
 CHAPTER 6

Benefits for children

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Benefits for children

Part 1: Entitlement to child benefit

Sections 1-3 of the Child Benefit Act 1975 (hereinafter in Chapter 6 referred to as 'the Act').

1 Receiving full-time education

Section 2(1)(b) of the Act.

- i It was provided by section 2(1)(b) of the Family Allowance Act 1945 that a person should be treated for the purposes of the Act as a 'child' during any period before he attained the age of 18 years whilst undergoing full-time instruction in a school (see now section 2(1)(b) of the Act). At the end of 1959 the claimant, her husband and their two children came to England from Canada. The elder son last attended school in Canada at the beginning of November 1959. He arrived in England on 21st December 1959 and on the following 1st January the Family Allowances and National Insurance (Canada) Order came into force and thereby removed another obstacle in the way of the claimant's claim for a family allowance. After arrival in England the claimant's husband made every effort to secure admission for the elder child to a suitable school, but was unable to do so until the end of April 1960. During the intervening period the child studied at home. It was held that the boy was not undergoing full-time instructions in a school and could not be treated as a child for the purposes of the Act of 1945. R(F) 4/61
- ii A girl aged 15 attended a course of instruction at a secretarial school from 9.15 a.m. to midday from Monday to Friday each week (a total of 13 ¾ hours). She was not expected to do any homework. It was held that the phrase 'full-time instruction' should be given its natural and ordinary meaning and that the instruction in that case was not full time. See also R(F) 2/85 and R(SB) 22/85. R(F) 4/62
- iii A youth left school at the end of the Easter term 1983. He was then over 16. Thereafter he was not included in the school register, but, by pre-arrangement with the headmaster, on 25, 26, 27 and 28 April 1983 he returned to the school for the sole purpose of sitting the GCE examination. On 15 April 1983 he had claimed supplementary benefit and the question in issue was whether on that date or at any material time thereafter he was in receipt of full-time education for the purposes of s.2(1)(b) of the Child Benefit Act 1975. A Tribunal of Commissioners held that he was not (para 2(3)); the question whether a person is receiving full-time education within the meaning of that Act is a question of fact to be ascertained by looking at the substance of the overall situation (paras 13 and 17(2)); the presence or absence of the claimant's name on or from the school register was not conclusive, but was a powerful factor (para 17(1)); in the absence of special features indicating the contrary, attendance at a school, where he had previously been undergoing full-time education, by a former pupil to sit examinations was not a return to full-time education (para 19); the claimant ceased to be in receipt of full-time education for the purposes of the above Act on 11 April 1983 (para 12). See also R(F) 4/62 *above*. R(F) 2/85 (T)
- iv The claimant's daughter continued her education mainly at the homes of two retired tutors in order to re-sit her 'A' levels. The Commissioner held that where schools are concerned 'supervised' when applied to 'study examination or practical work' ordinarily imports the presence or close proximity of a teacher or tutor. Recognition of education was a question for the Secretary of State who refused it in this case. The claimant was not entitled to child benefit. See also R(SB) 26/82; R(F) 2/85 and R(SB) 22/85. R(F) 1/93
- v The claimant's daughter continued her education by means of a correspondence course with the Rapid Results College. She did not physically attend at the college. The Commissioner held that the words "by attendance at a recognised educational establishment" meant that the person had to be physically present for instruction at the Establishment. Recognition of education was a question for the Secretary of State. The claimant was not entitled to child benefit. See also R(F) 1/93 *above*. R(F) 2/95

2 Responsibility for a child: “has the child living with him”*Section 3(1)(a) of the Act.*

- R(F) 3/63 i The claimant, her daughter and the daughter’s illegitimate son all lived together in the same house. The claimant maintained the child and looked after him whilst the child’s mother was at work, but the mother exercised much control over the child and gave him as much care as circumstances would permit, and the child was being brought up to recognise her as his mother. It was held that there was insufficient evidence to rebut the presumption that the child was living with his mother and he could not, therefore, be included in the claimant’s family. The question of whether a child is “living with” his mother is a question of fact which falls to be determined in the light of all the circumstances of the case. When the matter is being judged it is necessary to look further than the mere physical presence of the mother and child in the same household and it is relevant also to consider the question of the relationship of the parent and child which is a normal basis of family life. See also R(G) 4/62.
- R(F) 1/71 ii The claimant, her daughter and the daughter’s illegitimate child all lived together in the same house. Such control as it was necessary to exercise over the child was not exercised by the daughter and in the matter of maintenance, the provision of food, heat, light, clothing and amenity, she played no part and had no responsibilities whatsoever. It was held that the grandmother acted as the child’s mother in all aspects of the child’s life and that the daughter had delegated all her parental duties for an indefinite period and for 24 hours a day. It was not necessary for consent to adoption to exist before it could be said that the daughter had been relieved of her parental duties and obligations to such an extent that the normal relationship of parent and child no longer applied. The fact that the daughter could at any time have assumed her parental role did not affect the situation existing at that time and the normal relationship of parent and child did not in fact exist. The child was, accordingly, included in the claimant’s family. See paragraphs 8-11.
- R(F) 1/74 iii A man who was receiving family allowances for 2 children of his marriage claimed an additional allowance from the birth of a child to the woman with whom he was living, but to whom he was not married. The child lived with the claimant and the woman (the child’s mother) and was maintained by the claimant. It was held that, for the purposes of family allowances, an illegitimate child must be treated as included in the family of the mother as being issue of hers and could not be treated as in the family of the father whether or not the child was maintained by him. It was held further that the additional family allowance was payable to the claimant, 18.3.2 i *below*.
- R(F) 2/79 iv The claimant and his wife were divorced. Custody of their 2 sons was awarded to them jointly with care and control being given to the mother; the claimant to have reasonable access. During the relevant period both sons attended boarding schools, all fees being paid by the claimant. During holidays they spent rather more of their time with their mother than with their father. It was held that the expression ‘living with’ in section 3 of the Child Benefit Act 1975 is to be given its ordinary meaning. It involves the presence as opposed to the absence of the child, but it is not synonymous with “residing with” nor with “presence under the same roof”. *De facto* care and control is an important factor but not an essential one. The question whether a child is living with a claimant must always be decided on all the relevant evidence.
- R(F) 1/81 v The mother of a boy aged 16 was paid child benefit with an increase as a single parent for a period which included the weeks which began on 18 and 25 December 1978. In 1971 she had voluntarily submitted to the local authority taking the boy into care under section 1 of the Children Act 1948 because she suffered ill health and from time to time had to be admitted to hospital. However she continued to maintain a home for him with her and he returned there for mid-term and inter-term school holidays, he having been sent by the local authority to a boarding school. While at home she fed and maintained him and apart from that she made contribution to the local authority. In all she made provision for her son in excess of the benefit claimed. On 15 December 1978, the day the son returned home for the Christmas holidays, the

