

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

The Law Relating to Social Security

Volumes 2 - 4 Supplement 87 – June 2009

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [87] 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 - 4 and incorporates the following S.I.s
2009/471 2009/608 2009/610 2009/659 2009/664
as well as 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. 86 [March 2009]	Contents 1, 2, 3, 5, 6, 8, 11, 12 and 13.
Supplement No. 85 [Dec 2008]	Contents 1, 2, 3, 4, 5, 6, 8, 11, 12 and 13.
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www.dwp.gov.uk/advisers/docs/lawvols/bluevol/.
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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4.5007 – 4.5008 (1 page)

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Tax Credits Act 2002) in his or their case is such that he is not so entitled, and

- (b) either working tax credit or any element of child tax credit other than the family element is paid in respect of the day on such a claim.]

(2) Where—

- (a) a person becomes engaged in training for work, and
- (b) he was entitled to incapacity benefit under section 40 or 41 above for one or more of the 56 days immediately before he became so engaged, and
- (c) the first day after he ceases to be so engaged is for him a day of incapacity of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to incapacity benefit under that section,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for incapacity benefit under that section for period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection “training for work” means training for work in pursuance of arrangement made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 or training of such other description as may be prescribed.

- (3) for the purposes of this section “week” means any period of 7 days.]

Retirement pensions (Categories A and B)

43.—(1) A person shall not be entitled for the same period to more than one retirement pension under this Part of this Act except as provided by subsection (2) below.

Persons entitled to more than one retirement pension.

(2) A person who, apart from subsection (1) above, would be entitled for the same period to both—

- (a) a Category A or a Category B retirement pension under this Part; and
- (b) a Category C or a Category D retirement pension under Part III below,

shall be entitled to both of those pensions for that period, subject to any adjustment of them in pursuance of regulations under section 73 of the Administration Act.

(3) A person who, apart from subsection (1) above, would be entitled—

- [¹(a) to both a Category A retirement pension and one or more Category B retirement pensions under this Part for the same period,
- (aa) to more than one Category B retirement pension (but not a Category A retirement pension) under this Part for the same period, or]
- (b) to both a Category C and a Category D retirement pension under Part III below for the same period,

may from time to time give notice in writing to the Secretary of State specifying which of the pensions referred to in [¹paragraph (a), (aa) or (b) (as the case may be)] he wishes to receive.

(4) If a person gives such a notice, the pension so specified shall be the one to which he is entitled in respect of any week commencing after the date of the notice.

(5) If no such notice is given, the person shall be entitled to whichever of the pensions is from time to time the most favourable to him (whether it is the pension which he claimed or not).

¹ In s. 43(3), para. (a) & words substituted (18.11.04) by the Pensions Act 2004 (c. 35), s. 296.

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[¹(6) For the purposes of this section, a pension under section 55A below is not a retirement pension.]

Category A retirement pension.

44.—(1) A person shall be entitled to a Category A retirement pension if—

(a) he is over pensionable age; and

[²(b) he satisfies the relevant conditions or condition;]

and, subject to the provisions of this Act, he shall become so entitled on the day on which he attains pensionable age and his entitlement shall continue throughout his life.

[²(1A) In subsection (1)(b) above “the relevant conditions or condition” means—

(a) in a case where the person attains pensionable age before 6th April 2010, the conditions specified in Schedule 3, Part I, paragraph 5;

(b) in a case where the person attains pensionable age on or after that date, the condition specified in Schedule 3, Part I, paragraph 5A.]

(2) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner’s entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

(3) A Category A retirement pension shall consist of—

(a) a basic pension payable at a weekly rate; and

(b) an additional pension payable where there are one or more surpluses in the pensioner’s earnings factors for the relevant years.

[³(4) The weekly rate of the basic pension shall be [⁴£95.25] except that, so far as the sum is relevant for the purpose of calculating the lower rate of short-term incapacity benefit under section 30B(3) above, it shall be [⁴£86.20].

In this subsection “the lower rate” means the rate payable for the first 196 days of entitlement in any period of incapacity for work.]

[⁵(5) For the purposes of this section and section 45 below

(a) there is a surplus in the pensioner’s earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for the final relevant year; and

(b) the amount of the surplus is the amount of that excess;

and for the purposes of paragraph (a) above the pensioner’s earnings factor for any relevant year shall be taken to be that factor as increased by the last order under section 148 of the Administration Act to come into force before the end of the final relevant year.]

Application of s. 44(5) modified in certain circumstances. See S.I. 1996/2477 page 3.935.

¹ Subsection (6) inserted (1.12.00) in s. 43 by the Welfare Reform and Pensions Act 1999 (c. 30), Sch. 12, para. 18.

² In s. 44(1)(b) substituted & (1A) inserted (27.9.07) by the Pensions Act 2007 (c. 22), Sch. 1, para. 1.

³ Subsection (4) substituted (8.9.98) by s. 68 of S.S. Act 1998 (c. 14).

⁴ Amounts substituted (6.4.09) by art. 4(3) of S.I. 2009/497.

⁵ S. 44(5) as continuing to apply, notwithstanding s. 128(1) of the Pensions Act 1995 (c. 26), where s. 128(4)-(6) *ibid.* (relevant person’s pensionable age or death is after 5.4.00, etc.) does not apply.

[¹(d) except in such circumstances as may be prescribed, he is not receiving relevant education;]

[²(e) he falls within a prescribed category of person; and

(f) he is not entitled to a jobseeker's allowance and, if he is a member of a [³couple], the other member of the couple is not [⁴, and the couple are not,] entitled to an income-based jobseeker's allowance [⁵; and

(g) if he is a member of a [³couple], the other member of the couple is not entitled to state pension credit.]

(2) [...⁶]

(3) [...⁶]

(4) Subject to subsection (5) below, where a person is entitled to income support, then—

(a) if he has no income, the amount shall be the applicable amount; and

(b) if he has income, the amount shall be the difference between his income and the applicable amount.

(5) Where a person is entitled to income support for a period to which this subsection applies, the amount payable for that period shall be calculated in such manner as may be prescribed.

(6) Subsection (5) above applies—

(a) to a period of less than a week which is the whole period for which income support is payable; and

(b) to any other period of less than a week for which it is payable.

125. [...⁷]

126.—(1) This section applies to a person, other than a child or a person of a prescribed description—

(a) who [⁸is prevented from being entitled to a jobseeker's allowance by section 14 of the jobseekers Act 1995 (trade disputes)]; or

(b) who would be so [⁹prevented] if otherwise entitled to that benefit, except during any period shown by the person to be a period of incapacity for work [...¹⁰] or to be within the maternity period.

Trade disputes.

(2) In subsection (1) above “the maternity period” means the period commencing the beginning of the 6th week before the expected week of confinement and ending at the end of the 7th week after the week in which confinement takes place.

(3) For the purpose of calculating income support—

(a) so long as this section applies to a person who is not a member of a family, the applicable amount shall be disregarded;

¹ S. 124(1)(d) substituted (7.10.96) by para. 30(4) of Sch. 2 to Jobseekers Act 1995 (c. 18).

² Paras. (e) and (f) added (12.12.95 for reg. making purposes, 7.10.96 for other purposes) to s. 124(1) by para. 30(5) of Sch. 2 to Jobseekers Act 1995 (c. 18).

³ Words substituted in s. 124(1) (5.12.05) by the Civil Partnership Act 2004 c. 33, Sch. 24, para. 42.

⁴ Words inserted (19.3.01) by the Welfare Reform and Pensions Act 1999 (c. 30), s. 7 & Sch. 8, para. 28.

