

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

The Law Relating to Social Security

Volumes 2, 3 and 4 Supplement 85 – December 2008

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [85] includes amendments to the Contents Volume and Volumes 1, 2, 3, 4, 5, 6, 8, 11, 12 and 13.
2. This package contains Volumes 2, 3 and 4 and incorporates various miscellaneous amendments.
3. This supplement is issued in PDF format only.
4. The amended pages have been reprinted in full. The supplement number is printed at the bottom of each replacement page. This supplement contains an update of the page check list at the back of each volume.
5. Due to space constraints, DMA can only reproduce legislation currently in force. Where users are instructed to remove pages they may like to consider the need to retain such pages for their own use.
6. Remove the sheets in the left-hand column and insert new sheets in the right-hand column (the numbers quoted are those printed at the bottom of the respective pages). When the revised sheets have been inserted, note the record of amendments at the back of the volume.
7. The last 2 supplement packages have amended the following volumes:

Supplement No. 84 [Sept 2008] Contents 1, 3, 4, 5, 6, 8, 11 and 13
Supplement No. 83 [June 2008] Contents 1, 2, 3, 4, 5, 6, 8, 11, and 12.
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9. Starting in Supplement 76 the triangles ►◄ signifying additions, deletions or amendments to Statutory Instruments will be numbered to aid reference. Numbering will start at 1 on each page however, only those pages being updated will be affected.

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Insert

Volume 2

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- (2) The conditions referred to in subsection (1) above are that—
- (a) the pensioner would, apart from this section, have an earnings factor for the year—
 - (i) equal to or greater than the qualifying earnings factor for the year; but
 - (ii) less than the low earnings threshold for the year;
 - (b) [¹carer’s allowance]—
 - (i) was payable to the pensioner throughout the year; or
 - (ii) would have been so payable but for the fact that under regulations the amount payable to him was reduced to nil because of his receipt of other benefits;
 - (c) for the purposes of paragraph 5(7)(b) of Schedule 3, the pensioner is taken to be precluded from regular employment by responsibilities at home throughout the year by virtue of—
 - (i) the fact that child benefit was payable to him in respect of a child under the age of six; or
 - (ii) his satisfying such other condition as may be prescribed;
 - (d) the pensioner is a person satisfying the requirement in subsection (3) below to whom long-term incapacity benefit [²or qualifying employment and support allowance] was payable throughout the year, or would have been so payable but for the fact that—
 - (i) he did not satisfy the contribution conditions in paragraph 2 of Schedule 3 [²or, as the case may be, paragraph 1 of Schedule 1 to the Welfare Reform Act.]; or
 - (ii) under regulations the amount payable to him was reduced to nil because of his receipt of other benefits or of payments from an occupational pension scheme or personal pension scheme.

- (3) The requirement referred to in subsection (2)(d) above is that—
- (a) for one or more relevant years the pensioner has paid, or (apart from this section) is treated as having paid, primary Class 1 contributions on earnings equal to or greater than the qualifying earnings factor; and
 - (b) the years for which he has such a factor constitute at least one tenth of his working life.

- (4) For the purposes of subsection (3)(b) above—
- (a) a pensioner’s working life shall not include—
 - (i) any tax year before 1978-79; or
 - (ii) any year in which he is deemed under subsection (1) above to have an earnings factor by virtue of fulfilling the condition in subsection (2)(b) or (c) above; and
 - (b) the figure calculated by dividing his working life by ten shall be rounded to the nearest whole year (and any half year shall be rounded down).

[³(4A) The following do not apply to a pensioner attaining pensionable age on or after 6th April 2010—

- (a) the requirement referred to in subsection (2)(d) above, and
- (b) subsections (3) and (4) above.]

(5) The low earnings threshold for the first appointed year and subsequent tax years shall be £9,500 (but subject to section 148A of the Administration Act).

¹ In s. 44A(2)(b) the words “invalid care allowance” substituted by “carer’s allowance” (1.9.02 for the purposes of exercising powers to make subordinate legislation, 1.4.03 for all other purposes) by para. 2(a) of the Schedule to S.I. 2002/1457.

² Words inserted and added in paras. 2(d), ss. (2)(d) and (i) (27.10.08) by S.I. 2008/1554.

³ S. 44A(4A) inserted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 1, para. 34.

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Ss. 44A-44B

(6) In subsection (2)(d)(ii) above, “occupational pension scheme” and “personal pension scheme” have the meanings given by subsection (6) of section 30DD above for the purposes of subsection (5) of that section.]

[¹(7) In subsection (2)(d) “qualifying employment and support allowance” means contributory employment and support allowance where—

- (a) that allowance was payable for a continuous period of 52 weeks;
- (b) that allowance included the support component under section 2(2) of the Welfare Reform Act; or
- (c) in the case of—
 - (i) a man born between 6th April 1944 and 5th April 1947; or
 - (ii) a woman born between 6th April 1949 and 5th April 1951, that allowance was payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.]

Deemed earnings factors: 2010-11 onwards.

[²44B—(1) This section applies to 2010-11 and subsequent tax years.

(2) For the purposes of section 44(6)(za) above, if any of Conditions A to C in subsections (3) to (5) below is satisfied for a relevant year to which this section applies, a pensioner is deemed to have an earnings factors for that year which—

- (a) is derived from so much of his earnings as did not exceed the applicable limit and on which primary Class 1 contributions were paid; and
- (b) is equal to the amount which, when added to any other earnings factors taken into account under that provision, produces an aggregate of earnings factors equal to the low earnings threshold.

(3) Condition A is that the pensioner would, apart from this section, have an earnings factor for the year—

- (a) equal to or greater than the qualifying earnings factor (“the QEF”) for the year, but
- (b) less than the low earnings threshold for the year.

(4) Condition B is that the pensioner—

- (a) would, apart from this section and section 44C below, have an earnings factor for the year less than the QEF for the year, but
- (b) is entitled to an aggregate amount of earnings factor credits for that year under section 44C below equal to the difference between the QEF for the year and the earnings factor mentioned in paragraph (a) above.

(5) Condition C is that the pensioner is entitled to 52 earnings factor credits for that year under section 44C below.

(6) This section has effect in relation to the flat rate introduction year and any subsequent tax year as if—

- (a) subsection (2)(b) referred to an aggregate of earnings factors greater than the QEF, but less than the low earnings threshold, for the year (rather than to one equal to that threshold); and
- (b) Condition A in subsection (3) (and the reference to it in subsection (2)) were omitted.

(7) In this section—

- (a) “the applicable limit” has the same meaning as in section 44 above;

¹ Words inserted and added in s. (6) (27.10.08) by S.I. 2008/1554.

² Ss. 44B & 44C inserted (27.9.07) by the Pensions Act 2007 (c. 22), S. 9(1).

- (b) “the low earnings threshold” means the low earnings threshold for the year concerned as specified in section 44A above; and
- (c) in subsections (3) and (4), any reference to the pensioner’s earnings factor for a relevant year is to be construed in accordance with section 44(6)(za) above.

44C.—(1) This section applies, for the purposes of Conditions B and C in section 44B(4) and (5) above, to 2010-11 and subsequent tax years. Earnings factor credits.

- (2) In respect of each week—
 - (a) which falls in a relevant year to which this section applies, and
 - (b) in respect of which a pensioner is eligible for earnings factor enhancement,

the pensioner is entitled to an earnings factor credit equal to 1/52 of the QEF for that year.

This is subject to subsection (5) below.

(3) A pensioner is eligible for earnings factor enhancement in respect of a week if one or more of the following apply—

- (a) he was a relevant carer in respect of that week for the purposes of section 23A above (see section 23A(3));
- (b) carer’s allowance was payable to him for any part of that week, or would have been so payable but for the fact that under regulations the amount payable to him was reduced to nil because of his receipt of other benefits;
- (c) severe disablement allowance was payable to him for any part of that week;
- (d) long-term incapacity benefit was payable to him for any part of that week or would have been so payable but for the fact that—
 - (i) he did not satisfy the contribution conditions in paragraph 2 of Schedule 3, or
 - (ii) under regulations the amount payable to him was reduced to nil because of his receipt of other benefits or of payments from an occupational pension scheme or personal pension scheme;
- (e) he satisfies such other conditions as may be prescribed.

(4) In subsection (3)(d)(ii) above “occupational pension scheme” and “personal pension scheme” have the meanings given by subsection (6) of section 30DD above for the purposes of subsection (5) of that section.

(5) For the purposes of Condition B in section 44B(4) above a person is not entitled to an aggregate amount of earnings factor credits in respect of a year that is greater than the difference referred to in that Condition.

(6) For the purposes of this section a week that falls partly in one tax year and partly in another is to be treated as falling in the year in which it begins and not in the following year.

- (7) In section 44B above and this section—
 - (a) “the QEF” means the qualifying earnings factor, and
 - (b) any reference to a person being entitled to an earnings factor credit of a particular amount (or to an aggregate amount of earnings factor credits) for a year is a reference to the person being treated as having for that year an earnings factor (within the meaning of section 44(6)(za) above) of the amount in question by virtue of subsection (2) above.”]

45.—(1) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year before The additional pension in a Category A retirement pension.

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S. 45

6th April 1999 shall be the weekly equivalent of 1 1/4 per cent. of the [¹ adjusted] amount of the surpluses mentioned in section 44(3)(b) above.

(2) The weekly rate of the additional pension in Category A retirement pension in any case where the pensioner attained pensionable age in a tax year after 5th April 1999 shall be [²the sum of the following]—

- (a) in relation to any surpluses in the pensioner's earnings factors for the tax years in the period beginning with 1978-79 and ending with 1987-88, the weekly equivalent of 25/N per cent. of the [¹ adjusted] amount of those surpluses; and
 - (b) in relation to any surpluses in the pensioner's earnings factors in a tax year after 1987-88 [²but before the first appointed year], the weekly equivalent of the relevant percentage of the [¹ adjusted] amount of those surpluses.
- [²(c) in relation to any tax years falling within subsection (3A) below, the weekly equivalent of the amount calculated in accordance with Schedule 4A to this Act.] [³; and
- (d) in relation to the flat rate introduction year and subsequent tax years, the weekly equivalent of the amount calculated in accordance with Schedule 4B to this Act.]

(3) In subsection (2)(b) above, “relevant percentage” means—

- (a) 20/N per cent., where the pensioner attained pensionable age in 2009-10 or any subsequent tax year;
- (b) $(20 + X/N)$ per cent., where the pensioner attained pensionable age in a tax year falling within the period commencing with 1999-2000 and ending with 2008-9.

[⁴(3A) The following tax years all fall within this subsection—

- (a) the first appointed year;
- (b) subsequent tax years [⁵before the flat rate introduction year.]

(4) In this section—

- (a) $X = 0.5$ for each tax year by which the tax year in which the pensioner attained pensionable age precedes 2009-10; and
- (b) $N =$ the number of tax years in the pensioner's working life which fall after 5th April 1978;

but paragraph (b) above is subject, in particular, to subsection (5) and, where applicable, section 46 below.

(5) Regulations may direct that in prescribed cases or classes of cases any tax year shall be disregarded for the purpose of calculating N under subsection (4)(b) above, if it is a tax year after 5th April 1978 in which the pensioner—

- (a) was credited with contributions or earnings under this Act by virtue of regulations under section 22(5) above, or
- (b) was precluded from regular employment by responsibilities at home, or
- (c) in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,

but not so as to reduce the number of years below 210.

¹ Words in s. 45(1), (2)(a) & (b) inserted (8.1.01 for regulation & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907, 6.4.02 for all other purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 35(8)(a).

² Words and para. (c) inserted (8.1.01 for regulation & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907, 6.4.02 for all other purposes) in s. 45(2) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 31(1).

³ S. 45(2)(d) inserted (27.9.07) by the Pensions Act 2007 (c. 22), S. 11(2).

⁴ Subsection (3A) inserted in s. 45 (8.1.01 for reg. & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907, 6.4.02 for all other purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 31(2).

⁵ Words inserted in s. 45(3A) (27.9.07) by the Pensions Act 2007 (c. 22), s. 11(3).

(6) For the purposes of subsections (1) and (2) above, the weekly equivalent of [any amount] shall be calculated by dividing that amount by 52 and rounding the result to the nearest whole penny, taking any 1/2p as nearest to the next whole penny.

(7) Where the amount falling to be rounded under subsection (6) above is a sum less than 1/2p, the amount calculated under that subsection shall be taken to be zero, notwithstanding any other provision of this Act or the Administration Act.

(8) The sums which are the weekly rate of the additional pension in a Category A retirement pension are subject to alteration by orders made by the Secretary of State under section 150 of the Administration Act.

Up-rating percentages applicable to additional pension under such Orders are included in the table in volume 1 at pages 1.7751-3.

45A. [...²]

[³**45B.**—(1) The weekly rate of the additional pension in a Category A retirement pension shall be reduced as follows in any case where—

- (a) the pensioner has become subject to a state scheme pension debit, and
- (b) the debit is to any extent referable to the additional pension.

Reduction of additional pension in Category A retirement pension : pension sharing.

(2) If the pensioner became subject to the debit in or after the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount.

(3) If the pensioner became subject to the debit before the final relevant year, the weekly rate of the additional pension shall be reduced by the appropriate weekly amount multiplied by the relevant revaluation percentage.

(4) The appropriate weekly amount for the purposes of subsections (2) and (3) above is the weekly rate, expressed in terms of the valuation day, at which the cash equivalent, on that day, of the pension mentioned in subsection (5) below is equal to so much of the debit as is referable to the additional pension.

(5) The pension referred to above is a notional pension for the pensioner by virtue of section 44(3)(b) above which becomes payable on the later of—

- (a) his attaining pensionable age, and
- (b) the valuation day.

(6) For the purposes of subsection (3) above, the relevant revaluation percentage is the percentage specified, in relation to earnings factors for the tax year in which the pensioner became subject to the debit, by the last order under section 148 of the Administration Act to come into force before the end of the final relevant year.

[⁴(7) The Secretary of State may by regulations make provision about the calculation and verification of cash equivalents for the purposes of this section.

(7A) The power conferred by subsection (7) above includes power to provide—

- (a) for calculation or verification in such manner as may be approved by or on behalf of the Government Actuary, and
- (b) for things done under the regulations to be required to be done in accordance with guidance from time to time prepared by a person prescribed by the regulations.]

¹ Words in 45(6) substituted (8.1.01 for regs. & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907, 6.4.02 for all other purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 35(8)(b).

² S. 45A repealed (6.4.03) by the Tax Credits Act 2002, Sch. 6.

³ S. 45B inserted (1.12.00) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 6, para.

⁴ Subsections (7) & (7A) substituted (29.9.00) for (7) in s. 45B by the Child Support, Pensions & Social Security Act 2000 (c. 19), s. 41(2).

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Ss. 45B-46

- (8) In this section—
“final relevant year” means the tax year immediately preceding that in which the pensioner attains pensionable age;
“state scheme pension debit” means a debit under section 49(1)(a) of the Welfare Reform and Pensions Act 1999 (debit for the purposes of this Part of this Act);
“valuation day” means the day on which the pensioner became subject to the state scheme pension debit.]

Modifications of section 45 for calculating the additional pension in certain benefits.

46.—(1) [...¹]

(2) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 39(1)^[²or 39C(1)] above or section ^{[³48A(4) [², 48B(2) [...⁴]]} below in a case where the deceased spouse died under pensionable age ^[⁵or by virtue of section 39C(1) above or section 48A(4), 48B(2) or 48BB(5) below in a case where the deceased civil partner died under pensionable age], the following definition shall be substituted for the definition of “N” in section 45(4)(b) above—

[⁶“N”=

- (a) the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, or
- (b) the number of tax years in the period—
 - (i) beginning with the tax year in which the deceased spouse ^[⁵or civil partner] (“S”) attained the age of 16 or if later 1978-79, and
 - (ii) ending immediately before the tax year in which S would have attained pensionable age if S had not died earlier,whichever is the smaller number].

¹ S. 46(1) repealed (13.4.95) by the S.S. (Incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 12(a) & Sch. 2.

² For the purposes of making regulations, ref. to “39C(1)” inserted in s. 46(2) (24.4.00 for reg. making purposes, 9.4.01 for all other purposes) by s. 70 of the Welfare Reform and Pensions Act 1999 (c. 30).

³ Refs. substituted (19.7.95) in s. 46(2) by Pensions Act 1995 (c. 26), Sch. 4 para. 21(5).

⁴ Words omitted in s. 46(2) (8.1.01 for regulation & order making purposes, 9.4.01 for all remaining purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 32(3).

⁵ Words inserted in s. 46 (5.12.05) by Civil Partnership Act 2004 (c. 33) Sch. 24, para. 23.

⁶ Words in s. 46(2) substituted (19.7.95) by Pensions Act 1995 (c. 26), Sch. 4, para. 5.

SCHEDULE 10

Section 144(3).

PRIORITY BETWEEN PERSONS ENTITLED TO CHILD BENEFIT

Person with prior award

1.—(1) Subject to sub-paragraph (2) below, as between a person claiming child benefit in respect of a child [¹or qualifying young person] for any week and a person to whom child benefit in respect of that child [¹or qualifying young person] for that week has already been awarded when the claim is made, the latter shall be entitled.

(2) Sub-paragraphs (1) above shall not confer any priority where the week to which the claim relates is later than the third week following that in which the claim is made.

Person having child [¹or qualifying young person] living with him

2. Subject to paragraph 1 above, as between a person entitled for any week by virtue of paragraph (a) of subsection (1) of section 143 above and a person entitled by virtue of paragraph (b) of that subsection the former shall be entitled.

Husband and wife

3. Subject to paragraphs 1 and 2 above, as between a husband and wife residing together the wife shall be entitled.

Parents

4.—(1) Subject to paragraphs 1 to 3 above, as between a person who is and one who is not a parent of the child [¹or qualifying young person] the parent shall be entitled.

(2) Subject as aforesaid, as between two persons residing together who are parents of the child [¹or qualifying young person] but not husband and wife, the mother shall be entitled.

Other cases

5. As between persons not falling within paragraphs 1 to 4 above, such one of them shall be entitled as they may jointly elect or, in default of election, as the Secretary of State may in his discretion determine.

Supplementary

6.—(1) Any election under this Schedule shall be made in the prescribed manner.

(2) Regulations may provide for exceptions from and modifications of the provisions of paragraphs 1 to 5 above in relation to such cases as may be prescribed.

¹ Words inserted in paras. 1, 2 & 4 (10.4.05) by the Child Benefit Act 2005 (c. 6), Sch. 1, para. 18.

Sch. 11

Section 153(3).

SCHEDULE 11

CIRCUMSTANCES IN WHICH PERIODS OF ENTITLEMENT TO STATUTORY SICK PAY DO NOT ARISE

1. A period of entitlement does not arise in relation to a particular period of incapacity for work in any of the circumstances set out in paragraph 2 below or in such other circumstances as may be prescribed.

[¹1A. Regulations under paragraph 1 above must be made with the concurrence of the Treasury.]

2. The circumstances are that—

- (a) at the relevant date the employee is [² over the age of 65];
- (b) the employee's contract of service was entered into for a specified period of not more than three months;
- (c) at the relevant date the employee's normal weekly earnings are less than the lower earnings limit then in force under section 5(1)(a) above;

[³(d) in the period of 57 days ending immediately before the relevant date the employee had at least one day on which—

- (i) he was entitled to incapacity benefit (or would have been so entitled had he satisfied the contribution conditions mentioned in section 30A(2)(a) above), or
- (ii) she was entitled to a maternity allowance,
- (iii) [...⁴]

[⁵(dd) in the period of 85 days ending immediately before the relevant date the employee had at least one day on which he was entitled to an employment and support allowance (or would have been so entitled had he satisfied the requirements in section 1(2) of the Welfare Reform Act 2007);

(There is no longer a sub-paragraph (e).)

- (f) the employee has done no work for his employer under his contract of service;
- (g) on the relevant date there is, [...⁶] a stoppage of work due to a trade dispute at the employee's place of employment;
- (h) the employee is, or has been pregnant and the relevant date falls within the disqualifying period (within the meaning of section 153(12) above).

3. In this Schedule "relevant date" means the date on which a period of entitlement would begin in accordance with section 153 above if this Schedule did not prevent it arising.

4.—(1) Paragraph 2(b) above does not apply in any case where—

- (a) at the relevant date the contract of service has become a contract for a period exceeding three months; or
- (b) the contract of service (the "current contract") was preceded by a contract of service entered into by the employee with the same employer (the "previous contract") and—
 - (i) the interval between the date on which the previous contract ceased to have effect and that on which the current contract came into force was not more than 8 weeks; and

¹ Para. 1A inserted (1.4.99) by Transfer of Functions Act 1999 (c. 11) Sch 1, para. 20.

² Words in para. 2(a) substituted (6.4.94) by Statutory Sick Pay Act 1994 (c. 2) s. 1(2).

³ Para. 2(d) substituted (13.4.95) for para. 2(d) and (e) by para. 43(2) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

⁴ Para. 2(d)(iii) repealed (3.11.00 for reg. making purposes, 6.4.01 for all other purposes) by s. 88 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁵ Para. (dd) inserted (27.10.08) by reg. 44 of S.I. 2008/1554.

⁶ Words "within the meaning of section 27 above" in para. 2(g) repealed (7.10.96) by Sch. 3 to Jobseekers Act 1995 (c. 18).

- (ii) the aggregate of the period for which the previous contract had effect and the period specified in the current contract (or, where that period has been extended, the specified period as so extended) exceeds 13 weeks.

(2) For the purposes of sub-paragraph (1)(b)(ii) above, in any case where the employee entered into more than one contract of service with the same employer before the current contract, any of those contracts which came into effect no more than 8 weeks after the date on which an earlier one of them ceased to have effect shall be treated as one with the earlier contract.

5. repealed by 1994 c.18, see Annex 1, page 2.3101.

6. For the purposes of paragraph 2(f) above, if an employee enters into a contract of service which is to take effect not more than 8 weeks after the date on which a previous contract of service entered into by him with the same employer ceased to have effect, the two contracts shall be treated as one.

7. Paragraph 2(g) above does not apply in the case of an employee who proves that at no time on or before the relevant date did he have a direct interest in the trade dispute in question.

8. Paragraph 2(h) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement (as defined for the purposes of statutory maternity pay in section 17(1) above).

SCHEDULE 12

RELATIONSHIP OF STATUTORY SICK PAY WITH BENEFITS AND OTHER PAYMENTS, ETC

The general principle

1. Any day which—

- (a) is a day of incapacity for work in relation to any contract of service; and
- (b) falls within a period of entitlement (whether or not it is also a qualifying day).

shall not be treated for the purpose of this Act as a day of incapacity for work for the purposes of determining whether a period is ...1² a period of incapacity for work for the purpose of incapacity benefit].

Contractual remuneration

2.—(1) Subject to sub-paragraphs (2) and (3) below, any entitlement to statutory sick pay shall not affect any right of an employee in relation to remuneration under any contract of service (“contractual remuneration”).

(2) Subject to sub-paragraph (3) below—

- (a) any contractual remuneration paid to an employee by an employer of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay statutory sick pay to that employee in respect of that day; and
- (b) any statutory sick pay paid by an employer to an employee of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay contractual remuneration to that employee in respect of that day.

(3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of sub-paragraph (1) or (2) above.

[³Incapacity benefit

3.—(1) This paragraph and paragraph 4 below have effect to exclude, where a period of entitlement as between an employee and an employer of his comes to an end, the provisions by virtue of which short-term incapacity benefit is not paid for the first three days.

(2) If the first day immediately following the day on which the period of entitlement came to an end—

- (a) is a day of incapacity for work in relation to that employee, and
- (b) is not a day in relation to which paragraph 1 above applies by reason of any entitlement as between the employee and another employer,

that day shall, except in prescribed cases, be or form part of a period of incapacity for work notwithstanding section 30C(1)(b) above (by virtue of which a period of incapacity for work must be at least 4 days long).

(3) Where each of the first two consecutive days, or the first three consecutive days, following the day on which the period of entitlement came to an end is a day to which paragraphs (a) and (b) of sub-paragraph (2) above apply, that sub-paragraph has effect in relation to the second day or, as the case may be, in relation to the second and third days, as it has effect in relation to the first.

¹ Words “a period of interruption of employment for the purposes of unemployment benefit or” repealed (7.10.96) from para. 1 by Sch. 3 to Jobseekers Act 1995 (c. 18).

² Words inserted (13.4.95) into para. 1 of Sch. 12 by para. 44(2) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18). (The words so inserted originally included, at the beginning, the words “for the purposes of unemployment benefit or”, but those words were later included among the words which were repealed as indicated in the preceding footnote.)

³ Paras. 3 and 4 substituted (13.4.95) by para. 44(3) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

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1975 No. 494

SOCIAL SECURITY

The Social Security (Airmen's Benefits) Regulations
1975

<i>Made</i> - - - -	<i>24th March 1975</i>
<i>Laid before Parliament</i>	<i>26th March 1975</i>
<i>Coming into Operation</i>	<i>6th April 1975</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon her by section 129(1) of the Social Security Act 1975(a) and all other powers enabling her in that behalf, without having referred any proposals on the matter to the National Insurance Advisory Committee since it appears to her that by reason of urgency it is expedient to do so, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Airmen's Benefits) Regulations 1975, and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1975;

▶“the Welfare Reform Act” means the Welfare Reform Act 2007◀

“airman” means a person who is, or has been, employed under a contract of service either as a pilot, commander, navigator or other member of the crew of any aircraft, or in any other capacity on board any aircraft where—

- (a) the employment in that other capacity is for the purposes of the aircraft or its crew or of any passengers or cargo or mails carried thereby; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or part) while the aircraft is in flight;

but does not include a person in so far as his employment is as a serving member of the forces (as defined in regulation 1(2) of the Social Security (Contributions) Regulations 1975(b), unless he is serving or undergoing training or instruction in any of the forces mentioned in Part I of Schedule 5 to those regulations (except the regular naval, military or air forces of the Crown) for a continuous period not exceeding 72 consecutive hours;

“employed as aircrew” means employed as pilot, commander, navigator or other member of the crew of any aircraft;

and other expressions have the same meanings as in the Act.

(3) any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(c) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

(a) 1975 c. 14.

(b) S.I. 1975/492.

(c) 1889 c. 63.

¹Defn. of “the Welfare Reform Act” inserted by reg. 65(2) of S.I. 2008/1554 as from 27.10.08.

Regs. 2–3

Removal of disqualification in the case of airmen for receiving benefit while absent from Great Britain

2.—(1) Any person who is or has been employed as crew, or who is or has been under contract to travel at his employer's expense for the purpose of commencing such employment, shall not, by reason of his being absent from Great Britain (but subject to the provisions of any regulations made under section 20(2)(a) (disqualification through misconduct) of the Act¹ or section 18(1) of the Welfare Reform Act²) be disqualified on any day for receiving ²incapacity benefit¹, employment and support allowance³ or severe disablement allowance⁴ if, in respect of such day or days, he has been left outside Great Britain or his employment has been terminated or he has not commenced such employment—

- (a) on account of any hurt or injury received, or any illness suffered, by him while so employed or under contract so to travel; or
- (b) in consequence of any action taken, while he is or was so employed or under contract so to travel, for the purpose of preventing infection.

(2) Where by virtue of this regulation a person is not disqualified on any day for receiving ⁴incapacity benefit¹ or to have limited capability for work as defined in section 1(4) of the Welfare Reform Act⁵ or severe disablement allowance⁴, although absent from Great Britain, he shall be deemed to be incapable of work by reason of some specific disease or bodily or mental disablement on any such day.

Application of the Act and regulations

3. The provisions relating to benefit (other than industrial injuries benefit) of the Act and of the Regulations made thereunder⁶, and the Jobseekers Act 1995(a) and regulations made thereunder¹ and Part 1 of the Welfare Reform Act and regulations made under it² shall, so far as they are not inconsistent with the provisions of these regulations, apply to an airman with this modification, that where an airman is, on account of his being outside the United Kingdom by reason of his employment as an airman, unable to perform an act required to be done either forthwith or on the happening of a certain event or within a specified time, he shall be deemed to have complied therewith if he performs the act as soon as is reasonably practicable, although after the happening of the event or the expiration of the specified time.

¹Words in regs. 2 & 3 inserted by reg. 65 of S.I. 2008/1554 as from 27.10.08.

²Words in reg. 2(1) substituted by reg. 3(a) of S.I. 1995/829 as from 13.4.95.

³Words substituted in reg. 2(1) by reg. 14 of S.I. 1984/1303 as from 29.11.84.

⁴Words in reg. 2(2) substituted by reg. 3(b) of S.I. 1995/829 as from 13.4.95.

⁵Words substituted in reg. 2(2) by reg. 14 of S.I. 1984/1303 as from 29.11.84.

⁶Words inserted in reg. 3 by reg. 9 of S.I. 1996/1345 as from 7.10.96

24th March 1975

Barbara Castle
Secretary of State for Social Services

(a) 1995 c. 18.

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These regulations modify and amplify the general provisions relating to benefit (other than industrial injuries benefit) of the Social Security Act 1975 and the regulations made thereunder, in their application to persons who are or have been employed under a contract of service on board aircraft. They remove, in certain circumstances, the statutory disqualification for the receipt of benefits for periods of absence from Great Britain (regulation 2), and provide for the extension, in certain circumstances, in the case of an airman employed as such outside the United Kingdom, of the time within which certain acts have to be performed for the purpose of the provisions of Part I of the Act and of regulations relating to benefit (regulation 3).

In so far as these regulations are made under the power conferred by section 129(1) of the Act, they only replace provisions of previous regulations with new provisions to the same effect, and therefore, by virtue of section 167(2)(c) of the Act, are made without being laid before Parliament in draft under section 167(1) of the Act.

2001 No. 769

SOCIAL SECURITY

The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001

<i>Made</i> - - - -	<i>7th March 2001</i>
<i>Laid before Parliament</i>	<i>13th March 2001</i>
<i>Coming into force</i>	<i>6th April 2001</i>

The Secretary of State for Social Security, with the concurrence of the Inland Revenue in so far as required, in exercise of powers conferred by sections 13(3), 22(5), 122(1) and 175(1) to (4) of, and paragraphs 8(1)(d) and (1A) and 10 of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a) and sections 182C and 189(1) and (3) to (6) of the Social Security Administration Act 1992(b) and of all other powers enabling him in that behalf and for the purpose only of consolidating other regulations hereby revoked(c), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 and shall come into force on 6th April 2001.