mother was again admitted to hospital and she returned there or in a convalescent home until 2 January 1979. The question arose whether throughout the above two weeks the son was actually living with his mother within the meaning of regulation 16(6) and (7) of the Child Benefit (General) Regulations 1976 (a condition of entitlement where the child concerned is in care under the above-mentioned section 1) and so whether the mother had been entitled to the benefit for those weeks. It was held that, although, possibly, the thrust of the legal rules is directed to the absence of the child from the parental home, it is not possible to say that regulation 16(7) is so limited; it comprises also the absence of the parent and excludes any notional concept of living together. Accordingly there was no title to the above benefit for those two weeks.

vi The meaning of 'week' is defined in section 24(1) Child Benefit Act 1975 as 'a period of 7 days beginning on Monday'. While, under section 24(2) references to any condition being satisfied or facts existing in a week are construed as references to the condition being satisfied or facts existing at the beginning of a week, whether a child is living with a parent in any week for the purpose of section 3(1)(c) of the Acts does not merely depend on his transitory presence in the parent's home at the beginning of a Monday in any week. The expression 'living with' means that a child must be living in the same house or other residence as the parent and carrying on there, with the parent, a settled course of living. A child who spend the day with her father on Saturday and Sunday only in each week was not living with him. R(F) 2/81

vii The claimant's child was at a residential school in the care of a local authority as the subject of an order under s.2(1)(e) of the Matrimonial Proceedings (Magistrate Courts) Act 1960. The child returned home from 3 p.m. each Friday until 9 a.m. the next Monday on 38 of the 52 weeks of each year. The question arose whether the child ordinarily lived with the claimant throughout at least one day in each week within the meaning of regulation 16(6)(b)(iii) of the Child Benefit (General) regulations 1976 (or regulation 16(6)(b)(iv) as from 7.2.83). The Commissioner held that the child did not; the regulation required 'a claimant to establish that a child ordinarily, or as a general rule, or in the absence of exceptional circumstances lived with her (the claimant) not less than one full day in each and every week' (paragraph 17). See R(F) 1/82, 6.1.6 *ibelow*. R(F) 1/84

viii A man claimed child benefit for two children from 17.11.80 to 19.7.92. The children had been in care of a local authority and delivered by that authority into the care and possession of the claimant and his wife on 29.11.80 with a view to the couple ultimately adopting the children, which so far as the couple were concerned was the main object of the exercise. In September 1981 the Adoption Agency Sub-Committee of the local authority passed a resolution accepting the children for adoption and themselves placing the children in the couple's care and possession. The adoption was finally effected by Court Order on 19.7.82. Throughout the period from November 1980 a boarding out allowance was paid by the local authority to the couple in respect of the children. In relation to entitlement to child benefit the crucial question was whether the children were boarded out in accordance with the provisions of the Boarding-Out of Children Regulations 1955 within the meaning of r.16(8) of the Child Benefit (General) Regulations 1976 and, in that connection, r.1(2) of the 1955 Regs provided that for the purposes of those Regs a child who was delivered into the care and possession of persons or a person proposing to adopt him under the Adoption Act [1958] should not be regarded as boarded out. The Commissioner held that for reg 1(2) to apply the delivery of the children into the care and possession of the claimant and his wife had to be an integral step in the adoption process as seen from the viewpoint of the local authority and not merely for the purposes of boarding out children with foster parents; that in this case it was not a step in the adoption process and that child benefit was payable for the inclusive period from 17.11.80 to 23.11.80, but for no period thereafter during which a boarding out allowance was paid (paras 1, 5 and 9). The Court of Appeal held that child benefit was payable from 17 to 23.11.80 and on and after the date on which the Adoption Agency Sub-Committee passed its resolution in September 1981 and to that extent allowed the appeal by the claimant. (see transcript of judgements annexed as an Appendix to R(F) 1/85, *sub nom. Department of Health and Social Security v. G.J. Simpson*, given on 5.10.84, unreported). R(F) 1/85

R(F) 1/91 ix In Scotland, a grandmother claimed child benefit for her granddaughter on 20 July 1988, following a required under Section 44(1)(a) of the Social Work (Scotland) Act 1968 made by a children's hearing which imposed a residence condition requiring the child to reside with her grandmother and her husband. The local authority placed the child with the claimant and her husband in pursuance of their obligation under Section 44(5) of the 1968 Act and under regulation 3(1)(f) and Part IV of the Boarding Out and Fostering of Children (Scotland) Regs 1985. The question arose as to whether child benefit was payable within the meaning of "boarding out" in Reg 16(5)(b) of the Child Benefit (General) Regs. The Commissioner held that, in this case, the child was not boarded out and therefore her grandmother was entitled to Child Benefit. The Commissioner had regard to the following criteria: no recommendation needing action under reg 20 of the Boarding Out and Fostering of Children Regulations appears to have been made in the local authority reports to the children's hearing; there was no question of the grandparents concerned being approved foster parents; there was no question of agreements of financial and other matters referred to in regulations 8 and 9 of the Boarding Out and Fostering of Children Regulations; and the relatives were in effect stepping into the shoes of a parent for family reasons. This list is not exhaustive - other factors may well be relevant in other cases which must be decided on the circumstances particular to each.

R(F) 1/96 x A local authority retained legal responsibility for a child placed in the care of grandparents who did not receive payment and were not formally approved as foster parents. The Commissioner held that, for an initial 6 week period, placement under regulation 11 of the Foster Placement (Children) Regulations 1991 can amount to the same thing as "boarding-out" under regulation 16(8) of the Child Benefit (General) Regulations 1976. However "boarding-out" describes a commercial or professional arrangement and is inapt to describe the case of grandparents taking in their grandchild for no payment, out of natural love, affection and concern for her as a member of their immediate family. After 6 weeks, this was an informal arrangement under section 23(2)(f) of the Children Act 1989. The grandparents were not disentitled to child benefit.