⁵ Para. (g) inserted in s. 124(1) (2.7.02) for the purposes of exercising power to make regulations or orders by the State Pension Credit Act 2002 (c. 16), Sch. 2, para. 2.

⁶ S. 124(2) and (3) repealed (7.10.96) by Sch. 3 to Jobseekers Act 1995 (c. 18).

⁷ S. 125 repealed (7.10.96) by Sch. 3 to Jobseekers Act 1995 (c. 18).

⁸ Words in s. 126(1)(a) substituted (7.10.96) for “is disqualified under section 27 above for receiving unemployment benefit” by para. 31(a) of Sch. 2 to Jobseekers Act 1995 (c. 18).

⁹ Word in s. 126(1)(b) substituted (7.10.96) for “disqualified” by para. 31(b) of Sch. 2 to Jobseekers Act 1995 (c. 18).

¹⁰ Words “by reason of disease or bodily or mental disablement” in s. 126(1) repealed (13.4.95) by S.S. (incapacity for Work) Act 1994 (c. 18), Sch. 1, para. 31 and Sch. 2.

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- (b) so long as it applies to a person who is a member of a family but is not a member of a [¹couple], the portion of the applicable amount which is included in respect of him shall be disregarded;
- (c) so long as it applies to one of the members of a [¹couple]–
 - (i) if the applicable amount consists only of an amount in respect of them, it shall be reduced to one half; and
 - (ii) if it includes other amounts, the portion of it which is included in respect of them shall be reduced to one-half and any further portion of it which is included in respect of the member of the couple to whom this section applies shall be disregarded;
- (d) so long as it applies to both the members of a [¹couple]–
 - (i) if neither of them is responsible for a child or person of a prescribed description who is a member of the same household, the applicable amount shall be disregarded; and
 - (ii) in any other case, the portion of the applicable amount which is included in respect of them and any further portion of it which is included in respect of either of them shall be disregarded.

(4) Where a reduction under subsection (3)(c) above would not produce a sum which is a multiple of 5p, the reduction shall be to the nearest lower sum which is such a multiple.

(5) Where this section applies to a person for any period, then, except so far as regulations provide otherwise–

- (a) in calculating the entitlement to income support of that person or a member of his family the following shall be treated as his income and shall not be disregarded–
 - (i) any payment which he or a member of his family receives or is entitled to obtain by reason of the person to whom this section applies being without employment for that period; and
 - (ii) without prejudice to the generality of sub-paragraph (i) above, any amount which becomes or would on an application duly made become available to him in that period by way of repayment of income tax deducted from his [²taxable earnings (as defined by section 10 of the Income Tax (Earnings and Pensions) Act 2003) under PAYE regulations] (PAYE); and
- (b) any payment by way of income support for that period or any part of it which apart from this paragraph would be made to him, or to a person whose applicable amount is aggregated with his–
 - (i) shall not be made if the weekly rate of payment is equal to or less than the relevant sum; or
 - (ii) if it is more than the relevant sum, shall be at a weekly rate equal to the difference.

(6) In respect of any period less than a week, subsection (5) above shall have effect subject to such modifications as may be prescribed.

(7) Subject to subsection (8) below, “the relevant sum” for the purposes of subsection (5) above shall be [³£34.50].

(8) If an order under section 150 of the Administration Act (annual up-rating) has the effect of increasing payments of income support, from the time when the order comes into force there shall be substituted, in subsection (5)(b) above, for the references to the sum for the time being mentioned in it references to a sum arrived at by–

¹ Words substituted in s. 126 (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 24, para. 43.

² Words substituted in s. 126(5)(a)(ii) (6.4.03) by the Income Tax (Earnings & Pensions) Act 2003 (c. 1), Sch. 6, para. 179.

³ Amount £34.50 substituted (6.4.09) for £32.50 in s. 126(7) by art. 18 of S.I. 2009/497.

Rates of payment, etc.

157.—(1) Statutory sick pay shall be payable by an employer at the weekly rate of [¹£79.15]. Rates of payment.

(2) The Secretary of State may by order—

- [²(a) amend subsection (1) above so as to substitute different provision as to the weekly rate or rates of statutory sick pay; and]
- (b) make such consequential amendments as appear to him to be required of any provision contained in this Part of this Act.

(3) The amount of statutory sick pay payable by any one employer in respect of any day shall be the weekly rate applicable on that day divided by the number of days which are, in the week (beginning with Sunday) in which that day falls, qualifying days as between that employer and the employee concerned.

158. [...³]

159. repealed by S.I. 1995/512, see Annex 1, page 2.3101. Power to substitute provisions for s. 158(2).

¹ Amount substituted (6.4.09) in s. 157(1) by art. 9 of S.I. 2009/497.
² S. 157 (2)(a) substituted (6.4.95) by s. 8(3) of S.S. (Incapacity for Work) Act 1994 (c. 18).
³ S. 158 repealed (6.4.95) by S.I. 1995/512, art. 5(a).

S. 159A

Power to provide for recovery by employers of sums paid by way of statutory sick pay.

[¹**159A.**—(1) The Secretary of State may by order provide for the recovery by employers, in accordance with the order, of the amount (if any) by which their payments of, or liability incurred for, statutory sick pay in any period exceeds the specified percentage of the amount of their liability for contributions payments in respect of the corresponding period.

(2) An order under subsection (1) above may include provision—

- (a) as to the periods by reference to which the calculation referred to above is to be made.
- (b) for amounts which would otherwise be recoverable but which do not exceed the specified minimum for recovery not to be recoverable,
- (c) for the rounding up or down of any fraction of a pound which would otherwise result from a calculation made in accordance with the order, and
- (d) for any deduction from contributions payments made in accordance with the order to be disregarded for such purposes as may be specified,

and may repeal sections 158 and 159 above and make any amendments of other enactments which are consequential on the repeal of those sections.

(3) In this section—

“contributions payments” means payments which a person is required by or under any enactment to make in discharge of any liability of his as an employer in respect of primary or secondary Class 1 contributions; and

¹ S. 159A inserted (10.2.94) by Statutory Sick Pay Act 1994 (c. 2), s. 3(1).

SCHEDULE 8

INDUSTRIAL INJURIES AND DISEASES (OLD CASES)

PART I

WORKMEN'S COMPENSATION AND INDUSTRIAL DISEASES
BENEFIT IN RESPECT OF EMPLOYMENT BEFORE 5TH JULY
1948

Continuation of workmen's compensation

1. The Workmen's Compensation Acts and any other enactment specified in Schedule 9 to the original Industrial Injuries Act which was repealed by section 89 of that Act shall continue to apply to any cases to which, if the 1967 Act had not been passed, they would have applied by virtue of the said section 89, being certain cases where a right to compensation arises or has arisen in respect of employment before 5th July 1948.

Schemes for supplementing workmen's compensation

2.—(1) The Secretary of State may, by scheme made with the consent of the Treasury, provide for conferring a right to allowances on persons who are, or have at any time after 20th March 1951 been, entitled to weekly payments by way of workmen's compensation, other than a person whose entitlement to such payments—

- (a) arose in consequence of an accident happening after 31st December 1923; and
- (b) ceased before 5th July 1956.

(2) Subject to the provisions of this Schedule, the right to such an allowance or to a payment on account of such an allowance shall be subject to such conditions, and the rate of the allowance shall be such, as may be provided by a scheme under sub-paragraph (1) above.