(2) In these Regulations, including this regulation—

“the Act” means the Social Security Contributions and Benefits Act 1992;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1979(d);

“contribution week” means a period of seven days beginning with midnight between Saturday and Sunday;

-
- (a) 1992 c. 4. See paragraph 8(1A) of Schedule 1 in respect of Inland Revenue concurrence. Section 13(3) was amended by paragraph 14(3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the 1999 Act”). Section 22(5) was amended by paragraph 22 of Schedule 2 to the Jobseeker’s Act 1995 (c. 18). Section 122(1) is cited because of the meaning assigned to the word “prescribe”. Section 175 was amended by paragraph 29 of Schedule 3 to the 1999 Act. Paragraph 8(1A) was inserted by paragraph 39(3) of Schedule 3 to the 1999 Act and amended by paragraph 3 of Schedule 11 to the Welfare Reform and Pensions Act 1999 (c. 30).
- (b) 1992 c. 5. Section 182C was inserted by paragraph 9 of Schedule 1 to the Social Security Administration (Fraud) Act 1997 (c. 47) and amended by paragraph 31 of Schedule 1 to the 1999 Act. Section 189(1), (4) to (6) was amended by paragraph 109 of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14) and subsection (1) was further amended by paragraph 57(2) of Schedule 3 to the 1999 Act.
- (c) See paragraph 10 of Schedule 7 to the Social Security Administration Act 1992 which exempts regulations made for the purpose only of consolidating other regulations revoked by them from the requirement for prior submission to the Social Security Advisory Committee.
- (d) S.I. 1979/591. The relevant amending instruments are S.I. 1984/77, 1987/413 and 2111, 1989/572, 1992/97 and 669, 1993/260, 1995/829, 1996/2367, 1999/567, 2000/2207, 2343 and 2744 and 2001/45.

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¹Words inserted in defns. & sub-para. (c) added to defn. of “relevant benefit year” by reg. 49(2)(a)-(e) of S.I. 2008/1554 as from 27.10.08.

²Words inserted in defn. of “due date” by reg. 2(2) of S.I. 2007/1154 as from 6.4.07.

³Reg. 1(3) & (4) added by reg. 4(2) of S.I. 2007/2582 as from 1.10.07.

“contribution-based jobseeker’s allowance” and “income-based jobseeker’s allowance” have the same meaning as in the Jobseeker’s Act 1995(a);

“contributory benefit” includes a contribution-based jobseeker’s allowance but not an income-based jobseeker’s allowance ▶¹and includes a contributory employment and support allowance but not an income-related employment and support allowance◀;

▶¹“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);◀

“due date” ▶²(subject to regulation 4(11))◀ means, in relation to any contribution which a person is–

- (a) liable to pay, the date by which payment falls to be made in accordance with Part IV of the Contributions Regulations;
- (b) entitled, but not liable, to pay, the date 42 days after the end of the year in respect of which it is paid;

“earnings factor” has the meaning assigned to it in section 21(5)(c) of the Act;

▶¹“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);◀

“relevant benefit year” has the meaning assigned to it in–

- (a) section 2(4)(b) of the Jobseeker’s Act 1995, in relation to a contribution-based jobseeker’s allowance;
- (b) paragraph 2(6)(b) of Schedule 3 to the Act(b) (contribution conditions for entitlement to short-term incapacity benefit), in relation to short-term incapacity benefit;

▶¹(c) paragraph 3(1)(f) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance), in relation to a contributory employment and support allowance.◀;

“relevant time”, in relation to short-term incapacity benefit, has the meaning assigned to it in paragraph 2(6)(a) of Schedule 3 to the Act;

▶¹“the Welfare Reform Act” means the Welfare Reform Act 2007◀;

“year” means tax year.

▶³(3) In these Regulations, “official error” means an error made by–

- (a) an officer of the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside the Department or Her Majesty’s Revenue and Customs caused or to which no person outside the Department or Her Majesty’s Revenue and Customs materially contributed; or
- (b) a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or the court.

(4) In paragraph (3)–

“Commissioner” means the Chief Social Security Commissioner or any other Social Security Commissioner and includes a tribunal of three or more Commissioners constituted under section 16(7) of the Social Security Act 1998;

“service provider” means a person providing services to the Secretary of State for Work and Pensions or to Her Majesty’s Revenue and Customs.◀

(a) 1995 c. 18.

(b) Paragraph 2(6)(b) was amended by paragraph 38(2) of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).

Appropriation of Class 3 contributions

2. Any person paying Class 3 contributions in one year may appropriate such contributions to the earnings factor of another year if such contributions are payable in respect of that other year or, in the absence of any such appropriation, the Inland Revenue may, with the consent of the contributor, make such appropriation.

Crediting of Class 3 contributions

3. Where, for any year, a contributor's earnings factor derived from—
- (a) earnings upon which primary Class 1 contributions have been paid or treated as paid;
 - (b) credited earnings;
 - (c) Class 2 or Class 3 contributions paid by or credited to him; or
 - (d) any or all of such earnings and contributions,

falls short of a figure which is 52 times that year's lower earnings limit for Class 1 contributions by an amount which is equal to, or less than, half that year's lower earnings limit, that contributor shall be credited with a Class 3 contribution for that year.

Treatment for the purpose of any contributory benefit of late paid contributions

4.—(1) Subject to the provisions of regulations 5 ¹to ²6B ³below and regulation 40 of the Contributions Regulations (voluntary Class 2 contributions not paid within permitted period), for the purpose of entitlement to any contributory benefit, paragraphs (2) to (9) below shall apply to contributions ("relevant contributions")—

- (a) paid after the due date; or
- (b) treated as paid after the due date under regulation 7(2) below.

²(1A) Any relevant contribution which is paid—

- (a) by virtue of an official error; and
- (b) more than six years after the end of the year in which the contributor was first advised of that error,

shall be treated as not paid. ⁴

(2) Subject to the provisions of paragraph (4) below, any relevant contribution other than one referred to in paragraph (3) below—

- (a) if paid—
 - (i) after the end of the second year following the year in which liability for that contribution arises,
 - (ii) following the due date for that contribution in the case of a contribution which a person is entitled, but not liable, to pay,

shall be treated as not paid;

- (b) if paid before the end of the said second year, shall, subject to paragraphs (7) and (8) below, be treated as paid on the date on which payment of the contribution is made.

(3) Subject to the provisions of paragraph (4) below, any relevant Class 2 contribution payable in respect of a contribution week after 5th April 1983 or any relevant Class 3 contribution payable in respect of a year after 5th April 1982—

- (a) if paid—
 - (i) after the end of the sixth year following the year in which liability for that contribution arises,

¹Words substituted in reg. 4(1) by reg. 2(a) of S.I. 2004/1361 as from 17.5.04.

²Words substituted in reg. 4(1) & reg. 4(1A) added by reg. 4(3) of S.I. 2007/2582 as from 1.10.07.

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(ii) following the due date for that contribution in the case of a contribution which a person is entitled, but not liable, to pay, shall be treated as not paid;

(b) if paid before the end of the said sixth year, shall, subject to paragraphs (7) and (8) below, be treated as paid on the date on which payment of the contribution is made.

(4) A Class 3 contribution payable by a person to whom regulation 27(3)(b)(ii) or (iii) of the Contributions Regulations(a) (which specify the conditions to be complied with before a person may pay a Class 3 contribution) applies in respect of a year which includes a period of education, apprenticeship, training, imprisonment or detention in legal custody such as is specified in that regulation—

(a) if paid after the end of the sixth year specified in that regulation, shall be treated as not paid;

(b) if paid before the end of the said sixth year shall, subject to the provisions of paragraphs (7) and (8) below, be treated as paid on the date on which payment of the contribution is made.

(5) Notwithstanding the provisions of paragraph (4) above, for the purpose of entitlement to any contributory benefit, where—

(a) a Class 3 contribution other than one referred to in sub-paragraph (b) below which is payable in respect of a year specified in that sub-paragraph, is paid after—

(i) the due date, and

(ii) the end of the second year following the year preceding that in which occurred the relevant time or, as the case may be, the relevant event, that contribution shall be treated as not paid;

(b) in respect of a year after 5th April 1982, a Class 3 contribution which is payable in respect of a year specified in paragraph (4) above, is paid after—

(i) the due date, and

(ii) the end of the sixth year following the year preceding that in which occurred the relevant time or, as the case may be, the relevant event, that contribution shall be treated as not paid.

(6) For the purposes of paragraph (5) above, “relevant event” means the date on which the person concerned attained pensionable age(b) or, as the case may be, died under that age.

(7) Notwithstanding the provisions of paragraphs (2), (3) and (4) above, in determining whether the relevant contribution conditions are satisfied in whole or in part for the purpose of entitlement to any contributory benefit, any relevant contribution which is paid within the time specified in paragraph (2)(b), (3)(b) or, as the case may be, (4)(b) above shall be treated—

(a) for the purpose of entitlement in respect of any period before the date on which the payment of the contribution is made, as not paid; and

(b) subject to the provisions of paragraph (8) below, for the purpose of entitlement in respect of any other period, as paid on the date on which the payment of the contribution is made.

(8) For the purpose of determining whether the second contribution condition for entitlement to a contribution-based jobseeker’s allowance ►¹, short-term incapacity benefit or a contributory employment and support allowance◀ is satisfied in whole or in part, any relevant contribution shall be treated—

¹Words substituted by reg. 49(3)(a) of S.I. 2008/1554 as from 27.10.08.

(a) Sub-para. (b)(iii) was inserted by reg. 9(b) of S.I. 1984/77.

(b) The definition of “pensionable age” in s. 122(1) of the Social Security Contributions and Benefits Act 1992 was substituted by para. 13(a) of Sch. 4 to the Pensions Act 1995 (c. 26).

- (a) if paid before the beginning of the relevant benefit year, as paid on the due date;
- (b) if paid after the end of the benefit year immediately preceding the relevant benefit year, as not paid in relation to the benefit claimed in respect of any day before the expiry of a period of 42 days (including Sundays) commencing with the date on which the payment of that contribution is made, and, subject to the provisions of paragraphs (2)(a) and (3)(a) above, as paid at the expiry of that period in relation to entitlement to such benefit in respect of any other period.

(9) For the purposes of paragraph (8) above, “second contribution condition” in relation to—

- (a) a contribution-based jobseeker’s allowance is a reference to the condition specified in section 2(1)(b) of the Jobseeker’s Act 1995(a);
- (b) short-term incapacity benefit is a reference to the condition specified in paragraph 2(3) of Schedule 3 to the Act.
- ▶¹(c) a contributory employment and support allowance is a reference to the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act◀

¹Para. (9)(c) inserted by reg. 49(3)(b) of S.I. 2008/1554 as from 27.10.08.

(10) This regulation shall not apply to Class 4 contributions.

▶²(11) Where an amount is retrospectively treated as earnings (“retrospective earnings”) by regulations made by virtue of section 4B(2) of the Act, the “due date” for earnings-related contributions in respect of those earnings is the date given by paragraph 11A of Schedule 4 to the Social Security (Contributions) Regulations 2001, for the purposes of this regulation and regulations 5 and 5A.◀

²Reg. 4(11) inserted by reg. 2(3) of S.I. 2007/1154 as from 6.4.07.

Treatment for the purpose of any contributory benefit of late paid primary Class 1 contributions where there was no consent, connivance or negligence by the primary contributor

5.—(1) This regulation applies where a primary Class 1 contribution which is payable on a primary contributor’s behalf by a secondary contributor—

- (a) is paid after the due date; or
- (b) in relation to any claim for—
 - (i) a contribution-based jobseeker’s allowance, is not paid before the beginning of the relevant benefit year, ▶³◀
 - (ii) short-term incapacity benefit, is not paid before the relevant time, ▶³or
 - (iii) a contributory employment and support allowance, is not paid before the beginning of the relevant benefit year,◀

³Words in reg. 5(1)(b)(i) omitted and words substituted and added to para. (1)(b)(iii) and (2)(a) by reg. 49 of S.I. 2008/1554 as from 27.10.08.

and the delay in making payment is shown to the satisfaction of ▶⁴an officer of◀ the Inland Revenue not to have been with the consent or connivance of, or attributable to any negligence on the part of, the primary contributor.

⁴Words inserted in reg. 5(1) by reg. 19 of S.I. 2002/2366 as from 8.10.02.

(2) Where paragraph (1) above applies, the primary Class 1 contribution shall be treated—

- (a) for the purpose of the first contribution condition of entitlement to a contribution-based jobseeker’s allowance ▶³, short-term incapacity benefit or a contributory employment and support allowance◀, as paid on the day on which payment is made of the earnings in respect of which the contribution is payable; and
- (b) for any other purpose relating to entitlement to any contributory benefit, as paid on the due date.

(a) S. 2(1)(b) was modified by regs. 158 and 167 of S.I. 1996/207.

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(3) For the purposes of this regulation—

(a) “first contribution condition” in relation to—

(i) a contribution-based jobseeker’s allowance is a reference to the condition specified in section 2(1)(a) of the Jobseeker’s Act 1995(a),

(ii) short-term incapacity benefit is a reference to the condition specified in paragraph 2(2) of Schedule 3 to the Act(b);

▶¹(iii) a contributory employment and support allowance is a reference to the condition specified in paragraph 1(1) of Schedule 1 to the Welfare Reform Act;◀

(b) “primary contributor” means the person liable to pay a primary Class 1 contribution in accordance with section 6(4)(a) of the Act(c) (liability for Class 1 contributions);

(c) “secondary contributor” means the person who, in respect of earnings from employed earner’s employment, is liable to pay a secondary Class 1 contribution in accordance with section 6(4)(b) of the Act.

¹Para. (iii) inserted into reg. 5(3)(a) by reg. 49 of S.I. 2008/1554 as from 27.10.08.

²Reg. 5A inserted by reg. 2(4) of S.I. 2007/1154 as from 6.4.07.

▶²Treatment for the purpose of any contributory benefit of duly paid primary Class 1 contributions in respect of retrospective earnings

5A. Where a primary Class 1 contribution payable in respect of retrospective earnings is paid by the due date, it shall be treated—

(a) for the purposes of the first contribution condition of entitlement to a contribution-based jobseeker’s allowance or ▶¹, short-term incapacity benefit, or a contributory employment and support allowance◀ as paid on the day on which payment is made of the retrospective earnings in respect of which the contribution is payable; and

(b) for any other purpose relating to entitlement to any contributory benefit, as paid on the due date.◀

Treatment for the purpose of any contributory benefit of contributions under the Act paid late through ignorance or error

6.—(1) In the case of a contribution paid by or in respect of a person after the due date, where—

(a) the contribution is paid after the time when it would, under regulation 4 or 5 above, have been treated as paid for the purpose of entitlement to contributory benefit; and

(b) it is shown to the satisfaction of ▶³an officer of◀ the Inland Revenue that the failure to pay the contribution before that time is attributable to ignorance or error on the part of that person or the person making the payment and that that ignorance or error was not due to any failure on the part of such person to exercise due care and diligence,

³Words inserted & substituted in reg. 6(1) by reg. 19 of S.I. 2002/2366 as from 8.10.02.

▶³an officer of the Inland Revenue may direct◀, for the purposes of those regulations, the contribution shall be treated as paid on such earlier day as ▶³the officer considers◀ appropriate in the circumstances, and those regulations shall have effect subject to any such direction.

(2) This regulation shall not apply to a Class 4 contribution.

⁴Reg. 6A inserted by reg. 2(b) of S.I. 2004/1361 as from 17.5.04.

▶⁴Treatment for the purposes of any contributory benefit of certain Class 3 contributions

6A.—(1) For the purposes of entitlement to any contributory benefit, this regulation applies in the case of a Class 3 contribution paid after the due date—

(a) S. 2(1)(a) was modified by regs. 158 and 167 of S.I. 1996/207.

(b) Para. 2(2) is amended by s. 62(2) of the Welfare Reform and Pensions Act 1999.

(c) S. 6 was substituted by para. 2 of Sch. 9 to the Welfare Reform and Pensions Act 1999 and amended by s. 77(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

- (a) which would otherwise under regulation 4—
 - (i) have been treated as paid on a day other than on the day on which it was actually paid; or
 - (ii) have been treated as not paid; and
- (b) which is paid in respect of a year after 5th April 1996 but before 6th April 2002.

(2) A contribution referred to in paragraph (1), where it is paid on or before 5th April 2009 by or in respect of a person who attains pensionable age on or after 6th April 2008, shall be treated as paid on the day on which it is paid.

(3) A contribution referred to in paragraph (1), where it is paid on or before 5th April 2009 by or in respect of a person who attains pensionable age on or after 24th October 2004 but before 6th April 2008, shall be treated as paid on—

- (a) the day on which it is paid; or
- (b) the date on which the person attained pensionable age,

whichever is the earlier.

(4) A contribution referred to in paragraph (1), where it is paid on or before 5th April 2010 by or in respect of a person who attains pensionable age on or after 6th April 1998 but before 24th October 2004, shall be treated as paid on—

- (a) 1st October 1998; or
- (b) the date on which the person attained pensionable age,

whichever is the later. ◀

▶¹**Treatment for the purpose of any contributory benefit of certain Class 2 or Class 3 contributions**

¹Reg. 6B inserted by reg. 4(4) of S.I. 2007/2582 as from 1.10.07.

6B.—(1) For the purpose of entitlement to any contributory benefit, a Class 2 or a Class 3 contribution paid after the due date—

- (a) which would otherwise under regulation 4 (apart from paragraph (1A) of that regulation)—
 - (i) have been treated as paid on a day other than the day on which it was actually paid; or
 - (ii) have been treated as not paid; and
- (b) which was paid after the due date by virtue of an official error,

shall be treated as paid on the day on which it is paid. ◀

Treatment for the purpose of any contributory benefit of contributions paid under regulation 54 of the Contributions Regulations

7.—(1) Subject to the provisions of paragraph (2) below, for the purpose of entitlement to any contributory benefit, where—

- (a) a person pays a Class 2 or Class 3 contribution in accordance with regulation 54 of the Contributions Regulations^(a) (method of, and time for, payment of Class 2 and Class 3 contributions etc.); and
- (b) the due date for payment of that contribution is a date after the relevant day,

that contribution shall be treated as paid by the relevant day.

(2) Where, in respect of any part of a late notification period, a person pays a Class 2 contribution which he is liable to pay, that contribution shall be treated as paid after the due date, whether or not it was paid by the due date.

(a) Reg. 54 was substituted by reg. 5 of S.I. 1993/260.

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(3) For the purposes of this regulation—

- (a) “late notification period” means the period beginning with the day a person liable to pay a Class 2 contribution was first required to notify the Inland Revenue in accordance with the provisions of regulation 53A of the Contributions Regulations^(a) (notification of commencement or cessation of payment of Class 2 or Class 3 contributions) and ending on the last day of the contribution quarter immediately before the contribution quarter in which he gives that notification;
- (b) “relevant day” means the first day in respect of which a person would have been entitled to receive the contributory benefit in question if any contribution condition relevant to that benefit had already been satisfied;
- (c) “contribution quarter” means one of the four periods of not less than 13 contribution weeks commencing on the first day of the first, fourteenth, twenty-seventh or fortieth contribution week, in any year.

Treatment for the purpose of any contributory benefit of contributions paid under an arrangement

8. For the purposes of regulations 4 to 7 above and regulation 40 of the Contributions Regulations (voluntary Class 2 contributions not paid within permitted period)—

- (a) where a contribution is paid under an arrangement to which regulations 46A and 48 or, as the case may be, regulation 54A of the Contributions Regulations^(b) (other methods of collection and recovery of earnings-related contributions; special provisions relating to primary Class 1 contributions and arrangements approved by the Inland Revenue for method of, and time for, payment of Class 2 and Class 3 contributions respectively) apply, the date by which, but for the said regulations 4 to 7 and 40, the contribution would have fallen due to be paid shall, in relation to that contribution, be the due date;
- (b) any payment made of, or as on account of, a contribution in accordance with any such arrangement shall, on and after the due date, be treated as a contribution paid on the due date.

Application for allocation of national insurance number

9.—(1) Subject to the provisions of paragraph (2) below, every person, who is over the age of 16 and satisfies the conditions specified in regulation 87 or 119 of the Contributions Regulations^(c) (conditions of domicile or residence and conditions as to residence or presence in Great Britain respectively), shall, unless he has already been allocated a national insurance number under the Act, the Social Security Act 1975^(d) or the National Insurance Act 1965^(e), apply either to the Secretary of State or to the Inland Revenue for the allocation of a national insurance number and shall make such application at such time and in such manner as the Secretary of State shall direct.

►¹(1A) An application under paragraph (1) shall be accompanied by a document of a description specified ►²in Schedule 1 ◀◀

(2) As respects any person who is neither an employed earner nor a self-employed earner the provisions of paragraph (1) above shall not apply unless and until that person wishes to pay a Class 3 contribution.

- (a) Reg. 53A was inserted by reg. 4 of S.I. 1993/260 and amended by reg. 8 of S.I. 2000/2343 and reg. 2 of S.I. 2001/45.
- (b) Reg. 46A was inserted by reg. 8 of S.I. 2000/2207 and amended by reg. 4 of S.I. 2000/2744. Reg. 54A was substituted by reg. 5 of S.I. 1993/260 and amended by regulations 10 and 11 of S.I. 2000/2343.
- (c) Reg. 119 was amended by reg. 3 of S.I. 1989/572, reg. 8 of S.I. 1992/97 and reg. 9 of S.I. 1999/567.
- (d) 1975 c. 14.
- (e) 1965 c. 51.

¹Paras. (1A) added to reg. 9 by reg. 2(a) of S.I. 2006/2897 as from 11.12.06.

²Words substituted in para. (1A) by reg. 2(2) of S.I. 2008/223 as from 29.2.08.

(3) The Secretary of State may authorise arrangements for the allocation of a national insurance number to any person during the 12 months before that person reaches the age of 16, and in particular may direct that a person who will attain the age of 16 within 12 months after such direction shall apply for the allocation of a national insurance number before attaining the age of 16, and any such person shall accordingly comply with such direction.

▶¹(4) Where a person—

- (a) qualifies for a loan made in accordance with regulations made under section 22 of the Teaching and Higher Education Act 1998(a) (new arrangements for giving financial support to students) or sections 73 to 74(1) of the Education (Scotland) Act 1980(b) in connection with an academic year beginning on or after 1st September 2007; and
- (b) has been required as a condition of entitlement to payment of the loan to provide his national insurance number,

¹Para. (4) added to reg. 9 by reg. 2(b) of S.I. 2006/2897 as from 1.3.07.

he shall, unless he has already been allocated a national insurance number, apply to the Secretary of State or the Commissioners for Her Majesty's Revenue and Customs for one to be allocated to him, and the Secretary of State or, as the case may be, the Commissioners may direct how the application is to be made.◀

Deduction of contribution from pensions etc. - prescribed enactments and instruments under which payable

10. For the purposes of paragraph 10 of Schedule 1 to the Act (power to deduct contributions from a pension or allowance payable by the Secretary of State by virtue of any prescribed enactment or instrument), the enactments and instruments are—

- (a) Order in Council 19th December 1881;
- (b) The Royal Warrant 27th October 1884;
- (c) The Naval and Military War Pensions Act 1915(c);
- (d) The War Pensions Act 1920(d);
- (e) The War Pensions Act 1921(e);
- (f) Order by His Majesty 14th January 1922;
- (g) The War Pensions (Coastguards) Scheme 1944(f);
- (h) The Royal Warrant 1964(g);
- (i) The Order by Her Majesty 1964(h);
- (j) The War Pensions (Naval Auxiliary Personnel) Scheme 1964(i);
- (k) The Pensions (Polish Forces) Scheme 1964(j);
- (l) The War Pensions (Mercantile Marine) Scheme 1964(k);

(a) 1998 c. 30; section 22 was amended by section 146 of, and Schedule 11 to, the Learning and Skills Act 2000 (c. 21), Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), section 147(3) of the Finance Act 2003 (c. 14) and sections 42 and 43 of, and Schedule 7 to, the Higher Education Act 2004 (c. 8).

(b) 1980 (c. 44); section 73 was amended by section 29(1) of the Teaching and Higher Education Act 1998 (c. 30) and section 3(2) of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp. 6); sections 73A, 73B, 73C and 73D were inserted by section 29(2) of the Teaching and Higher Education Act 1998; section 74(1) was amended by paragraph 8(17) of, and Schedule 10 to, the Self Governing Schools etc. (Scotland) Act 1989 (c. 39). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(c) 1915 c. 83.

(d) 1920 c. 23.

(e) 1921 c. 49.

(f) S.I. 1944/500.

(g) Cmnd 2563.

(h) Cmnd 2564.

(i) S.I. 1964/1985.

(j) S.I. 1964/2007.

(k) S.I. 1964/2058.

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- (m) The Order by Her Majesty (Ulster Defence Regiment) 1971(a);
- (n) The Personal Injuries (Civilians) Scheme 1983(b);
- (o) The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(c).

¹Reg. 11 revoked by reg. 157 of S.I. 2000/1004 as from 6.4.01.

11. ▶¹◀

Revocations

²Words substituted in reg. 12 by reg. 2(3) of S.I. 2008/223 as from 29.2.08.

12. The regulations set out in column (1) of ▶²Schedule 2◀ to these Regulations are hereby revoked to the extent mentioned in column (3) of that Schedule.

Signed by authority of the Secretary of State for Social Security.

7th March 2001

Jeff Rooker
Minister of State,
Department of Social Security

The Commissioners of Inland Revenue hereby concur.

7th March 2001

Ann Chant
Nick Montagu
Two of the Commissioners of Inland Revenue

(a) Cmnd 4567.
(b) S.I. 1983/686.
(c) S.I. 1983/883.

►¹SCHEDULE 1

Regulation 9(1A)

¹Sch. 1 inserted and Sch. renumbered as Sch. 2 by reg. 2(3) and (5) of S.I. 2008/223 as from 29.2.08.

DOCUMENTS TO ACCOMPANY AN APPLICATION FOR A NATIONAL INSURANCE NUMBER

1. Any document specified for the time being in paragraphs 1 to 6 of List A of the Schedule to the Immigration (Restrictions on Employment) Order 2007(a).
2. Any document specified for the time being in paragraphs 1 to 6 of List B of the Schedule to the Immigration (Restrictions on Employment) Order 2007.
3. Any of the following documents—
 - (a) a full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder’s parents;
 - (b) a full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder’s adoptive parents;
 - (c) a birth certificate issued in the Channel Islands, the Isle of Man or Ireland;
 - (d) an adoption certificate issued in the Channel Islands, the Isle of Man or Ireland;
 - (e) a certificate of registration or naturalisation as a British Citizen;
 - (f) an Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom;
 - (g) a letter issued by the Home Office or the Border and Immigration Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom;
 - (h) an Immigration Status Document issued by the Home Office or the Border and Immigration Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question.
 - (i) a letter issued by the Home Office or the Border and Immigration Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.◀

►¹SCHEDULE 2◀

Regulation 12

REGULATIONS REVOKED

Column (1) Citation	Column (2) Statutory Instrument	Column (3) Extent of Revocation
The Social Security (Contributions) Regulations 1979	S.I. 1979/591	Regulations 30, 36, 38, 41, 41A, 42, 44 and 55
The Social Security (Contributions) Amendment Regulations 1980	S.I. 1980/1975	Regulation 4

(a) 1992 c. 5. Section 182C was inserted by paragraph 9 of Schedule 1 to the Social Security Administration (Fraud) Act 1997 (c. 47). Subsection (1A) was inserted by paragraph 31 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) (“the 1999 Act”). Section 189(1), (4) to (6) was amended by paragraph 109 of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14) and subsection (1) was further amended by paragraph 57(2) of Schedule 3 to the 1999 Act and Schedule 6 to the Tax Credits Act 2002 (c. 21).

SOCIAL SECURITY (CREDITING AND TREATMENT OF CONTRIBUTIONS, AND NATIONAL INSURANCE NUMBERS) REGULATIONS 2001

The Social Security (Contributions) Amendment Regulations 1984	S.I. 1984/77	Regulation 13
The Social Security (Contributions) Amendment (No. 2) Regulations 1987	S.I. 1987/413	Regulations 8 and 9
The Social Security (Contributions) Amendment (No. 5) Regulations 1992	S.I. 1992/669	Regulations 2 and 4
The Social Security (Contributions) Amendment (No. 6) Regulations 1993	S.I. 1993/2094	Regulations 3, 4 and 5
The Social Security (Contributions) Amendment (No. 2) Regulations 1994	S.I. 1994/1553	Regulation 3
The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995	S.I. 1995/829	Regulation 13(4)
The Social Security (Credits and Contributions) (Jobseeker's Allowance Consequential and Miscellaneous Amendments) Regulations 1996	S.I. 1996/2367	Regulation 3(4)
The Social Security Contributions, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 1999	S.I. 1999/567	Regulation 7
The Social Security (Contributions and Credits) (Miscellaneous Amendments) Regulations 1999	S.I. 1999/568	Regulation 13
The Social Security (Contributions) (Amendment No. 8) Regulations 2000	S.I. 2000/2207	Regulation 6

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate certain regulations in the Social Security (Contributions) Regulations 1979 (S.I. 1979/591) (“the Contributions Regulations”) relating to the appropriation and crediting of Class 3 contributions and the treatment of late paid social security contributions for the purposes of entitlement to contributory benefit and the application for the allocation of a national insurance number, which are hereby revoked. Accordingly, these Regulations do not require prior submission to the Social Security Advisory Committee and have not been so referred.

Regulation 1 contains provisions concerning the citation, commencement and interpretation of the Regulations.

Regulation 2 provides for the appropriation of Class 3 contributions to the earnings factor of another year.

Regulation 3 provides for the crediting of a Class 3 contribution where a person’s earnings factor falls short of a figure equal to 52 times the lower earnings limit for Class 1 contributions for the relevant year.

Regulations 4 to 8 provide for the treatment of late paid contributions for contributory benefit purposes. Regulation 4 does so in respect of a contribution (other than a Class 4 contribution) paid before the end of the second or sixth year (as the case may be) in which it is due; regulation 5 in respect of a primary Class 1 contribution where the primary contributor has not been negligent or consented to or connived in its late payment; regulation 6 in respect of a contribution paid after the due date as a result of ignorance or error on the part of the person paying it; regulation 7 in respect of a Class 2 or a Class 3 contribution paid in accordance with specified provisions of the Contributions Regulations and regulation 8 in respect of a contribution paid on, or after, the due date under an arrangement approved by the Inland Revenue under specified provisions of those Regulations.

Regulation 9 provides for an application to be made to the Secretary of State or the Inland Revenue for the allocation of a national insurance number.

Regulation 10 specifies the enactments and instruments in respect of which the Secretary of State has the power to deduct contributions from certain pensions or allowances.

Regulation 11 makes consequential amendments to the Contributions Regulations.

Regulation 12 provides for the revocation of regulations set out in the Schedule to these Regulations.

These Regulations impose no costs on business.

[See S.I. 1999/779 at page 1.6401 for details of treatment of persons and payments participating in New Deal 25 plus.]

1975 No. 556

SOCIAL SECURITY

The Social Security (Credits) Regulations 1975

<i>Made</i> - - - -	<i>3rd April 1975</i>
<i>Laid before Parliament</i>	<i>4th April 1975</i>
<i>Coming into Operation</i>	<i>6th April 1975</i>

The Secretary of State for Social Services in exercise of the powers conferred upon her by section 13(4) of the Social Security Act 1975(a) and section 2(1) of, and paragraph 3 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975(b) and of all other powers enabling her in that behalf, without having referred any proposals on the matter to the National Insurance Advisory Committee since it appears to her that by reason of urgency it is inexpedient to do so, hereby makes the following regulations:

[The current determination of entitlement to past credits will sometimes depend on a past version of a regulation which has since been amended. Unless the amendment consists purely of the insertion of new material, or where (for small changes) the annotation indicates the words deleted or replaced, the desired past version will not be deducible from the current text of the regulations. For this reason, credits provisions which have been amended within the last 2 or 3 years are, where appropriate, reproduced below not only in their current version (in normal type) but also, for a temporary period, in recent pre-amendment versions (in small sanserif type and indented).]