3 Responsibility for a child: contributing to the cost of providing for the child

Section 3(1)(b) of the Act and see also section 3(5)(a) and regulation 2 of the Child Benefit (General) Regulations 1975.

R(F) 8/61 i A father continued to obtain family allowances for his 2 children after they had been (T) admitted to a home managed by a charity. He agreed to pay the charity 15s. a week in respect of each child and made 5 payments at irregular intervals, 4 of which were of amounts which were multiples of 30s. a week, but he did not specifically apply those amounts to any particular periods. It was held by a Tribunal of Commissioners that the children could be included in the father's family only in the week next following a week for which he contributed at the rate of 8s. or more for each child (which was then the minimum weekly amount under the relevant statutory provision rules) and in weeks of temporary interruption in accordance with section 21(7) of the Act of 1945; that each of the 5 payments made by the father should be regarded as a payment of 30s. (that is at the rate of 8s. or more for each child) in the week in which the payment was made, the balance being regarded as the payment of arrears of maintenance; that payment of arrears of maintenance did not enable the children to be retrospectively included in the father's family in weeks falling wholly or partly before the time of payment; and that entitlement to family allowances terminated when the condition of contributing first ceased to be satisfied and could not be revived without a fresh claim. See paragraph 17-26.

R(F) 9/61 ii A man paid weekly sums into court under an order for maintenance of his separated (T) wife and their 2 children. The children lived with and were maintained by their grandmother and on the wife's authority the payments into court were remitted in 2 lump sums to the grandmother. The wife then disappeared and the payments accrued in court. It was held by a Tribunal of Commissioners that the cost of providing for a child was contributed to only when the contribution reached the person maintaining the child. Accordingly the children were included in the father's family only in the weeks next following those in which the lump sums were received by the grandmother.

iii A father whose sons had been admitted to a home run by a charity was advised that a weekly contribution of 10s. for each child was expected from him. He continued to draw family allowances but made only irregular payments of sums varying between 8s. and 30s. and there were intervals of several months between some of the payments. The charity allocated these sums to the earliest part of the father's account, but it was held by a Tribunal of Commissioners that, for family allowances purposes, the payments should be treated as having been made at the time they were made. Payment of the minimum statutory amount for each child entitled the claimant to include the child in his family for one week and, after such inclusion, for a further period not exceeding 4 weeks. See also R(F) 11/61. R(F) 10/61(T)

iv A local authority, having taken the claimant's 4 children into care under section 1 of the Children Act 1948, obtained court orders against the putative father of the children. Under the orders the local authority received 17s. 6d. per week for each child. It was held that as the money was payable to the local authority without any agreement to which the claimant was a party, and under an order obtained by the authority, it could not be regarded as the property of the claimant and as contributed by her towards the cost of providing for the children, with the result that the claimant was not entitled to include the 4 children in her family or in the family of her husband and herself. R(F) 2/62

v A claimant's newborn child was taken direct from hospital into the care of the local authority under section 1 of the Children Act 1948 and was boarded-out with foster-parents. The claimant made no cash contributions to the cost of providing for the child but provided certain articles in kind on various dates. It was held that the proper approach was to keep payment in money and in kind as far as possible in line and to treat a contribution in kind as made in the actual week when the articles were provided. Allocation on that basis achieved fairest result as between claimant and the foster-parents, who might qualify for family allowances for any week during which the child could not be included in the claimant's family. Only in very exceptional circumstances would it be proper to split forward the value of the articles to produce contributions at the required weekly rate over the estimated period of their life. R(F) 1/73

4 Meaning of 'step-parent'

i The claimant's late wife had 2 children by a previous marriage which had been dissolved. Following the death of the wife and one of the children in an accident the surviving child continued to live with the claimant and he was in receipt of child benefit in respect of her. The child's natural father was still alive. It was held that upon his marriage to his late wife the claimant acquired the status of step-father to the child and he did not lose that status on his wife's death. He therefore fell to be treated as a parent of the child for the purposes of regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 and so was entitled to an increase in child benefit. See also R(F) 4/81 where the relevant marriage ended with a divorce. See also R(SB) 9/83, 6.1.4 iii *below*. R(F) 1/79

ii A claimant who acquired the status of a step-father on marrying the mother of two children retained that status even after the marriage had ended with a divorce. R(F) 1/79 referred to. R(S) 4/81

iii For the purposes of entitlement to an increase of benefit in respect of a child dependant, a claimant is the step-father (and also the parent) of a child who is the illegitimate son of his wife by another man and was born before the claimant's marriage, in this case, re-marriage to the child's mother (paragraphs 16 and 17). See also R(F) 1/79, 6.1.4 i *above*. R(SB) 9/83

5 'Single parent' increase

Sections 5, 17(1) and 20(1) of the Act; the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 (in this section referred to as 'the Rates Regulations') and regulation 11 of the Child Benefit (General) Regulations 1976 (in this section referred to as 'the General Regulations')

R(F) 3/81

i A woman claimed an increase of child benefit as a 'single parent' from the date of a decree nisi of divorce in respect of her marriage for a period during part of which she and her husband continued to live under the same roof, albeit as separate households. Under regulation 2(2)(b) of the Rates Regulations it was a condition of entitlement that the claimant should either have no spouse or should not be residing with him. Under regulation 11(1) of the General Regulations a person could be treated as not residing with his or her spouse either if they were separated by order of a court of competent jurisdiction or for any period during which they were absent the one from the other after the expiration of 91 consecutive days of such absence if, in either case, the separation or, as the case might be, the absence was likely to be permanent. It was held that such separation or absence could exist even when the spouses were living under the same roof, if they were not living in the same household; a decree nisi of divorce was an order of a court of competent jurisdiction under which the spouses were separated even if the order had only the effect of giving formal recognition to what had already taken place rather than of bringing it about. The claimant was held therefore to be entitled to the increase from the date of the decree nisi.