(3) The allowances for the payment of which a scheme under sub-paragraph (1) above may make provision shall be—

- (a) where the relevant accident happened before 1st January 1924, an allowance (in this paragraph referred to as a "basic allowance") in respect of any period such as is mentioned in sub-paragraph (8) below;
- (b) an allowance in respect of any period such as is mentioned in sub-paragraph (8)(a) below (in this paragraph referred to as a "major incapacity allowance");
- (c) subject to sub-paragraphs (4) and (5) below, an allowance in respect of any period such as is mentioned in sub-paragraph (8)(b) below (in this paragraph referred to as a "lesser incapacity allowance");

and a major incapacity allowance or lesser incapacity allowance in respect of any period shall be payable whether or not a basic allowance is also payable in respect of that period.

(4) A lesser incapacity allowance—

- (a) shall not be payable to any person in respect of any period unless there is or may be expected to be (or, but for the cesser at a time after 1st March 1966 of that person's entitlement to workmen's compensation, would or might be expected to have been) payable to that person in respect of that period either a weekly payment by way of basic allowance or a weekly payment by way of workmen's compensation which is not a notional payment;

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1951 c. 22.

- (b) except to a person who immediately before 1st March 1966 was receiving an allowance under a scheme made under the Workmen's Compensation (Supplementation) Act 1951, shall not be payable if the relevant accident happened after 31st December 1923 and the claimant's entitlement to workmen's compensation in consequence of it ceased before 1st March 1966.

(5) For the purposes of a lesser incapacity allowance, a weekly payment by way of workmen's compensation shall be treated as a notional payment if awarded or paid for the purpose of safeguarding a potential entitlement to compensation and not related to any existing loss of earnings; and a scheme under sub-paragraph (1) above may provide that—

- (a) in such circumstances or cases as may be specified in the scheme; and
(b) in particular, in cases where weekly payments by way of such compensation are being paid to a person to whom such payments were not made, or were made at a lower rate, during the period of 12 months immediately preceding such date not earlier than 30th November 1965 as may be specified in the scheme,

a weekly payment by way of such compensation shall be deemed to be a notional payment unless the contrary is proved.

(6) The weekly rate—

- (a) of a basic allowance shall not exceed £2 less the amount of the recipient's workmen's compensation and, in respect of a period such as is mentioned in sub-paragraph (8)(b) below which is a period of partial incapacity only, shall also not exceed the difference between 2/3rds of the amount representing his weekly loss of earnings determined in accordance with a scheme under sub-paragraph (1) above and the amount of his workmen's compensation;
(b) of a major incapacity allowance shall be the corresponding disablement pension rate;
(c) of a lesser incapacity allowance shall not exceed [¹£53.10].

(7) Sub-paragraph (6)(b) above shall have effect in relation to any person who has retired, or is treated as having retired, from regular employment, for the purposes of Parts I to VI of this Act, for so long as he continues to be treated as retired for those purposes, as if at the end of the paragraph there were added the words "less the amount of the recipient's workmen's compensation and less the amount of this basic allowance, if any".

(8) The periods referred to in sub-paragraph (3) above are—

- (a) any period during which the person claiming or receiving an allowance under this paragraph—
(i) being or having been entitled to his workmen's compensation in respect of any injury or disease other than pneumoconiosis or byssinosis, is as a result of that injury or disease totally incapable of work and likely to remain so incapable for a considerable period; or
(ii) being or having been entitled to his workmen's compensation in respect of pneumoconiosis, is certified under a scheme made under the Workmen's Compensation (Silicosis) Act 1918 (as originally enacted or as extended by the Workmen's Compensation (Silicosis) Act 1924 or under section 47 of the Workmen's Compensation Act 1925 (as originally enacted or as extended by any subsequent enactment), or is determined in accordance with a scheme under sub-paragraph (1) above, to be totally disabled; or

1918 c. 14.

1924 c. 40.

1925 c. 84.

¹ Amount substituted (8.4.09) in Sch. 8, para. 2(6)(c) by art. 7(a) of S.I. 2009/497.

mentioned in sub-paragraph (2)(d) below this paragraph shall have effect as if for the reference to 31st December 1949 there were substituted a reference to 27th July 1967.

(2) The diseases to which this paragraph applies are—

- (a) pneumoconiosis;
- (b) byssinosis;
- (c) any disease in respect of which compensation was payable under the Workmen's Compensation Act 1925 by virtue of section 43 of that Act; 1925 c. 84.
- (d) any other disease which is a malignant or potentially malignant neoplasm and is for the time being prescribed for the purposes of part of this Act;

but a scheme under this paragraph shall not provide for the payment of benefit in respect of such a disease as is mentioned in paragraph (c) or (d) above unless the Secretary of State is satisfied that the disease is of such a nature that there are likely to be cases where—

- (i) a person suffers from it and it is due to the nature of his employment; but
- (ii) it does not manifest itself until more than 12 months after he has ceased to be engaged in the employment.

(3) Subject to the provisions of this Schedule, the right to benefit in pursuance of a scheme under this paragraph shall be subject to such conditions as may be provided by the scheme, and the rate or amount of any such benefit shall be such as may be so provided.

(4) A scheme under this paragraph may make provision as to the circumstances in which any benefit payable to a person in pursuance of this scheme may be paid to another person on his behalf.

Restrictions on scope of schemes under paragraph 4

5.—(1) A scheme under paragraph 4 above shall not provide for the payment of benefit to or in respect of a person disabled or dying as a result of a disease to which that paragraph applies—

- (a) if he or any other person is or has been entitled to benefit under Part V of this Act in respect of the disablement or death;
- (b) if he or any member of his family within the meaning of the Workmen's Compensation Act 1925 has received or is entitled to compensation in respect of the disablement or death under the Workmen's Compensation Acts or by virtue of a scheme made or certified under those Acts or by virtue of any scheme or law in force in any country or territory outside Great Britain providing for compensation in respect of that disease;
- (c) if he would have received or would be entitled to such compensation by virtue of any scheme so made or certified under the Workmen's Compensation Acts but for the fact that he was or is entitled to receive compensation in respect of disablement from any other disease or in respect of an injury by accident;
- (d) if he or his personal representative or any of his relations has recovered any sum by way of damages in respect of the disablement or death, whether at common law or under the Fatal Accidents Act 1976 or section 1 of the Law Reform (Miscellaneous Provisions) Act 1934; 1976 c. 30. 1934 c. 41.
- (e) if throughout the employment mentioned in paragraph 4(1)(a) above he was employed otherwise than as a workman within the meaning of the Workmen's Compensation Act 1925. 1925 c. 84.

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(2) A scheme under paragraph 4 above shall not provide for the payment of benefit to a person disabled as a result of the disease of byssinosis unless it is determined in accordance with the scheme that the disablement is likely to be permanent.

(3) Sub-paragraphs (1) and (2) above shall be without prejudice to any other restrictions which may be imposed by a scheme under paragraph 4 above in respect of the persons to or in respect of whom benefit is payable under the scheme; and those other restrictions shall include restrictions relating to the nature or degree of disablement.

(4) For the avoidance of doubt, the benefits in relation to which restrictions are or may be imposed by virtue of this paragraph shall not include an allowance by virtue of paragraph 4(1)(b) above.

S.I. 1983/136.

(5) Notwithstanding anything in this paragraph the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983 and any further scheme under paragraph 4 above may contain any provision which the Secretary of State considers corresponds to a provision which was required by paragraph 2 or authorised by paragraph 3 of Schedule 1 to the Social Security (Miscellaneous Provisions) Act 1977.