[In the following S.I. wherever the words “training for work” appear substitute the words “work based training for adults” except in the case of reference to the title or principal order or of the 1993 order. As per S.I. 1998/1426 from 3.7.98.]

Citation and commencement

1. These regulations may be cited as the Social Security (Credits) Regulations 1975 and shall come into operation on 6th April 1975.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires,—

“the Act” means the Social Security Act 1975;

▶¹“benefit” includes a contribution-based jobseeker’s allowance but not an income-based jobseeker’s allowance ▶²and includes a contributory employment and support allowance but not an income-related employment and support allowance ◀; ◀

▶³“bereavement allowance” means an allowance referred to in section 39B of the Contributions and Benefits Act;

“bereavement benefit” means a benefit referred to in section 20(1)(ea)(c) of the Contributions and Benefits Act; ◀

▶ ◀

▶⁴“the Contribution and Benefits Act” means the Social Security Contributions and Benefits Act 1992; ◀

¹Defn. of “benefit” inserted and defn. of “charity” deleted by reg. 2(2)(a) of S.I. 1996/2367 as from 7.10.96.

²Words inserted in defn. of “benefit” by reg. 48(2)(a) of S.I. 2008/1554 as from 27.10.08.

³Defn. of “bereavement allowance” and “bereavement benefit” inserted by reg. 3(2) of S.I. 2000/1483 as from 6.4.01.

⁴Defn. of “the Conts. and Bens. Act” inserted by reg. 6(2) of S.I. 1995/829 as from 13.4.95.

(a) 1975 c. 14.

(b) 1975 c. 18.

(c) Section 20(1)(ea) was inserted by para. 3(2)(b) of Sch. 8 to the Welfare Reform and Pensions Act 1999.

Reg. 2

¹Defn. “contribution-based jobseeker’s allowance” inserted by reg. 2(2)(a) of S.I. 1996/2367 as from 7.10.96.

²Defns. of “contributory employment and support allowance” and “income-related employment & support allowance” inserted, word “or” omitted in defn. of reckonable year & sub-para. (c) added, word “and” omitted in defn. of “relevant benefit year” & sub-para. (c) added by reg. 48(2)(b)-(f) of S.I. 2008/1554 as from 27.10.08.

³Defn. of “disability working allowance” inserted by reg. 2(1) by reg. 2 of S.I. 1991/2772 as from 6.4.92.

⁴Defn. of “disabled person’s tax credit” omitted by reg. 1(a)(i) of S.I. 2003/455 as from 7.3.03.

⁵Defns. “health authority”, “health board”, “local authority” and “preserved board” deleted, defns. “income based jobseeker’s allowance” and “jobseeker’s allowance” inserted, and defns. “reckonable year” and “relevant benefit year” substituted, by reg. 2(2) of S.I. 1996/2367 as from 7.10.96.

⁶Words inserted in defn. of “reckonable year” by reg. 8 of S.I. 2007/1749 as from 16.7.07.

⁷Defn. of “relevant earnings factor” substituted by reg. 2 of S.I. 1987/414 as from 6.4.87.

⁹Words in defn. of “relevant earnings factor” substituted by reg. 2(2)(d) of S.I. 1996/2367 as from 7.10.96.

⁹Words in defn. “relevant earnings factor” substituted by reg. 20(a) of S.I. 1999/568 as from 6.4.99.

▶¹“contribution-based jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995(a);◀

▶²“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act (employment and support allowance);◀

“credits” and “a credit” shall be construed in accordance with regulation 3;

▶³“disability working allowance” has the meaning assigned to it in section 20 of the Social Security Act 1986(b);◀

▶⁴◀

▶⁵◀

▶⁵“income-based jobseeker’s allowance” has the same meaning as in the Jobseekers Act 1995;

▶²“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act (employment and support allowance);◀

“jobseeker’s allowance” means an allowance payable under Part I of the Jobseekers Act 1995;◀

▶⁵◀

▶⁵“reckonable year” means a year for which the relevant earnings factor of the contributor concerned was sufficient to satisfy—

(a) in relation to short-term incapacity benefit, widowed mother’s allowance, ▶⁶widowed parent’s allowance, bereavement benefits,◀ widow’s pension or Category A or Category B retirement pension, paragraph (b) of the second contribution condition specified in relation to that benefit in Schedule 3 to the Contributions and Benefits Act; ▶²◀

(b) in relation to contribution-based jobseeker’s allowance, the additional condition specified in section 2(3) of the Jobseekers Act 1995;◀ ▶²or

(c) in relation to a contributory employment and support allowance, the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance).◀

▶⁵“relevant benefit year” has the same meaning as it has—

(a) in relation to short-term incapacity benefit, in paragraph 2(6)(b) of Schedule 3 to the Contributions and Benefits Act; ▶²◀

(b) in relation to contribution-based jobseeker’s allowance, in section 2(4)(b) of the Jobseekers Act 1995;◀ ▶²and

(c) in relation to a contributory employment and support allowance, in paragraph 3(1)(f) of Schedule 1 to the Welfare Reform Act (conditions relating to national insurance);◀

▶⁷“relevant earnings factor”, in relation to any benefit, means—

(a) ▶⁸if the benefit is a contribution-based jobseeker’s allowance or if the contributions relevant to the benefit under section 21 of the Contributions and Benefits Act◀ are Class 1 contributions, the earnings factor derived from earnings upon which primary Class 1 contributions have been paid or treated as paid, or credited earnings;

(b) if the contributions relevant to that benefit under ▶⁸that section◀ are Class 1 and Class 2 contributions, the earnings factor or the aggregate of the earnings factors derived from—

(i) earnings ▶⁹in respect of which◀ primary Class 1 contributions have been paid or treated as paid, or credited earnings, and

(ii) Class 2 contributions;

(a) 1995 c. 18.

(b) 1986 c. 50; subsections (1)(bb) and (6A) of section 20 were inserted by section 6 of the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21). [The relevant parts of the said s. 20 were re-enacted (1.7.92) in s. 129 of the S.S. Conts. & Bens. Act 1992 (c. 4).]

(c) See section 1 of, and paragraphs 1 and 2(h) of Schedule 1 to, the Tax Credits Act 1999.

(c) if the contributions relevant to that benefit ►¹that section◄ are Class 1, Class 2 and Class 3 contributions, the earnings factor or the aggregate of the earnings factors derived from—

(i) earnings ►¹in respect of which◄ primary contributions have been paid or treated as paid, or credited earnings.

(ii) Class 2 contributions, and

(iii) Class 3 contributions paid or credited◄;

►²“relevant past year” means the last complete year before the beginning of the relevant benefit year;◄

►³“the Welfare Reform Act” means the Welfare Reform Act 2007;◄

►⁴“widowed parent’s allowance” means an allowance referred to in section 39A of the Contributions and Benefits Act;◄

►⁵“working tax credit” means a working tax credit under section 10 of the Tax Credits Act 2002(a);◄

►⁶“year” means tax year;◄

and other expressions have the same meanings as in the Act.

(2) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(b) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

(3) Unless the context otherwise requires, any reference in these regulations—

(a) to a numbered section is a reference to the section of the Act bearing that number;

(b) to a numbered regulation is a reference to the regulation bearing that number in these regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;

(c) to any provision made by or contained in any enactment or instrument shall be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces or which may re-enact or replace it with or without modification.

(4) Nothing in these regulation shall be construed as entitling any person to be credited with contributions for the purposes of any benefit for a day, period or event occurring before 6th April 1975.

General provisions relating to the crediting of contributions ►⁷and earnings◄.

3.—►⁸(1) Any contributions or earnings credited in accordance with these Regulations shall be only for the purpose of enabling the person concerned to satisfy—

(a) in relation to short-term incapacity benefit, widowed mother’s allowance, ►⁹widowed parent’s allowance, bereavement allowance,◄ widow’s pension or Category A or Category B retirement pension, the second contribution condition specified in relation to that benefit in Schedule 3 to the Contributions Benefits Act; ►¹⁰◄

(b) in relation to contribution-based jobseeker’s allowance, the condition specified in section 2(1)(b) of the Jobseekers Act 1995, ►¹⁰or

(c) in relation to a contributory employment and support allowance, the condition specified in paragraph 2(1) of Schedule 1 to the Welfare Reform Act,◄

and accordingly, where under any of the provisions of these Regulations a person would, but for this paragraph, be entitled to be credited with any contributions or earnings for a year, or in respect of any week in a year, he shall be so entitled or the purposes of any benefit if and to no greater extent than that by which his relevant earnings factor for that year falls short of the level required to make that year a reckonable year.◄

¹Words in defn. of “relevant earnings factor” substituted by reg. 2(2)(d) of S.I. 1996/2367 as from 7.10.96.

²Defn. of “relevant past year” inserted by reg. 2(2) of S.I. 1988/1545 as from 2.10.88.

³Defns. of “the Welfare Reform Act” inserted by reg. 48(2)(b)-(f) of S.I. 2008/1554 as from 27.10.08.

⁴Defn. of “widowed parent’s allowance” inserted by reg. 3(2) of S.I. 2000/1483 as from 9.4.01.

⁵The defn. of “working tax credit” substituted by reg. 1(a)(ii) of S.I. 2003/455 as from 7.3.03.

⁶Defn. of “year” inserted by reg. 2(2) of S.I. 1988/1230 as from 2.10.88.

⁷Words added to heading of reg. 3 by reg. 3(a) of S.I. 1987/414 as from 6.4.87.

⁸Reg. 3(1) substituted by reg. 2(3) of S.I. 1996/2367 as from 7.10.96.

⁹Words inserted in reg. 3(1)(a) by reg. 3(3) of S.I. 2000/1483 as from 9.4.01.

¹⁰Word “or” omitted in reg. 3(1)(a) & reg. 3(1)(c) added by reg. 48(3) of S.I. 2008/1554 as from 27.10.08.

(a) 2002 c. 21.

(b) 1889 c. 63, [subject to construction under Interpretation Act 1978 (c. 30), s. 25(2)].

Regs. 3-7

(2) Where under these regulations a person is entitled for the purposes of any benefit to—

¹Words substituted in reg. 3(2) & (3), and reg. 3(2)(b) deleted by reg 3 of S.I. 1987/414 as from 6.4.87.

- (a) ▶¹be credited with earnings◀ for a year, he is to be credited with such amount of ▶¹earnings◀ as may be required to bring his relevant earnings factor to the level required to make that year a reckonable year;

▶¹◀

(3) Where under these regulations a person is entitled to ▶¹be credited with earnings or a contribution◀ in respect of a week which is partly in one tax year and partly in another, he shall be entitled to ▶¹be credited with those earnings or that contribution◀ for the tax year in which that week began and not for the following year.

Starting credits for the purposes of a retirement pension, a widowed mother's allowance ▶², a widowed parent's allowance, a bereavement allowance,◀ and a widow's pension

²Words added to heading of reg. 4 and inserted in reg. 4(1) by reg. 3(4) of S.I. 2000/1483 as from 9.4.01.

³Words in reg. 4(1) substituted by reg. 2(5)(a) of S.I. 1988/1545 as from 2.10.88.

4.—(1) For the purposes of entitlement to a Category A or a Category B retirement pension, a widowed mother's allowance ▶², a widowed parent's allowance, a bereavement allowance,◀ or a widow's pension ▶³by virtue of a person's earnings or contributions◀, he shall be credited with such number of Class 3 contributions as may be required to bring his relevant earnings factor in respect of the tax year in which he attained the age of 16 and for each of the 2 following tax years to the level required to make those years reckonable years; so however that, subject to paragraph (2), no contribution shall be credited under this regulation in respect of any tax year commencing before 6th April 1975.

(2) Where a person was in Great Britain on 6th April 1975 and had attained the age of 16 but was not an insured person under the National Insurance Act 1965(a), he shall be credited with contributions under paragraph (1) in respect of the tax year commencing on 6th April 1974.

[Regulation 5 revoked by regulation 3(1) of S.I. 1988/1230 as from 2.10.88, subject to saving in regulation 3(2) *ibid.*.]

[Regulation 6 (credits for maternity grant) revoked by regulation 3(1) of S.I. 1988/516 as from 6.4.88.]

Credits for approved training

⁴Words in reg. 7(1) substituted by reg. 2(5)(b) of S.I. 1988/1545 as from 2.10.88.

⁵Words in reg. 7(1) substituted by reg. 5(a) of S.I. 1987/414 as from 6.4.87.

⁶Words in reg. 7(1) deleted and reg. 7(2) substituted by reg. 2 of S.I. 1988/1439 as from 4.9.88.

7.—(1) For the purposes of entitlement to any benefit ▶⁴by virtue of a person's earnings or contributions◀ he shall, subject to paragraphs (2) and (3), be entitled to ▶⁵be credited with earnings equal to the lower earnings limit then in force,◀ in respect of each week in any part of which he was undergoing (otherwise than in pursuance of his employment as an employed earner) a course of ▶⁶◀ training approved by the Secretary of State for the purposes of this regulation.

▶⁶(2) Paragraph (1) shall apply to a person only if—

- (a) the course is—
- (i) a course of full-time training; or
 - (ii) a course of training which he attends for not less than 15 hours in the week in question and he is a disabled person within the meaning of the Disabled Persons (Employment) Act 1944(b); or
 - (iii) a course of training introductory to a course to which paragraph (i) or (ii) above applies; and

- (b) when the course began it was not intended to continue for more than 12 months or, if he was a disabled person within the meaning of the Disabled Persons (Employment) Act 1944 and the training was provided under the Employment and Training Act 1973(c) ▶⁷or the Enterprise and New Towns (Scotland) Act 1990◀(d), for such longer period as is reasonable in the circumstances of his case; and

⁷Words added to reg. 7(2)(b) by art. 3(a) of S.I. 1991/387 as from 1.4.91.

(a) 1965 c. 51.

(b) 1944 c. 10.

(c) 1973 c. 50; section 2 was substituted by the Employment Act 1988 (c. 19), section 25.

(d) 1990 c. 35.

- (c) he had attained the age of 18 before the beginning of the tax year in which the week in question began.◀

(3) Paragraph (1) shall not apply to a woman in respect of any week in any part of which she was a married woman in respect of whom an election made by her under regulations made ▶¹under section 3(2) of the Social Security Pensions Act 1975◀ had effect.

▶²Credits for ▶³carer's allowance◀

7A.—(1) For the purposes of entitlement to any benefit ▶⁴by virtue of a person's earnings or contributions◀ he shall, subject to paragraph (2), be entitled to ▶⁵be credited with earnings equal to the lower earnings limit then in force,◀ in respect of each week for any part of which ▶³a carer's allowance◀ is paid to him, ▶⁶or would be paid to him but for a restriction under section 7 of the Social Security Fraud Act 2001 (loss of benefit provisions)◀ or in the case of a ▶⁷widow, widower or surviving civil partner◀ would have been so payable but for the provisions of the Social Security (Overlapping Benefits) Regulations 1975, as amended by the Social Security (Invalid Care Allowance) Regulations 1976, requiring adjustment of ▶³a carer's allowance◀ against widow's benefit ▶⁸, bereavement benefits◀ or benefit by virtue of section 39(4) corresponding to a widowed mother's allowance or a widow's pension.

(2) Paragraph (1) shall not apply—

- (a) to a person in respect of any week where he is entitled to ▶⁵be credited with earnings◀ under ▶⁹regulation 8A or 8B◀ in respect of the same week; or
- (b) to a woman in respect of any week in any part of which she was a married woman in respect of whom an election made by her under regulations made ▶¹under section 3(2) of the Social Security Pensions Act 1975◀ had effect.◀

▶¹⁰Credits for ▶¹¹disability element of working tax credit◀

7B.—(1) For the purposes of entitlement to any benefit by virtue of a person's earnings or contributions he shall, subject to paragraphs (2) and (3), be credited with earnings equal to the lower earnings limit then in force in respect of each week for any part of which the ▶¹¹disability element or the severe disability element of working tax credit as specified in reg. 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 is included in an award of working tax which◀ is paid to him.

(2) Paragraph (1) shall apply to a person only if he is—

- (a) an employed earner; or
- (b) a self-employed earner who is excepted from liability to pay Class 2 contributions by virtue of his earnings being less than or being treated by regulations as less than the amount specified in section 7(5) of the Act (exception from liability for Class 2 contributions on account of small earnings)(a).

(3) Paragraph (1) shall not apply—

- (a) to a person in respect of any week where he is entitled to be credited with earnings under ▶⁹regulation 8A or 8B◀ in respect of the same week; or
- (b) to a woman in respect of any week in any part of which she was a married woman in respect of whom an election made by her under regulations made under section 3(2) of the Social Security Pension Act 1975(b) had effect.◀

¹Words substituted in regs. 7(3) and 7A(2)(b) by reg. 2(2) of S.I. 1978/409 as from 6.4.78.

²Reg. 7A added by reg. 19 of S.I. 1976/409 as from 12.4.76.

³Words substituted in heading & reg. 7A(1) by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

⁴Words in reg. 7A(1) substituted by reg. 2(5)(c) of S.I. 1988/1545 as from 2.10.88.

⁵Words in reg. 7A(1) and 7A(2)(a) substituted by regs. 6(a) and (b) of S.I. 1987/414 as from 6.4.87.

⁶Words inserted in reg. 7A(1) by reg. 3 of S.I. 2002/490 as from 1.4.02.

⁷Words substituted in reg. 7A(1) by para. 4(2) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

⁸Words in reg. 7A(1) substituted by reg. 3(5) of S.I. 2000/1483 as from 9.4.01.

⁹Words in reg. 7A(2)(a) and 7B(3)(a) substituted by reg. 2(4) of S.I. 1996/2367 as from 7.10.96.

¹⁰Reg. 7B inserted by reg. 3 of S.I. 1991/2772 as from 6.4.92.

¹¹Words in reg. 7B substituted by para. 1(b)-(e) of Sch. 4 to S.I. 2003/455 as from 7.3.03.

(a) 1975 c. 14; section 7(5) was amended by S.I. 1991/505.

(b) 1975 c. 60.

Regs. 7C-8

¹Reg. 7C inserted by reg. 2 of S.I. 1995/2558 for people reaching pensionable age after 5.4.99, for weeks in 1995-96 or later.

²Words in reg. 7C (3) substituted & deleted by para. 1(b)-(e) of Sch. 4 to S.I. 2003/455 as from 7.3.03.

³Words inserted in reg. 7C(1) by reg. 3(6) of S.I. 2000/1483 as from 9.4.01.

⁴Words substituted in reg. 7C(2)(a), 7C(3) & (6) by para. 4(3)(a) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

⁵Words in reg. 7C(4)(a) and 8(1) substituted by regs. 2(4) and 2(5) of S.I. 1996/2367 as from 7.10.96.

⁶Para. (5) deleted by reg. 1(iv) of S.I. 2003/455 as from 7.3.03.

⁷Reg. 8(1) substituted by reg. 3 of S.I. 1989/1627 as from 1.10.89.

⁸Words substituted in reg. 8(1) by reg. 48(4) of S.I. 2008/1554 as from 27.10.08.

⁹Words added to reg. 8(1)(a)(ii)(a) by art. 3(b) of S.I. 1991/387 as from 1.4.91.

▶¹Credits for ▶²working tax credit◀

7C.—(1) ▶²Subject to regulation 7B,◀ for the purposes of entitlement to a Category A or a Category B retirement pension, a widowed mother's allowance ▶³, a widowed parent's allowance, a bereavement allowance◀ or a widow's pension by virtue of a person's earnings or contributions, where ▶²working tax credit◀ is paid for any week in respect of—

- (a) an employed earner; or
- (b) a self-employed earner who is excepted from liability to pay Class 2 contributions by virtue of his earnings being less than or being treated by regulations as less than the amount specified in section 11(4) of the Contributions and Benefits Act (exception from liability for Class 2 contributions on account of small earnings)(a),

that person shall, subject to paragraphs (4) and (5), be credited with earnings equal to the lower earnings limit then in force in respect of that week.

(2) The reference in paragraph (1) to the person in respect of whom ▶²working tax credit◀ is paid—

- (a) where it is paid to one of ▶⁴a couple◀, is a reference to the member of that couple specified in paragraph (3); and
- (b) in any other case, is a reference to the person to whom it is paid.

(3) the member of ▶⁴a couple◀ specified for the purposes of paragraph (2)(a) is—

- (a) where only one member is assessed for the purposes of the award of ▶²working tax credit◀ as having income consisting of earnings, that member.

▶²◀

- (c) where the earnings of each member are assessed ▶²◀, the member to whom the ▶²working tax credit◀ is paid.

(4) Paragraph (1) shall not apply—

- (a) to a person in respect of any week he is entitled to be credited with earnings under ▶⁵regulation 8A or 8B◀ in respect of the same week; or
- (b) to a woman in respect of any week in any part of which she is a married woman in respect of whom an election made by her under regulations made under section 19(4) of the Contributions and Benefits Act has effect.

▶⁶◀

(6) In this regulation ▶⁴“couple” has◀ the same meaning as in Part VII of the Contributions and Benefits Act.◀

Credits on termination of full-time education, training or apprenticeship

8.—▶⁷(1) For the purposes of his entitlement to ▶⁵a contribution-based jobseeker's allowance◀▶⁸, short-term incapacity benefit or a contributory employment and support allowance◀ a person shall be entitled to be credited with earnings equal to the lower earnings limit then in force for either one of the last two complete years before the beginning of the relevant benefit year if—

- (a) during any part of that year he was—
 - (i) undergoing a course of full-time education; or
 - (ii) undergoing—
 - (a) a course of training which was full-time and which was arranged under section 2(1) of the Employment and Training Act 1973(b)▶⁹or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990◀(c); or
 - (b) any other full-time course the sole or main purpose of which was the acquisition of occupational or vocational skills; or

(a) Section 11(4) was amended by S.I. 1995/561. Also, a definition of “the Contributions and Benefits Act” was inserted into S.I. 1975/556 by S.I. 1995/829.

(b) 1973 c. 50. Section 2 was substituted by the Employment Act 1988 (c. 19), section 25.

(c) 1990 c. 35.

- (c) if he is a disabled person within the meaning of the Disabled Persons (Employment) Act 1944(a), a part-time course attended for at least 15 hours a week which, if it was full-time, would fall within either of heads (a) or (b) above; or

(iii) an apprentice; and

(b) the other year is, in his case, a reckonable year; and

(c) that course or, as the case may be, his apprenticeship has terminated.◀

(2) Paragraph (1) shall not apply—

(a) where the course of education or training or the apprenticeship commenced after the person had attained the age of 21;

(b) to a woman in respect of any tax year immediately before the end of which she was a married woman and an election made by her under regulations made ▶¹under section 3(2) of the Social Security Pensions Act 1975◀ had effect ▶²;

(c) to a person in respect of any tax year before that in which he attains the age of 18.◀

▶³Credits for unemployment

8A.—(1) ▶⁴◀, for the purpose of entitlement to any benefit by virtue of a person's earnings or contributions, he shall be entitled to be credited with earnings equal to the lower earnings limit then in force, in respect of each week to which this regulation applies.

(2) Subject to paragraph (5) this regulation applies to a week which, in relation to the person concerned, is—

(a) a week for the whole of which he was paid a jobseeker's allowance; or

(b) a week for the whole of which he satisfied or was treated as having satisfied the conditions set out in paragraphs (a), (c) and (e) to (h) of section 1(2) of the Jobseekers Act 1995 (conditions for entitlement to a jobseeker's allowance) and in respect of which he has satisfied the further condition specified in paragraph (3); or

(c) a week which would have been a week described in sub-paragraph (b) but for the fact that he was incapable of work ▶⁵or had limited capability for work◀ for part of it ▶⁶or;

(d) a week in respect of which he would have been paid a jobseeker's allowance but for a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000 ▶⁷or section 7, 8 or 9 of the Social Security Fraud Act 2001◀ (loss of benefit provisions).◀

(3) The further condition referred to in paragraph (2)(b) is that the person concerned—

(a) furnished to the Secretary of State notice in writing of the grounds on which he claims to be entitled to be credited with earnings—

(i) on the first day of the period for which he claims to be so entitled in which the week in question fell; or

(ii) within such further time as may be reasonable in the circumstances of the case; and

(b) has provided any evidence required by the Secretary of State that the conditions referred to in paragraph (2)(b) are satisfied.

(4) This regulation also applies to a week for the whole of which the conditions set out in paragraphs (a), (c) and (e) to (h) of section 1(2) of the Jobseekers Act 1995 would have been satisfied but for its being a week in respect of which, in accordance with regulation 52(3) (persons treated as engaged in remunerative work) and Part VIII (income and capital) of the Jobseeker's Allowance Regulations 1996(b), there is taken into account any compensation payment referred to in regulation 98(1)(b) of those Regulations.

¹Words substituted in reg. 8(2)(b) by reg. 2(2) of S.I. 1978/409 as from 6.4.78.

²Reg. 8(2)(c) inserted by reg. 2(3) of S.I. 1988/1230 and from 2.10.88.

³Regs. 8A and 8B inserted by reg. 2(6) of S.I. 1996/2367 as from 7.10.96, subj. (in the case of new reg. 8A) to transl. prov. in reg. 4(3) *ibid.* (employment for 16 hours or more in a transitionally protected week).

⁴Words omitted in reg. 8A(1) by reg. 4(a) of S.I. 2000/3120 as from 6.4.01.

⁵Words inserted in reg. 8A(2)(c) by reg. 48(5) of S.I. 2008/1554 as from 27.10.08.

⁶Sub-para. (d) inserted in reg. 8A(2) by reg. 2(5) of S.I. 2001/1711 as from 15.10.01.

⁷Words in reg. 8A(d) inserted by reg. 3(b) of S.I. 2002/490 as from 1.4.02.

(a) 1944 c. 10.

(b) S.I. 1996/207; regulation 52 amended by S.I. 1996/1516.

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- (5) This regulation shall not apply to—
- (a) a week in respect of which the person concerned was not entitled to a jobseeker's allowance (or would not have been if he had claimed it) because of section 14 of the Jobseekers Act 1995 (trade disputes); or
 - (b) a week in respect of which, in relation to the person concerned, there was in force a direction under section 16 of that Act (which relates to persons who have reached the age of 16 but not the age of 18 and who are in severe hardship); or
 - (c) a week in respect of which, because of section 19 of that Act, a jobseeker's allowance was not payable to the person concerned even though he satisfied the conditions for entitlement to that allowance; or
 - ▶¹(cc) a week in respect of which a joint-claim jobseeker's allowance was not payable or was reduced pursuant to section 20A of that Act because the person was subject to sanctions for the purpose of that section, even though the couple of which he was a member satisfied the conditions for entitlement to that allowance;◀
 - (d) a week in respect of which a jobseeker's allowance was payable to the person concerned only by virtue of regulation 141 of the Jobseeker's Allowance Regulations 1996(a) (circumstances in which an income-based jobseeker's allowance is payable to a person in hardship); or
 - ▶²(dd) a week in respect of which a joint-claim jobseeker's allowance was payable in respect of a joint-claim couple of which the person is a member only by virtue of regulation 146C of the Jobseeker's Allowance Regulations 1996(b) (circumstances in which a joint-claim jobseeker's allowance is payable where a joint-claim couple is a couple in hardship);◀
 - (e) where the person concerned is a married woman, a week in respect of any part of which an election made by her under regulations made under section 19(4) of the Contributions and Benefits Act had effect.

¹Sub-para. (cc) inserted in reg. 8A(5) by reg. 3 of S.I. 2001/518 as from 19.3.01.

²Sub-para (dd) inserted in reg. 8A(5) by reg. 3 of S.I. 2001/518 as from 19.3.01

³Words added to heading of reg. 8B, word "or" omitted after reg. 8B(2)(a)(iii) & reg. 8B(2)(aa) added by reg. 48(6) of S.I. 2008/1554 as from 27.10.08.

⁴Words omitted in reg. 8B(1) by reg. 4(b) of S.I. 2000/3120 as from 6.4.01.

⁵Words omitted in reg. 8B(2)(a)(i) by reg. 8 of S.I. 2007/1749 as from 16.7.07.

Credits for incapacity for work ▶³or limited capability for work◀

8B.—(1) ▶⁴◀ For the purposes of entitlement to any benefit by virtue of a person's earnings or contributions, he shall be entitled to be credited with earnings equal to the lower earnings limit then in force, in respect of each week to which this regulation applies.

- (2) Subject to paragraphs (3) and (4) this regulation applies to—
- (a) a week in which, in relation to the person concerned, each of the days—
 - (i) was a day of incapacity for work ▶⁵◀; or
 - (ii) would have been such a day had the person concerned claimed short-term incapacity benefit or maternity allowance within the prescribed time; or
 - (iii) was a day of incapacity for work for the purposes of statutory sick pay under section 151 of the Contributions Benefits Act and fell within a period of entitlement under section 153 of that Act; ▶³
 - (aa) a week in which, in relation to the person concerned, each of the days—
 - (i) was a day of limited capability for work for the purposes of Part 1 of the Welfare Reform Act (limited capability for work) or would have been such a day had that person been entitled to an employment and support allowance by virtue of section 1 of the Welfare Reform Act; or
 - (ii) would have been such a day had the person concerned claimed an employment and support allowance or maternity allowance within the prescribed time; or◀

(a) The relevant amending instrument is S.I. 1996/1517.

(b) Regulation 146C was inserted by S.I. 2000/1978.

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- ¹(b) a week for any part of which an unemployability supplement or allowance was payable by virtue of
- (i) Schedule 7 to the Contributions and Benefits Act;
 - (ii) Article 18 of the Naval, Military and Air Forces etc, (Disablement and Death) Service Pensions Order 1983(a); or
 - (iii) Article 18 of the Personal Injuries (Civilians) Scheme 1983(b).◀

⁴Reg. 8B(2)(b) substituted by reg 2(2) of S.I. 2003/521 as from 6.4.03.

(3) Where the person concerned is a married woman, this regulation shall not apply to a week in respect of any part of which an election made by her under regulations made under section 19(4) of the Contributions and Benefits Act had effect.

(4) A day shall not be a day to which paragraph (2)(a) applies unless the person concerned has—

- (a) before the end of the benefit year immediately following the year in which that day fell; or
- (b) within such further time as may be reasonable in the circumstances of the case,

furnished to the Secretary of State notice in writing of the grounds on which he claims to be entitled to be credited with earnings.◀

►²Credits on termination of bereavement benefits

8C.—(1) This regulation applies for the purpose only of enabling a person who previously received a bereavement benefit (“the recipient”) to satisfy, as the case may be, the condition referred to in—

²Reg. 8C inserted by reg. 3(7) of S.I. 2000/1483 as from 9.4.01.

- (a) paragraph 2(3)(b) of Schedule 3 to the Contributions and Benefits Act in relation to short-term incapacity benefit; ►³◀
- (b) section 2(1)(b) of the Jobseeker’s Act 1995 in relation to contribution-based jobseeker’s allowance. ►³or
- (c) paragraph 2(1) of Schedule 1 to the Welfare Reform Act in relation to a contributory employment and support allowance.◀

³Word “or” omitted after reg. 8C(1)(a) & reg. 8C(1)(c) added by reg. 48(7) of S.I. 2008/1554 as from 27.10.08.