R(F) 4/85

ii A claimant for child benefit, who had been in receipt of an increase of the benefit, known as one parent benefit, married a man who was serving a sentence of imprisonment and was not due to be released until some 14 months later at the earliest. The question in issue was whether during that period under r. 11 of the CB (General) Regs 1976 she should be treated as residing with her spouse. The Commissioner held that she should be. This decision was subsequently upheld by the *Court of Appeal, sub nom. Grove v. Haydon (Insurance Officer)*, heard on 8.3.85, not reported, save in R(F) 4/85, Appendix, the Court holding that the regulation in prescribing the circumstances in which persons are to be treated as 'residing together' prescribed also the circumstances in which one of them is to be treated as 'residing with' the other. Northern Ireland decision R2/78(IVB) distinguished.

6 Meaning of 'week' and 'day'

R(F) 1/82
(T)

i The claimant's child, in care of Local Authority under the Children and Young Persons Act 1969, was permitted to spend 'institutional holiday periods' at home with the claimant, such periods ending on the Sunday, when the child was required to return to the institution by 9.00 p.m. The question arose as to the meaning of 'week' for the purposes of regulation 16 of the Child Benefit (General) Regulations 1976 and whether, for the purposes of that regulation, the 3 hours between 9.00 p.m. and midnight could be disregarded under the doctrine of '*de minimis non curat lex*'. A Tribunal of Commissioners held that by virtue of regulation 1(2) of the Regulations and section 24(1) of the Act a 'week' for the purposes of regulation 16 means a period of seven days beginning on Monday, which means midnight Sunday/Monday to midnight Sunday/Monday next (paragraph 16); within the week a period of 3 hours was too long to allow the doctrine of '*de minimis non curat lex*' to be invoked. See R(U) 33/53, 1.11.2 i and R(F) 1/84, 6.1.2 vii *above*.

R(F) 3/85

ii A child was in the care of a local authority and began periods of residence with his grandmother from 11 a.m. on Saturdays to late on Sunday evenings. The question at issue was whether that period of residence with the grandmother constituted living with her 'throughout at least one day in each week' within the meaning of r. 16(6)(b)(iv) of the CB (General) Regs 1976. The Commissioner held that it did not; a 'week' for the purposes of the CB Act 1975 necessarily meant from midnight Sunday/Monday to midnight Sunday/Monday next and a 'day' for the purposes of the CB legislation meant a period of 24 hours from midnight to midnight (paras 5 and 6).

7 Earnings of claimant or spouse exempt from UK income tax

i The claimant and her husband, a citizen of West Germany, lived and worked in this country, paying UK tax on their earnings. The question arose whether CHB should be disallowed because the spouse received additional earnings exempt from UK income tax. The Commissioner held that CHB should be disallowed. Reg. 9(1) of the Child Benefit (General) Regs. applied because the spouse received some exempt income. See also 17.3.2 xiv. R(F) 3/89

8 Child benefit rate payable for twins

i A claimant made a claim for CHB in respect of twins, the eldest being born about 30 seconds before the younger. It was held that the higher rate was payable in respect of the first born of the twins and the lower rate in respect of the other twin. R(F) 2/96

9 Necessity of claiming for each child

i A separate claim must be made in respect of each child for which an award of benefit is sought. R(F) 3/96

10 Person from abroad: transitional provisions

See Chapter 19 - International subjects.

11 Child in care but no care order

i Two of the claimant's children were placed in LA accommodation but no care order was made. An AO held that the claimant was not entitled to CHB in respect of them because para. 1(c) of Sch. 9 to the Social Security Contributions and Benefits Act 1992 provided there should be no entitlement in respect of a child who "is in the care of a local authority in such circumstances as may be prescribed". Furthermore 16(5)(f) of the Child Benefit (General) Regulations 1976, as amended, provided that one such circumstance was where accommodation was provided under S. 20 of the Childrens Act 1989. The decision was upheld by a tribunal and the claimant appealed to the Commissioner, arguing that, since the enactment of the Childrens Act 1989, there had been a distinction between care provided by a LA following the making of a care order and the provision of accommodation under S. 20, that para. 1(c) of Sch. 9 to the 1992 Act referred only to the former situation and that reg. 16(5)(f) was therefore *ultra vires*. The Commissioner dismissed her appeal and the claimant appealed to the CA. R(F) 1/97

Held, dismissing the appeal, that:

1. the 1976 Regulations were initially made under the Child Benefit Act 1975 at a time when "care" referred to both care under a care order and voluntary care and, therefore, being "in the care of the local authority" in the 1975 Act could have two possible meanings, either referring, to those two kinds of care or referring to the ordinary natural meaning of "care" when, by whatever route a child is being cared for by a LA, the child is in the care of the LA;

2. Parliament had not intended to change the law relating to child benefit by passing the 1992 Act, which was a consolidation Act, or by enacting the Children Act 1989, under S. 105 of which being "in the care of a local authority" was defined as being in their care by virtue of a care order but under S. 20 of which the substance of voluntary care also survived;

3. the phrase "in the care of the local authority" in para. 1(c) of Sch. 9 to the 1992 Act did not have the same meaning as in S. 105 of the Childrens Act 1989 but had one of two possible meanings the phrase previously had in the 1975 Act it was not necessary to decide which (although the Court inclined to the ordinary and natural meaning).

Part 2: Increase of benefits for a child dependant

CS 726/49

1 Sickness and Invalidity benefit

i A man employed a woman to come to his house daily to carry out household duties and to have the care of his child. It was held that an increase of sickness benefit was payable to him under section 24(2)(c) of the National Insurance Act 1946 (see now section 44(2) and (3)(c) of the Social Security Act 1975). And see as to the meaning of 'having care of the child' paragraph 7-11. R(S) 2/64

ii It was held that an increase of sickness benefit was not payable in respect of a child who had been committed to an approved school by a juvenile court. See as to the meaning of 'absence under supervision' paragraph 5-7. (See also section 4(1) of and Schedule 1 to the Act). R(S) 3/74

iii A man in receipt of sickness, and subsequently invalidity, benefit gave written undertaking in the terms of (what is now) regulation 5 of the Social Security Benefit (Dependency) Regulations 1977 to contribute not less than the rate of the increase of benefit towards the costs of providing for 2 children of his former marriage who were living with his former wife. Throughout the period in question he regularly contributed £5 per week, which for the latter part of the period was less than the amount he should have paid in accordance with his undertaking. It was held that regulation 10 of the National Insurance (General Benefit) Regulations 1970, which provided for allocation of contributions towards the maintenance of a wife and the cost of providing for children so as to secure as large a payment as possible by way of benefit in respect of dependants (see now regulation 3 of the 1977 Regulations), only permitted allocation as between dependants and not allocation in time. Irrespective of the Regulations, however, a single payment might be treated as covering a future period longer than a week if that was what, in fact, was intended. It was held further that the claimant's payments entitled him to an increase of benefit for the elder child but not for the young child during the period under review. See paragraph 11-16. R(S) 11/79