1977 c. 5.

Nature and amount of benefit under paragraph 4

6.—(1) The benefit payable to any person in pursuance of a scheme under paragraph 4 above by virtue of sub-paragraph (1)(a) or (b) of that paragraph shall be by way of a weekly allowance.

(2) Subject to the provisions of this Schedule and to any provisions of the scheme for the adjustment of benefit under it by reference to pensions, allowances or other benefits payable out of public funds, the weekly rate—

- (a) of an allowance by virtue of paragraph 4(1)(a) above in respect of total disablement shall be the corresponding disablement pension rate;
- (b) of an allowance by virtue of paragraph 4(1)(a) above in respect of disablement which is not total shall be [¹£53.10];
- (c) of an allowance by virtue of paragraph 4(1)(b) above shall be the corresponding disablement pension rate.

(3) Sub-paragraph (2)(c) above shall have effect in relation to any person who has retired, or is treated as having retired, from regular employment, for the purposes of Parts I to VI above, for so long as he continues to be treated as retired for those purposes, as if at the end of the paragraph there were added the words “less the amount of any weekly payments by way of workmen’s compensation payable to the recipient in consequence of any of the diseases or injuries in consequence of which the allowance is payable”.

(4) The weekly rate of an allowance such as is mentioned in sub-paragraph (2)(a) or (b) above shall be increased, in such circumstances and subject to such conditions as may be prescribed by the scheme (in accordance, for the purposes of paragraph (b) of this paragraph, with any regulations in force under paragraph 8 of Schedule 6 to this Act)—

- (a) in any case, by an amount equal to the unemployability supplement which would be payable under paragraph 2 of Schedule 7 to this Act or, as the case may be, paragraphs 2 and 3 of that Schedule if the person entitled to the allowance were entitled to a disablement pension;
- (b) where the person requires constant attendance as the result of the disablement, by an amount equal to any increases which would be payable under section 104 or 105 above if he were entitled to a disablement pension in respect of an assessment of 100 per cent.;

¹ Amount in para. 6(2)(b) substituted (9.4.09) by art. 7(b) of S.I. 2009/497.

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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 6C¹ below 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")—

¹Words substituted in reg. 4(1) by reg. 3(2) of S.I. 2009/659 as from 6.4.09.

- (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—

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

- (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.◀

(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,

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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 \blacktriangleright^1 , short-term incapacity benefit or a contributory employment and support allowance \blacktriangleleft 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) 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. ◀

▶²**Treatment of Class 3 contributions paid under section 13A of the Act**

²Reg. 6C inserted by reg. 3(3) of S.I. 2009/659 as from 6.4.09.

6C.—(1) This regulation applies to a Class 3 contribution paid by an eligible person under section 13A (right to pay additional Class 3 contributions in certain cases) of the Act.

(2) A contribution paid after 5th April 2009 but before 6th April 2011 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.

(3) A contribution paid after 5th April 2011 shall be treated as paid on the day on which it is paid. ◀

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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.

(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(b) (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(c) (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

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

(b) 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.

(c) 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.

Contributions Regulations(a) (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(b) or the National Insurance Act 1965(c), 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 ◀◀

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

(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.

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.

▶³(4) Where a person—

³Para. (4) added to reg. 9 by reg. 2(b) of S.I. 2006/2897 as from 1.3.07.

(a) qualifies for a loan made in accordance with regulations made under section 22 of the Teaching and Higher Education Act 1998(d) (new arrangements for giving financial support to students) or sections 73 to 74(1) of the Education (Scotland) Act 1980(e) 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,

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(f);

(a) 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.

(b) 1975 c. 14.

(c) 1965 c. 51.

(d) 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).

(e) 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).

(f) 1915 c. 83.

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- (d) The War Pensions Act 1920(a);
- (e) The War Pensions Act 1921(b);
- (f) Order by His Majesty 14th January 1922;
- (g) The War Pensions (Coastguards) Scheme 1944(c);
- (h) The Royal Warrant 1964(d);
- (i) The Order by Her Majesty 1964(e);
- (j) The War Pensions (Naval Auxiliary Personnel) Scheme 1964(f);
- (k) The Pensions (Polish Forces) Scheme 1964(g);
- (l) The War Pensions (Mercantile Marine) Scheme 1964(h);
- (m) The Order by Her Majesty (Ulster Defence Regiment) 1971(i);
- (n) The Personal Injuries (Civilians) Scheme 1983(j);
- (o) The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(k).

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.

-
- (a) 1920 c. 23.
 - (b) 1921 c. 49.
 - (c) S.I. 1944/500.
 - (d) Cmnd 2563.
 - (e) Cmnd 2564.
 - (f) S.I. 1964/1985.
 - (g) S.I. 1964/2007.
 - (h) S.I. 1964/2058.
 - (i) Cmnd 4567.
 - (j) S.I. 1983/686.
 - (k) S.I. 1983/883.

SCHEDULE 2

Regulation 12(2)

PRESCRIBED CIRCUMSTANCES FOR INCREASE OF ¹A
CARER'S ALLOWANCE[◀]

¹Words substituted in Sch. 2 title, Part 1 title & in paras. 1, 2, & 2BB by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

PART I

Increase of ¹carer's allowance[◀] for child dependants

1. For the purposes of increases of ¹carer's allowance[◀] for child dependants under section 49, the prescribed circumstances in which a beneficiary is entitled to such an increase for any period shall be as set out in the following paragraphs.

2. The weekly rate of ¹a carer's allowance[◀] for any period for which the beneficiary is entitled to child benefit in respect of a child or children shall be increased in respect of that child, or each respectively of those children, by the appropriate amount specified in relation to that allowance in column (2) of Part IV of Schedule 4 to the Act.

²2A. Where—

- ³(a) a beneficiary is a member of a couple; and[◀]
 - (i) spouses residing together; or
 - (ii) an unmarried couple; and
- (b) the other ³member of the couple[◀] had earnings in any week,

the beneficiary's right to payment of increases for the following week under paragraph 2 above shall be determined in accordance with paragraph 2B below.

2B. No increase shall be payable—

- (a) in respect of the first child where the earnings were ⁴£195[◀] or more; and
- (b) in respect of a further child for each complete ⁴£26[◀] by which the earnings exceeded ⁴£195[◀].

⁵2BB. The provisions of paragraphs 2A and 2B above shall not apply so as to affect entitlement to an increase of ¹carer's allowance[◀] in respect of a child in any case where the beneficiary—

- (a) was entitled to receive such an increase immediately before 26th November 1984; and
- (b) throughout the period from and including that date to the date of coming into operation of this paragraph was, or but for the operation of those paragraphs would have been, continuously so entitled.[◀]

until such time as he would otherwise first cease to be so entitled.[◀]

2C. In this Part of this Schedule—**⁶◀****⁶“couple” means**

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

²Para. 2A, 2B and 2C inserted by reg. 3(c) of S.I. 1984/1699 as from 26.11.84.

³In para. 2A, sub-para. (a) substituted & word in sub-para. (b) substituted by para. 7(7)(a) of Sch. 3 to S.I. 2005/2877 as from 10.4.06.

⁴Amounts substituted by reg. 4 of S.I. 2009/607 as from 6.4.09.

⁵Para. 2BB inserted by reg. 5(a) of S.I. 1987/355 as from 6.4.87.

⁶In para. 2C defn. of “unmarried couple” omitted & “couple” inserted by para. 7(7)(b) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

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and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;◀

¹Defn. of “week” substituted in para. 2C by reg. 17(b) of S.I. 1996/2745 as from 25.11.96.