(2) For every year up to and including that in which the recipient ceased to be entitled to a bereavement benefit otherwise than by reason of remarriage ►⁴, forming a civil partnership,◀ or living together with a person of the opposite sex as husband and wife, the recipient shall be credited with such earnings as may be required to enable the condition referred to above to be satisfied.◀

⁴Words inserted in reg. 8C(2) by para. 4(4) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

►⁵Credits for the purposes of entitlement to incapacity benefit following official error

8D.—(1) This regulation applies for the purpose only of enabling a person who was previously entitled to incapacity benefit to satisfy the condition referred to in paragraph 2(3)(a) of Schedule 3 to the Contributions and Benefits Act in respect of a subsequent claim for incapacity benefit where his period of incapacity for work is, together with a previous period of incapacity for work, to be treated as one period of incapacity for work under section 30C of that Act.

⁵Reg. 8C inserted by reg. 2 of S.I. 2007/2582 as from 1.10.07.

(2) Where—

- (a) a person was previously entitled to incapacity benefit;
- (b) the award of incapacity benefit was as a result of satisfying the condition referred to in paragraph (1) by virtue of being credited with earnings for incapacity for work or approved training in the tax years from 1993-94 to 2007-08;
- (c) some or all of those credits were credited by virtue of official error derived from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions’ Pension Strategy Computer

(c) S.I. 1983/883 to which there are amendments not relevant to this instrument.

(d) S.I. 1983/686 to which there are amendments not relevant to this instrument.

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System to Her Majesty's Revenue and Customs' computer system (NIRS2) or from related clerical procedures;

- (d) that person makes a further claim for incapacity benefit; and
- (e) his period of incapacity for work is, together with the period of incapacity for work to which his previous entitlement referred to in sub-paragraph (a) related, to be treated as one period of incapacity for work under section 30C of the Contributions and Benefits Act,

that person shall be credited with such earnings as may be required to enable the condition referred to in paragraph (1) to be satisfied.

(3) In this regulation and in regulations 8E and 8F, "official error" means an error made by—

- (a) an officer of the Department for Work and Pensions or an officer of Revenue and Customs acting as such which no person outside the Department or Her Majesty's Revenue and Customs caused or to which no person outside the Department for Work and Pensions or Her Majesty's Revenue and Customs materially contributed; or
- (b) a person employed by a service provider and to which no person who was not so employed materially contributed,

but excludes any error of law which is shown to have been an error by virtue of a subsequent decision of a Commissioner or the court.

(4) In paragraph (3)—

"Commissioner" means the Chief Social Security Commissioner or any other Social Security Commissioner and includes a tribunal of three or more Commissioners constituted under section 16(7) of the Social Security Act 1998;

"service provider" means a person providing services to the Secretary of State for Work and Pensions or to Her Majesty's Revenue and Customs.

Credits for the purposes of entitlement to retirement pension following official error

8E.—(1) This regulation applies for the purpose only of enabling the condition referred to in paragraph 5(3)(a) of Schedule 3 to the Contributions and Benefits Act to be satisfied in respect of a claim for retirement pension made by a person ("the claimant")—

- (a) who would attain pensionable age no later than 31st May 2008;
- (b) not falling within sub-paragraph (a) but based on the satisfaction of that condition by another person—
 - (i) who would attain, or would have attained, pensionable age no later than 31st May 2008; or
 - (ii) in respect of whose death the claimant received a bereavement benefit.

(2) Where—

- (a) a person claims retirement pension;
- (b) the satisfaction of the condition referred to in paragraph (1) would be based on earnings credited for incapacity for work or approved training in the tax years from 1993-94 to 2007-08; and
- (c) some or all of those credits were credited by virtue of official error derived from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (NIRS2) or from related clerical procedures,

those earnings shall be credited.

(3) In this regulation, "bereavement benefit" means a bereavement allowance, a widowed mother's allowance, a widowed parent's allowance or a widow's pension.

Credits for the purposes of entitlement to contribution-based jobseeker's allowance following official error

8F.—(1) This regulation applies for the purpose only of enabling a person to satisfy the condition referred to in section 2(1)(b) of the Jobseekers Act 1995(a).

(2) Where—

- (a) a person claims a jobseeker's allowance;
- (b) the satisfaction of the condition referred to in paragraph (1) would be based on earnings credited for incapacity for work or approved training in the tax years from 1993-94 to 2007-08; and
- (c) some or all of those credits were credited by virtue of official error derived from the failure to transpose correctly information relating to those credits from the Department for Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' computer system (NIRS2) or from related clerical procedures,

that person shall be credited with those earnings.◀

▶¹◀

Credits for persons approaching pensionable age

▶²9A.—(1) For the purposes of entitlement to any benefit by virtue of a person's earnings or contributions he shall, subject to the following paragraphs, be credited with such earnings as may be required to bring his relevant earnings factor in respect of a tax year to which this regulation applies to the level required to make that year a reckonable year.

(2) This regulation shall apply to the tax year in which a person attains the age of 60 and to each of the 4 succeeding tax years.

(3) Paragraph (1) shall apply, in the case of a self-employed earner, only if he is—

- (a) liable to pay a Class 2 contribution in respect of any week in a tax year to which this regulation applies; or
- (b) excepted from liability to pay Class 2 contributions in respect of any week in a tax year to which this regulation applies by virtue of his earnings being less than, or being treated by regulations as less than, the amount specified in section 11(4) of the Social Security Contributions and Benefits Act 1992 (exception from liability for Class 2 contributions on account of small earnings)(b),

so that he shall be credited with earnings equal to the lower earnings limit then in force in respect of each week for which he is not so liable.

(4) ▶³◀

(5) Where in any tax year to which this regulation applies a person is absent from Great Britain for more than 182 days, he shall not by virtue of this regulation be credited with any earnings or contributions in that tax year.◀

▶⁴Credits for jury service

9B.—(1) Subject to paragraphs (2) and (3), for the purposes of entitlement to any benefit ▶⁵by virtue of a person's earnings or contributions◀ he shall be entitled to be credited with earnings equal to the lower earnings limit then in force, in respect of each week for any part of which he attended at Court for jury service.

(2) A person shall be entitled to be credited with earnings in respect of a week by virtue of the provisions of this regulation only if—

- (a) his earnings in respect of that week from any employment of his as an employed earner are below the lower earnings limit then in force; and

(a) 1995 c. 18.

(b) 1992 c. 4. Section 11(4) was amended by article 3(b) of S.I. 1994/544. *See* also the Social Security (Contributions) Regulations 1979, S.I. 1979/591, regulations 25 and 26.

¹Reg. 9 omitted by reg. 4(c) of S.I. 2000/3120 as from 6.4.01.

²Reg. 9A substituted by reg. 3 of S.I. 1994/1837 as from 8.8.94.

³Reg. 9A(4) deleted by reg. 2(8) of S.I. 1996/2367 as from 7.10.96.

⁴Reg. 9B inserted by reg. 2(3) of S.I. 1988/516 as from 6.4.88.

⁵Words substituted in reg. 9B(1) by reg. 2(5)(f) of S.I. 1988/1545 as from 2.10.88.

(b) he furnished to the Secretary of State notice in writing of his claim to be entitled to be credited with earnings and did so before the end of the benefit year immediately following the tax year in which that week or part of that week fell or within such further time as may be reasonable in the circumstances of his case.

(3) Paragraph (1) shall not apply—

- (a) to a woman in respect of any week in any part of which she was a married woman in respect of whom an election made by her under Regulations made under section 3(2) of the Social Security Pensions Act 1975(a) had effect; or
- (b) in respect of any week falling wholly or partly within a year commencing before 6th April 1988 ¹or
- (c) to a person in respect of any week in any part of which he is a self-employed earner. ²

¹Word “or” and sub-para. (c) added to reg. 9B(3) by reg. 4 of S.I. 1994/1837 as from 8.8.94.

²Reg. 9C substituted by reg. 2(3) of S.I. 2003/521 as from 6.4.03.

►²Credits for adoption pay period and maternity pay period

9C.—(1) For the purposes of entitlement to any benefit by virtue of—

- (a) in the case of a person referred to in paragraph (2)(a), that person’s earnings or contributions;
- (b) in the case of a woman referred to in paragraph (2)(b), her earnings or contributions,

that person or that woman, as the case may be, shall be entitled to be credited with earnings equal to the lower earnings limit then in force in respect of each week to which this regulation applies.

(2) Subject to paragraphs (3) and (4), this regulation applies to each week during—

- (a) the adoption pay period in respect of which statutory adoption pay was paid to a person; or
- (b) the maternity pay period in respect of which statutory maternity pay was paid to a woman.

(3) A person or woman referred to above shall be entitled to be credited with earnings in respect of a week by virtue of this regulation only if he or she—

- (a) furnished to the Secretary of State notice in writing of his or her claim to be entitled to be credited with earnings; and
- (b) did so—
 - (i) before the end of the benefit year immediately following the tax year in which that week began, or
 - (ii) within such further time as may be reasonable in the circumstances of his or her case.

(4) This regulation shall not apply to a woman in respect of any week in any part of which she was a married woman in respect of whom an election made by her under regulations made under section 19(4) of the Contributions and Benefits Act had effect.

(5) In this regulation “adoption pay period”, “maternity pay period”, “statutory adoption pay” and “statutory maternity pay” have the same meaning as in the Contributions and Benefits Act(b). ◀

³Reg. 9D inserted by reg. 2 of S.I. 2001/573 as from 26.3.01.

►³Credits for certain periods of imprisonment or detention in legal custody

9D.—(1) Subject to paragraphs (2) and (4), for the purposes of entitlement to any benefit by virtue of a person’s earnings or contributions, where—

- (a) a person is imprisoned or otherwise detained in legal custody by reason of his conviction of an offence or convictions in respect of 2 or more offences;

(a) 1975 c. 60.

(b) See Part XII (Statutory Maternity Pay) and Part XII2B (Statutory Adoption Pay) of the Social Security Contributions and Benefits Act 1992. Part XII2B was inserted by section 4 of the Employment Act 2002 (c. 22).

- (b) that conviction or, as the case may be, each of those convictions is subsequently quashed by the Crown Court, the Court of Appeal or the High Court of Justiciary; and
- (c) he is released from that imprisonment or detention, whether prior, or pursuant, to the quashing of that conviction or, as the case may be, each of those convictions,

that person shall, if he has made an application in writing to the Secretary of State for the purpose, be entitled to be credited with earnings or, in the case of any year earlier than 1987-88, contributions, in accordance with paragraph (3).

(2) Paragraph (1) shall not apply in respect of any period during which the person was also imprisoned or otherwise detained in legal custody for reasons unconnected with the conviction or convictions referred to in that paragraph.

(3) The earnings or, as the case may be, the contributions referred to in paragraph (1) are, in respect of any week in any part of which the person was—

- (a) detained in legal custody—
 - (i) prior to the conviction or convictions referred to in that paragraph, but,
 - (ii) for the purposes of any proceedings in relation to any offence referred to in sub-paragraph (a) of that paragraph; or
- (b) imprisoned or otherwise detained in legal custody by reason of that conviction or those convictions,

those necessary for the purpose of bringing his earnings factor, for the year in which such a week falls, to the level required to make that year a reckonable year.

(4) Subject in paragraph (5), paragraph (1) shall not apply to a woman in respect of any week referred to in paragraph (3) in any part of which she was a married woman in respect of whom an election made by her under regulations made under section 19(4) of the Contributions and Benefits Act had effect.

(5) Paragraph (4) shall not apply to any woman—

- (a) who was imprisoned or otherwise detained in legal custody as referred to in paragraph (3) for a continuous period which included 2 complete years; and
- (b) whose election ceased to have effect in accordance with regulation 101(1)(c) of the Social Security (Contributions) Regulations 1979^(a) (which provides for an election to cease to have effect at the end of 2 consecutive years which began on or after 6th April 1978 during which the woman is not liable for primary Class 1 or Class 2 contributions).

(6) An application referred to in paragraph (1) may be transmitted by electronic means.◀

▶¹◀

¹Reg. 10 revoked by reg. 10 of S.I. 1987/414 as from 6.4.87.

Signed by authority of the Secretary of State for Social Services,

Brian O'Malley
Minister of State,

3rd April 1975.

Department of Health and Social Security

(a) S.I. 1979/591.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations provide for the crediting of contributions under the Social Security Act 1975.

The Regulations provide: for credits for certain young people and others who were not insured under the National Insurance Act 1965 (regulation 4, 5 and 6); for credits for certain persons undergoing approved training or completing full-time education, training or apprenticeship (regulations 7 and 8); and for credits for periods of unemployment or incapacity for work in certain cases (regulation 9). The regulations also contain certain transitional provisions (regulation 10).

▶¹◀ DISABLEMENT BENEFIT

[Regulations 12 and 13 revoked by regulation 13(4) of S.I. 1983/186 as from 6.4.83.]

¹Words omitted by reg. 13(3) of S.I. 1983/186 as from 6.4.83.

Amount of disablement gratuities

14.—(1) Where the extent of a claimant's disablement is assessed at any of the degrees of disablement severally specified in column 1 of Schedule 3 to these regulations, the amount of any disablement gratuity payable shall

- (a) if the period taken into account by that assessment is limited by reference to the claimant's life or is not less than 7 years, be the amount calculated as the percentage of the maximum disablement gratuity (specified in paragraph 2 of Part V of Schedule 4 to the Act) which is shown in column 2 of Schedule 3 to these regulations as being appropriate to that degree of disablement;
- (b) in any other case, be the amount calculated as such a percentage of the maximum disablement gratuity as bears the same proportion to the percentage shown in column 2 of Schedule 3 to these regulations as being appropriate to that degree of disablement as the period taken into account by the assessment bears to a period of 7 years, a fraction of 5 pence being, for this purpose, treated as 5 pence.

▶²(1A) Paragraph (1) applies in relation to cases where the claim for benefit was made before 1st October 1986.◀

²Reg. 14(1A) inserted by reg. 7(3) of S.I. 1986/1561 as from 1.10.86.

(2) For the purposes of this regulation, whenever such maximum disablement gratuity is altered by virtue of the passing of an Act or the making of an up-rating order, corresponding variations in the scale of gratuities payable under this regulation shall be payable only where the period taken into account by the assessment of the extent of disablement in respect of which the gratuity is awarded begins on or after the date of coming into operation of the provision altering the amount of the maximum disablement gratuity.

Weekly value of gratuity for purposes of reduction of increase of disablement benefit during hospital treatment

15. For the purpose of reducing the weekly rate of disablement pension payable by virtue of section 62 to a person awarded a disablement gratuity wholly or partly in respect of the same period, the weekly value of the gratuity shall be the weekly rate of disablement pension which would be payable to that person in lieu thereof in accordance with regulation 18(2) if that regulation applied to his case.

Earnings level for the purpose of unemployability supplement under section 58 of the Act

16. For the purpose of section 58(3) (earnings level that does not disqualify for unemployability supplement) the prescribed amount of earnings in a year shall be ▶³£4,784◀.

The said s. 58(3) was re-enacted (1.7.92) in para. 2(3) of Sch. 7 to the Social Security Contributions and Benefits Act 1992 (c. 4).

³Amount in reg. 16 substituted by reg. 2 of S.I. 2008/2365 as from 1.10.08.

INCREASE OF ▶⁴◀ DISABLEMENT BENEFIT

Circumstances in which, for the purposes of section 60, a beneficiary may be treated as being incapable of following an occupation or employment notwithstanding that he has worked thereat

⁴Words deleted by reg. 13(3) of S.I. 1983/186 as from 6.4.83.

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¹Words substituted in reg. 17(1) by reg. 7(4) of S.I. 1986/1561 as from 1.10.86.

17.—(1) For the purposes of ►¹section 59A (reduced earnings allowance)◄, when it is being determined whether a beneficiary has at all times since the end of ►¹the period of 90 days referred to in section 57(4)◄ been incapable of following his regular occupation or employment of an equivalent standard which is suitable in his case, and in determining that question only, the fact that since the end of ►¹that period of 90 days◄ such beneficiary had worked at that occupation or any such employment (as the case may be)—

- (a) for the purpose of rehabilitation or training or of ascertaining whether he had recovered from the effects of the relevant injury; or
 - (b) before obtaining surgical treatment for the effects of the said injury;
- shall be disregarded in respect of the periods specified in the next following paragraph.

(2) The periods during which the beneficiary worked at his regular occupation or at employment of equivalent standard, which shall be disregarded in accordance with the provision of the preceding paragraph, shall be—

- (a) in any case to which sub-paragraph (a) of that paragraph applies—
 - (i) any period during which he worked thereat for any of the said purposes with the approval of the Secretary of State or on the advice of a medical practitioner, and
 - (ii) any other period or periods during which he worked thereat for any of the said purposes and which did not exceed six months in the aggregate and
- (b) in any case to which sub-paragraph (b) of that paragraph applies—
 - (i) any period during which he worked thereat and throughout which it is shown that having obtained the advice of a medical practitioner to submit himself to such surgical treatment he was waiting to undergo the said treatment in accordance therewith, and
 - (ii) any other period during which he worked thereat and throughout which it is shown that he was in process of obtaining such advice.

Payments in respect of special hardship where beneficiary is entitled to a gratuity

[Under regulation 7(5) and (6) of The Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions Regulations 1986, S.I. 1986/1561, regulation 18 below continues to apply, for pre-1.10.86 beneficiaries under it, as if references to an increase of disablement pension under s. 60 were references to a reduced earnings allowance payable under s. 59A. S. 59A has been re-enacted as para. 11 of Sch. 7 to the S.S. Conts. & Bens. Act 1992 (c. 4); reduced earnings allowance is now available only for pre-1.10.90 cases, see S.S. Act 1990 (c. 27), s. 3, and S.I. 1990/1446 (c. 43), Sch., Part II.]

18.—(1) Where in any case a beneficiary is entitled to or has received a disablement gratuity, such beneficiary shall as respects that gratuity have the like rights to payments in respect of special hardship as he would have had by way of increase of disablement pension under section 60 if the disablement gratuity had been a disablement pension payable during the period taken into account by the assessment.

(2) A beneficiary who is entitled as respects a disablement gratuity to payments in respect of special hardship by virtue of the preceding paragraph shall, if he makes an application in that behalf at any time before that gratuity or any part thereof has been paid to him, be entitled, subject to the proviso to section 57(6), to a disablement pension in lieu of such gratuity for any part of the period taken into account by the assessment during which he may be entitled to an increase of such pension in respect of special hardship under section 60, and the weekly rate of such pension shall be determined in accordance with Schedule 4 of these regulations.

(3) For the purposes of paragraph (2) and notwithstanding the provisions of regulation 14(2) whenever the weekly rate of such pension is altered consequent upon the passing of an Act or the making of an uprating order, such variation shall have effect as from the date on which the provision varying the amount of

30A of the Contributions and Benefit Act(a), a day which falls within the maternity pay period shall, notwithstanding paragraph 1 of Schedule 13 to that Act, be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where—

- (a) on that day she was incapable of work; and
- (b) that day is not treated under section 30C(3) of the Contributions and Benefits Act(b) as a day which is not a day of incapacity for work; and
- (c) the day immediately preceding the first day in the maternity pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part II of the Contributions and Benefits Act; and
- (d) the woman either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day for incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefit Act, as being a day on which the woman has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation “period of incapacity for work” has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a woman is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to her for that week shall be reduced by an amount equivalent to any statutory maternity pay to which she is entitled in accordance with Part 12 of the Contributions and Benefits Act for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to her.◀

▶¹Effect of statutory adoption pay on incapacity benefit

¹Reg. 7B inserted by reg. 10(2) of S.I. 2002/2690 as from 8.12.02.

7B.—(1) For the purpose of determining a person’s entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section 30A of the Contributions and Benefits Act, a day which falls within the adoption pay period shall, notwithstanding section 171ZP(1) of the Contributions and Benefits Act(c), be treated as a day of incapacity for work for the purpose of determining whether it forms part of a period of incapacity for work where—

- (a) on that day he was incapable of work; and
- (b) that day is not treated under section 30C(3) of the Contributions and Benefits Act as a day which is not a day of incapacity for work; and
- (c) the day immediately preceding the first day in the adoption pay period falls within either a period of incapacity for work or a period of entitlement to statutory sick pay for the purposes of Part 11 of the Contributions and Benefits Act; and
- (d) the person either satisfied the contribution conditions specified for short-term incapacity benefit on the first day of incapacity for work to fall within that period of incapacity for work or would have satisfied those conditions had a claim for short-term incapacity benefit been made on the first or any subsequent day of incapacity for work falling within that period of entitlement.

(2) Any day which, by virtue of paragraph (1), forms part of a period of incapacity for work shall be further treated, for the purpose of determining entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section

(a) S. 30A was inserted by s. 1(1) of the Social Security (Incapacity for Work) Act 1994 and was amended by s. 64 and 88 of the Welfare Reform and Pensions Act 1999.

(b) S. 30C(3) was inserted by s. 3(1) of the Social Security (Incapacity for Work) Act 1994.

(c) S. 171ZP(1) was inserted by s. 4 of the Employment Act 2002.

30A of the Contributions and Benefits Act, as being a day on which the person has been entitled to short-term incapacity benefit.

(3) For the purposes of this regulation “period of incapacity for work” has the same meaning as in section 30C(1) of the Contributions and Benefits Act.

(4) Where by virtue of paragraph (1) a person is entitled to short-term incapacity benefit at the higher rate or long-term incapacity benefit for any week (including part of a week) the total amount of such benefit (including any increase for a dependant) payable to him for that week shall be reduced by an amount equivalent to any statutory adoption pay to which he is entitled in accordance with Part 12ZB of the Contributions and Benefits Act^(a) for the same week and only the balance, if any, of the short-term incapacity benefit at the higher rate or long-term incapacity benefit shall be payable to him. ◀

¹Reg. 7C inserted by reg. 2 of S.I. 2003/1068 as from 5.5.03.

►¹Inclusion of days of sickness absence from duty before discharge from Her Majesty’s forces in calculating days of entitlement to incapacity benefit

7C.—(1) For the purpose of section 30D(3A) of the Contributions and Benefits Act (days to be included in respect of person discharged from Her Majesty’s forces after 3rd May 2003 when calculating the number of days for which the person has been entitled to short-term incapacity benefit) there is prescribed any day which falls within a period—

- (a) of 4 or more consecutive days each of which is a day which is recorded by the Secretary of State for Defence as a day on which the person was on sickness absence from duty; and
- (b) which ends not more than 8 weeks before the first day of the period to which the claim for incapacity benefit relates.

(2) For the purpose of paragraph (1)(a) any two such periods not separated by a period of more than 8 weeks shall be treated as one period. ◀

Limit of earnings from councillor’s allowance

8. For the purposes of section 30E(1) of the Contributions and Benefits Act (net amount of councillor’s allowance in excess of prescribed amount to be deducted from incapacity benefit) the prescribed amount is ►²£92.00◀.

²Amount in reg. 8 substituted by reg. 3 of S.I. 2008/2365 as from 1.10.08.

Councillor’s allowance paid otherwise than weekly

9.—(1) For the purposes of section 30E(2) of the Contributions and Benefits Act, where a councillor’s allowance is paid otherwise than weekly, an amount calculated in accordance with paragraphs (2) and (3) shall be regarded as the weekly amount of the allowance.

(2) In the case of an attendance allowance, the weekly amount shall be the amount paid in respect of attendances undertaken in the week in question.

(3) In the case of a basic allowance or a special responsibility allowance, the weekly amount shall be calculated—

- (a) where that allowance is paid annually, by dividing the amount paid by 52;
- (b) where that allowance is paid quarterly, by dividing the amount paid by 13;
- (c) where that allowance is paid monthly, by multiplying the amount by 12 and dividing by 52; and
- (d) in any other case, by dividing the amount of the allowance by the number of days in the period and multiplying it by 7.

(a) Part 12ZB was inserted by s. 4 of the Employment Act 2002.

2008 No. 2928

SOCIAL SECURITY

The Social Security (Incapacity benefit work-focused Interviews) Regulations 2008

<i>Made</i> - - - -	<i>10th November 2008</i>
<i>Laid before Parliament</i>	<i>14th November 2008</i>
<i>Coming into force</i> -	<i>15th December 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations, in exercise of the powers conferred upon him by sections 2A(1), (3) to (6) and (8), 2B(2), (6) and (7), 189(4) to (6) and (7A) and 191 of the Social Security Administration Act 1992(a).

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(b).

Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008 and come into force on 15th December 2008.

Interpretation

2.—(1) In these Regulations—

"the 1998 Act" means the Social Security Act 1998(e);

"the 2000 Regulations" means the Social Security (Work-focused Interviews) Regulations 2000(d);

"the 2001 Regulations" means the Social Security (Jobcentre Plus Interviews) Regulations 2001(e);

(a) 1992 c. 5. Sections 2A and 2B were inserted by section 57 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 2B(2) was amended by section 53 of, and paragraphs 8 and 9(1) and (3) of Schedule 7 to, the Employment Act 2002 (c. 22). Section 189(4) to (6) was amended by section 86 of, and paragraph 109 of Schedule 7 to, the Social Security Act 1998 (c. 14). Section 189(7A) was inserted by paragraph 82 of Schedule 12 to the Welfare Reform and Pensions Act 1999. Section 191 is cited because of the meaning there given to the word "prescribe".

(b) See section 173(1)(b) of the Social Security Administration Act 1992.

(c) 1998 c. 14.

(d) S.I. 2000/897. Provisions of the 2000 Regulations were revoked by regulation 16(1) of, and Schedule 1 to, the Social Security (Jobcentre Plus Interviews) Regulations 2002 (S.I. 2002/1703), however under regulation 16(2) of the 2002 Regulations, the revoked provisions are saved in respect of a specified person to whom those Regulations applied on the day before the revocations took effect.

(e) S.I. 2001/3210. Provisions of the 2001 Regulations were revoked by regulation 16(1) of, and Schedule 1 to, the Social Security (Jobcentre Plus Interviews) Regulations 2002 (S.I. 2002/1703), however under regulation 16(2) of the 2002 Regulations, the revoked provisions are saved in respect of a specified person to whom those Regulations applied on the day before the revocations took effect.

"the 2002 Regulations" means the Social Security (Jobcentre Plus Interviews) Regulations 2002(a);

"the 2003 Regulations" means the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003(b);

"action plan" has the meaning given by regulation 7;

"benefit week" means any period of seven days corresponding to the week in respect of which the relevant specified benefit is due to be paid;

"relevant claimant" has the meaning given by regulation 3;

"relevant decision" has the meaning given by section 2B(2) of the Social Security Administration Act 1992 (supplementary provisions relating to work-focused interviews);

"specified benefit" means—

- (a) incapacity benefit;
- (b) income support, if any of the following paragraphs of Schedule 1B (prescribed categories of person) to the Income Support (General) Regulations 1987(c) applies—
 - (i) paragraph 7 (persons incapable of work);
 - (ii) paragraph 24 or 25 (persons appealing against a decision which embodies a determination that they are not capable of work);
- (c) severe disablement allowance;

"work-focused interview" means an interview conducted under regulation 6 for the purposes described in regulation 4.

(2) Any notification under these Regulations that is sent by post is to be taken to have been received on the second working day after posting.

Relevant claimant

3.—(1) A relevant claimant is a person who satisfies all of the following conditions.

(2) The first condition is that the person is entitled to a specified benefit.

(3) The second condition is that, immediately before these Regulations came into force, the person—

- (a) was a "relevant person" within the meaning of the 2003 Regulations; or
- (b) would have been a "relevant person" within the meaning of the 2003 Regulations if not for the person being 16 or 17 years of age; or
- (c) was a "relevant person" within the meaning of the 2000 Regulations or the 2001 Regulations, as saved by regulation 16(2) of the 2002 Regulations.

(4) The third condition is that the person has not attained the age of 60 years.

(5) The fourth condition is that, on the day on which the requirement to take part in a work-focused interview would have arisen, the person is not treated as incapable of work in accordance with regulation 10 of the Social Security (Incapacity for Work) (General) Regulations 1995(d) (certain persons with a severe condition to be treated as incapable of work).

(a) S.I. 2002/1703.

(b) S.I. 2003/2439.

(c) S.I. 1987/1967. Schedule 1B was inserted by regulation 22 of S.I. 1996/206. Paragraph 24 of Schedule 1B was amended by S.I. 1999/2422. Paragraph 25 of Schedule 1B was amended by S.I. 1999/2422 and 3109 and S.I. 2005/337.

(d) S.I. 1995/311. Regulation 10 was amended by S.I. 1995/987, S.I. 1996/3207, S.I. 1997/1009 and S.I. 1999/3109.

Purposes of a work-focused interview

4. A work-focused interview is an interview with a relevant claimant that is conducted for any or all of the following purposes—

- (a) assessing the relevant claimant's prospects of remaining in or obtaining work;
- (b) assisting or encouraging the relevant claimant to remain in or obtain work;
- (c) identifying activities that the relevant claimant may undertake that will make remaining in or obtaining work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the relevant claimant which may make it more likely that the relevant claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities, including self-employment opportunities, for the relevant claimant, which are relevant to that person's needs and abilities.

Requirement for a relevant claimant to take part in a work-focused interview

5.—(1) Subject to the following provisions of this regulation, a relevant claimant may be required by the Secretary of State to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of the specified benefit which is payable to that claimant.

(2) The Secretary of State may determine that a requirement that a relevant claimant take part in a work-focused interview is not to apply, or is treated as not having applied, if that interview would not be, or would not have been, of assistance because the claimant is or was likely to be starting or returning to work.

(3) A relevant claimant in relation to whom a requirement to take part in a work-focused interview has been determined not to apply under paragraph (2) must be treated as having complied with that requirement in respect of that interview for the purposes of—

- (a) paragraph (1); and
- (b) entitlement to a specified benefit.

(4) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred by the Secretary of State if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—

- (a) of assistance to that relevant claimant; or
- (b) appropriate in the circumstances.

(5) A deferral under paragraph (4) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.

(6) If a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined and notified to the relevant claimant.

(7) Any requirement to take part in a work-focused interview ceases to have effect if the relevant claimant ceases to satisfy the conditions in regulation 3.

The work-focused interview

6.—(1) The Secretary of State must notify, in writing or otherwise, a relevant claimant who is required to take part in a work-focused interview of the date, time and place of that interview.

(2) A work-focused interview may take place at a relevant claimant's home if the Secretary of State determines that requiring the relevant claimant to attend elsewhere would cause undue inconvenience to, or endanger the health of, the relevant claimant.

(3) A relevant claimant is to be regarded as having taken part in a work-focused interview if the claimant—

- (a) attends for the work-focused interview at the place and on the date and time notified under paragraph (1);
- (b) provides information, if requested by the Secretary of State, about any or all of the matters set out in paragraph (4);
- (c) participates in discussions to the extent the Secretary of State considers necessary, about any or all of the matters set out in paragraph (5);
- (d) assists the Secretary of State in the completion of an action plan in accordance with regulation 7.

(4) The matters referred to in paragraph (3)(b) are—

- (a) the relevant claimant's educational qualifications and vocational training;
- (b) the relevant claimant's work history;
- (c) the relevant claimant's aspirations for future work;
- (d) the relevant claimant's skills that are relevant to work;
- (e) the relevant claimant's work-related abilities;
- (f) the relevant claimant's caring or childcare responsibilities;
- (g) any paid or unpaid work that the relevant claimant is undertaking.