iv A husband and wife exchanged the conventional roles, the wife becoming the breadwinner and the husband remaining at home attending to domestic duties. The wife claimed an increase of sickness benefit in respect of her husband and daughter. She conceded that her husband was not incapable of self-support (see sections 41(6) and 44(3)(a) of the Social Security Act 1975) but contended that the sex discrimination inherent in that Act and the regulations made thereunder must have been negated by the Sex Discrimination Act 1975. It was held that even if, which was doubtful, the provision of social security benefits fell within any of the theatres of discrimination against which the latter Act is directed section 51 of that Act operates to prevent the discrimination from being unlawful. R(S) 3/80

v A claimant who was incapable of work claimed an increase of sickness/invalidity benefit in respect of his son who was living in Guernsey with the claimant's separated wife and no child benefit was in payment. Subsequent to the local tribunal hearing the claimant claimed child benefit which was awarded from 22 February 1978. The Secretary of State also accepted the claim for increase for sickness/invalidity benefit as a claim for child benefit so removing the obstacle to payment of child benefit from 4 April 1977. It was held that the condition in section 6(1) of the Child Benefit Act that no person shall be entitled to child benefit unless he claims it in the prescribed manner is satisfied if by the time the relevant statutory authority determines the claim for increase of benefit a claim for child benefit has been made for the period at issue. This includes a claim R(S) 10/81

for other benefit which the Secretary of State has accepted as a claim for child benefit.

vi A claimant was in receipt of invalidity benefit with an increase for his daughter who was not living with him, but with his former wife and in respect of whose maintenance he contributed. The former wife then obtained an increase of child benefit of £3 a week. This had the effect (under regulation 8 of the Social Security (Overlapping Benefits) Regulations 1979) of reducing the weekly amount of the increase of benefit from £7.50 (the standard rate) to £4.50. The claimant gave a written undertaking under regulation 5 of the Social Security Benefits (Dependency) Regulations 1977 to contribute towards the cost of providing for his daughter at least the amount of the increase paid to him and this undertaking he faithfully honoured; but the insurance officer required him, as a condition of entitlement to the increase, to contribute a weekly amount of at least £7.50 (the amount, in effect, prescribed by section 41(1) of the Act, if read in isolation from any other statutory provision which has a modifying effect). This he refused to do. The Commissioner held that the claimant was entitled to the increase of benefit because he had made the requisite contribution within the meaning of section 43(1) of the Act by paying the weekly sum of £4.50, since that amount was the amount prescribed by section 41(1), *as reduced by the effect of regulation 8 of the first above-mentioned Regulations*. A similar result is achieved by virtue of regulation 16 of those Regulations. By virtue of that regulation he had to be treated as having received a weekly increase of benefit of £7.50 and, it was accepted that he had handed over to his former wife all he had received by way of the increase, he had to be deemed to have handed over the full £7.50 a week. He was further entitled to rely on the above-mentioned regulation 5.

R(S) 12/83

vii A claimant for sickness benefit lived with a woman and her 4 children, of whom only the youngest was the claimant's child. He claimed an increase of benefit in respect of each of the children. The woman was in receipt of child benefit for each of them. The claim was disallowed by the insurance officer in respect of the 3 elder children on the grounds that, for the purposes of the 'family fund' test, the child benefit should be treated as earmarked for the children in respect of whom it was paid and that accordingly, on the facts of this case, the claimant was not wholly or mainly maintaining the 3 elder children. The Commissioner considered the history of the 'family fund' test and set out the stages by which it should be applied (paragraphs 6 to 10) and he held that child benefit (even if not treated as the contribution of any member of the household) should not be treated for the purposes of the test as earmarked for the children in respect of whom it is paid (paragraph 15). See also CI 151/50 (KL), R(I) 46/52, R(I) 1/57, R(I) 70/60, CS 58/49 (KL) para 6, 7.3.6i, R(S) 1/51, 7.21ii, CP 96/50 (KL), 5.2.2i, 7.2.1i, CU 544/50 (KL). Followed in R(S) 2/85.

R(S) 2/85

viii A man claimed an increase of sickness benefit in respect of 3 children, none of whom were his, but were the children of the woman with whom he was living. His sole resources were supplementary benefit paid to him as head of the assessment unit, which included the children. The question arose whether he was wholly or mainly maintaining the children for the purposes of the 'family fund' test. It was held that he was not: where a household is being maintained wholly by supplementary benefit, a person cannot be said to be maintaining that household simply by virtue of the fact that he (or she) is the person to whom supplementary benefit is payable as the head of the assessment unit: for the purposes of the 'family fund' test supplementary benefit falls to be treated as a contribution from an outside agency. (Para 12) R(S) 22/52, para 8 and R(S) 12/83 followed. R(I) 1/57, para 21 and R(I) 8/65, para 11 not followed. See also R(S) 7/89, 6.2.1 ix *below*.

R(S) 7/89

ix A claimant for invalidity benefit lived with a widow and the 2 children of her marriage plus a younger child of their union. Prior to claiming invalidity benefit, which included an increase for all 3 children, he had been unemployed and receiving supplementary benefit for the whole family because his title to unemployment benefit was exhausted. His claim for the eldest 2 children was disallowed because he was not wholly or mainly maintaining them for the purposes of the family fund test. A Tribunal of Commissioners held that the period during which the claimant must satisfy the

family fund test is that immediately prior to incapacity, not when last in employment. It was further held that supplementary benefit is to be regarded as being contributed by the claimant where in fact he does contribute the amount of his supplementary benefit to the upkeep of the family. R(S) 2/85 para 12 not followed.

R(U) 25/59

2 Unemployment benefit

i A man made a claim for an increase of unemployment benefit in respect of his 2 children who were living with their mother, his divorced wife. He was required by court order to pay 15s. a week towards the maintenance of each child, but in fact he made no payments at all for some 10 months. It was held that the increase was not payable to him on the grounds that, since the children were not living with him, he was required by the statutory provisions then in force to prove that he was contributing to the cost of providing for the children at the required rate. See now section 43 of the Social Security 1975 and section 3(1)(b) of the Act.