▶¹“week” means any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid or ending on the day before the first day of the first such week following the date of claim.◀◀

²Words substituted in paras. 3, 5, 6 & 7 by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

3. Where a person is entitled to receive payment of an amount by way of an increase of ▶²a carer’s allowance◀ under paragraph 2 above, that increase shall not be payable unless one of the following conditions is satisfied—

- (a) that the beneficiary would be treated for the purposes of the Child Benefit Act as having the child living with him; or
- (b) that the requisite contributions are being made to the cost of providing for the child.

4. The condition specified in paragraph 3(b) above is to be treated as satisfied if, but only if—

- (a) such contributions are being made at a weekly rate not less than the amount referred to in paragraph 2 above—
 - (i) by the beneficiary, or
 - (ii) where the beneficiary is one of two spouses ▶³or civil partner◀ residing together, by them together; and
- (b) the contributions are over and above those required for the purposes of satisfying subsection (1)(b) of section 3 of the Child Benefit Act.

³In para. 4(a)(ii) & 7(a) words inserted by reg. 7(7)(c) & (d) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

5. Any sum or sums paid by a person by way of contribution towards the cost of providing for two or more children being children in respect of whom, in the period for which the sum in question is paid by the person, he is entitled to child benefit shall be treated as such contributions, of such respective amounts equal in the aggregate to the said sum or sums, in respect of those children so as to secure as large a payment as possible by way of ▶²carer’s allowance◀ in respect of them.

PART II

Increase of ▶²carer’s allowance◀ for adult dependants

6. For the purposes of increases of ▶²carer’s allowance◀ for adult dependants under section 49, the prescribed circumstances in which a beneficiary is entitled to such an increase for any period shall be as set out in paragraph 7 below.

7. The weekly rate of ▶²a carer’s allowance◀ shall be increased by the amount specified in relation to that allowance in column (3) of Part IV of Schedule 4 to the Act for any period during which the beneficiary is residing with—

⁴Sub-para. (a) and (b) substituted retrospectively from 22.12.84 by Social Security Act 1986 (c. 50), s. 37(2).

⁵Sub-para. (a) of para. 7 substituted by reg. 5(a) of S.I. 1988/554 as from 11.4.88.

⁶Words inserted in para. 7(b), (b)(i) & (b)(iii) by reg. 2(4) of S.I. 2006/692 as from 10.4.06.

⁷Words omitted by reg. 5(b) of S.I. 1987/355 as from 6.4.87.

⁸Head (iii) of para. 7(b) substituted by reg. 5(b) of S.I. 1988/554 as from 11.4.88.

- ▶⁴▶⁵ (a) a spouse ▶³or civil partner◀ whose weekly earnings do not exceed that amount;◀ or
- (b) some person (not being a child ▶⁶or qualifying young person◀) who—
 - (i) has the care of a child or children ▶⁶or a qualifying young person or persons◀ in respect of whom the beneficiary is entitled to child benefit ▶⁷◀◀ ;
 - (ii) is not undergoing imprisonment or detention in legal custody;
 - ▶⁸(iii) if he has earnings, does not have weekly earnings exceeding that amount and for this purpose there shall be disregarded any weekly earnings derived from employment by the beneficiary in caring for a child or children ▶⁶or a qualifying young person or persons◀ in respect of whom the beneficiary is entitled to child benefit;◀

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may be, ►¹section 73◄(9)(a) of the Act (3 months qualifying period)), the determination shall be made without regard to the fact that he is aged 65 or over at the time the claim is determined.

¹Words substituted in reg. 3(3) by reg. 2(5) of S.I. 1993/1939 as from 26.8.93.

(4) Schedule 1, which makes further provision for persons aged 65 or over shall have effect.

Rate of Benefit

4.—(1) The three weekly rates of the care component are—

- (a) the highest rate, payable in accordance with ►²section 72◄(4)(a) of the Act, ►³£70.35◄;
- (b) the middle rate, payable in accordance with ►²section 72◄(4)(b) of the Act, ►³£47.10◄;
- (c) the lowest rate, payable in accordance with ►²section 72◄(4)(c) of the Act, ►³£18.65◄.

²Words substituted in reg. 4 by reg. 2(4) and (5) of S.I. 1993/1939 as from 26.8.93.

³Amounts in reg. 4 substituted by art. 13 of S.I. 2009/497 as from 6.4.09.

(2) The two weekly rates of the mobility component are—

- (a) the higher rate, payable in accordance with ►²section 73◄(11)(a) of the Act, ►³£49.10◄; and
- (b) the lower rate, payable in accordance with ►²section 73◄(11)(b) of the Act, ►³£18.65◄.

5. ►⁴◄

►⁵◄

⁴Reg. 5 deleted by reg. 19(c) of S.I. 1997/793 as from 1.9.97.

⁵Regs. 5A, 5B and 5C revoked by para. 3 of Sch. 7 to S.I. 1999/2860 as from 18.10.99.

PART III

CARE COMPONENT

Qualifying period for care component after an interval

¹Words substituted in reg. 6(1) by reg. 2(4) of S.I. 1993/1939 as from 26.8.93.

6.—(1) The period prescribed for the purposes of ►¹section 72◄(2)(a)(ii) of the Act is a period of 3 months ending on the day on which the person was last entitled to the care component or to attendance allowance where that day falls not more than 2 years before the date on which entitlement to the care component would begin, or would have begun but for any regulations made under ►²section 5(1)(k) of the Administration Act◄ (which enables regulations to provide for the day on which entitlement to benefit is to begin or end).

²Words substituted in reg. 6(1) by reg. 2(7) of S.I. 1993/1939 as from 26.8.93.

(2) Except in a case to which paragraph (3) applies, this regulation shall apply to a person to whom paragraph 3 or 7 of Schedule 1 refers as if for the reference to 3 months there was substituted a reference to 6 months.

(3) Paragraph (1) and not paragraph (2), shall apply to those persons referred to in paragraph (2) who, on the day before they attained the age of 65, had already completed the period of 3 months referred to in paragraph (1).

³Words substituted in reg. 6(4)(a) by reg. 2(4) of S.I. 1993/1939 as from 26.8.93.

(4) For the purposes of paragraph (3), the modification made in Schedule 1—

(a) in paragraph 3(2) and 7(2), to ►³section 72◄(2)(a) of the Act, and

(b) in paragraph 5(2), to ►⁴section 73◄(9)(a) of the Act,

shall be treated as not having been made.

⁴Words substituted in reg. 6(4)(b) by reg. 2(5) of S.I. 1993/1939 as from 26.8.93.

Renal Dialysis

7.—(1) A person who suffers from renal failure and falls within the provisions in paragraph (2) shall be taken to satisfy—

⁵Words substituted in reg. 7(1)(a) by reg. 2(8)(a) of S.I. 1993/1939 as from 26.8.93.

(a) where he undergoes renal dialysis by day, the conditions in paragraph (b) of subsection (1) of ►⁵section 72◄ of the Act (severe physical or mental disability);

(b) where he undergoes renal dialysis by night, the conditions in paragraph (c) of that subsection; or

(c) where he undergoes renal dialysis by day and by night, the conditions in either paragraph (b) or paragraph (c) of subsection (1), but not both.