(5) The matters referred to in paragraph (3)(c) are—

- (a) any activity the relevant claimant is willing to undertake which may make obtaining or remaining in work more likely;
- (b) any such activity that the relevant claimant may have previously undertaken;
- (c) any progress the relevant claimant may have made towards remaining in or obtaining work;
- (d) the relevant claimant's opinion as to the extent to which the ability to remain in or obtain work is restricted by the relevant claimant's physical or mental condition.

Action plan

7.—(1) An action plan is a written document completed by the Secretary of State, which contains a record of the discussions a relevant claimant has participated in with the Secretary of State in relation to the relevant claimant's employability, including any action the relevant claimant and the Secretary of State agree is reasonable and the relevant claimant is willing to take in order to help that relevant claimant enhance his or her employment prospects.

(2) The Secretary of State must provide the relevant claimant with a copy of the action plan completed under paragraph (1) at the end of the work-focused interview.

Failure to take part in a work-focused interview

8.—(1) A relevant claimant who is required to take part in a work-focused interview but fails to do so must show good cause for that failure within five working days of the date on which the Secretary of State gives notification of that failure.

(2) In determining whether a relevant claimant has shown good cause for a failure to take part in a work-focused interview, the matters to be taken into account include—

- (a) that the relevant claimant misunderstood the requirement to take part in the work-focused interview due to any learning, language or literacy difficulties of the relevant claimant or any misleading information given to the relevant claimant by the Secretary of State;
- (b) that the relevant claimant had transport difficulties and that no reasonable alternative was available;
- (c) that the relevant claimant was attending an interview with an employer with a view to remaining in or obtaining employment;
- (d) that the relevant claimant was pursuing employment opportunities as a self-employed earner;
- (e) that the relevant claimant was attending a medical or dental appointment and that it would have been unreasonable in the circumstances to re-arrange the appointment;
- (f) that the relevant claimant was accompanying another person for whom the claimant has caring responsibilities to a medical or dental appointment and that it would have been unreasonable for that other person to re-arrange the appointment;
- (g) that the relevant claimant, a dependant or another person for whom the relevant claimant provides care suffered an accident, sudden illness or relapse of a physical or mental health condition;
- (h) that the relevant claimant was attending the funeral of a relative or close friend on the day fixed for the work-focused interview;
- (i) that the physical or mental condition of the relevant claimant made it impracticable to attend at the time and place fixed for the interview;
- (j) that the established customs and practices of the religion to which the relevant claimant belongs prevented attendance on the day or at the time fixed for the work-focused interview;
- (k) any other matter that the Secretary of State considers appropriate.

(3) If the Secretary of State determines that a relevant claimant has failed to take part in a work-focused interview and good cause has not been shown for that failure within five working days of the day on which the interview was to take place, the Secretary of State shall make a relevant decision for the purposes of section 2B of the Social Security Administration Act 1992.

Consequences of failure to take part in a work-focused interview

9.—(1) A relevant claimant in respect of whom a relevant decision has been made in accordance with regulation 8(3) shall, in accordance with this regulation, have his or her benefit reduced—

- (a) by 50% of the "work-related activity component" in each of the first four benefit weeks to which, by virtue of section 10(5) of the 1998 Act or regulations made under section 10(6) of that Act, the reduction applies;
- (b) by 100% of that component for each subsequent benefit week.

(2) If two or more specified benefits are in payment to a relevant claimant, a reduction made in accordance with paragraph (1) shall be applied, subject to paragraphs (3) to (6), to the specified benefits in the following order of priority—

- (a) income support;
- (b) incapacity benefit;
- (c) severe disablement allowance.

(3) If the amount of the reduction is greater than some, but not all, of the specified benefits listed in paragraph (2), the reduction shall be made against the first benefit in that list that is the same as, or greater than, the amount of the reduction.

(4) For the purpose of determining whether a specified benefit is the same as, or greater than, the amount of the reduction for the purposes of paragraph (3), ten pence shall be added to the amount of the reduction.

(5) In a case where the whole of the reduction cannot be applied against any one specified benefit because the amount of no one benefit is the same as, or greater than, the amount of the reduction, the reduction shall be applied against the first benefit in payment in the list of priorities in paragraph (2) and so on against each benefit in turn until the whole of the reduction is exhausted or, if this is not possible, the whole of the specified benefits are exhausted.

(6) If the rate of any specified benefit payable to a relevant claimant changes, the rules set out in this regulation for a reduction in the benefit payable shall be applied to the new rates and any adjustments to the benefits against which the reductions are made shall take effect from the beginning of the first benefit week to commence for that relevant claimant following the change.

(7) Paragraph (1) applies to a relevant claimant each time a relevant decision is made in accordance with regulation 8(3) in respect of that person.

(8) In the case of a relevant claimant whose benefit has been reduced in accordance with paragraph (1) and who subsequently takes part in a work-focused interview, the whole of the reduction shall cease to have effect on the first day of the benefit week in which the requirement to take part in a work-focused interview was met.

(9) In the case of a relevant claimant whose benefit has been reduced in accordance with paragraph (1) and who subsequently fails to meet the conditions specified in regulation 3(4) or (5), the whole of the reduction shall cease to have effect on the first day of the benefit week in which those conditions are no longer satisfied.

(10) For the purposes of determining the amount of any benefit payable, a relevant claimant shall be treated as receiving the amount of any specified benefit which would have been payable but for a reduction made in accordance with paragraph (1).

(11) Despite regulation 8(3), the consequences specified in paragraph (1) do not apply to a person who—

- (a) brings new facts to the notice of the Secretary of State within one month of the date on which the initial determination was notified to that person and—
 - (i) those facts could not reasonably have been brought to the Secretary of State's notice within five working days of the date on which the notification of the initial determination was received; and
 - (ii) those facts show that there is good cause for the person's failure to take part in the work-focused interview;
- (b) is no longer required to take part in a work-focused interview as a condition of continuing to be entitled to the full amount of the specified benefit that is payable to that person apart from these Regulations; or
- (c) attains the age of 60.

(12) Despite anything to the contrary in this regulation, no benefit is to be reduced in any benefit week—

- (a) below 10 pence;
- (b) in relation to more than one relevant decision relating to a particular work-focused interview;
- (c) by more than 100% of the work-related activity component.

(13) For the purposes of this regulation, "work-related activity component" is the amount specified in Part 4 of Schedule 4 to the Employment and Support Allowance Regulations 2008(a).

(a) S.I. 2008/794.

Appeals

10.—(1) This regulation applies to any relevant decision under regulation 8(3) or any decision made under section 10 of the 1998 Act (decisions superseding earlier decisions) superseding such a relevant decision.

(2) This regulation applies whether the decision is as originally made or as revised under section 9 of the 1998 Act (revision of decisions).

(3) In the case of a decision to which this regulation applies, the relevant claimant in respect of whom the decision was made shall have a right of appeal under section 12 of the 1998 Act (appeal to first-tier tribunal) to the First-tier tribunal.

Exercise of certain functions relating to work-focused interviews

11.—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by a person providing services to the Secretary of State (including the employees of such a person) as may be authorised by the Secretary of State.

(2) The functions are any function under—

- (a) regulation 5(1), (2) and (4) (requirement to take part in a work-focused interview);
- (b) regulation 6(1), (2) and (3)(b), (c) and (d) (the work-focused interview);
- (c) regulation 7 (action plan).

[Regulation 12(1) revokes S.I. 2005/3, 2005/2604, 2006/536 and 2006/3088.]

[Regulation 12(2) amends regulation 4 of S.I. 2000/1926.]

[Regulation 12(3) amends regulation 8 of S.I. 2002/1703.]

[Regulation 12(4) & (5) makes modifications to S.I. 2005/3.]

Signed by authority of the Secretary of State for Work and Pensions.

10th November 2008

Jonathan Shaw
Parliamentary-Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 1 provides for citation and commencement.

Regulation 2 provides definitions for certain terms used in these Regulations.

Regulation 3 defines a relevant claimant for the purposes of these Regulations. Generally, these Regulations apply to a person who is in receipt of a specified benefit, except for people who were excluded by the earlier Regulations, people who fall under a different work-focused interview regime, people aged over 59 or people exempted by reason of being incapable of work.

Regulation 4 sets out the purposes of a work-focused interview.

Regulation 5 provides that a relevant claimant is required to take part in one or more work-focused interviews if so required by the Secretary of State, unless the person is exempted or the work-focused interview is deferred.

Regulation 6(1) provides that the Secretary of State must inform the relevant claimant of the time, date and place of the work-focused interview. Regulation 6(2) provides that a work-focused interview may take place at a relevant claimant's home in certain circumstances. Regulation 6(3) to (5) sets out a list of factors to determine whether a relevant claimant has taken part in a work-focused interview.

Regulation 7 provides for the making of an action plan in relation to the relevant claimant.

Regulation 8 provides for the case where a relevant claimant has failed to take part in a work-focused interview. Paragraph (1) gives a relevant claimant an opportunity to show good cause why he or she has failed to take part in a work-focused interview. Paragraph (2) provides for a list of 'good cause' reasons. Paragraph (3) mandates that a relevant claimant who has failed to show good cause for taking part in a work-focused interview shall suffer the consequences set out in regulation 9.

Regulation 9 sets out the consequences of a failure to show good cause for not taking part in a work-focused interview. Generally, these consequences are a 50% reduction of the amount of the work-related activity component of benefit for the first 4 weeks, followed by a 100% reduction in subsequent weeks. The "work-related activity component" is a reference to an amount specified under the Employment and Support Allowance Regulations 2008. Paragraphs (2) to (6) provide for an order of priority of reductions in a case where more than one specified benefit is paid to a relevant claimant. Paragraphs (8) to (11) provide for the consequences set out in paragraph (1) to come to an end in certain circumstances.

Regulation 10 provides for an appeal path from a relevant decision made under regulation 8(3).

Regulation 11 provides that certain powers under these Regulations may be exercised by a person, or employees of that person, authorised by the Secretary of State.

Regulation 12 provides that certain sets of Regulations are revoked, makes minor consequential amendments to two other sets of Regulations and includes a savings and a transitional provision. Paragraph (1) revokes the 2003 Regulations and all of the instruments that amended those Regulations. Paragraphs (2) and (3) update references in two other instruments, in provisions stating that the 2003 Regulations do not apply to certain claimants, to ensure that Regulations do not apply to the same claimants. Paragraph (4) is a savings provision to ensure that a person who is subject to a sanction on the date on which these Regulations come into force remains subject to the sanctions regime under the 2003 Regulations. Paragraph (5) is a transitional provision and provides that a person subject to a saved sanction is transitioned to these Regulations upon the ending of that sanction.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

- of work falls to be determined in accordance with the personal capability assessment, ◀ she does not refrain from work in any occupation; or
- (b) in the case of a woman whose expected or actual date of confinement has been certified in accordance with the Social Security (Medical Evidence) Regulations 1976, on any day in the period—
- (i) beginning with the first day of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
- (ii) ending on the 14th day after the actual date of her confinement, if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

Person to be treated as incapable of work throughout a day

15. A person who at the commencement of any day is, or thereafter becomes, incapable of work by reason of some specific disease or bodily or mental disablement shall be treated as incapable of work throughout that day.

CHAPTER IV

TREATING AS CAPABLE, DISQUALIFICATION ETC.

Person who works to be treated as capable of work

▶**16.**—(1) A person shall be treated as capable of work on each day of any week during which he does work.

¹Reg. 16 substituted by reg. 3 of S.I. 2006/757 as from 10.4.06.

- (2) Paragraph (1) applies even if—
- (a) it has been determined that he is, or is to be treated under any of regulations 10 to 15 or regulation 27 as, incapable of work, or
- (b) he meets the conditions set out in regulation 28(2) for treating a person as incapable of work in accordance with the personal capability assessment until a determination has been made in accordance with that assessment.
- (3) Paragraph (1) does not apply to—
- (a) work as a councillor disregarded under section 171F of the Contributions and Benefits Act,
- (b) approved work under regulation 10A,
- (c) care of a relative or domestic tasks carried out in his own home,
- (d) any activity he undertakes during an emergency solely to protect another person or to prevent serious damage to property or livestock, or
- (e) any of the categories of work set out in regulation 17 (exempt work).
- (4) This regulation is subject to regulation 13(3) (person receiving certain regular treatment).
- (5) A person who does work to which this regulation applies in a week which is—
- (a) the week in which he first becomes entitled to a benefit, allowance or advantage on account of his incapacity for work in any period, or
- (b) the last week in any period in which he is incapable of work,

shall be treated as capable of work by virtue of paragraph (1) only on the actual day or days in that week on which he does that work.

- (6) In this regulation—
- “week” means a period of 7 days beginning with Sunday,
- “work” means any work which a person does, whether or not he undertakes it in expectation of payment. ◀

Reg. 17

Exempt work

¹Reg. 17 substituted by reg. 4 of S.I. 2006/757 as from 10.4.06.

²Amounts in reg. 17(3) & (4) substituted by reg. 4 and words substituted in para. 7 of S.I. 2008/2365 as from 1.10.08.

►¹17.—(1) The categories of work referred to in regulation 16(3)(e) are set out in the following paragraphs.

- (2) Work for which the earnings in any week do not exceed £20.00.
- (3) Work for which the earnings in any week do not exceed ►²£92.00◀ and which—
- (a) is part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution, or
- (b) is supervised by a person employed by a public or local authority or voluntary organisation engaged in the provision or procurement of work for persons who have disabilities.
- (4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed ►²£92.00◀ and which—
- (a) is done during a 52 week period beginning on the first day on which the work is done, provided that—
- (i) the person has not previously done specified work,
- (ii) since the beginning of the last period of specified work, he has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks, or
- (iii) not less than 52 weeks have elapsed since he previously did specified work; or
- (b) is done by a person who is treated as incapable of work under—
- (i) regulation 10 (persons with a severe condition treated as incapable of work), or
- (ii) regulation 31(3) and (5)(c) to (k) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(a) (persons treated as incapable of work).
- (5) Work done in the course of receiving assistance in pursuing self-employed earner's employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973(b) (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(c) (functions in relation to training for employment etc).
- (6) Work done as a volunteer.
- (7) ►²Duties undertaken on either one full day or two half days a week◀—
- (a) a member of the Disability Living Allowance Advisory Board, or
- (b) a panel member with a disability qualification, as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999(d), acting as a member of an appeal tribunal constituted under Chapter 1 of Part 1 of the Social Security Act 1998(e).
- (8) In this regulation—
- “less than 16 hours a week” means—
- (a) subject to paragraph (b) or (c), a combined total of less than 16 hours a week,
- (b) subject to paragraph (c), an average of less than 16 hours a week in the period which comprises that week and the 4 weeks preceding it, or

(a) S.I. 1995/310. Relevant amending instruments are S.I. 1995/987, 1996/3207, 1998/2231 1999/3109.

(b) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (C. 19); section 29(4) and Schedule 7; Part I of the Employment Act 1989 (c. 38) and section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(c) 1990 c. 35; section 2 was amended by sections 47 and 51 of, and Schedule 10 to, the Trade Union Reform and Reform and Employment Rights Act 1993 and by S.I. 1999/1820.

(d) S.I. 1999/991, to which there are amendments not relevant to these Regulations.

(e) 1998 c. 14.

1975 No. 529

SOCIAL SECURITY

The Social Security (Mariners' Benefits) Regulations
1975*Laid before Parliament in draft**Made - - - - 26th March 1975**Coming into Operation 6th April 1975*

Whereas a draft of the following regulations was laid before Parliament and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Services, in exercise of the powers conferred upon her by sections 12(1)(a), 14(4) and 41(1) of the Social Security Act 1973(a) and all other powers enabling her in that behalf, hereby makes the following regulations

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Mariners' Benefits) Regulations 1975, and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1973;

“British ship” means—

- (a) any ship or vessel belonging to Her Majesty; or
- (b) any ship or vessel whose port or registry is a port in Great Britain;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1973(b), as amended(c);

▶¹“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act◀

“foreign-going voyage” means a voyage going outside the following limits, that is to say, the United Kingdom the Republic of Ireland, the Channel Islands, the Isle of Man and the continent of Europe between the river Elbe and Brest inclusive;

“managing owner” means that owner of any ship or vessel who, where there is more than one such owner, is responsible for the control and management of that ship or vessel;

“mariner” means a person who is or has been in employment under a contract of service either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment in that other capacity is for the purposes of that ship or vessel or her crew or any passengers or cargo or mails carried thereby; and
- (b) the contract is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage;

¹Defn. of “contributory employment and support allowance” inserted by reg. 67(2)(a) of S.I. 2008/1554 as from 27.10.08.

(a) 1973 c. 38.

(b) S.I. 1973/1264 (1973 II, p. 3750).

(c) The relevant amending instruments are S.I. 1974/2035, 2171 (1974 III, p. 7871, 8523).

Regs. 1-2

but does not include a person in so far as his employment is as a serving member of the forces (as defined in regulation 1(2) of the Contributions Regulations), unless he is serving or undergoing training or instruction in any of the forces mentioned in Part I of Schedule 6 to those regulations (except the regular naval, military or air forces of the Crown) for a continuous period not exceeding 72 consecutive hours;

“owner”, in relation to any ship or vessel, means the person to whom the ship or vessel belongs and who, subject to the right of control of the captain or master of the ship or vessel, is entitled to control of that ship or vessel, and references to the owner of a ship or vessel shall, in relation to a ship or vessel which has been demised, be construed as referring to the person who for the time being is entitled as charterer to possession and, subject as aforesaid, control of the ship or vessel by virtue of the demise or any sub-demise;

“share fisherman” means any person who—

- (a) is ordinarily employed in the fishing industry otherwise than under a contract of service, as master or a member of the crew of any British fishing boat within the meaning of section 373 of the Merchant Shipping Act 1894(a), being a fishing boat manned by more than one person, and remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of the fishing boat; or
- (b) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in Great Britain otherwise than under a contract of service making or mending any gear appurtenant to a British fishing boat or performing other services ancillary to or in connection with that boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in such employment;

“sea-going share fisherman” means a person falling within sub-paragraph (a) of the definition of “share fisherman” above;

“on-shore share fisherman” means a person falling within sub-paragraph (b) or the definition of “share fisherman” above;

▶¹“the Welfare Reform Act” means the Welfare Reform Act 2007◀

¹Defn. of “the Welfare Reform Act” inserted by reg. 67(2)(b) of S.I. 2008/1554 as from 27.10.08.

and, subject as aforesaid, expressions to which meanings are assigned in the Merchant Shipping Acts 1894 to 1970 have the same meanings as in those Acts; and other expressions have the same meanings as in the Act.

(3) Regulations 1, 4, 6(1) and (2) and 9, in their application to mariners but not in their application to share fishermen, shall have effect as if any reference therein in whatever terms to ships or vessels or activities or places connected therewith included a reference to hovercraft or activities or places connected with hovercraft, subject to the modifications contained in the Schedule to these regulations.

(4) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(b) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Days in periods of paid leave not to be treated as days of unemployment

2. Where a person, either being domiciled or having a place of residence in the United Kingdom—

(a) 1894 c. 60.

(b) 1899 c. 63.

- (a) is employed as a mariner on board any British ship, not being a ship used wholly or mainly for the disposal of sludge; or
- (b) is employed as a mariner on board any ship or vessel, not being a British ship or a ship or vessel used wholly or mainly for the disposal of sludge, and—
 - (i) the contract in respect of the employment is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on her voyage; and
 - (ii) the owner (or managing owner, if there is more than one owner) has a place of business in Great Britain; and
- (c) upon the termination of a voyage ending during the period of that employment, he is entitled to a day or days of leave on pay, and
- (d) that employment is terminated before the end of the period of leave on pay,

▶¹he shall not be ▶²regarded◀ as available for employment on any day in that period of leave.◀

¹Words substituted in reg. 2 by reg. 166(2) of S.I. 1996/207 as from 7.10.96.

Information to be furnished by mariners on claims for benefit

3. Upon making any claim for benefit, any mariner shall, if so required, furnish to the Secretary of State the number of his continuous discharge book and particulars of the ships and vessels on board which he was employed during any period material to the claim.

²Word substituted in reg. 2 for "treated" by Pt II of Sch. to S.I.1996/1516 (where it refers to reg. 166(2)) as from 7.10.96.

Removal of disqualification for receiving benefit by reason of absence from Great Britain

4. Any person, who is or has been employed as a mariner on board any ship or vessel or who is or has been under contract to travel at his employer's expense for the purpose of commencing such employment, shall not by reason of his being absent from Great Britain (but subject to the provisions of any regulations made under section 14(3)(a) disqualification through misconduct) of the Act ▶³or section 18(1) of the Welfare Reform Act 2007,◀, be disqualified on any day for receiving—

³Words inserted in reg. 5 by reg. 67(4) of S.I. 2008/1554 as from 27.10.08.

- (a) ▶⁴▶⁵incapacity benefit ▶³, contributory employment and support allowance◀◀ or severe disablement allowance◀ if,
 - (i) on account of any hurt or injury received, or any illness suffered, by him while so employed or under contract so to travel; or
 - (ii) in consequence of any action taken, while he is or was so employed or under contract so to travel, for the purpose of preventing infection; he has been left outside Great Britain or have been discharged or has not commenced such employment; or
- (b) ▶⁶▶⁷◀, ▶⁸incapacity benefit ▶³, contributory employment and support allowance◀◀ or severe disablement allowance◀ if, while so employed or under contract so to travel, he has been left outside Great Britain for any reasons other than those specified in sub-paragraphs (i) and (ii) of paragraph (a) of this regulation, and reports to the appropriate superintendent or consular officer or chief officer of customs not later than 14 days after being so left, or, if, at the time of being so left, he was placed in custody, immediately after his release from custody:

⁴Words in reg. 4(a) substituted by reg. 15(2)(a) of S.I. 1984/1303 as from 29.11.84.

⁵Words in reg. 4(a) substituted by reg. 4(2) of S.I. 1995/829 as from 13.4.95.

⁶Words in reg. 4(b) substituted by reg. 15(2)(b) of S.I. 1984/1303 as from 29.11.84.

⁷Words "unemployment benefit" deleted from reg.4(b) by reg.21(2) of S.I. 1996/1345 as from 7.10.96.

⁸Words in reg. 4(b) substituted by reg. 4(2) of S.I. 1995/829 as from 13.4.95.

Provided that this regulation shall cease to have effect—

- (a) on that person's commencing or resuming employment outside Great Britain; or
- (b) in any case where that person is not returned without undue delay to the place to which regulation 7 of the Merchant Shipping (Repatriation) Regulations 1972(a) requires him to be returned, on the occurrence of the delay; or
- (c) in any other case, on his being returned to the place mentioned in sub-paragraph (b) of this proviso.

(a) S.I. 1972/1805.

Regs. 4-6

¹Reg. 4A inserted by reg. 166(3) of S.I. 1996/207 as from 7.10.96.

►¹Entitlement to a contributions-based jobseeker's allowance for persons outside Great Britain

4A.—(1) Subject to paragraph (2), where a claimant would be entitled to a contribution-based jobseeker's allowance but for section 1(2)(i) of the Jobseekers Act 1995(a) (conditions of entitlement to a jobseeker's allowance: requirement to be in Great Britain), he shall be entitled to a contribution-based jobseeker's allowance notwithstanding his absence from Great Britain if—

- (a) he is or has been employed as a mariner on board any ship or vessel, or is or has been under contract to travel at his employer's expense for the purpose of commencing such employment, and
- (b) while so employed or under contract so to travel, he has been left outside Great Britain, and reports to the appropriate superintendent or consular officer or chief officer of customs not later than 14 days after being so left, or, if it is not reasonably practicable for him to report within 14 days, as soon as is reasonably practicable.

(2) Paragraph (1) shall cease to apply to a claimant—

- (a) on his commencing or resuming employment outside Great Britain; or
- (b) on his being returned to the place to which regulation 6 of the Merchant Shipping (Repatriation) Regulations 1979(b) (place for return) requires him to be returned; or
- (c) where he is required to be returned under regulation 6 of the Merchant Shipping (Repatriation) Regulations 1979 but is not so returned, on the first day on which his return could reasonably have been expected.◀

²Words in reg. 5 & heading substituted & inserted by reg. 67(4) of S.I. 2008/1554 as from 27.10.08.

³Words substituted by reg. 15(3) of S.I. 1984/1303 as from 29.11.84.

⁴Words substituted in reg. 5 by reg. 21(3) of S.I. 1996/1345 as from 7.10.96.

⁵Words in reg. 5 substituted by reg. 4(3) of S.I. 1995/829 as from 13.4.95.

⁶Reg. 6(1) substituted by reg. 166(4) of S.I. 1996/207 as from 7.10.96.

⁷Words substituted by reg. 15(4) of S.I. 1984/1303 as from 29.11.84.

⁸Words in reg. 6(2) substituted by reg. 4(4) of S.I. 1995/829 as from 13.4.95.

Evidence of unemployment ►², incapacity for work or limited capability for work◀

5. For the purpose of any claim to a ►³►⁴jobseeker's allowance◀►⁵incapacity benefit ►², contributory employment and support allowance◀◀ or severe disablement allowance◀ by a mariner or share fisherman employed on board any ship or vessel, evidence may be taken—

- (a) in any part of the Commonwealth or the Republic of Ireland, before a judge or magistrate, or by a superintendent;
- (b) in a foreign country, by a British consular officer.

Special provisions relating to days of unemployment or ►², incapacity for work or limited capability for work◀ in the case of mariners and share fishermen employed on board any ships or vessels

6.—►⁶(1) A mariner or share fisherman employed as such on board any ship or vessel shall be treated as available for and actively seeking employment during any period when he is absent from Great Britain if he would be so available or actively seeking employment but for the fact that he is absent from Great Britain.◀

(2) Where by virtue of regulation 4(a) above a person is not disqualified on any day for receiving ►⁷►⁸incapacity benefit ►², contributory employment and support allowance◀◀ or severe disablement allowance◀, although absent from Great Britain, he shall be deemed to be incapable of work ►² or as having limited capability for work as defined in section 1(4) of the Welfare Reform Act◀ by reason of some specific disease or bodily or mental disablement on any such day.

(a) 1995 c. 18.

(b) S.I. 1979/97.

1974 No. 2010

SOCIAL SECURITY

The Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974

Laid before Parliament in draft

Made - - - - 3rd December 1974
Coming into force 6th April 1975

Whereas a draft of the following regulations was laid before Parliament and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Services, in exercise of the powers conferred upon her by sections 9(7), 37 and 42 of and paragraph 14 of Schedule 22 and paragraphs 2 and 4 of Schedule 26 to the Social Security Act 1973(a) and all other powers enabling her in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974, and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1973;

“the Industrial Injuries Act” means the National Insurance (Industrial Injuries) Act 1965(b);

▶¹“the Welfare Reform Act” means the Welfare Reform Act 2007;◀

“appropriate weekly rate” means, in relation to any benefit, the weekly rate of personal benefit by way of benefit of that description which is appropriate in the case of the person in relation to whom the provision containing that expression is to be applied;

▶¹“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act;◀

▶²“the determining authority” means, as the case may be, the Chief Adjudication Officer appointed under section 97(1B) of the Social Security Act 1975, any other adjudication officer appointed under section 97(1) of that Act, a social security appeal tribunal constituted under section 97(2) to (2E) of that Act, the Chief of any other Social Security Commissioner appointed under section 97(3) of that Act or a tribunal of 3 such Commissioners constituted under section 116 of that Act.◀

“marriage” includes any remarriage, and the word “married”, wherever it occurs, shall be construed accordingly;

“personal benefit” means that benefit, pension or allowance (whether under the Act or otherwise) which, apart from the provisions of regulations made under

¹Words inserted in defns. by reg. 64(2) of S.I. 2008/1554 as from 27.10.08.

²Definition substituted by reg. 2 of S.I. 1984/458 as from 23.4.84.

(a) 1973 c. 38.
(b) 1965 c. 52.

paragraph 3 of Schedule 10 to the Act (overlapping benefits), is payable to a person otherwise than in respect of another person who is a child or an adult dependant;

“Personal Injuries Scheme” means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939(a) or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(b);

“reckonable year”, for the purposes of the contribution conditions for any benefit, means an income tax year in which the contributor concerned has paid or been credited with contributions of a relevant class and in which the earnings factor derived from those contributions amounts to not less than that year’s lower earnings limit multiplied by 50;

“Service Pensions Instrument” means those provisions and only those provisions of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a death or a disablement pension (not including a pension calculated by reference to length of service) and allowances for dependants payable with either such pension may be paid out of public funds in respect of any death or disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council;

“1914-1918 War Injuries Scheme” means any scheme made under the Injuries in War (Compensation) Act 1914(c) or under the Injuries in War Compensation Act 1914 (Session 2)(d) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 War;

“year” means an income tax year;

and other expressions have the same meaning as in the Act.

(3) References in these regulations to any enactment or regulations shall, except in so far as the context otherwise requires, be construed as references to such enactment or regulations as amended or extended by or under any other enactment, order or regulations and as including references to any enactment or regulations thereby consolidated.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(e) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Special credits where a woman’s marriage has been terminated

2.* Where a woman’s marriage has been terminated by the death of her husband or otherwise, and she has in respect of any one year (not being a year before that in which the marriage took place, and being either the last year before that in which the marriage was terminated or any subsequent year) paid Class 1 or Class 2 contributions or both, and the earnings factor derived from those contributions is not less than that year’s lower earnings limit multiplied by 25, there shall be credited to her, in respect of any year during the whole or any part of which the marriage subsisted, and for the purpose only of enabling her to satisfy the second contribution condition for unemployment and sickness benefit or maternity allowance referred to in paragraph 1 or 3, as the case may be, of Schedule 3 to the Act, such Class 1 contributions (if any) as are required to enable her to satisfy that condition, so however that she shall not be entitled by virtue of this provision to benefit in respect of any period before the marriage was terminated or before she paid contributions as aforesaid.

(a) 1939 c. 82.

(b) 1939 c. 83.

(c) 1914 c. 30.

(d) 1914 (5 & 6 Geo. 5) c. 18.

(e) 1889 c. 63.

*Reg. 2 was deleted by S.I. 1989/893, reg. 2(2), w.e.f. 28.5.89, subject to transitional savings in reg. 6 *ibid.*

Modifications, in relation to widows, of provisions with respect to unemployment † and ▶¹short-term incapacity benefit◀ ▶², contributory employment and support allowance◀, maternity allowance and Category A retirement pension

† The reference to unemployment benefit in the heading to this regulation became obsolete as from 7.10.96, when all references to that benefit were deleted from this regulation.

