.2 vi and R(SB) 26/83, 30.3.1 x *above*.

iii While the husband was temporarily in prison, his wife was (erroneously - see 31.1.1 i above) treated as a single woman and awarded FIS for some 2½ months. It was held that there was no right to make the award for less than 52 weeks because (apart from the consideration whether the wife could be treated as a single woman) the circumstances in which FIS may be made payable for less than 52 weeks were prescribed by regulation 3 of the FIS (General) Regulations 1980 and none of those circumstances applied (paragraph 8). See R(FIS) 31.1.1 iii *above*.

R(FIS) 3/83