(2) Subject to paragraph (3), a person falls within this paragraph—

(a) if—

(i) he undergoes renal dialysis two or more times a week; and

(ii) the renal dialysis he undergoes is of a type which normally requires the attendance or supervision of another person during the period of the dialysis; or

(iii) because of the particular circumstances of his case he in fact requires another person, during the period of the dialysis, to attend in connection with his bodily functions or to supervise him in order to avoid substantial danger to himself; and

1994 No. 2946

SOCIAL SECURITY

The Social Security (Incapacity Benefit) Regulations 1994

Made - - - - - 21st November 1994

Laid before Parliament 24th November 1994

Coming into force 13th April 1995

ARRANGEMENT OF REGULATIONS

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General

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4. Days not to be treated as days of incapacity for work
5. Night workers
6. Calculating periods of incapacity for persons receiving certain regular treatment
7. Days of statutory sick pay to be included in days of entitlement to incapacity benefit
8. Limit of earnings from councillor’s allowance
9. Councillor’s allowance paid otherwise than weekly

PART III

Rate of incapacity benefit

10. Increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date.
11. Qualifying date for entitlement to increased rate of incapacity benefit—previous entitlement to statutory sick pay
12. Qualifying date for entitlement to increased rate of incapacity benefit—members of the armed forces
13. Qualifying date for entitlement to increased rate of incapacity benefit—widows

SOCIAL SECURITY (**INCAPACITY BENEFIT**) REGULATIONS
1994

The Secretary of State for Social Security in exercise of the powers conferred on him by sections 30B(7), 30C(3), (4)(a) and (6), 30D(3), 30E(1) and (2), 122, and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, by this instrument, which contains only regulations made by virtue of sections 2(1) and 3(1) of the Social Security (Incapacity for Work) Act 1994(b) and is made before the end of the period of 6 months beginning with the coming into force of that Act, hereby makes the following Regulations.

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity Benefit) Regulations 1994 and shall come into force on 13th April 1995.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
“the Administration Act” means the Social Security Administration Act 1992(c); and
“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992.

(2) In these Regulations—

- (a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations; and
- (b) any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

►¹Disapplication of section 1(1A) of the Administration Act

2A. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

- (a) ►²◄
- (b) to an adult dependant in respect of whom a claim for an increase of incapacity benefit is made or treated as made before 5th October 1998.◄
- ³(c) to an adult dependant who—
 - (i) is a person in respect of whom a claim for an increase of incapacity benefit is made;
 - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(d); and
 - (iii) has not previously been allocated a national insurance number.◄

►⁴PART 1A

CONTRIBUTION CONDITIONS : SUPPLEMENTARY PROVISIONS

Relaxation of the first contribution condition in certain cases

2B.—(1) For the purposes of sub-paragraph (2)(a) of paragraph 2 of Schedule 3 to the Contributions and Benefits Act(e) (first contribution condition) a person who

- (a) 1992 c. 4. Section 30B was inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and sections 30C, 30D and 30E were inserted by section 3(1) of that Act. Section 122 is cited for the definition of “prescribe” contained in that section.
- (b) 1994 c. 18. See section 173(5)(a) of the Social Security Administration Act 1992 (c. 5), the effect of which is that regulations made before the end of 6 months from the coming into force of the enactment under which they are made are not required to be referred to the Social Security Advisory Committee.
- (c) 1992 c. 5.
- (d) 1999 c. 33.
- (e) 1992 c. 4 Sub-paragraph (2)(a) of paragraph 2 of Schedule 3 was inserted by section 62(2) of the Welfare Reform and Pensions Act 1999 (c. 30).

¹Reg. 2A inserted by reg. 9 of S.I. 1997/2676 as from 1.12.97.

²Reg. 2A(a) omitted by reg. 2(8) of S.I. 2003/937 as from 6.4.03

³Reg. 2A(c) inserted by reg. 6 of S.I. 2009/471 as from 6.4.09.

⁴Reg. 2B inserted by reg. 2(2) of S.I. 2000/3120 as from 6.4.01.

satisfies any of the conditions in paragraph (2) shall be taken to satisfy the first contribution condition if—

- (a) he paid contributions of a relevant class before the relevant time in respect of any one year; and
- (b) the earnings factor is derived—
 - (i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25, or
 - (ii) from Class 2 contributions multiplied by 25.

(2) The conditions referred to in paragraph (1) are that—

- (a) he was a person who, in the ¹last complete tax year ²immediately preceding the relevant benefit year in which ³the first day of incapacity for work ⁴occurred, was entitled to ⁵carer's allowance under section 70 of the Contributions and Benefits Act (a) or would have been in receipt of the ⁶carer's allowance but for the provision of regulation 4 of the Social Security (Overlapping Benefits) Regulations 1979 (b);
- (b) immediately before the first day of incapacity for work, he was a person—
 - (i) who had been engaged in remunerative employment for a period of more than 2 years, and
 - (ii) who was entitled to disability working allowance or disabled person's tax credit, as the case may be, under section 129 of the Contributions and Benefits Act (c) throughout that period; or
 - ⁷(iii) who was entitled to working tax credit where the disability element or the severe disability element of working tax credit as specified in regulation 20(1)(b) and (f) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 was included in the award; or ⁸
- ⁹(ba) he is, in respect of any week in any tax year preceding the relevant benefit year, a person who—
 - (i) is entitled to be credited with earnings or, as the case may be, contributions in accordance with regulation 9D of the Social Security (Credits) Regulations 1975 (credits for certain periods of imprisonment or detention in legal custody), or
 - (ii) would be so entitled had he made an application to the Secretary of State for the purpose of that regulation; ¹⁰
- (c) he is, on the first day of his incapacity for work, a person who had received incapacity benefit in the last complete tax year immediately preceding the relevant benefit year he again becomes entitled to it. ¹¹

¹Words substituted in reg. 2B(2)(a) by reg. 2(2) of S.I. 2001/1305 as from 25.4.01.

²Words substituted & inserted in reg. 2B(2)(a) by reg. 3(a) of S.I. 2001/2979 as from 1.10.01.

³Words substituted in reg. 2B(2)(a) by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

⁴Head (iii) inserted in reg. 2B(2)(b) by para. 4 of Sch. 4 to S.I. 2003/455 as from 7.4.03.

⁵Sub-para (ba) inserted in reg. 2B(2) by reg. 3 of S.I. 2001/573 as from 6.4.01.

PART II

ENTITLEMENT TO INCAPACITY BENEFIT: SUPPLEMENTARY PROVISIONS

Definition of “training for work” for the purposes of section 30C(6) of the Contributions and Benefits Act

3. For the purposes of section 30C(6) of the Contributions and Benefits Act (which provides for days of training for work to be treated as days of incapacity for work) “training for work” also includes any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills.

(a) Section 70 was amended by S.I. 1994/2556.

(b) S.I. 1979/597. Regulation 4 was amended by S.I. 1984/1303, 192/3194, 1995/829 and 1996/1345 and 3209. See paragraph 11 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) in relation to the repeal of section 18 of the Social Security Act 1998 (c. 50) which amended regulation 4.

(c) Section 129 was amended by sections 1 and 14 of the Tax Credits Act 1999 (c. 10).

Reg. 4

Days not to be treated as days of incapacity for work

4.—(1) For the purposes of incapacity benefit a day shall not be treated as a day of incapacity for work if it is—

- (a) a day in respect of which a person—
 - (i) has made no claim for incapacity benefit;
 - (ii) has made a claim for incapacity benefit but not within the prescribed time and good cause for the delay is not shown; or
 - (iii) has made a claim for incapacity benefit but not within the prescribed time and whether or not the person has shown good cause for the delay, he is not entitled to benefit as a result of section 1(2) of the Administration Act (which provides for a 12 month limit on claims for incapacity benefit);

¹Sub-para (iv) inserted in reg. 4(1)(a) by reg. 2 of S.I. 1999/2226 as from 6.9.99.