3.—(1) Subject to the following provisions of this regulation, where, otherwise than by reason of remarriage ▶³, the formation of a civil partnership◀ or cohabitation with a man as his wife, a woman ceases to be entitled either to a widow's allowance or to a widowed mother's allowance—

- (a) she shall be deemed to have satisfied the first contribution condition for ▶⁴▶⁵short-term incapacity benefit◀ ▶⁶or◀, maternity allowance ▶⁶◀ referred to in paragraph 1 ▶⁶or◀ 3 ▶⁶◀, as the case may be, of Schedule 3 to the Act ▶²or, in relation to contributory employment and support allowance, she shall be deemed to have satisfied the first condition referred to in paragraph 1(1) of Schedule 1 to the Welfare Reform Act◀;
- (b) for the purpose only of enabling her to satisfy the second contribution condition for ▶⁴▶⁵short-term incapacity benefit◀ or maternity allowance referred to in paragraph 1 or 3, as the case may be, of Schedule 3 to the Act ▶²or, in relation to contributory employment and support allowance, she shall be deemed to have satisfied the second condition referred to in paragraph 2(1) of Schedule 1 to the Welfare Reform Act◀, there shall be credited to her such Class 1 contributions (if any) for every year up to and including that in which she ceased to be entitled as aforesaid as are required to enable her to satisfy that condition; and
- (c) ▶⁷◀

[Regulation 3(2) revoked by regulation 3(2) of S.I. 1978/508 as from 6.4.79.]

(3) Where a woman ceases to be entitled to a widowed mother's allowance as is mentioned in paragraph (1) of this regulation at a time when she is entitled to personal benefit by way of a widow's pension under the Industrial Injuries Act or any Personal Injuries Scheme or any Service Pensions Instrument or any 1914-1918 War Injuries Scheme at a weekly rate which is equal to or exceeds the weekly rate of widow's pension under the Act which is specified in the second column of Part I of Schedule 4 thereto, and thereafter that personal benefit, while continuing to be payable, falls to be reduced to a weekly rate which is less than the said weekly rate of widow's pension under the Act, paragraph (1) of this regulations shall apply to her both when she so ceases and when that personal benefit so falls to be reduced.

[Regulation 3(4) revoked by regulation 3(2) of S.I. 1978/508 as from 6.4.79.]

(5) Subject to paragraph (9) of this regulation, where a woman is entitled to personal benefit by way of a widow's pension under the Industrial Injuries Act or any Personal Injuries Scheme or any Service Pensions Instrument or any 1914-1918 War Injuries Scheme—

- (a) if the weekly rate of that personal benefit is equal to or exceeds appropriate weekly rate of ▶⁸▶⁵short-term incapacity benefit◀ ▶², contributory employment and support allowance◀ or maternity allowance, the provisions of sub-paragraphs (a) to (c) of paragraph (1) of this regulation shall not operate to entitle her to ▶⁴▶⁵short-term incapacity benefit◀ ▶², contributory employment and support allowance◀ or maternity allowance for any period before she has satisfied the following contribution condition, namely that she has, in respect of any one year beginning after her husband's, or as the case may be her last husband's death, paid Class 1 or Class 2 contributions or both, ▶⁹and the earnings factor derived from—

¹Words substituted for "sickness benefit" in heading to & reg. 3 and (5) by reg. 2(a) & (b) of S.I. 1995/829 as from 13.4.95.

²Words inserted in heading to reg. 3 and reg. 3(1) & (5) by reg. 64(3)(a)-(c) of S.I. 2008/1554 as from 27.10.08.

³Words inserted in reg. 3(1) by para. 1 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

⁴Words deleted in reg. 3(1)(a), (b) and 3(5)(a) by reg. 13(2)(a) and 13(3) of S.I. 1996/1345 as from 7.10.96.

⁵Words substituted for "sickness benefit" in reg. 3(1)(a) & (b) and reg. 5(a) by reg. 2(a) of S.I. 1995/829 as from 13.4.95.

⁶In reg. 3(1)(a) words "or" inserted & words omitted by reg. 3(1) of S.I. 1978/508 as from 6.4.79.

⁷Sub-para. (c) deleted from reg. 3(1) by reg. 13(2)(b) of S.I. 1996/1345 as from 7.10.96.

⁸Words deleted from reg. 3(5)(a) by reg. 13(3) of S.I. 1996/1345 as from 7.10.96

⁹Words in reg. 3(5)(a) substituted by reg. 2(3)(a) of S.I. 1989/893 as from 28.5.89.

SOCIAL SECURITY (BENEFIT) (MARRIED WOMEN AND WIDOWS SPECIAL PROVISIONS) REGULATIONS

- †(i) earnings paid in a year upon which primary Class 1 contributions have been paid or treated as paid in respect of that year, or
 (ii) earnings with which she has been credited in respect of that year, or
 (iii) Class 2 contributions,

is not less than that year's lower earnings limit multiplied by 25: and◀

- (b) if the weekly rate of that personal benefit is less than the said appropriate weekly rate, the said provisions shall not operate to entitle her to ▶¹◀▶²short-term incapacity benefit◀ ▶³, contributory employment and support allowance◀ or maternity allowance, for any period such as is mentioned in the last foregoing sub-paragraph, at a weekly rate which exceeds the difference between the said appropriate weekly rate and the weekly rate of that personal benefit.

¹Words deleted in reg. 3(5)(b) by reg. 13(3) of S.I. 1996/1345 as from 7.10.96.

²Words in reg. 3(5)(b) substituted for "sickness benefit" by reg. 2(b) of S.I. 1995/829 as from 13.4.95.

³Words inserted in reg. 3(5)(b) by reg. 64(3)(c) of S.I. 2008/1554 as from 27.10.08.

†Under reg. 5 of S.I. 1989/893, regulation 3(5)(a) above has effect for years beginning before 6.4.88 as if the words "those contributions" were substituted for sub-paragraphs (i) to (iii) above.

[Regulation 3(6) revoked by regulation 3(2) of S.I. 1978/508 as from 6.4.79.]

(7) For the purpose of determining whether a woman ceases to be entitled as is mentioned in paragraph (1) of this regulation, a woman in whose case the Secretary of State is satisfied that she would be or would have been entitled to widow's benefit for any period but for any one or more of the following factors, namely—

- (a) her failure to make, or delay in making, a claim to the benefit;
 (b) her disqualification for the receipt of benefit for any other reason than her cohabitation with a man as his wife;
 (c) the operation of the provisions of regulations made under paragraph 3 of Schedule 10 to the Act (overlapping benefits);

shall be treated as if she is or was, as the case may be, entitled thereto throughout that period.

[Regulation 3(8) revoked by regulation 3(2) of S.I. 1978/508 as from 6.4.79.]

(9) A woman who ceases to be entitled as is mentioned in paragraph (1) of this regulation on more than one occasion shall be entitled to the benefit of the provisions of that paragraph, subject as therein mentioned, on each such occasion, and if, on one such occasion, she satisfies the contribution condition referred to in paragraph (5)(a) of this regulation, that paragraph shall not apply to her on any subsequent occasion.

(10)* Where, but for this paragraph, the provisions of regulation 2 of these regulations and the provisions of this regulation would be applicable for the purpose of determining a woman's right to unemployment benefit or sickness benefit or maternity allowance for any day, her right thereto shall be determined by reference to the provisions of that one of those 2 regulations which is more favourable to her, to the exclusion of the provisions of the other.

*Reg. 3(10) was deleted by S.I. 1989/893, reg. 2(3)(b), w.e.f. 28.5.89, subject to transitional savings in reg. 6 *ibid*.

⁴Reg. 3A inserted by reg. 2 of S.I. 1980/1168 as from 11.8.80.

▶⁴**Modification of paragraphs 4(1) and 4A(1) of Schedule 1 to the Social Security Pensions Act 1975**

3A.—(1)The provisions of paragraphs 4(1) and 4A(1) of Schedule 1 to the Social Security Pensions Act 1975(a) (increase of pension where a ▶⁵woman's deceased husband's entitlement to a Category A or Category B retirement pension was deferred◀ shall, in the case of a woman who

⁵Words substituted in reg. 3A(1) by reg. 6 of S.I. 1989/1642 as from 1.10.89.

(a) 1975 c. 60; Schedule 1 was amended by the Social Security Act 1979 (c. 18), section 5 and Schedule 1, Part I, paragraphs 6 and 7 and Part II, paragraph 22, and section 21(4) and Schedule 3, paragraph 23.

1976 No. 615

SOCIAL SECURITY

The Social Security (Medical Evidence) Regulations
1976

<i>Made</i> - - - -	<i>21st April 1976</i>
<i>Laid before Parliament</i>	<i>30th April 1976</i>
<i>Coming into Operation</i>	<i>4th October 1976</i>

The Secretary of State for Social Services, in exercise of powers conferred upon him by section 115(1) of, and Schedule 13 to, the Social Security Act 1975(a) and of all other powers enabling him in that behalf, after reference to the National Insurance Advisory Committee, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Medical Evidence) Regulations 1976, and shall come into operation on 4th October 1976.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1975;

▶¹“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(b);◀

▶²“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;

“limited capability for work” has the meaning given in section 1(4) of the Welfare Reform Act 2007;

“limited capability for work assessment” means the assessment of whether a person has limited capability for work as set out in regulation 19(2) of, and in Schedule 2 to, the Employment and Support Allowance Regulations;◀

▶³“personal capability assessment” means the assessment provided for in section 171C of the Contributions and Benefits Act(c);◀

▶⁴“registered midwife” means a midwife who is registered as a midwife with the United Kingdom Central Council for Nursing, Midwifery and Health Visiting under the Nurses, Midwives and Health Visitors Act 1979(d);◀

“doctor” means a registered medical practitioner;

“signature” means, in relation to any statement or certificate given in accordance with these regulations, the name by which the person giving that statement or certificate, as the case may be, is usually known (any name other than the surname being either in full or otherwise indicated) written by that person in his own handwriting; and “signed” shall be construed accordingly.

(3) Any reference in these regulations to any provisions made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(a) 1975 c. 14.

(b) 1992 c. 4.

(c) 1992 c. 4. Section 171C was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by section 61 of the Welfare Reform and Pensions Act 1999 (c. 30).

(d) 1979 c. 36.

¹Defn. inserted in reg. 1(2) by reg. 2(2) of S.I. 1994/2975 as from 13.4.95.

²Defns. of “the Employment and Support Allowance Regulations”, “limited capability for work” & “limited capability for work assessment” inserted by reg. 68(2) of S.I. 2008/1554 as from 27.10.08.

³Defn. “personal capability assessment” inserted by reg. 5(a) of S.I. 1999/3109 as from 3.4.00.

⁴Defn. substituted in reg. 1(2) by reg. 2 of S.I. 1987/409 as from 6.4.87.

Regs. 2-4

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(a) shall apply in relation to this instrument and in relation to the revocation effected by it as if this instrument, the regulations revoked by it and regulations revoked by the regulations so revoked were Acts of Parliament, and as if each revocation were a repeal.

¹Words inserted in heading to reg. 2 & paras. (1), (1)(a) & (2) by reg. 68(3)(a)-(c) of S.I. 2008/1554 as from 27.10.08.

²Words inserted into reg. 2(1) by reg. 2(1) of S.I. 1982/699 as from 14.6.82.

³Words substituted in reg. 2(1) by reg. 2(3)(a)(i) of S.I. 1994/2975 as from 13.4.95.

⁴Words substituted in reg. 2(1) and 2(1)(c) by reg. 6(a) of S.I. 2000/590 as from 3.4.00.

⁵Sub-para. (a)-(c) substituted for words in reg. 2(1) by reg. 3(2) of S.I. 1992/247 as from 9.3.92.

⁶Sub-para. (c) and (d) substituted in reg. 2(1) for sub-para. (c) & words inserted in reg. 2(2) by reg. 2(3) of S.I. 1994/2975 as from 13.4.95.

⁷Words substituted and words inserted in reg. 2(1)(d) by reg. 4(2) of S.I. 1995/987 as from 13.4.95.

⁸Words substituted in reg. 2(2) by reg. 5(b) of S.I. 1999/3109 as from 3.4.00.

⁹Words substituted in reg. 2(3) by reg. 3 of S.I. 1987/409 as from 6.4.87.

¹⁰Words inserted in reg. 2(3) by reg. 2(2) of S.I. 2001/2931 as from 28.9.01.

Evidence of incapacity for work ¹, limited capability for work ² and confinement

2.—(1) ²Subject to regulation 5 ³where a person claims he is entitled to any benefit, allowance or advantage (other than industrial injuries benefit or statutory sick pay), and his entitlement to that benefit, allowance or advantage depends on his being incapable of work ¹, or having limited capability for work ², then in respect of each day until he has been assessed for the purposes of the ⁴personal capability assessment ¹ or the limited capability for work assessment ², he shall provide evidence of such incapacity ¹ or limited capability for work ²

⁵(a) by means of a certificate in the form of a statement in writing given by a doctor in accordance with the rules set out in Part I of Schedule 1 to these Regulations on the form set out in Part II of that Schedule; or

(b) where a doctor—

(i) has not given a statement under sub-paragraph (a) of this paragraph since the patient was examined and wishes to give such a statement but more than one day has passed since the examination; or

(ii) advises that the patient should refrain from work on the basis of a written report from another doctor,

by means of a special statement given in accordance with the rules set out in Part I of Schedule 1A to these Regulations on the form set out in Part II of that Schedule; or

⁶(c) ⁴where the question of whether a person is capable or incapable of work ¹ or whether a person has or does not have limited capability for work ² falls to be determined in accordance with the personal capability assessment ¹ or the limited capability for work assessment ² and the Secretary of State so requests, a statement in writing given by a doctor in accordance with the rules set out in Part I of Schedule 1B to these Regulations on the form set out in Part II of that Schedule; or

(d) where it would be unreasonable to require a person to provide a statement ⁷in accordance with sub-paragraphs (a) to (c) ², such other evidence as may be sufficient to show that he should refrain ⁷(or should have refrained) ² from work by reason of some specific disease or bodily or mental disablement. ²

(2) Every person to whom paragraph (1) applies ⁶who has not been assessed for the purposes of the ⁸personal capability assessment ¹ or the limited capability for work assessment ² shall, before he returns to work, furnish evidence of the date on which he will become fit to resume work either in accordance with rule 10 of Part I of Schedule 1 to these regulations, or by such other means as may be sufficient in the circumstances of the case.

(3) Every woman who claims maternity benefit shall furnish evidence—

(a) where the claim is made in respect of expectation of confinement, that she is pregnant and as to the stage which she has reached in her pregnancy; or

(b) where the claim is made by virtue of the fact of confinement, that she has been confined.

and shall furnish such evidence ⁹by means of a maternity certificate ² given by a doctor or by a ⁹registered midwife ² ¹⁰not earlier than the beginning of the 20th week before the week in which she is expected to be confined, ² in accordance with the rules set out in Part I of Schedule 2 to these regulations in the appropriate form as set out in Part II of that Schedule or by such other means as may be sufficient in the circumstances of any particular case.

[Regulation 3 (amendment of the Social Security (Claims and Payments) Regulations 1975) revoked by regulation 32 of and Schedule 5 to S.I. 1979/628 as from 9.7.79.]

[Regulation 4 (transitional provisions and revocation) revoked by regulation 2(3) of S.I. 1982/699 as from 14.6.82.]

(a) 1889 c. 63, to be construed in accordance with the Interpretation Act 1978 (c. 30) s. 25(2).

►¹ Self-certificate for first 7 days of a spell of incapacity for work ►² or limited capability for work ◀

5.—►³(1) ►⁴The evidence of incapacity ►² or limited capability for work ◀ required for the purposes of determining entitlement to a benefit, allowance or advantage referred to in regulation 2(1) ◀—

- (a) for a spell of incapacity which lasts less than 8 days, ►² ◀
- (b) in respect of any of the first 7 days of a longer spell of incapacity; may consist of a self certificate instead of a certificate in the form of a statement in writing given by a doctor in accordance with regulation 2(1). ◀
- ²(c) for a period of limited capability for work which lasts less than 8 days; or
- (d) in respect of any of the first 7 days of a longer period of limited capability for work, ◀

(2) For the purpose of this regulation:—

►⁵“self-certificate” means either—

- (i) a declaration made by the claimant in writing, on a form approved for the purpose by the Secretary of State; or
- (ii) where the claimant has made a claim for employment and support allowance in accordance with regulation 4G of the Social Security (Claims and Payments) Regulations 1987, an oral declaration by the claimant.

that the claimant has been unfit for work from a date or for a period specified in the declaration and may include a statement that the claimant expects to continue to be unfit for work on days subsequent to the date on which it is made; ◀

►⁶“spell of incapacity” has the meaning given to it by section 171B(3) of the Contributions and Benefits Act. ◀◀

¹Reg. 5 inserted by reg. 2(2) of S.I. 1982/699 as from 14.6.82.

²Words inserted in heading to reg. 5 and para. (1), words omitted in sub-para. (a) & sub-paras. (c) & (d) added by reg. 68(4)(a) & (b) of S.I. 2008/1554 as from 27.10.08.

³Para. (1) of reg. 5 substituted by reg. 2 of S.I. 1989/1686 as from 9.10.89.

⁴Words substituted in reg. 5(1) by reg. 2(4)(a) of S.I. 1994/2975 as from 13.4.95.

⁵Defn. of “self certificate” substituted by reg. 68(4)(c) of S.I. 2008/1554 as from 27.10.08.

⁶Defn. substituted in reg. 5(2) by reg. 2(4)(b) of S.I. 1994/2975 as from 13.4.95.

21st April 1976

David Ennals
Secretary of State for Social Services

SCHEDULE 1

Regulation 2(1)

PART I

RULES

1. In these rules, unless the context otherwise requires—
 - “Claimant” means the person in respect of whom a statement is given in accordance with these rules;
 - “doctor” means a registered medical practitioner not being the claimant;
 - “doctor’s statement” means a statement given in accordance with these rules;
 - “2 weeks” means any period of 14 consecutive days.
2. The doctor’s statement shall be in the form set out in Part II of this Schedule.
3. Where the claimant is on the list of a doctor providing general medical services under the National Health Service Act 1946(a), or the National Health Service (Scotland) Act 1947(b), and is being attended by such a doctor, the doctor’s statement shall be on a form provided by the Secretary of State for the purpose and shall be signed by that doctor.
4. In any other case, the doctor’s statement shall be either on a form provided by the Secretary of State for the purpose or in a form substantially to the like effect, and shall be signed by the doctor attending the claimant.
5. Every doctor’s statement shall be completed in ink or other indelible substance, and shall contain the following particulars:-
 - (a) the claimant’s name;
 - (b) the date of the examination on which the doctor’s statement is based;
 - (c) the diagnosis of the claimant’s disorder in respect of which the doctor is advising the claimant to refrain from work or, as the case may be, which has caused the claimant’s absence from work;
 - (d) the date on which the doctor’s statement is given;
 - (e) the address of the doctor.

and shall bear, opposite the words “Doctor’s signature”, the signature of the doctor making the statement written after there have been entered the claimant’s name and the doctor’s diagnosis.

6. Subject to rules 7 and 8 below, the diagnosis of the claimant’s disorder in respect of which the doctor is advising the claimant to refrain from work or, as the case may be, which has caused the claimant’s absence from work shall be

(a) 1946 c. 81.

(b) 1947 c. 27.

1975 No. 493

SOCIAL SECURITY

**The Social Security (Benefit) (Members of the Forces)
Regulations 1975**

<i>Made</i> - - - -	<i>24th March 1975</i>
<i>Laid before Parliament</i>	<i>26th March 1975</i>
<i>Coming into Operation</i>	<i>6th April 1975</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon her by section 128 of the Social Security Act 1975(a) and section 123 of the Social Security (Northern Ireland) Act 1975(b) and of all other powers enabling her in that behalf, without having referred any proposals on the matter to the National Insurance Advisory Committee since it appears to her that by reason of urgency it is inexpedient to do so, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Benefit) (Members of the Forces) Regulations 1975 and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1975;

“the Northern Ireland Act” means the Social Security (Northern Ireland) Act 1975;

“serving members of the forces” has the same meaning as in regulation 1(2) of the Social Security (Contributions) Regulations 1975(c);

“discharge” includes transfer to the reserve in the case of a serving member of the forces who on the completion of any term of service is transferred to any reserve, and the expression “discharged” shall be construed accordingly;

and other expressions, in the application of these regulations to Great Britain, have the same meanings as in the Act, and in the application of these regulations to Northern Ireland, have the same meanings as in the Northern Ireland Act.

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(d) shall apply in relation to this instrument as if it were an Act of Parliament.

(a) 1975 c. 14.
(b) 1975 c. 15.
(c) S.I. 1975/492.
(d) 1889 c. 63.

Regs. 2-4

¹Words substituted by reg. 13 of S.I. 1984/1303 as from 29.11.84.

²Words in reg. 2 substituted by reg. 14(2) of S.I. 1996/1345 as from 7.10.96.

³Words inserted in reg. 2 by reg. 66 of S.I. 2008/1554 as from 27.10.08.

►¹† **Unemployment, sickness and invalidity benefit and severe disablement allowance**

2. A person shall not be entitled to a ►²jobseeker's allowance◄►³, an employment and support allowance◄sickness benefit*, invalidity benefit *, or a severe disablement allowance◄ in respect of any day on which he is a serving member of the forces, other than either—

- (a) a member of any territorial or reserve force mentioned in Part I of Schedule 5 to the Social Security (Contributions) Regulations 1975 who is not undergoing training or instruction as such a member for a continuous period exceeding 72 consecutive hours; or
- (b) a member of the Ulster Defence Regiment who is neither—
 - (i) serving also as a member of any regular naval, military or air forces of the Crown, nor
 - (ii) on the full-time permanent staff of that regiment, nor
 - (iii) serving or undergoing training or instruction in that regiment for a continuous period exceeding 72 consecutive hours.

† The references to unemployment benefit, sickness benefit and invalidity benefit in the heading to this regulation are obsolete; the former reference in the regulation to unemployment benefit was replaced with jobseeker's allowance as from 7.10.96, and the references to sickness benefit and invalidity benefit have been construed as incapacity benefit since 13.4.95.

* From 13.4.95, s. 13(2) of the S.S. (Incapacity for Work) Act 1995 (c. 18) provides that any reference sickness benefit is to be construed as short-term incapacity benefit at the lower rate, and that any reference to invalidity benefit is to be construed as short-term incapacity benefit at the higher rate or long-term incapacity benefit.

Unemployment benefit †

3.—(1) Any person who, whilst a serving member of the forces, is discharged, cashiered or otherwise dismissed in consequence of having been convicted on any proceedings under the Naval Discipline Act 1957(a), the Army Act 1955(b) or the Air Force Act 1955(c), or by any civil court, ►⁴shall be treated for the purposes of section 19 ►⁵or 20A◄ of the Jobseekers Act 1995(d) (circumstances in which a jobseeker's allowance is not payable) as though he has lost his employment through misconduct.◄

►⁶(2) Section 19(6)(b) and (d) ►⁷or section 20A(2)(e) and (g)◄ of the Jobseekers Act 1995 (jobseeker's allowance not payable where claimant has voluntarily left employment or neglected to avail himself of reasonable opportunity of employment) shall not apply to a claimant who whilst a serving member of the forces is discharged at his own request.◄

(3) For the purposes of any claim for ►⁸a jobseeker's allowance◄, a document purporting to be signed by a person authorised in that behalf by the Secretary of State certifying the fact that any person has been discharged, cashiered or otherwise dismissed as mentioned in either of the foregoing paragraphs of this regulation and the date of the discharge, cashiering or dismissal shall be conclusive evidence thereof, unless it is proved that the document was not signed by a person so authorised.

† The reference to unemployment benefit in the heading to this regulation became obsolete as from 7.10.96, when the references to that benefit in this regulation were replaced with jobseeker's allowance.

Maternity benefit

4.—(1) A woman shall not be disentitled to a maternity grant † by reason of confinement outside Great Britain or Northern Ireland, as the case may be, if at the date of confinement or within the period of 13 weeks ending on that date she is or was

-
- (a) 1957 c. 53.
 - (b) 1955 c. 18.
 - (c) 1955 c. 19.
 - (d) 1995 c. 18.

⁴Words in reg. 3(1) substituted by reg. 2 of S.I. 1988/269 as from 11.4.88.

⁵Words inserted in reg. 3(1) by reg. 6(a) of S.I. 2000/1982 as from 19.3.01.

⁶Reg. 3(2) substituted by reg. 168(3) of S.I. 1996/207 as from 7.10.96.

⁷Words inserted in reg. 3(2) by reg. 6(b) of S.I. 2000/1982 as from 19.3.01.

⁸Words in reg. 3(3) substituted by reg. 168(4) of S.I. 1996/207 as from 7.10.96.

a serving member of the forces other than such a person as is mentioned in paragraphs (a) and (b) of regulation 2 above, and any such woman shall, in addition, not be disqualified for receiving any such benefit by reason of her being absent from Great Britain or Northern Ireland, as the case may be.

† *Maternity grant was abolished (6.4.87) by s.38 of the S.S. Act 1986 (c. 50).*

(2) A woman shall not be disqualified for receiving maternity allowance by reason of her being absent from Great Britain or Northern Ireland, as the case may be, if she is a serving member of the forces other than such a person as is mentioned in paragraphs (a) and (b) of regulation 2 above, or, when so absent, for any period within 26 weeks after she has ceased to be such a member.

Application of the Act, the Northern Ireland Act and regulations

5. In relation to any person who is a serving member of the forces other than such a person as is mentioned in paragraphs (a) and (b) of regulation 2 above, the provisions relating to benefits (other than industrial injuries benefit) of the Act and regulations made under it, ▶¹or of the Jobseekers Act 1995(a) and regulations made under it, ◀ or of the Northern Ireland Act and regulations made under it, as the case may be, shall apply with this modification that where he is, on account of his being at sea or outside the United Kingdom by reason of his employment as a serving member of the forces, unable to perform an act required to be done either forthwith or on the happening of a certain event or within a specified time, he shall be deemed to have complied therewith if he performs the act as soon as is reasonably practicable, although after the happening of the event or the expiration of the specified time.

Effect of contributions paid under the Act with reference to Northern Ireland

6. Every contribution paid under the Act by a serving member of the forces shall have effect, in relation to a claim for benefit duly made under the Northern Ireland Act, as if duly paid under the Northern Ireland Act.

24th March 1975

Barbara Castle
Secretary of State for Social Services

(a) 1995 c. 18.

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations modify the provisions relating to benefit of the Social Security Act 1975 and the Social Security (Northern Ireland) Act 1975 in their application to persons who are, or are treated as being, serving members of Her Majesty's forces, and provide that such persons are not entitled to, or are disqualified for receiving, certain benefits in specified circumstances. They provide for certain women who are serving members of the forces not to be disentitled to maternity benefit through being outside Great Britain or Northern Ireland, as the case may be. They also provide for contributions paid under the Social Security Act 1975 in certain cases to have effect for the purposes of the Social Security (Northern Ireland) Act 1975 as if paid under the latter Act.

[See S.I. 1999/779 at page 1.6401 for details of treatment of persons and payments participating in New Deal 25 plus].

1979 No. 597

SOCIAL SECURITY

The Social Security (Overlapping Benefits) Regulations 1979

<i>Made</i> - - - -	<i>29th May 1979</i>
<i>Laid before Parliament</i>	<i>6th June 1979</i>
<i>Coming into Operation</i>	<i>29th June 1979</i>

The Secretary of State for Social Services, in exercise of powers conferred by sections 83(1) and 85 of the Social Security Act 1975(a) and of all other powers enabling him in that behalf hereby makes the following regulations which only consolidate the regulations herein revoked and which accordingly by virtue of paragraph 20 of Schedule 15 to the Social Security Act 1975, are not subject to the requirement of section 139(1) of that Act for prior reference to the National Insurance Advisory Committee:

Citation and commencement

1. These regulations may be cited as the Social Security (Overlapping Benefits) Regulations 1979 and shall come into operation on 29th June 1979.

[In the following S.I. wherever the words “training for work” appear substitute the words “work based training for adults” except in the case of reference to the title or principal order or of the 1993 order. As per S.I. 1998/1426 from 3.7.98].

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—
“the Act” means the Social Security Act 1975;

▶¹“bereavement allowance” means an allowance referred to in section 39B of the Contributions and Benefits Act;◀

▶²“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;◀

“the Pensions Act” means the Social Security Pensions Act 1975(b);

“benefit under Chapters I and II of Part II of the Act” includes benefit treated as included in Chapter I of Part II of the Act by virtue of section 66(2)(b) of the Pensions Act;

“the Child Benefit Act” means the Child Benefit Act 1975(c);

“child benefit” means benefit under Part I of the Child Benefit Act;

▶³“contributory benefit” means any benefit payable under Part II of the Contributions and Benefits Act, ▶⁴a contribution-based jobseeker’s allowance and a contributory employment and support allowance;◀◀

“death benefit” means any benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) in respect of the death of any person;

“the deceased” means, in relation to any death benefit, the person in respect of whose death that benefit, apart from these regulations, is payable;

“dependency benefit” means that benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) to a person in

¹Defn of “bereavement allowance” inserted by reg. 6(2) of S.I. 2000/1483 as from 9.4.01.

²Defn. of “the Contributions and Benefits Act” inserted by reg. 2 of S.I. 1992/3194 as from 13.1.93.

³Defn. of “contributory benefit” inserted by reg. 22(2)(a) of S.I. 1996/1345 as from 7.10.96.

⁴Words substituted in defn. of “contributory benefit” by reg. 51(2)(a) of S.I. 2008/1554 as from 27.10.08.

(a) 1975 c. 14.

(b) 1975 c. 60.

(c) 1975 c. 61.

Reg. 2

¹Words inserted in defn. of “dependency benefit” by reg. 2(3) of S.I. 2003/937 as from 6.4.03.

²Defn. of “the Jobseekers Act” inserted and words inserted in defn. of “personal benefit” by reg. 22(2)(b) & (c) of S.I. 1996/1345 as from 7.10.96.

³Words inserted in defn. of “personal benefit” by reg. 5(a) of S.I. 2005/1551 as from 6.7.05.

⁴Words inserted by reg. 2(a) of S.I. 1980/1927 as from 5.1.81.

⁵Words inserted in defn. of “personal benefit” by reg. 51(2)(b) of S.I. 2008/1554 as from 27.10.08.

⁶Defn. substituted by reg. 2(b) of S.I. 1980/1927 as from 5.1.81.

⁷Defn. of “shared additional pension” inserted by reg. 5(b) of S.I. 2005/1551 as from 6.7.05.

⁸Words added to defn. of “training allowance” in reg. 2(1) by art. 5(a) of S.I. 1991/387 as from 1.4.91.

⁹Words inserted in reg. 2(1) defn. of “training allowance” by reg. 11(a) and (b) of S.I. 2005/337 as from 18.03.05.

¹⁰Words in reg. 2(1) substituted for the Training Commission by virtue of Employment Act 1989 (c. 38), Sch. 5, paras. 1 & 4, as from 16.11.89.