R(U) 11/62
(T)

ii The main purpose of increases of unemployment benefit is to enable the person who has been maintaining dependants, either by providing them with a home or otherwise, to continue to do so during a spell of unemployment; they are not designed merely to increase his personal rate of benefit. A man who had not lived with his wife and 2 children for 12 months, but was not living permanently apart from them, made a claim for an increase of unemployment benefit in respect of, *inter alia*, the children. He had contributed the required weekly amount to the cost of providing for the children and his entitlement to the increase depended accordingly upon whether they could be said to be 'living with him'. It was held by a Tribunal of Commissioners that the words 'living with' in what was then the relevant statutory provisions (see now section 43 of the Social Security Act 1975 and section 3(1)(b) of the Act) should be given their ordinary and natural meaning. (See paragraph 11-12).

R(U) 14/62

iii A claimant was not making current contributions for the maintenance of his child, who was not living with him, during 2 periods when he was receiving an increase of unemployment benefit for the child. It was held that the increase was not payable since, in order to satisfy the 'contribution test' (see section 43 of the Social Security Act) contributions must be paid at the relevant time and once contributions have ceased to be made a subsequent payment of arrears could not provide the right to the increase retrospectively. But where contributions were being paid at the relevant time it might be possible to take an elastic view of interruptions in such contributions. On the facts of the case it was held that the claimant was not entitled to an increase of unemployment benefit in respect of his child.

R(U) 2/65

iv A claimant's 4 elder children lived with his former wife and were included in her family for the purposes of the Family Allowances Act 1945, while the claimant's youngest child lived with him and his second wife and was included in his family for the purposes of that Act. It was held that an increase of unemployment benefit was payable to the claimant in respect of the 4 children who were living with his former wife, it being accepted that he was contributing to the cost of providing for them at the required rate, and the fact that he was part-owner with his former wife of the house in which she and the 4 elder children were residing fell to be taken into account when the amount was being calculated.

R(U) 3/78

v Prior to his imprisonment in September 1976 the claimant received an increase of unemployment benefit in respect of his wife and 2 children with whom he was living. Following his release from prison in October 1976 he made a fresh claim for unemployment benefit from 13 October 1976, but he did not return to live with his wife and children and he sent no money towards the maintenance of the children until about a fortnight later. In July 1977, he gave a written undertaking to contribute to their maintenance in accordance with regulation 8 of the Social Security (General Benefit) Regulations

R(U) 6/79

1974 (replaced from April 1977 by regulation 5 of the Social Security Benefit (Dependency) Regulations 1977). It was held that regulation 8 postulates that an undertaking has been given before or during the week in respect of which entitlement is in question, and that whilst it may be necessary, to give practical efficacy to the regulation, to give retrospective effect to the undertaking to the extent of a week, it is not legitimate to give such effect to anything like the extent of 8 or 9 months.

vi A claimant was awarded unemployment benefit, including an increase in respect of his 2 children who were not living with him, from 30 July 1976 to 7 October 1976 and from 17 November 1976 to 27 January 1977. Sickness benefit was awarded for the intervening period. On 25 August 1976 and 9 December 1976 he gave undertakings to make the required contributions towards the cost of providing for the children. He was in breach of his undertaking for the period 17 November 1976 to 20 January 1977. It was submitted that there was no power to review the award of the increase for the children for the period 17 November 1976 to 4 December 1976 because the undertaking given on 9 December 1976 could

not operate retrospectively (R(U) 3/78, 6.2.2v *above*). Rejecting this submission it was held that the undertaking given on 9 December 1976 was merely in confirmation of that given on 25 August 1976. The earlier undertaking remained effective and was neither superseded nor destroyed by the later one. Accordingly, the decisions awarding increases of benefit for the inclusive period 17 November 1976 to 20 January 1977 could be reviewed.

R(G) 1/57

3 Widow's benefit

i The son of a claimant for widowed mother's allowance had taken a training course in farming and then, in continuation of his training, was placed in employment on a farm for 3 years. He lived on the farm during the week but stayed at weekends and holidays with the claimant, who bought for him a motor-bicycle, petrol and nearly all his clothes. The claimant lodged with friends and special arrangements had to be made to accommodate him when he was away from the farm. It was held that the son was residing with his mother and that the claimant was entitled to a widowed mother's allowance. See also regulation 2(3) of the Social Security Benefit (Persons Residing Together) Regulations 1977.

R(G) 4/62

ii A widow, her daughter and her daughter's illegitimate child lived in the same house and, whilst the daughter was at work, the grandmother looked after the child. Although she was unable to support herself and the child, the mother had not relinquished parental control of her child despite the grandmother's wish that she should do so. It was held that the child was living with her mother and therefore could not be included in the grandmother's family. The grandmother was not, therefore, entitled to an increase in widow's allowance in respect of the child. See also R(F) 3/63, 6.1.2 i *above*.

R(G) 1/92

iii Following her husband's death, a pregnant woman claimed and was paid widowed mother's allowance. Having answered "no" to the question whether the expected child was her husband's, her claim for an increase for that child was disallowed on the ground that the child was not her late husband's. It was held that:

1. the presumption of law that a child born in wedlock to a married woman was begotten by her husband may be rebutted by evidence showing it is more probable that the child was not her late husband's
2. the standard of proof to be adopted is that used by the courts by virtue of the Family Law Reform Act 1969 - to consider whether it is more probable than not that the child was not the child of the husband
3. the child was the daughter of the claimant and her late husband.