²Sub-para. (aa) inserted in reg. 4(1) by reg. 2(3) of S.I. 2000/3120 as from 6.4.01.

- ▶¹(iv) subject to regulation 2A(a), is not entitled to incapacity benefit because section 1(1A) of the Administration Act(b) (requirement to state national insurance number) applies.◀
- ▶²(aa) a day which is for the purposes of section 30A(2A)(c) of the Contributions and Benefits Act(c) (period of 196 consecutive days preceding the relevant day), not part of any consecutive days of incapacity;◀
- (b) a day on which a person is disqualified for receiving incapacity benefit during a period of absence from Great Britain or imprisonment or detention in legal custody, if that disqualification is for more than 6 weeks; or
- (c) subject to paragraph (2), a day on which a person attends a training course in respect of which he is paid a training allowance pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973(d) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(e).

(2) Paragraph (1)(c) shall not apply—

- (a) for the purposes of any claim for incapacity benefit for a period commencing after a person ceased attending such a training course; or
- (b) in calculating a period of continuous incapacity for work for the purposes of regulation 2 of the Social Security Benefit (Persons Abroad) Regulations 1975(f).

³Sub-para (c) inserted in reg. 4(2) by reg. 5 of S.I. 2000/678 as from 3.4.00.

⁴Reg. 4(2)(d) & (3) inserted by reg. 3 of S.I. 2006/2144 as from 1.9.06.

- ▶³(c) where such payment is made, is for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangement made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.◀▶⁴, or
- (d) to any part of such a payment made—
 - (i) as a consequence of the person taking part in the scheme known as the Adult Learning Option (which is provided in pursuance of arrangements made by or on behalf of the Secretary of State under section 2 of the Employment and Training Act 1973), and
 - (ii) which is not intended to meet the cost of living expenses to which paragraph (3) applies.

(3) This paragraph applies to living expenses which relate to—

- (a) food
- (b) ordinary clothing or footwear,
- (c) household fuel,
- (d) rent for which housing benefit is payable,
- (e) any housing costs (to the extent that they are met under regulation 83(f) or

(a) Regulation 2A was inserted by S.I. 1997/2676.

(b) 1992 c. 5 Section 1(1A) was inserted by the Social Security Administration (Fraud) Act 1997 (c. 47), section 19.

(c) 1992 c. 4 Section 30A(1)(b) and (2A) were inserted by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30).

(d) 1973 c. 50.

(e) 1990 c. 35.

(f) S.I. 1975/563. The relevant amending instrument is S.I. 1990/40.

84(1)(g) of the Jobseeker's Allowance Regulations 1996(a) or regulation 17(1)(e) or 18(1)(f) of the Income Support (General) Regulations 1987(b) housing costs)) of the claimant or, where the claimant is a member of the family, any other member of his family, or

- (f) any council tax or water charges for which that claimant or member is liable. ◀

▶¹Days to be treated as days of incapacity for work

4A.▶²—(1)◀ For the purposes of incapacity benefit for persons incapacitated in youth under section 30A(2A) of the Contributions and Benefits Act, any day in respect of which a person is entitled to statutory sick pay immediately before the relevant day shall be treated as a day of incapacity for work. ◀

▶²(2) Where—

- (a) any day was, as a result of official error, a day of incapacity for work in a period of incapacity for work for the purposes of the previous entitlement to incapacity benefit referred to in regulation 8D(2)(a) of the Social Security (Credits) Regulations 1975(c) (credits for the purposes of entitlement to incapacity benefit following official error); and
- (b) that official error derived from the failure to transpose correctly information relating to credits for incapacity for work or approved training in the tax years from 1993-94 to 2007-08 from the Department of Work and Pensions' Pension Strategy Computer System to Her Majesty's Revenue and Customs' Computer System (NIRS2) or from related clerical procedures,

that day shall be treated as a day of incapacity for work for the purposes of the later claim referred to in paragraph (2)(d) of that regulation.

(3) In this regulation—

“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(d);

“credits for incapacity for work or approved training” means earnings credited pursuant to the Social Security (Credits) Regulations 1975(e) for incapacity for work or approved training;

“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;

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

Night Workers

5.—(1) For the purposes of incapacity benefit, where a person works for a continuous period which extends over midnight into the following day, the day on which the lesser part of that period falls shall be treated as a day of incapacity for work if that person was incapable of work for the remainder of that day.

(a) S.I. 1996/207. Relevant amending instrument is S.I. 2001/3767.

(b) Relevant amending instrument are S.I. 1998/1288, 1996/206, 2001/3767.

(c) S.I. 1975/556. Regulation 8D was inserted by S.I. 2007/2582.

(d) 1998 c. 14.

(e) Credits for approved training are made under regulation 7, which was amended by S.I. 1987/414, 1988/1439 and 1988/1545. Credits for incapacity for work are made under regulation 8B which was inserted by S.I. 1996/2367 and were made under regulation 9 before the amendments made by S.I. 1996/2367.

¹Reg. 4A inserted by reg. 2(4) of S.I. 2000/3120 as from 6.4.01.

²Reg. 4A renumbered para. (1) and paras. (2) & (3) added by reg. 6(2) & (3) of S.I. 2007/2618 as from 1.10.07.

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(2) Where, in relation to a period referred to in paragraph (1), the number of hours worked before and after midnight is equal—

- (a) if the days in question fall at the beginning of a period of incapacity for work, the second day shall be treated as a day of incapacity for work; and
- (b) if the days in question fall at the end of a period of incapacity for work, the first day shall be treated as a day of incapacity for work.

¹Reg. 5A inserted by reg. 2 of S.I. 1998/2231 as from 5.10.98.

►¹Calculating periods of incapacity for work for welfare to work beneficiaries

5A. For the purposes of incapacity benefit, in the case of a person who has been determined in accordance with regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 as a welfare to work beneficiary, section 30C(1)(c) of the Contributions and Benefits Act (any two periods of incapacity for work not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work) shall have effect as if for the reference to 8 weeks there were substituted a reference to ►²104 weeks◄.◄

²Words substituted in reg. 5A by reg. 10(2) of S.I. 2006/2378 as from 1.10.06.

Calculating periods of incapacity for work for persons receiving certain regular treatment

6.—(1) In the cases specified in paragraph (2), section 30C(1)(b) of the Contributions and Benefits Act (which defines a period of incapacity for work) shall have effect as if the period of 4 days mentioned there were a period of 2 days, whether consecutive or not, within a period of 7 consecutive days.

(2) The cases referred to in paragraph (1) are those where the days of incapacity for work in question result from—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure or peritoneal dialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis, by way of parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

Days of statutory sick pay to be included in days of entitlement to incapacity benefit

7.—(1) For the purposes of section 30D(3) of the Contributions and Benefits Act (which provides for days of entitlement to statutory sick pay to be included in calculating the number of days for which a person has been entitled to short-term incapacity benefit) the days which are to be included are any of the days specified in paragraph (2) which—

- (a) fell within a period of entitlement to statutory sick pay as between that person and his employer which ended not later than the 57th day before the first day of the period of incapacity for work to which that calculation relates; and
- (b) fell on or after a day on which the person satisfied the contribution conditions for short-term incapacity benefit.