¹¹Words in reg. 2(1) substituted by reg. 2 of S.I. 1988/1446 as from 5.9.88.

respect of another person who is a child or an adult dependant; it includes child’s special allowance and any personal benefit by way of pension payable to a child under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme, but does not include benefit under section 73 of the Act (allowances to a woman who has care of children of a person who died as a result of an industrial accident) ►¹or child tax credit under the Tax Credits Act 2002;◄ “disablement pension” includes a disablement payment on a pension basis and retired pay or pension in respect of any disablement, wound, injury or disease; ►²“the Jobseeker’s Act” means the Jobseekers Act 1995(a);◄

“personal benefit” means any benefit, pension or allowance ►³except a shared additional pension;◄ ►⁴(whether under the Act or otherwise)◄ which is not a dependency benefit ►², and includes ►⁵a contributory employment and support allowance but not an income-based employment and support allowances◄ and includes a contribution-based jobseeker’s allowance but not an income-based jobseeker’s allowance,◄ and which ►⁴, apart from these regulations,◄ is payable to any person;

“Personal Injuries Scheme” means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939(b) or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(c);

“Pneumoconiosis and Byssinosis Benefit Scheme” means any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(d);

►⁶“Service Pensions Instrument” means any instrument described in subparagraphs (a) or (b) below in so far, but only in so far, as the pensions or other benefits provided by that instrument are not calculated or determined by reference to length of service, namely:-

- (a) any instrument made in exercise of powers-
 - (i) referred to in section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(e) (pensions or other benefits for disablement or death due to service in the armed forces of the Crown); or
 - (ii) under section 1 of the Polish Resettlement Act 1947(f) (pensions and other benefits for disablement or death due to service in certain Polish forces); or
- (b) any instrument under which a pension or other benefit may be paid to a person (not being a member of the armed forces of the Crown) out of public funds in respect of death or disablement, wound, injury or disease due to service in any nursing service or other auxiliary service of any of the armed forces of the Crown, or in any other organisation established under the control of the Defence Council or formerly established under the Control of the Admiralty, the Army Council or the Air Council.◄

►⁷“shared additional pension” means a shared additional pension under section 55A of the Contributions and Benefits Act;◄

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable out of public funds by a Government department or by or on behalf of ►⁸Scottish Enterprise, Highlands and Islands Enterprise ►⁹, the Learning and Skills Council for England, the National Assembly for Wales◄ or ►¹⁰the Secretary of State◄ to a person for his maintenance, or in respect of any dependant of his, for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of ►⁸Scottish Enterprise, Highlands and Islands Enterprise ►⁹, the National Assembly for Wales◄ or ►¹⁰the Secretary of State◄; ►¹¹but it does not include-

- (a) an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education or is training as a teacher; or
- (b) a payment made by or on behalf of ►⁸Scottish Enterprise, Highlands and Islands Enterprise or◄ the Secretary of State to any person by way of training premium or training bonus in consequence of that person’s use of facilities for training provided in pursuance of arrangements made under section 2 of

(a) 1995 c. 18.

(b) 1939 c. 82.

(c) 1939 c. 83.

(d) 1975 c. 16.

(e) 1977 c. 5.

(f) 1947 c. 19.

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the Employment and Training Act 1973(a) ►¹or section 2 of the Enterprise and New Towns (Scotland) Act 1990◀(b)◀;

“treatment allowance” means an allowance payable under a Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme only to a person undergoing a course of medical, surgical or rehabilitative treatment in consequence of a disablement in respect of which a pension may be or has been paid, or an allowance payable to any such person pending the determination of the question whether he is entitled to receive such a pension; “unemployability supplement” includes an increase on account of unemployability under-

- (a) any Pneumoconiosis and Byssinosis Benefit Scheme; and
- (b) any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme;

“war pension death benefit” means a death benefit by way of pension or allowance under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme, but does not include a rent allowance or a grant payable by reason of the beneficiary being in receipt of a pension and being a specific age which is not less than 65 or a pension or an allowance calculated by reference to the necessities of the beneficiary;

“1914-1918 War Injuries Scheme” means any scheme made under the Injuries in War (Compensation) Act 1914(c) or under the Injuries in War Compensation Act 1914 (Session 2)(d) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 War.

►²“the Welfare Reform Act” means the Welfare Reform Act 2007. ◀

►³“widowed parent’s allowance” means an allowance referred to in section 39A of the Contributions and Benefits Act; ◀

(2) For the purposes of these regulations, unless otherwise specified, ►⁴additional pension◀ payable by virtue of the Act or the Pensions Act shall be deemed to include any increase so far as attributable to any ►⁴additional pension◀ or to any increase by virtue of section 126A of the Act or paragraph 4A of Schedule 1 to the Pensions Act or to any increase of graduated retirement benefit and shall be treated as a separate personal benefit included in Chapter 1 of Part II of the Act.

[Reg. 3 deleted by reg. 14(2) of S.I. 1995/829 as from 13.4.95, subject to saving in reg. 14(9) and (10) *ibid.*.]

*Regulation 3, as amended by reg. 14(10) of S.I. 1995/829, and as, in the circumstances described in reg. 14(9) *ibid.*, preserved thereby from 13.4.95 as so amended notwithstanding its revocation by reg. 14(2) *ibid.*, is reproduced below:-*

Special provisions for widow’s benefit and invalidity pension

3.—(1) This regulation applies where, apart from these regulations, there is payable for the same period to a person under pensionable age both—

- (a) a ►⁵long-term incapacity benefit◀; and
- (b) a widowed mother’s allowance or widow’s pension (hereafter referred to in this regulation as “the widow’s benefit”).

(2) The total amount payable in respect of these benefits under this regulation shall be—

- ⁶(a) an amount equal to either the basic rate of long-term incapacity benefit referred to in regulation 18(1)(a) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995 paid in a transitional case or an award of widow’s basic pension calculated by reference to section 44(1) of the Contributions and Benefits Act or an amount equal to the greater of them◀; and
- (b) the sum of the ►⁷incapacity benefit payable at the additional rate in accordance with regulation 18(1)(b) of the Social Security (Incapacity Benefit) (Transitional)

¹Words inserted into defn. of “training allowance” in reg. 2(1) by art. 2 of and Sch. to S.I. 1991/387 as from 1.4.91.

²Defn. of “the Welfare Reform Act” inserted by reg. 51(2)(c) of S.I. 2008/1554 as from 27.10.08.

³Defn. of “widowed parent’s allowance” inserted by reg. 6(2) of S.I. 2000/1483 as from 9.4.01.

⁴Words substituted in reg. 2(2) (6.4.87) by Social Security Act 1986 (c. 50), s. 18(1).

⁵Words in sub-para. (1)(a) of reg. 3 substituted by reg. 14(10)(a) of S.I. 1995/829 as from 13.4.95.

⁶Reg. 3(2)(a) substituted by reg. 14(10)(b) of S.I. 1995/829 as from 13.4.95.

⁷Words substituted in reg. 3(2)(b) by reg. 14(10)(c) of S.I. 1995/829 as from 13.4.95.

(a) 1973 c. 50; s. 2 was substituted by the Employment Act 1988 (c. 19), s. 25.

(b) 1990 c. 35.

(c) 1914 c. 30.

(d) 1914 c. 18 of Session 2.

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Regulations 1995 and widow's pension determined in accordance with section 44(3)(b) of the Contributions and Benefits Act◀ up to and not exceeding the maximum for the time being prescribed under section 9(3) of the Pensions Act.

(3) Subject to paragraph (4)–

- (a) where the beneficiary has made application, before the payment is made, that the total amount payable should be treated as being made up of the rate of the ▶¹long term incapacity benefit◀, any balance being the widow's benefit, it shall be so treated;
- (b) in any other case, that amount shall be treated as being made up of the rate of the widow's benefit, any balance being the ▶¹long-term incapacity benefit◀.

(4) For the purposes of the remainder of these regulations (other than regulation 6(5)), which shall apply after adjustment has been made under this regulation, the total amount payable under this regulation shall be treated as a single long-term benefit payable on a weekly basis.

¹Words in reg. 3(3) substituted by reg. 14(10)(a) of S.I. 1995/829 as from 13.4.95.

²Heading to reg. 4 substituted by reg. 3(1) of S.I. 1992/3194 as from 13.1.93.

³Reg. 4(1) substituted by reg. 3(2) of S.I. 1992/3194 as from 13.1.93

⁴Words inserted in reg. 4(1)(a) by reg. 51(3) of S.I. 2008/1554 as from 27.10.08.

⁵Words inserted in reg. 4(1)(a) by reg. 22(3) of S.I. 1996/1345 as from 7.10.96.

⁶Words substituted in reg. 4(2)(d) by reg. 11 of, and Sch. 2 to S.I. 1984/1303 as from 29.11.84.

⁷Words substituted in reg. 4(2)(d) by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

⁸Words substituted in reg. 4(2)(f) (6.4.87) by Social Security Act 1986 (c. 50), s. 18(1).

⁹Words substituted in reg. 4(2)(g) by reg. 5(2) of S.I. 1991/2742 as from 6.4.92.

¹⁰Reg. 4(2A) inserted by reg. 14(3) of S.I. 1995/829 as from 13.4.95.

¹¹Words substituted in reg. 4(4) by s.18(1) of Social Security Act 1986 (c. 50) as from 6.4.87.

▶²Adjustment of personal benefit under Parts II and III of the Contributions and Benefits Act where other personal benefit under those Parts or graduated retirement benefit is payable◀

▶⁴4.—▶³(1) Subject to paragraphs (2), (3) and (4) and regulations 12, an adjustment shall be made in accordance with paragraph (5) where either–

- (a) two or more personal benefits (whether of the same or a different description) are, or but for this regulation would be, payable under Parts II and III of the Contributions and Benefits Act (which relate to benefits other than industrial injuries benefits) ▶⁴, Part 1 of the Welfare Reform Act◀ ▶⁵or under the Jobseekers Act◀ for any period; or
- (b) graduated retirement benefit is payable under sections 36 and 37 of the National Insurance Act 1965(a) together with one or more personal benefits (whether of the same or a different description) which are, or but for this regulation would be, payable under Parts II and III of the Contributions and Benefits Act for any period.◀

(2) Paragraph (1) shall not require the adjustment of, or by reference to–

- (a) a death grant;
- (b) a maternity grant;
- (c) any other sum paid otherwise than in respect of a period;
- (d) an earnings-related supplement or earnings-related addition to any benefit (except as provided by regulation 5 and in the case of ▶⁶severe disablement allowance◀ or ▶⁷carer's allowance◀);
- (e) an attendance allowance;
- (f) ▶⁸additional pension◀ or graduated retirement benefit (except as provided by paragraph (4));
- (g) ▶⁹disability living allowance◀.

▶¹⁰(2A) Paragraph (1) shall not require an adjustment of widow's pension reduced in accordance with section 39(4) of the Contributions and Benefits Act only by reference to long-term incapacity benefit calculated in accordance with section 40(5)(b) of that Act.◀

(3) Paragraph (1) shall require an adjustment of age addition only by reference to another age addition.

(4) Where there are payable 2 or more personal benefits to which this regulation applies with which ▶¹¹additional pension◀ or graduated retirement benefit is payable as part of the rate of benefit or as an increase of benefit, or, in a case where the person entitled to receive the benefits is over pensionable age and one or more of the benefits includes either ▶¹¹additional pension◀ or graduated retirement benefit while another of the benefits is payable at the rate referred to in section 14(6) or 15(4) of the Act, then the following provisions shall apply–

(a) 1965 c. 51. Sections 36 and 37 are continued in force by virtue of regulation 3 of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978/393.

(2) The other dependency benefit referred to in paragraph (1) is any dependency benefit under—

- (a) the Act;
- (b) any Personal Injuries Scheme, Service Pension Instrument or 1914-1918 War Injuries Scheme;
- (c) any Pneumoconiosis and Byssinosis Benefit Scheme;
- (d) any scheme being a benefit by way of training allowance.

(3) Paragraph (1) shall not require an adjustment to be made where one of the dependency benefits in question is an increase of benefit under section 44(3)(c), 46(2) or 66(1)(d) in respect of a person who is employed by the beneficiary but is not residing with him and the other such benefit is payable to a person other than the beneficiary ▶¹or to a person entitled to an increase of incapacity benefit under regulation 9(1)(d) of the Social Security (Incapacity Benefit—Increases for Dependants) Regulations 1994 who satisfies the requirements of paragraph (3)(a) of that regulation◀.

¹Words added to reg. 14(5) of S.I. 1995/829 as from 13.4.95.

(4) For the purposes of paragraph (2)(b) any dependency benefit which is payable with a disablement pension shall be disregarded unless it is payable as an increase of an unemployment supplement.

Adjustment of dependency benefit where certain personal benefit is payable

10.—(1) Subject to the following provisions of this regulation, where a dependency benefit under the Act is payable for the same period as one or more of the following personal benefits is, or but for the provisions of these regulations would be, payable to the dependant—

- (a) a personal benefit under Chapter I or II of Part II of the Act (other than a benefit specified in regulation 4(2)(a) (b) (c) (e) or (g);
- (b) an unemployment supplement;
- (c) ▶²◀
- (d) industrial death benefit;
- (e) war pension death benefit;
- (f) a training allowance;
- ▶³(g) a temporary allowance under the provisions of section 1 of the Job Release Act 1977(a);◀
- ▶⁴(h) a weekly allowance pursuant to arrangements made by ▶⁵the Secretary of State◀ under section 2 of the Employment and Training Act 1973(b) ▶⁶, or by Scottish Enterprise or Highlands and Islands Enterprise under section 2 of the Enterprise and New Towns (Scotland) Act 1990,◀(c) for the purpose of the Enterprise Allowance Scheme,◀
- ▶⁷(i) graduated retirement benefit,◀
- ▶⁸(j) a contribution-based jobseeker’s allowance,◀
- ▶⁹(k) a contributory employment and support allowance◀

²Reg. 10(1)(c) revoked by reg. 10(2) of S.I. 1983/186 as from 6.4.83.

³Sub-para. (g) inserted by reg. 3 of S.I. 1980/1927 as from 5.1.81.

⁴Sub-para. (h) inserted by reg. 2 of S.I. 1982/1173 as from 14.9.82.

⁵Words in reg. 10(h)(1)(h) substituted for the Training Commission by virtue of Employment Act 1989 (c. 38), Sch. 5, paras. 1 & 4, as from 16.11.89.

⁶Words added to reg. 10(I)(h) by art. 5(b) of S.I. 1991/387 as from 1.4.91.

⁷Reg. 10(1)(i) added to reg. 10(1) by reg. 22(4) of S.I. 1996/1345 as from 7.10.96.

⁸Sub-para. (j) added to reg. 10(1) by reg. 22(4) of S.I. 1996/1345 as from 7.10.96.

⁹Reg. 10(1)(k) inserted by reg. 51(4) of S.I. 2008/1554 as from 27.10.08.

the dependency benefit shall be adjusted in accordance with paragraph (2).

(2) Where the weekly rate of the personal benefit (or, if more than one, the aggregate weekly rate payable after any adjustment made by virtue of regulations 4(1) or 6(1)—

- (a) is equal to or exceeds the weekly rate of the dependency benefit, the dependency benefit shall not be paid;
- (b) in any other case, the weekly rate of the dependency benefit payable shall be adjusted, if necessary, so it does not exceed the difference between the weekly rate of the personal benefit and that of the unadjusted dependency benefit.

(a) 1977 c. 8.
 (b) 1973 c. 50.
 (c) 1990 c. 35.

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¹Words added to reg. 10(3) by reg. 14(6)(a) of S.I. 1995/829 as from 13.4.95.

(3) Paragraph (1) does not apply to an increase of benefit under section 44(3)(c), 46(2) or 66(1)(d) in respect of a person who is employed by, but is not residing with, the beneficiary ►¹or to a person entitled to an increase of incapacity benefit under regulation 9(1)(d) of the Social Security (Incapacity Benefit—Increases for Dependants) Regulations 1994 who satisfies the requirements of paragraph (3)(a) of that regulation◄.

²Words inserted into reg. 10(4) by reg. 14(6)(b) of S.I. 1995/829 as from 13.4.95.

(4) Where the personal benefit to which paragraph (1) applies is sickness benefit ►²but not incapacity benefit◄ payable to a married woman which falls to be adjusted by virtue of regulations under section 85(1)(b) (hospital in-patients) and the dependency benefit would be payable to her husband, the rate of sickness benefit to be taken into account for the purposes of paragraph (1) shall be the rate after it has been so adjusted.

Dependency benefit under the Act not to be payable if a training allowance is payable

11. Dependency benefit under the Act shall not be payable to any person for any period in respect of which any personal benefit by way of training allowance is payable to him so however that this regulation shall not apply where such personal benefit has itself been adjusted by reference to any benefit under the Act.

Special provision relating to the adjustment of ¹severe disablement allowance[◀] and ²carer's allowance[◀]

12. In any case where personal benefit or dependency benefit by way of a ²severe disablement allowance[◀] or ²a carer's allowance[◀] would, in accordance with the provisions of regulations 4, 6, 7 or 9, fall to be adjusted by reference to any other personal benefit (other than ³additional pension[◀] or graduated retirement benefit) or dependency benefit, it shall be reduced by the amount which is, or but for these regulations would be, payable by way of that other benefit both as personal benefit and as dependency benefit, so however that the amount payable by way of a ⁴severe disablement allowance[◀] or ²a carer's allowance[◀] and that other benefit shall in no case be less than the sum of the amounts which, but for any adjustment, would have been payable by way of a ⁴severe disablement allowance[◀] or ²a carer's allowance[◀] as personal benefit and dependency benefit.

¹Words substituted in title to reg. 12 by reg. 11 of, and Sch. 2 to S.I. 1984/1303 as from 29.11.94.

²Words substituted in title & in reg. 12 by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

³Words substituted (6.4.87) by Social Security Act 1986 (c. 50), S. 18 (1).

⁴Words substituted by reg. 11 of, and Sch. 2 to S.I. 1984/1303 as from 29.11.84.

Increases in respect of more than one dependant to be treated as separate dependency benefits

13. For the purposes of these regulations, where dependency benefit by way of an increase is payable in respect of more than one person (whether a child or adult dependant), each such increase shall be treated as a separate dependency benefit.

Provisions for adjusting benefit for part of a week

⁵14.—(1) Where an adjustment falls to be made under these regulations for part of a week, benefit (whether under the Contributions and Benefits Act or otherwise) shall be deemed to be payable at a rate equal to one-seventh of the appropriate weekly rate for each day of the week in respect of any such benefit.◀

(2) ⁶◀

Paras. (1) and (2) of reg. 14 are reproduced below as in force before their amendment (13.4.95) by reg. 14(7) of S.I. 1995/829.

14.—(1) Where an adjustment falls to be made under these regulations for a part of a week, any benefit (whether under the Act or otherwise) which is not payable for that week at a daily rate equal to one-sixth of the appropriate weekly rate for each day of the week except Sunday, shall be deemed to be so payable.

(2) Where the benefit in question is unemployment benefit, sickness benefit, invalidity benefit or severe disablement allowance and the beneficiary is a person in whose case the day to be disregarded in accordance with regulations made under section 17(1)(e) is a day other than Sunday, the reference in paragraph (1) to Sunday shall be construed as a reference to that other day.

(3) In paragraph (1) "appropriate weekly rate" means the weekly rate at which the benefit in question would be payable but for these regulations.

Priority between persons entitled to increase of benefit

15.—(1) Subject to paragraphs (5) and (6), the following provisions shall apply for the purpose of determining priority as between two persons entitled to an increase of benefit under the Act in respect of a third person.

(2) Where, but for the provisions of this paragraph, a man and his wife would both be entitled to an increase of retirement pension (being an increase of Category A or Category C retirement pension in his case and a Category B or Category C retirement pension in hers) in respect of the same child or children, that man shall, and his wife shall not, be entitled to the increase; and he shall be treated as so entitled for the purposes of this paragraph during any period for

⁵Reg. 14(1) substituted by reg. 2(2) of S.I. 2006/2379 as from 1.10.06 and whose expected week of confinement falls on or after 1.4.07.

⁶Reg. 14(2) deleted by reg. 22(5)(c) of S.I. 1996/1345 as from 7.10.96.

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which he would be entitled but for the operation of any provision of the Act, with the exception of section 82(5)(b) (disqualification while undergoing imprisonment or detention), disqualifying him for the receipt of benefit.

(3) Subject to paragraphs (2), (5) and (6), where, but for the provisions of this paragraph, more than one person would be entitled to an increase of benefit in respect of the same child for the same period—

- (a) in a case where one of those persons has been awarded child benefit in respect of the child for that period, that one of them shall be entitled to the said increase;
- (b) in the case where sub-paragraph (a) does not apply but where one of those persons is entitled otherwise than by virtue of regulations made under Schedule 20 to the Act to child benefit in respect of the child for that period, that one of them shall be entitled to the said increase;
- (c) in a case where neither sub-paragraph (a) nor sub-paragraph (b) applies but where the child is living with one and no other of those persons for that period, that one of them with whom the child is living shall be entitled to the said increase;
- (d) in a case where none of the preceding sub-paragraphs applies but where one of those persons is a parent of the child, that one of them shall be entitled to the said increase.

(4) Subject to paragraphs (5) and (6), where, but for the provisions of this paragraph, more than one person would be entitled to an increase of benefit in respect of an adult dependant for the same period—

- (a) in a case where one of those persons is the spouse ¹or civil partner¹ of the adult dependant that one of them shall be entitled to the said increase;
- (b) in a case where sub-paragraph (a) above does not apply that one of them with whom the adult dependant is residing shall be entitled to the said increase.

(5) Nothing in paragraphs (3) and (4) shall prevent a written notice signed by one or, as the case may be, a majority of the said persons designating another of them as the person to be entitled to the increase, being sent to the Secretary of State; so however that such notice shall not be effective to confer entitlement to an increase in respect of any period for which such increase has already been paid to someone other than the person so designated.

(6) Nothing in paragraphs (3) and (4) shall prevent a person who, in accordance with any of those paragraphs, is not entitled to an increase from being paid an amount equivalent to the amount, if any, by which the increase which would otherwise have been paid to such person exceeds the increase payable to the person entitled by virtue of any of the said paragraphs.

Persons to be treated as entitled to benefit for certain purposes

16. Any personal who would be entitled to any benefit under the Act ²or under the Welfare Reform Act³ or under the Jobseekers Act³ but for these regulations shall be treated as if he were entitled thereto for the purpose of any rights or obligations under the Act and the regulations made under it ²Part 1 of the Welfare Reform Act and regulations made under it², or under the Jobseekers Act and regulations made under it,³ whether of himself or some other person) which depend on his being so entitled, other than for the purposes of the right to payment of that benefit.

¹Words inserted in reg. 15(4)(a) by para. 9(3) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

²Words in reg. 16 inserted by reg. 51(5)(a) & (b) of S.I. 2008/1554 as from 27.10.08.

³Words inserted in reg. 16 by reg. 22(6)(a) and (b) of S.I. 1996/1345 as from 7.10.96.

Prevention of double adjustments

17. No adjustment shall be made under regulations 6 to 10 to any benefit under the Act¹, the Jobseeker's Act or Part 1 of the Welfare Reform Act¹ by reference to any other benefit, whether under the Act¹, the Jobseeker's Act or Part 1 of the Welfare Reform Act¹ or otherwise, where the latter benefit has itself been adjusted by reference to the former benefit.

¹Words inserted in reg. 17 by reg. 51(6) of S.I. 2008/1554 as from 27.10.08.

Revocations

18. Regulations specified in column (1) of Schedule 2 to these regulations are hereby revoked to the extent stated in Column (3) of that Schedule.

29th May 1979

Patrick Jenkin
Secretary of State for Social Services

SCHEDULE 1

Regulation 6

PERSONAL BENEFITS WHICH ARE REQUIRED TO BE ADJUSTED BY REFERENCE TO BENEFITS NOT UNDER CHAPTERS I AND II OF PART II OF THE ACT

Column (1) <i>Personal benefit under the Act</i>	Column (2) <i>Other personal benefit by reference to which the benefit in column (1) is to be adjusted</i>	
1. ▶ ¹ A contribution-based jobseeker's allowance For ▶ ² short-term incapacity benefit◀	1. ▶ ³ ◀Unemployability supplement and training allowance	¹ Words in para. 1 col. (1) substituted for "unemployment benefit" by reg. 22(8) of S.I. 1996/1345 as from 7.10.96.
2. Maternity allowance	2. ▶ ³ ◀ Training allowance	² Words in para. 1 col. (1) substituted for "sickness benefit" by reg. 4(8)(a) of S.I. 1995/829 as from 13.4.95.
3. Widow's benefit ▶ ⁴ ,bereavement allowance, widowed parent's allowance◀ and benefit by virtue of section 39(4) corresponding to widowed mother's allowance or widow's pension	3. ▶ ³ ◀ Unemployability supplement, industrial death benefit or war pension death benefit in either case payable to a woman as widow of the deceased and (except where the benefit in column (1) is widow's allowance) training allowance	³ Words deleted from col. (2) by reg. 10(3) of S.I. 1983/186 as from 6.4.83.
4. Retirement pension of any category (except any age addition) or ▶ ³ incapacity benefit◀, ▶ ⁶ severe disablement allowance◀▶ ⁷ , contributory employment and support allowance◀ or ▶ ⁸ carer's allowance◀	4. ▶ ⁹ ◀ Unemployability supplement, industrial death benefit or war pension death benefit in either case payable to that person as the surviving spouse ▶ ¹⁰ or civil partner◀, and training allowance	⁴ Words inserted in para. 3 col. (1) by reg. 6(3) of S.I. 2000/1483 as from 9.4.01. ⁵ Words in para. 4 col. (1) substituted for "invalidity benefit" by reg. 14(8)(b) of S.I. 1995/829 as from 13.4.95.
5. Attendance allowance ▶ ¹¹ , or the care component of disability living allowance◀	5. Any benefit based on need for attendance under section 61 or under any Pneumoconiosis and Byssinosis Benefit Scheme, Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme	⁶ Words substituted in para. 4 col. (1) by reg. 11 of, and Sch. 2 to, S.I. 1984/1303 as from 29.11.84. ⁷ Words inserted in para. 4col. (1) by reg. 51(7) of S.I. 2008/1554 as from 27.10.08.
6. Invalidity allowance ▶ ¹² or an increase in the rate of incapacity benefit in accordance with regulation 10(1) of the Social Security (Incapacity Benefit) Regulations 1994(a)◀	6. An increase under section 59(1) of an unemployability supplement and an additional allowance payable only to a beneficiary who is entitled to an unemployability supplement under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries scheme	⁸ Words substituted in col. 1, para. 4 by Sch. 2 of S.I. 2002/2497 as from 1.4.03. ⁹ Words deleted from para. 4, col. (2), by reg. 10(3) of S.I. 1983/186 as from 6.4.83. ¹⁰ Words in col. 2 off para. 4 inserted by para. 9(4) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.
7. ▶ ¹³ ◀	▶ ¹³ ◀	¹¹ Words added to para. 5 col. (1) by reg. 5(4) of S.I. 1991/2742 as from 6.4.92.
8. Unemployability supplement	8. Any other unemployability supplement	¹² Words inserted into para. 6 col. (1) by reg. 14(8)(c) of S.I. 1995/829 as from 13.4.95.
9. Increase of disablement pension during hospital treatment	9. Treatment allowance	¹³ Para. 7 deleted by reg. 10(3)(c) of S.I. 1983/186 as from 6.4.83.

(a) S.I. 1994/2946.

SCHEDULE 2

REGULATIONS REVOKED

Column (1) <i>Citation</i>	Column (2) <i>Statutory Instrument</i>	Column (3) <i>Extent of revocation</i>
The Social Security (Overlapping Benefits) Regulations 1975	S.I. 1975/554	The whole of the regulations
The Social Security (Non-Contributory Invalidity Pension) Regulations 1975	S.I. 1975/1058	Regulation 18
The Mobility Allowance Regulations 1975	S.I. 1975/1573	Regulation 11
The Social Security (Invalid Care Allowance) Regulations 1976	S.I. 1976/409	Regulation 15
The Social Security (Miscellaneous Amendments) Regulations 1976	S.I. 1976/1736	Regulation 3
The Social Security (Child Benefit Consequential) Regulations 1977	S.I. 1977/342	Regulation 10
The Social Security (Miscellaneous Amendments) Regulations 1978	S.I. 1978/433	Regulation 3
The Social Security (Overlapping Benefits) Amendment Regulations 1978	S.I. 1978/524	The whole of the regulations
The Social Security (Overlapping Benefits) Amendment (No. 2) Regulations 1978	S.I. 1978/1511	The whole of the regulations
The Social Security (Overlapping Benefits and Miscellaneous Amendments) Regulations 1979	S.I. 1979/359	Regulations 2 to 7, Regulation 9 and the Schedule

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

The Regulations contain provisions relating to adjustment of benefits under the Social Security Act 1975 by reference to other benefits payable for the same period.

The principal matters dealt with are adjustment of personal benefit under Chapters I, II and IV of Part II of the Act (regulations 4 and 6), earnings-related supplement (regulation 5) and dependency benefit (regulations 7 to 11). The regulations also contain miscellaneous provisions incidental to those matters.

[Reg. 16 (special provisions relating to delay or failure in making or prosecuting a claim) revoked by Sch. to S.I. 1996/1345 as from 7.10.96. It is however included among those provisions of S.I. 1983/1598 which will temporarily continue to be reproduced at Annex 2 on page 3.8795 et seq.]

[Reg. 17 (disqualification for sickness or invalidity benefit) revoked by reg. 17(11) of S.I. 1995/829 as from 13.4.95. It is however included among those provisions of S.I. 1983/1598 which, although so revoked, will temporarily continue to be reproduced at Annex on page 3.8789 et seq.]

[Reg. 18 (partial satisfaction of contribution conditions and reduced rates of benefit) lapsed on repeal of s.33(1)(a)–(c) of Social Security Act 1975 (c.14) by s.42 of and Sch. 11 to Social Security Act 1986 (c.50) as from 5.10.86. Savings in respect of reg. 18 made by art. 3 of S.I. 1986/1606 expired on 4.10.87.]

[Reg. 19 (modifications of normal idle day rule) revoked by Sch. to S.I. 1996/1345 as from 7.10.96. It is however included among those provisions of S.I. 1983/1598 which will temporarily continue to be reproduced at Annex 2 on page 3.8795 et seq.]

Special provisions for certain persons who have been employed abroad

20.—(1) The following provisions of this regulation shall apply for the purposes of ►¹contribution-based jobseeker's allowance◀►², short-term incapacity benefit and contributory employment and support allowance◀ where a person—

- (a) has been absent from Great Britain;
- (b) has returned to Great Britain;
- (c) throughout the whole period of his absence was ordinarily resident in Great Britain;

and in this regulation “a person” shall mean such a person.

(2) Where a person has paid Class 1 contributions at the standard rate under the Act either—

- (a) to the full extent of his liability under regulation 120 of the Social Security (Contributions) Regulations 1979(a); or
- (b) in respect of the first 52 weeks of his employment abroad by virtue of either—
 - (i) an Order in Council made under section 143 (reciprocity with countries outside the United Kingdom); or
 - (ii) Council Regulation No. 1408/71/EEC(b) (application of social security schemes to employed persons and their families moving within the Community);

and the employment, by reference to his liability mentioned in sub-paragraph (a) or (b), as the case may be, arose, continued throughout the first 52 weeks after the commencement of that liability, he shall be treated as having paid Class 1 contributions on earnings at the lower earnings limit for the relevant tax year for any weeks between the end of that liability and the date of his return to Great Britain which are relevant to his claim.

(3) Where—

- (a) a person would have been liable to pay Class 1 contributions at the standard rate under the said regulation 120 but for the provisions of an Order in Council made under section 143;
- (b) in relation to his case that Order does not provide for periods of insurance, employment or residence in the other country to which that Order relates to be taken into account in determining title to benefit; and
- (c) the employment by reference to which he would have been liable under the said regulation 120 continued throughout the first 52 weeks;

¹Words in reg. 20(1) substituted for “unemployment benefit” by reg. 25 of S.I. 1996/1345 as from 7.10.96.