R(P) 3/85

4 Retirement pension

i A claimant was in receipt of an increase of his retirement pension in respect of his grandson. He was also in receipt of child benefit in respect of him until 18.7.83, when payment of it was stopped, because the grandson who had left school at the age of 17 on 8.3.83 had begun employment on 11.7.83. The claimant continued to draw the increase of his retirement pension for another 7 weeks until 7.9.83. The insurance officer then reviewed the award, declared an overpayment in those weeks and required repayment. The Commissioner held that the Child Benefit (General) Regs 1976, r.7(1) and (2) applied to the grandson in that, although he ceased full-time education on 8.7.83, he fell to be treated as a child until the (prescribed) terminal date - 5.9.83; reg 7(3) did not remove entitlement to child benefit for a child undertaking full-time employment, but provided

R(G) 6/52 that such benefit should not be payable (para 6); the claimant's entitlement to an increase of retirement pension depended upon his being entitled to child benefit for his grandson; entitlement to that benefit continued to 5.9.83, albeit by operation of r.7(3) it was not payable after 18.7.83; the claimant therefore had to be held as remaining entitled to increase of retirement pension up to the week in which 5.9.83 fell (para 7); the decision awarding increase of the pension did not fall to be revised in respect of the period 21.7.83 to 7.9.83 and no overpayment of retirement pension had been made (para 8). *Insurance Office v. McCaffrey* [1984] 1 WLR 1353 HL followed; R(S) 11/83 (T) rejected.

Part 3: Guardian's allowance

Section 38 of the Social Security Act 1975.

R(G) 12/55
(T)

1 Meaning of 'parent'

R(G) 4/83
(T)

Appendix

i The word 'step-parent' must be given its ordinary meaning and, since a step-parent is a spouse of a parent by a subsequent marriage, it was held that, although the father and mother of the child in respect of whom a guardian's allowance was claimed were dead, the child's step-mother was still alive and that the allowance was not, therefore, payable to the claimant.

ii An illegitimate child whose mother had died was adopted jointly by the parents of the child's natural father. Following the death of the adopters the child became a child of the family of its father, who claimed the guardian's allowance. It was held by a Tribunal of Commissioners that a guardian's allowance was not payable since 'parent' must include a child's natural father.

iii The Court of Appeal, *sub nom. Secretary of State for Social Services v. Joan Smith and the Insurance Officer*, overruling the decision of a Tribunal of Commissioners, held that for the purposes of section 38(6) of the Act 'parent' does not include the natural parent of a child who has been adopted by another.

R(G) 11/52
(T)

2 Allowance not payable on ground that the whereabouts of the surviving parent is not unknown

Section 38(2)(b) of the Social Security Act 1975

R(G) 10/55

i A claim for a guardian's allowance was made in respect of the claimant's 3 brothers. Their mother was dead and their father had not been seen by the claimant for some years, but his address at the date of the mother's death was known to the children's grandfather. It was held by a Tribunal of Commissioners that guardian's allowance was not payable on the ground that 'cannot be traced' (which was not the phrase used in the statutory provisions then in force) means that no evidence can be found of the parent being alive or having died.

R(G) 3/68

ii It was held that a guardian's allowance was not payable to the grandmother of

a child whose mother was dead and whose father, it was alleged, could not be traced. The father had disappeared 4 days before the mother's death but was arrested by the police 2 days afterwards. Although the father could not be found at the date of the mother's death, it was proper to allow a reasonable period for enquiry and research when it was being considered whether he could be traced.

iii A claim for a guardian's allowance was made in respect of a boy of 15 who had been born in England. The boy's father was dead and the whereabouts of his mother were unknown despite the claimant's having made enquiries, but about a fortnight after the claim was made the boy received a letter from his mother, who was in the Soviet Union. The claimant then began wardship proceedings in respect of the boy, who received 2 further letters from his mother, but she did not reply to letters about the wardship proceedings which were sent to her at the address given in her letters to the boy. It was held that the insurance office should not be disregard facts which have come to light and events which have occurred since the date of the claim and that a local tribunal should also deal with the case on the basis of the facts known at the date of decision. It was held further that the whereabouts of the moth had been discovered notwithstanding that they had become known otherwise than by means of the efforts of the claimant; that the mother had not replied to the letters sent to her; and that the mother could not be compelled to contribute to the maintenance of the boy.

R(G) 10/52
(T)

3 Death of one parent

R(G) 15/52

i The mother of a child who was divorced from the child's father had obtained a court order for maintenance. The mother died and it was contended that, as the order came to an end on her death, there was no court order in force 'at' her death, with the result that the fact that the father was still alive was not material to the claim for a guardian's allowance. It was held by a Tribunal of Commissioners that a guardian's allowance was not payable since 'at the death' refers to the moment of dying and not to the state of being dead. See paragraphs 5-12.

R(G) 4/59

ii A claim for guardian's allowance was made in respect of an illegitimate child whole mother was dead. The father of the child was alive but had not been found by a court of competent jurisdiction to be the father. It was held that guardian's allowance was not payable since, on the facts, paternity had been 'admitted or established'.

iii A mother of an illegitimate child in respect of whom a claim for a guardian's allowance was made had died and the whereabouts of the father were unknown with any certainty. Nevertheless the claimant agreed that a man traced in the records (of what was then the Ministry of Pensions and National Insurance) was the father, but contended that paternity could not be legally established and stated that she was not willing to attempt to ascertain his whereabouts. It was held that it had been shown that the man traced was the father of the child and that the claimant had not proved that he was dead or that she had failed after all reasonable effects to discover his whereabouts.

R(G) 2/81

iv The marriage of a child's mother had ended in divorce. On the mother's death the child's grandmother took over her care and claimed guardian's allowance under regulation 4(1) Social Security (Guardian's Allowance) Regulation 1975. Evidence conflicted about the child's paternity but regulation 3 of the Guardian's Allowance regulations, only operate where a child is clearly illegitimate and this will not be the position save in most exceptional circumstances where there was a subsisting marriage at the child's birth. The relevance of an Order under section 41 Matrimonial Causes Act 1973 and section 26 Family Law Reform Act 1969 are discussed.

R(G) 2/83

v The claimant claimed guardian's allowance for her niece and nephew. Their mother, her sister, had died in 1981 and the claimant had looked after the 2 children since before her sister's death. The sister had been separate from her husband, the children's father, since 1970. She had received no maintenance from him and his whereabouts were unknown. The claimant's mother had the address of her husband's sister in Cyprus and had told her by telephone of her sister-in-law's death. The husband did in fact attend his wife's funeral and was seen there by the claimant but she did not talk to him. After the funeral the husband again disappeared. Later the claimant's mother lost the address of the husband's sister and neither she nor the claimant could remember it, nor did either know of the husband's subsequent whereabouts or themselves make any effort to find him. The Commissioner held that:-

1. section 38 of the Social Security Act 1975 differed from the provision in the National Insurance Act 1965: the provisions of the 1975 Act indicated the abandonment of the exclusive application of the principle of orphanhood: the interpretation of the Northern Ireland Commissioners in decisions R 3/74(P) and 3/75(P) applied under the 1965 Act should be adopted in Great Britain for the purposes of the 1975 Act (paragraph 16);

2. for the purposes of claiming the allowance, once a person had, after the death of one parent, discovered the whereabouts of the other parent, that person could not be assisted by the subsequent disappearance of the other parent; for such a person had not failed [in fact] to discover the whereabouts of the other parent (paragraph 17);

3. the claimant had discovered the whereabouts of the father within the meaning of section 38(2)(b) of the 1975 Act, when she saw him at her sister's funeral (paragraph 18);

R(G) 4/65

4. a claimant could not be regarded as having made all reasonable efforts to discover a person's whereabouts if she had not made the efforts to do so which would reasonably be expected to be made by someone who had wanted to find that person (paragraph 21).

4 Imprisonment and legal custody

i The father of 4 children was charged with the murder of their mother and was found by the High Court of Judiciary at Glasgow to be unfit to plead. The court made an order under section 63 of the Mental Health (Scotland) Act 1960 for him to be detained in hospital and subsequently the maternal grandmother of the children claimed guardian's allowance in respect of them. It was held that the allowance was not payable because the father was not, in terms of regulation 5A of the National Insurance (Guardian's Allowances) Regulations 1948 (see now regulation 5 of the Social Security (Guardian's Allowances) Regulations 1975), in custody as a person sentenced or ordered to be kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known. See paragraph 7-8.

R(G) 2/80

ii 2 children were in the care of their grandmother following the death of their mother. Their father was convicted of their mother's manslaughter and ordered to be detained without limit of time under sections 60-65 of the Mental Health Act 1959.

Held that the grandmother's claim for guardian's allowance failed since the father was not in prison within section 38(2)(c) Social Security Act 1975 nor could he be treated as being in prison or legal custody by regulation 5(1) of the Social Security (Guardian's Allowances) Regulations 1975. The meanings of 'imprisonment', 'detention in legal custody' and kept in custody during Her Majesty's pleasure or until the directions of Her Majesty are known' in relation to the Mental Health Act 1959, the Social Security Act 1975 and the Guardian's Allowances Regulations 1975 are discussed. R(G) 4/65 distinguished.

R(G) 15/59

Part 4: Child's special allowance

Section 31 of the Social Security Act 1975

1 When payable

i The claimant's former husband contributed towards the maintenance of her 2 children, in cash or in kind, until he became unemployed just over 4 months before he died, but although he was a very sick man he obtained employment during about 8 weeks of that time. He was then admitted to hospital and died 6 weeks later. It was held that there was a temporary and involuntary cessation of contribution from the time he became unemployed but that the period from his admission to hospital to his death should be disregarded. Before that he had been ill for a long time but his condition was not so hopeless that there were no prospects of future contributions towards the children's maintenance and that when his contributions to determine weekly rates of the allowance were being averaged the weeks when no contributions were made should be excluded. It was held further that child's special allowance was payable to the claimant.

R(G) 17/59

ii A claimant for a child's special allowance was divorced from her husband at the time of his death and an order for interim alimony for herself and her 2 children had been made when she instituted divorce proceedings, but the order had never been complied with. After the decree had been made absolute the claimant's husband agreed to pay her half the net profits of the sale of a house he had brought in her name and half the surrender value of a life policy and enter into covenants to pay £5 a year for herself and £50 a year for each child, but he died before the deeds of covenant were agreed or the sale of the house completed. It was held that the claimant was entitled to child's special allowance at the full rate since the fact that the deeds of covenant were not signed and the payment was not made until after his death did not preclude her from attributing the sum to the discharge of her husband's undertaking to maintain her children where, before his death, he had done everything in his power to ensure that she should receive that sum.

R(G) 3/59

R(G) 5/59

2 Allowance held not to be payable

i It was held that the innocent party to a bigamous marriage was not entitled to a child's special allowance since such a marriage was void *ab initio* and was not, accordingly, a marriage which could be terminated by divorce or by annulment.

ii A woman was divorced from her husband in 1951 and a court order for maintenance was made against him in respect of her and her child. The husband made regular payments until June 1951, when he was discharged from the Army, but for the next 2½ years he made 3 payments only. It was held that a child's special allowance was not payable to the claimant since the expression 'had before his death been contributing' means 'had immediately before his death been contributing'. Compare R(G) 15/59, supra 6.4.1 i. See also R(G) 6.59 and R(G) 3/60.

R(F) 2/89

Part 5: Overlapping Benefits

1 One-parent benefit and guardian's allowance not awarded for the same child

i A claimant receiving an increase of child benefit for her youngest child was awarded child benefit and guardian's allowance for her grandchild. One parent

benefit was disallowed because the guardians allowance is a "specified benefit". The increase in benefit already paid from 10.12.85 to 19.10.86 was treated as paid on account of the guardian's allowance. A Commissioner held that the claimant was entitled to both an increase of benefit for her daughter and the full rate of guardians allowance for her grandchild for the disputed period. Although regulation 2(4)(a) and (c) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 do not expressly state that one parent benefit and the "specified benefit" must relate to the same child, any other interpretation would be inconsistent with regulation 8 of the overlapping benefit regulations.

The decisions listed below are not included in chapter 6

A *Decisions relating to apprentices*

R(F) 1/61	R(F) 4/63
R(F) 5/61	R(F) 2/64
R(F) 6/61	R(F) 4/64
R(F) 7/61	R(F) 5/64
R(F) 12/61	R(F) 2/73

B *Decisions relating to interruption of full-time training or instruction in a school*

R(F) 2/61	R(F) 1/68
R(F) 13/61	R(F) 1/70
R(F) 7/64	

C *Decisions no longer relevant for divers reasons*

CG 13/48	CG 186/50	R(F) 6/60
CS 7/49	CG 203/50	R(F) 7/60
CS 41/49	R(G) 9/51	R(G) 8/62
CG 114/49	R(G) 4/52	R(F) 1/69
CS 788/49	R(G) 13/56	R(G) 1/74
CG 52/50	R(F) 5/60	

D *Decisions relating to European Community law*

R(F) 1/76
R(F) 2/83
R(F) 1/88