²Words in reg. 20(1) substituted by reg. 21 of S.I. 2008/2428 as from 27.10.08.

(a) S.I. 1979/591

(b) O.J. No. L149, 5.7.71, p.2. (O.J.S.E. 1971(II), p.416).

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he shall be treated as having paid Class 1 contributions on earnings at the lower earnings limit for the relevant tax year for each week of his absence.

(4) Where—

- (a) a person would have been liable to pay Class 1 contributions at the standard rate under the said regulation 120 but for the provisions of either an Order in Council made under section 143 or Council Regulation No. 1408/71/EEC;
- (b) the employment by reference to which he would have been liable under the said regulation 120 continued throughout the first 52 weeks from the time that that liability would have commenced; and
- (c) that Order or Council Regulation, as the case may be, provides for aggregation of periods of insurance, employment or residence only if an insurance period has been completed since his return to Great Britain, and an insurance period has not been so completed;

any period of insurance, employment, or, as the case may be, residence in the other country to which that Order or Council Regulation, as the case may be, relates which falls in the relevant tax year and which could be taken into account in determining entitlement to benefit if an insurance period had been completed since his return to Great Britain shall be treated as a period in respect of which Class I contributions on earnings at the lower earnings limit for that tax year had been paid.

(5) Paragraphs (2) (except in a case to which paragraph (2)(a) applies), (3) and

(4) shall not apply in relation to benefit to which this regulation applies for any day in respect of which the person concerned is entitled to a corresponding benefit under the social security scheme of the country in which he was employed.

(6) Where a person satisfies the requirements of paragraph (3)(a) or (4)(a) but the relevant employment did not continue for 52 weeks, he shall be treated as having paid Class 1 contributions on earnings at the lower earnings limit for the relevant tax year for each week for which it did continue.

(7) Where a person to whom regulation 3 of the National Insurance (Residence and Persons Abroad) Regulations 1948(a) applies—

- (a) has paid contributions to the full extent of his liability under that regulation; and
- (b) has paid or has had credited to him 45 contributions of any Class under the National Insurance Act 1965(b) during each contribution year from the year in which his liability ceased until the last contribution year relevant to him which ended before 5th April 1975 (inclusive of both these years);

paragraph (2) shall apply to him, notwithstanding paragraph (2)(a), as if the reference to his liability were a reference to his liability under the said regulation 3.

(8) Paragraph (2) shall not apply to any case where the employment, which gave rise to the liability mentioned in sub-paragraph (a) of that paragraph, commenced before 6th April 1975, unless the person concerned paid contributions under the said Act of 1965 to the full extent of his liability under the said regulation 3.

[Regulation 21 (additional condition with respect to the respect of unemployment benefit by seasonal workers) revoked by regulation 8 of S.I. 1989/1324 as from 9.10.89.]

[Regulation 22 (additional condition with respect to the receipt of unemployment benefit by students) revoked by regulation 6(3) of S.I. 1990/1549 as from 1.9.90.]

(a) S.I. 1948/1275; relevant amending instruments are S.I. 1950/1946, 1958/1084, 1960/1210.
(b) 1965 c. 51.

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1995/1164	The Vaccine Damage Payments (Specified Disease) Order 1995	4.7883
2001/1652	The Vaccine Damage Payments (Specified Disease) Order 2001	4.7885
2006/2066	The Vaccine Damage Payments (Specified Disease) Order 2006	4.7887
2008/2103	The Vaccine Damage Payments (Specific Disease) Order 2008	4.7889
2007/1931	The Vaccine Damage Payments Act 1979 Statutory Sum Order 2007	4.7905
1982/1489	The Workmen's Compensation (Supplementation) Scheme 1982	4.5001
1994/671	The Workmen's Compensation (Supplementation) (Amendment) Scheme 1994	4.5359
1996/598	The Workmen's Compensation (Supplementation) (Amendment) Scheme 1996	4.5365
1997/731	The Workmen's Compensation (Supplementation) (Amendment) Scheme 1997	4.5369

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2002/718	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2002	4.5395
2003/656	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2003	4.5397
2004/582	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2004	4.5399
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2006/738	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2006	4.5403
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2001 1001	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2001	4.5393
1652	The Vaccine Damage Payments (Specified Disease) Order 2001	4.7885
2002 718	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2002	4.5395
1592	The Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	4.7821
2003 270	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2003	4.4277
656	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2003	4.5397
2190	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2003	4.4279
2004 582	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2004	4.5399
2005 324	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2005	4.4281
358	The Statutory Maternity Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (General) (Amendment) Regulations 2005	4.6351
832	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2005	4.5401
2006 738	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2006	4.5403
965	The Child Benefit (Rates) Regulations 2006	4.9003
2066	The Vaccine Damage Payments (Specific Disease) Order 2006	4.7887
2007 804	The Workmen's Compensation (Supplementation) (Amendment) Scheme 2007	4.5405
811	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2007	4.4289
1753	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2007	4.4291
1931	The Vaccine Damage Payments Act 1979 Statutory Sum Order 2007	4.7905
2000	The Pneumoconiosis, etc. (Workers' Compensation) (Prescribed Occupations) Order 2007	4.4653
2008 14	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2008	4.4295
699	The Social Security (Industrial Injuries) (Dependency) (Permitted Earnings Limits) Order 2008	4.3211
721	The Workmen's Compensation (Supplementation) Amendment Regulations 2008	4.5409
1552	The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2008	4.4297

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1963	The Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008	4.3613
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2008 No. 1963

SOCIAL SECURITY

The Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008

Made - - - - *17th July 2008*
Coming into force - *1st October 2008*

The Secretary of State for Work and Pensions in exercise of the powers conferred by section 1(1) of the Pneumoconiosis etc. (Workers' Compensation) Act 1979(a) and sections 46(3) and 47 of the Child Maintenance and Other Payments Act 2008(b) makes the following Regulations.

In accordance with section 7(3) of the Pneumoconiosis etc. (Worker's Compensation) Act 1979 and section 53(3) of the Child Maintenance and Other Payments Act 2008 and (these being the first Regulations made under section 47 of that Act) section 53(4) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mesothelioma Lump Sum Payments (Conditions and Amounts) Regulations 2008.

(2) These Regulations shall come into force on 1st October 2008.

(3) In these Regulations—

"the Act" means the Child Maintenance and Other Payments Act 2008;

"claim" means a claim under section 46(1) of the Act;

"deceased" means a person who, immediately before death, had diffuse mesothelioma;

"mesothelioma" means diffuse mesothelioma;

"payment" includes a payment in money or money's worth or in kind.

Disqualifying payments

2.—(1) The following payments are prescribed for the purposes of section 47(1)(a), (2)(a) and (3)(e) of the Act (payments which, if made in consequence of diffuse mesothelioma, prevent the conditions provided for in section 47(1)(a) and (2)(a) from being fulfilled)—

(a) payment under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(c);

(b) payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005(d);

(a) 1979 c. 41.

(b) 2008 c. 6.

(c) S.I. 2006/606.

(d) S.I. 2005/439.

¹Para. (c) of reg. 2(1) substituted by reg. 5 of S.I. 2008/2365 as from 1.10.08.

- ▶¹(c) payment from any government department, authority, body corporate or employer exempted from insurance by or under section 3 of the Employers' Liability (Compulsory Insurance) Act 1969^(a) or Article 7 of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972^(b).◀
- (d) payment under the UK Asbestos Trust established on 10th October 2006, for the benefit of certain persons suffering from asbestos-related diseases;
- (e) payment under the EL Scheme Trust established on 23rd November 2006, for the benefit of certain persons suffering from asbestos-related diseases.

(2) The following payments are prescribed for the purposes of section 47(1)(b) and (2)(b) of the Act (payments eligibility for which prevents the conditions provided for in section 47(1)(b) or (2)(b) from being fulfilled)–

- (a) payment under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006;
- (b) payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2005.

Disregarded payments

3. A payment made in error and which in consequence is liable to be repaid in accordance with a statutory provision or rule of law, is to be disregarded for the purpose of section 47(1)(a) or (2)(a) of the Act (conditions of entitlement).

Presence in the United Kingdom

4.—(1) In the case of a person with mesothelioma it is a condition of entitlement that the person was in the United Kingdom at a time when and place where that person was exposed to asbestos.

(2) In the case of a dependant it is a condition of entitlement that the deceased was in the United Kingdom at a time when and place where the deceased was exposed to asbestos.

Amount of lump sum payment

5.—(1) The amount of a payment made under section 46(2) of the Act to a person with mesothelioma shall be determined in accordance with Table 1 of the Schedule.

(2) In Table 1 of the Schedule, the reference to the age of the person is a reference to–

- (a) the age at which the person was first diagnosed with mesothelioma; or
- (b) where the age at which the person was first diagnosed with mesothelioma is unknown, the age at which the person made the claim.

(3) The amount of a payment made under section 46(2) of the Act to a dependant shall be determined in accordance with Table 2 of the Schedule.

(4) In Table 2 of the Schedule, the reference to the age of the person with mesothelioma is a reference to the age of that person at death.

[Regulation 6 amends regulation 3 of S.I. 1988/668.]

Signed by authority of the Secretary of State for Work and Pensions.

(a) 1969 c. 57.

(b) S.I. 1972/963 (N.I. 6); Article 7 was amended by paragraph 1 of Schedule 2 to the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1) and Part 5. of Schedule 7 to the Criminal Justice and Police Act 2001 (c. 16).

PART V
ADMINISTRATION

Evidence of expected week of confinement or of confinement

22.—(1) A woman shall in accordance with the following provisions of this regulation, provide the person who is liable to pay her statutory maternity pay with evidence as to—

- (a) the week in which the expected date of confinement occurs, and
- (b) where her entitlement to statutory maternity pay depends upon the fact of her confinement, the week in which she was confined.

(2) For the purpose of paragraph (1)(b) a certificate of birth shall be sufficient evidence that the woman was confined in the week in which the birth occurred.

(3) The evidence shall be submitted to the person who will be liable to make payments of statutory maternity pay not later than the end of the third week of the maternity pay period so however that where the woman has good cause the evidence may be submitted later than that date but not later than the end of the 13th week of the maternity pay period.

(4) For the purposes of paragraph (3) evidence contained in an envelope which is properly addressed and sent by prepaid post shall be deemed to have been submitted on the day on which it was posted.

Notice of absence from work

23.—(1) Where a woman is confined before the beginning of the 14th week before the expected week of confinement, she shall be entitled to payments of statutory maternity pay only if—

- (a) she gives notice to the person who will be liable to pay it ►of the date on which she was confined◄, and
- (b) that notice is given within ►28 days◄ of the date she was confined or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter; and
- (c) where the person so requests, the notice is in writing.

(2) Where a woman is confined before the date stated in a notice provided in accordance with ►section 164(4) of the contributions and benefits Act◄ as being the date her absence from work is due to being, she shall be entitled to payments of statutory maternity pay only if—

- (a) she gives a further notice to the person who will be liable to pay it specifying the date she was confined and the date her absence from work ►◄ began, and
- (b) that further notice is given within ►28 days◄ of the date she was confined or if in the particular circumstances that is not practicable, as soon as is reasonably practicable thereafter; and
- (c) where the person so requests, the notice is in writing.

(3) For the purpose of this regulation, a notice contained in an envelope which is properly addressed and sent by prepaid post shall be deemed to be given on the date on which it is posted.

►(4) Subject to paragraph (5), section 164(4) of the Contributions and Benefits Act (statutory maternity pay-entitlement and liability to pay) shall not have effect in the case of a woman who leaves her employment with the person who will be liable to pay her statutory maternity pay after the beginning of the week immediately preceding the 14th week before the expected week of confinement.◄

►(5) A woman who is exempted from section 164(4) of the Contributions and Benefits Act by paragraph (4) but who is confined before the 11th week before the expected week of confinement shall only be entitled to statutory maternity pay if she gives the person who will be liable to pay it notice specifying the date she was confined.◄

(a) In reg. 23, words substituted in paras. (1)(a), (b) & (2)(b), words omitted in para. (2)(a) & para. (4) substituted by reg. 7 of S.I. 2002/2690 as from 24.11.02.

Words in reg. 23(2) substituted by reg. 6(2) of S.I. 1994/137 as from 11.6.94.

See note (a) above.

Para. (5) of reg. 23 substituted by reg 6(3) of S.I. 1994/1367, under powers effective where expected week of confinement begins on or after 16.10.94.

Notification of employment after confinement

24. A woman who after the date of confinement but within the maternity pay period commences work in employed earner's employment with a person who is not liable to make payments of statutory maternity pay to her and is not a non-labile employer for the purposes of regulation 8(1), shall within 7 days of the day she commenced work inform any person who is so liable of the date she commenced work.

Provision of information in connection with determination of questions

25. Any woman claiming to be entitled to statutory maternity pay, or any other person who is a party to proceedings arising under the 1986 Act relating to statutory maternity pay, shall, if she receives notification from the Secretary of State that any information is required from her for the determination of any question arising in connection therewith, furnish that information to the Secretary of State within 10 days of receiving that notification.

Reg. 25A inserted by reg. 7 of S.I. 1990/622 full as from 6.4.90.

Words in reg. 25A, para. (1) substituted & words in para. (3) omitted by reg. 8(2) & (3) of S.I. 2002/2690 as from 24.11.02.

Provision of information relating to claims for certain other benefits

25A.—(1) Where an employer who has been given notice in accordance with section 164(4)(a) or (9)(ea) of the Contributions and Benefits Act (a) or regulation 23 by a woman who is or has been an employee—

- (a) decides that he has no liability to make payments of statutory maternity pay to her, or
- (b) has made one or more payments of statutory maternity pay to her but decides, before the end of the maternity pay period and for a reason specified in paragraph (3), that he has no liability to make further payments to her,

then, in connection with the making of a claim by the woman for a maternity allowance or incapacity benefit, he shall furnish her with the information specified in the following provisions of this regulation.

(2) Where the employer decides he has no liability to make payments of statutory maternity pay to the woman, he shall furnish her with details of the decision and the reasons for it.

(3) Where the employer decides he has no liability to make further payments of statutory maternity pay to the woman because she has within the maternity pay period been detained in legal custody or sentenced to a term of imprisonment which was not suspended, he shall furnish her with—

- (a) details of his decision and the reasons for it; and
- (b) details of the last week in respect of which a liability to pay statutory maternity pay arose and the total number of weeks within the maternity pay period in which such a liability arose.

(4) The employer shall—

- (a) return to the woman any maternity certificate provided by her in support of the notice referred to in paragraph (1); and
- (b) comply with any requirements imposed by the preceding provisions of this regulation—
 - (i) in a case to which paragraph (2) applies, within 7 days of the decision being made, or, if earlier, within 28 days of the day the woman gave notice of her intended absence or of her confinement if that had occurred; or
 - (ii) in a case to which paragraph (3) refers, within 7 days of being notified of the woman's detention or sentence.

Words in reg. 25A(4)(b)(i) substituted and in (ii) omitted by reg. 8(4) of S.I. 2002/2690 as from 24.11.02.

(a) Section 164(4)(a) was substituted and section 164(a)(ea) was inserted by section 20 of the Employment Act 2002.

- (aa) regulations 8 and 9 (examination, etc. of persons on aircraft and powers in respect of persons leaving aircraft) of the Public Health (Aircraft) (Scotland) Regulations 1971(a); or
- (bb) regulations 9 and 10 (examination, etc. of persons on ships and powers in respect of certain persons on ships) of the Public Health (Ships) (Scotland) Regulations 1971(b),

applies.◀

▶¹Linking periods of incapacity for work

¹Reg. 2A inserted by reg. 2 of S.I. 1986/477 as from 6.4.86.

2A. In subsection (3) of section 2 of the 1982 Act (linking periods of incapacity for work), 8 weeks shall be substituted for 2 weeks.◀

Period of entitlement ending or not arising

3.—(1) In a case where an employee is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended) on a day which in relation to him falls within a period of entitlement, that period shall end with that day.

(2) A period of entitlement shall not arise in relation to a period of incapacity for work where at any time on the first day of that period of incapacity for work the employee in question is in legal custody or sentenced to or undergoing a term of imprisonment (except where the sentences suspended).

▶²(2A) A period of entitlement in respect of an employee who was entitled to incapacity benefit, maternity allowance or severe disablement allowance shall not arise in relation to any day within a period of incapacity for work beginning with the first day on which paragraph 2(d) of Schedule 11 to the Contributions and Benefits Act(c) ceases to have effect where the employee in question is a person to whom regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 (welfare to work beneficiary) applies.◀

²Reg. 3(2A) inserted by reg. 6 of S.I. 1998/2231 as from 5.10.98.

▶³(2B) Paragraph (2A) shall not apply, in the case of an employee who was entitled to incapacity benefit, where paragraph 2(d)(i) of Schedule 11 to the Contributions and Benefits Act ceases to have effect by virtue of paragraph 5A of that Schedule.◀

³Reg. 3(2B) inserted by reg. 5(2) of S.I. 2007/825 as from 6.4.07.

▶⁴(2C) A period of entitlement in respect of an employee who was entitled to employment and support allowance shall not arise in relation to any day within a period of limited capability for work beginning with the first day on which paragraph 2(dd) of Schedule 11 to the Contributions and Benefits Act ceases to have effect where the employee in question is a person to whom regulation 148 of the Employment and Support Allowance Regulations 2008 (work and training beneficiaries) applies.◀

⁴Reg. 3(2C) inserted by reg. 45(1) of S.I. 2008/1554 as from 27.10.08.

▶⁵(3) A period of entitlement as between an employee and his employer shall end after 3 years if it has not otherwise ended in accordance with ▶⁶section 153(2) of the Contributions and Benefits Act◀ or with regulations (other than this paragraph) made under ▶⁶section 153(6) of the Contributions and Benefits Act◀.◀

⁵Reg. 3(3) inserted by reg. 3 of S.I. 1986/477 as from 6.4.86.

⁶Words in reg. 3(3) substituted by reg. 9(2) of S.I. 1994/1367 as from 11.6.94.

▶⁷(4) Where a period of entitlement is current as between an employee and her employer and the employee

⁷Reg. 3(4) substituted by reg. 9(3) of S.I. 1994/1367 as from 11.6.94 in cases where expected week of confinement begins on or after 16.10.94.

- (a) is pregnant or has been confined; and
- (b) is incapable of work wholly or partly because of pregnancy or confinement on any day which falls on or after the beginning of the ▶⁸4th week◀ before the expected week of confinement; and
- (c) is not by virtue of that pregnancy or confinement entitled to statutory maternity pay under Part XII of the Contributions and Benefits Act or to maternity allowance under section 35 of that Act;

⁸Words in reg. 3(4)(b) substituted by reg. 13(2) of S.I. 2002/2690 as from 24.11.02.

(a) S.I. 1971/131.

(b) S.I. 1971/132.

(c) Paragraph 2(d) was substituted by paragraph 43(2) of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18).

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the period of entitlement shall end on that day or, if earlier, on the day she was confined.◀

¹Reg. 3(5) substituted by reg. 9(4) of S.I. 1994/1367 as from 11.6.94 in cases where expected week of confinement begins on or after 16.10.94.

²Words in reg. 3(5)(b) substituted by reg. 13(3) of S.I. 2002/2690 as from 24.11.02.

▶¹(5) Where an employee—

- (a) is pregnant or has been confined; and
- (b) is incapable of work wholly or partly because of pregnancy or confinement on any day which falls on or after the beginning of the ▶²4th week◀ before the expected week of confinement; and
- (c) is not by virtue of that pregnancy or confinement entitled to statutory maternity pay under Part XII of the Contributions and Benefits Act or to maternity allowance under section 35 of that Act;

a period of entitlement as between her and her employer shall not arise in relation to a period of incapacity for work where the first day in that period falls within 18 weeks of the beginning of the week containing the day referred to at (b) above or, if earlier, of the week in which she was confined.◀

³Reg. 3(6) added by reg. 2 of S.I. 1987/868 as from 7.6.87.

⁴Words in reg. 3(6) substituted by reg. 9(5) of S.I. 1994/1367 as from 11.6.94.

▶³(6) In paragraphs (4) and (5) “confinement” and “confined” have the same meanings as in ▶⁴section 171 of the Contributions and Benefits Act◀.◀

[Reg. 3A revoked by reg. 3 of S.I. 2008/1735 as from 27.10.08.]

Contract of service ended for the purpose of avoiding liability or statutory sick pay

4.—(1) The provisions of this regulation apply in any case where an employer’s contract of service with an employee is brought to an end by the employer solely or mainly for the purpose of avoiding liability for statutory sick pay.

(2) Where a period of entitlement is current on the day on which the contract is brought to an end, the employer shall be liable to pay statutory sick pay to the employee until the occurrence of an event which, if the contract had still been current, would have caused the period of entitlement to come to an end under section 3(2)(a), (b) or (d) or regulation 3(1) ▶⁵of these regulations or regulation 10(2) of the Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations 1982◀, or (if earlier) until the date on which the contract would have expired.

⁵Words added by reg. 10(3) of S.I. 1982/1349 as from 6.4.83.

Qualifying days

5.—(1) In this regulation “week” means a period of 7 consecutive days beginning with Sunday.

(2) Where an employee and an employer of his have not agreed which day or days in any week are or were qualifying days ▶⁶or where in any week the only day or days are or were such as are referred to in paragraph (3)◀, the qualifying day or days in that week shall be—

⁶Words inserted by reg. 2 of S.I. 1985/126 as from 5.3.85.

- (a) the day or days on which it is agreed between the employer and the employee that the employee is or was required to work (if not incapable) for that employer or, if it so agree that there is or was no such day,
- (b) the Wednesday, or, if there is no such agreement between the employer and employee as mentioned in sub-paragraph (a),
- (c) every day, except that or those (if any) on which it is agreed between the employer and the employee that none of that employer’s employees are or were required to work (any agreement that all days are or were such days being ignored).

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(2)-(5) ▶¹◀

¹Paras. (2) to (5) of reg. 13 deleted by reg. 2(4)(b) of S.I. 1996/777 as from 6.4.96.

²Reg. 13A inserted by reg. 3 of S.I. 2005/989 as from 6.4.05.

▶²Production of employer's records

13A.—(1) An authorised officer of the Commissioners of Inland Revenue may by notice require an employer to produce to him at the place of keeping such records as are in the employer's possession or power and as (in the officer's reasonable opinion) contain, or may contain, information relevant to satisfy him that statutory maternity pay has been paid and is being paid in accordance with these regulations to employees or former employees who are entitled to it.

(2) A notice referred to in paragraph (1) shall be in writing and the employer shall produce the records referred to in that paragraph within 30 days after the birth of such a notice.

(3) The production of records in pursuance of this regulation shall be without prejudice to any lien which a third party may have in respect of those records.

(4) References in this regulation to "records" means—

- (a) any wage sheet or deductions working sheet; or
- (b) any other document which relates to the calculation or payment of statutory maternity pay to his employees or former employees,

whether kept in written form, electronically, or otherwise.

(5) In paragraph (1), "place of keeping" means such place in Great Britain that an employer and an authorised officer may agree upon, or, in the absence of such agreement—

- (a) any place in Great Britain where records referred to in paragraph (1) are normally kept; or
- (b) if there is no such place, the employer's principal place of business in Great Britain.◀

Provision of information in connection with determination of questions

14. Any person claiming to be entitled to statutory sick pay, or any other person who is a party to proceedings arising under Part I, shall, if he receives notification from the Secretary of State that any information is required from him for the determination of any question arising in connection therewith, furnish that information to the Secretary of state within 10 days of receiving that notification.

Provision of information by employers to employees

15.—(1) ▶³Subject to paragraph (1A),◀ in a case which falls with paragraph (a), (b) or (c) of section 18(3) (provision of information by employers in connection with the making of claims for ▶⁴short-term incapacity◀ and other benefits), the employer shall furnish to his employee, in writing on a form approved by the Secretary of State for the purpose ▶³or in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose◀, the information specified in paragraph (2), (3) or (4) below respectively within the time specified in the appropriate one of those paragraphs.

³Words inserted in reg. 15(1), and reg. 15(1A) inserted, by reg. 2(5)(a) and (b) respectively of S.I. 1996/777 as from 6.4.96.

⁴Words in reg. 15(1) substituted by reg. 15 of S.I. 1995/829 as from 13.4.95.

▶³(1A) For the purposes of paragraph (1), where, in the particular circumstances of a case, it is not practicable for the employer to furnish the information within the specified time mentioned in paragraph (2), (3)(4)(b)(ii) or (5), he shall, not later than the first pay day within the meaning of regulation 9(1) immediately following the relevant specified time, furnish the information to his employee.◀

(2) In a case which falls within paragraph (a) (no period of entitlement arising in relation to a period of incapacity for work) of section 18(3)—

- (a) the information mentioned in paragraph (1) is a statement of all the reasons why, under the provisions of paragraph 1 of Schedule 1 and regulations made thereunder, a period of entitlement does not arise; and

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- (b) it shall be furnished not more than 7 days after the day on which the employer is notified by or on behalf of the employee of the employee's incapacity for work on the fourth day of the period of incapacity for work.

(3) In a case which falls within paragraph (b) (period of entitlement ending but period of incapacity for work continuing) of section 18(3)–

¹Sub-paras. (a) & (b) substituted by reg. 6(2) of S.I. 1986/477 as from 6.4.86.

- ▶¹▶²(a) the information mentioned in paragraph (1) above is a statement informing the employee of–
- (i) the reason why the period of entitlement ended;
 - (ii) the date of the last day in respect of which the employer is or was liable to make a payment of statutory sick pay to him.◀
- (b) the statement shall be furnished not more than 7 days after the day on which the period of entitlement ended, or if earlier, on the day on which it is already required to be furnished under paragraph (4)◀

²Paras. (3)(a) & (4)(a) of reg. 15 substituted by regs. 2(2)(a) & (b) of S.I. 2008/1735 as from 27.10.08.

(4) In a case which falls within paragraph (c) (period of entitlement expected to end before period of incapacity for work ends, on certain assumptions) of section 18(3)–

³Sub-Paras. (a) & (b) substituted by reg. 6(3) of S.I. 1986/477 as from 6.4.86.

- ▶³▶²(a) the information mentioned in paragraph (1) above is a statement informing the employee of–
- (i) the reason why the period of entitlement is expected to end;
 - (ii) the date of the last day in respect of which the employer is or was expected to be liable to make a payment of statutory sick pay to him.◀
- (b) the statement shall be furnished–
- (i) in a case where the period of entitlement is expected to end in accordance with section 3(2)(b) of the Act (maximum entitled to statutory sick pay), on or before the 42nd day before the period of entitlement is expected to end, or
 - (ii) in any other case, on or before the seventh day before the period of entitlement is expected to end.

⁴Words deleted in reg. 15(4)(b) by reg. 2(5)(c) of S.I. 1996/777 as from 6.4.96.

▶⁴◀◀

(5) For the purposes of section 18(3)(c)(i) (period for which the period of incapacity for work is to be assumed to continue to run) the prescribed period shall be 14 days.

[Reg. 15A revoked by reg. 3 of S.I. 2008/1735 as from 27.10.08.]

Meaning of “employee”

⁵Words inserted & omitted in reg. 16(1) by para. 50 of part 2 to Sch. 8 of S.I. 2006/1031 as from 1.10.06.

16.—(1) ▶⁵Subject to paragraph (1ZA),◀ in a case where, and in so far as, a person ▶⁵◀ is treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978(a), he shall be treated as an employee for the purposes of Part I and in a case where, and in so far as, such a person is treated otherwise than as an employed earner by virtue of those regulations, he shall not be treated as an employee for the purposes of Part I.

⁶Reg. 16(1ZA) substituted by reg. 5(3) of S.I. 2007/825 as from 6.4.07.

- ▶⁶(1ZA) Paragraph (1) shall have effect in relation to a person who–
- (a) is under the age of 16; and
 - (b) would or, as the case may be, would not have been treated as an employed earner by virtue of the Social Security (Categorisation of Earners) Regulations 1978 had he been over that age,

as it has effect in relation to a person who is or, as the case may be, is not so treated.◀

⁷Para inserted by reg. 5(2) of S.I. 1983/376 as from 6.4.83.

▶⁷(1A) Any person who is in employed earner's employment within the meaning of the Social Security Act 1975 under a contract of apprenticeship shall be treated as an employee for the purposes of Part I.◀

(2) A person who is in employed earner's employment within the meaning of the Social Security Act 1975 but whose employer–

- (a) does not fulfil the conditions prescribed in regulation 119(1)(b) of the Social

(a) S.I. 1978/1689, amended by S.I. 1980/1713.

2006 No. 2066

PUBLIC HEALTH

**The Vaccine Damage Payments (Specified Disease)
Order 2006**

<i>Made</i> - - - -	<i>25th July 2006</i>
<i>Laid before Parliament</i>	<i>1st August 2006</i>
<i>Coming into force</i> -	<i>4th September 2006</i>

The Secretary of State for Work and Pensions makes the following Order in exercise of the power conferred by section 1(2)(i) of the Vaccine Damage Payments Act 1979(a).

Citation and commencement

1. This Order may be cited as the Vaccine Damage Payments (Specified Disease) Order 2006 and shall come into force on 4th September 2006.

Addition to the diseases to which the Vaccine Damage Payments Act 1979 applies

2. Pneumococcal infection is specified as a disease to which the Vaccine Damage Payments Act 1979 applies.

Signed by authority of the Secretary of State for Work and Pensions.

25th July 2006

Anne C McGuire
Parliamentary Under-Secretary of State,
Department for Work and Pensions

(a) 1979 c. 17.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order adds pneumococcal infection to the diseases to which the Vaccine Damage Payments Act 1979 applies.

A full regulatory impact assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

2008 No. 2103**PUBLIC HEALTH****The Vaccine Damage Payments (Specified Disease)
Order 2008**

<i>Made - - - -</i>	<i>5th August 2008</i>
<i>Laid before Parliament</i>	<i>8th August 2008</i>
<i>Coming into force -</i>	<i>1st September 2008</i>

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by sections 1(2)(i) and 2(2) of the Vaccine Damage Payments Act 1979(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Vaccine Damage Payments (Specified Disease) Order 2008 and shall come into force on 1st September 2008.

(2) In this Order, "the Act" means the Vaccine Damage Payments Act 1979.

Addition to the diseases to which the Act applies

2. Human papillomavirus is specified as a disease to which the Act applies.

Modification of conditions of entitlement

3. The condition of entitlement in section 2(1)(b) of the Act (age or time at which vaccination was carried out) shall be omitted in relation to vaccination against human papillomavirus.

Signed by authority of the Secretary of State for Work and Pensions.

5th August 2008

James Plaskitt
Parliamentary-Under Secretary of State,
Department for Work and Pensions

(a) 1979 c. 17.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order adds human papillomavirus to the diseases to which the Vaccine Damage Payments Act 1979 applies. Article 3 modifies the condition of entitlement in section 2(1)(b) of that Act so that it is not a condition in relation to human papillomavirus that the vaccinated person was under eighteen at the time the vaccination was given or that there was an outbreak of the disease within the United Kingdom or Isle of Man at that time.

A full impact assessment has not been prepared for this Order as it has no impact on the private and voluntary sectors.

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