(2) The specified days are—

- (a) in any week in which the employer was liable to pay that person statutory sick pay at the weekly rate specified in section 157(1) of the Contributions and Benefits Act, each day of that week; and
- (b) in any week in which the employer was liable to pay that person statutory sick pay at a fraction of that weekly rate, each of the days of that week which would comprise the same fraction of a 7 day week; and any fractions of days produced by that calculation shall be included in the calculation for the following week and for any fraction of a day not accounted for at the end of that period of entitlement one additional day shall be added.

³Reg. 7A inserted by reg. 10(1) of S.I. 2002/2690 as from 24.11.02.

►³Effects of statutory maternity pay on incapacity benefit

7A.—(1) For the purpose of determining a woman's entitlement to short-term incapacity benefit at the higher rate or long-term incapacity benefit under section

PART III

RATE OF INCAPACITY BENEFIT

Increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date

10.—(1) The weekly rate of long-term incapacity benefit under section 30A of the Contributions and Benefits Act (incapacity benefit: entitlement)(a) in relation to a period of incapacity for work shall be increased—

- (a) by the higher amount specified in paragraph (2) if on the qualifying date the beneficiary was under the age of 35; and
- (b) by the lower amount specified in that paragraph if on the qualifying date the beneficiary had attained the age of 35 but was under the age of 45.

(2) The amounts referred to in paragraph (1) are—

- (a) higher amount▶¹£15.65◀;
- (b) lower amount▶¹£6.55◀.

¹Amounts substituted in reg. 10(2) by art. 14 of S.I. 2009/497 as from 9.4.09.

Qualifying date for entitlement to increased rate of incapacity benefit—previous entitlement to statutory sick pay

11. For the purposes of regulation 10 the qualifying date in relation to a person to whom regulation 7 applies shall be the first day in the period of entitlement mentioned in paragraph (1)(a) of that regulation.

Qualifying date for entitlement to increased rate of incapacity benefit—members of the armed forces

12.—(1) If, for the purposes of regulation 10, the qualifying date in relation to a person would have been earlier than that specified in section 30B(7) of the Contributions and Benefits Act (incapacity benefit: rate) but for the fact that on that earlier date he was a serving member of the forces, the qualifying date in relation to him shall nevertheless be that earlier date.

(2) In this regulation “serving member of the forces” has the meaning given to it by regulation 1(2) of the Social Security (Contributions) Regulations 1979(b), except that it does not include a person who falls within that definition by reason only of the fact that he was undergoing training or instruction for a continuous period of not more than 72 hours in any of the forces specified in paragraphs 2 to 9 of Part I of Schedule 3 to those Regulations.

Qualifying date for entitlement to increased rate of incapacity benefit—widows

13. If, for the purposes of regulation 10, the qualifying date in relation to a person who was entitled to a widow’s allowance would have been earlier than that specified in section 30B(7) of the Contributions and Benefits Act, if in respect of that earlier date she had claimed short-term incapacity benefit and had satisfied the contribution conditions for that benefit specified in paragraph 2 of Schedule 3 to the Contributions and Benefits Act(c), the qualifying date in relation to her shall nevertheless be that earlier date.

(a) S. 30A was inserted by s. 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(b) S.I. 1979/591. The relevant amending instruments are S.I. 1980/1975 and 1994/1553.

(c) Paragraph 2 of Schedule 3 was amended by section 1(2) and 3(2) of, and paragraph 38(2) of Schedule 1 to, the Social Security (Incapacity for Work) Act 1994 (c. 18).

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¹Parts IV and V inserted
by reg. 2(5) of S.I.
2000/3120 as from
6.4.01

▶¹PART IV

ADDITIONAL CONDITIONS FOR PERSONS INCAPACITATED IN YOUTH

General

14. This Part of these Regulations applies to persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act(a).

Age Exception - Persons aged 20 and under 25

15.—(1) For the purposes of subsection (2A)(b) of section 30A of the Contributions and Benefits Act (prescribed cases in relation to persons aged under 25 and above the age 20 limit), a person falls within a prescribed case if he satisfies the conditions specified in the following paragraphs.

(2) The conditions referred to in paragraph (1) are that, he is a person who—

(a) registered on a course of—

(i) full-time advanced or secondary education, or

(ii) vocational or work-based training,

at least 3 months before he attained the age of 20 years; and

(b) not more than one academic term immediately after registration under sub-paragraph (a), attended one or more such courses of education or training as are mentioned in that sub-paragraph ▶²in respect of a period◀ referred to in paragraph (3).

(3) The period mentioned in paragraph (2)(b) is a period which—

(a) began on or before a day at least 3 months before the day he attained the age of 20 years, and

▶²(b) ended no earlier than the beginning of the last two complete tax years before the benefit year which would have governed a claim for incapacity benefit under section 30A(1)(a) of the Contributions and Benefits Act had he been eligible for it.◀

(4) For the purposes of this regulation a person is attending a course of education or training on any day on which the course or training is interrupted by an illness or domestic emergency.

(5) For the purposes of this regulation—

“advanced education” means full-time education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Vocational Education Council, or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of Sixth Year Studies;

“course of education” means a course of advanced education or secondary education;

“full-time” includes part-time where the disability from which a person suffers prevents him from attending a full-time course;

“relevant day” has the same meaning as in section 30A(1) of the Contributions and Benefits Act, that is to say, the day—

(a) in respect of which a person is entitled to claim incapacity benefit;

(b) which falls on any day immediately after a period of 196 consecutive days of incapacity for work; and

²Reg. 15(3)(b) and words in reg. 15 (2)(b) substituted by reg. 2(3) of S.I 2001/1305 as from 25.4.01

(a) 1992 c. 4. Section 30A(1) was amended by section 64(1) of the Welfare Reform and Pensions Act 1999 (c. 30) and section 30A(2A) was inserted by section 64(3) of that Welfare Reform and Pensions Act.

Rate of long-term incapacity benefit in transitional cases

18.—(1) Subject to paragraph (7), in transitional cases, the weekly rate of long-term incapacity benefit shall consist of—

- (a) a basic rate of an amount equal to the rate of long-term incapacity benefit specified in Schedule 4, Part I, paragraph 2A, of the 1992 Act **(a)**;
- (b) where an additional pension was paid or payable with invalidity benefit immediately before the appointed day, an additional rate of an amount equal to the rate paid or payable as an additional pension with invalidity benefit immediately before the appointed day; and that amount shall be referred to as the additional rate;
- (c) where an invalidity allowance was payable ¹pursuant to subsection (3) of section 34 of the 1992 Act immediately before the appointed day, an amount equal to the appropriate rate specified in paragraph (2); and that amount shall be referred to as a transitional invalidity allowance.

¹Words inserted into sub-para 1(c) & (7) and deleted from sub-para. (4) by reg. 3(4)(a)-(c) of S.I. 1996/3207 with effect from 6.1.97.

(2) The appropriate rate referred to in paragraph (1)(c) is—

- (a) where the higher rate of invalidity allowance was payable immediately before the appointed day, ²£18.65*²;
- (b) where the middle rate of invalidity allowance was payable immediately before the appointed day, ²£12.00*²;
- (c) where the lower rate of invalidity allowance was payable immediately before the appointed day, ²£6.00*².

²Amounts substituted in reg. 18(2) for by art. 15 of S.I. 2009/497 as from 9.4.09.

For amounts relevant to other benefits see art. 15 to S.I. 2009/497.

(3) The transitional invalidity allowance shall be up-rated in accordance with the provisions of Part X of the Administration Act (review and alteration) as if that allowance were a sum specified in section 150(1)(a)(i), (2)(a) and (3)(a) of that Act.

(4) In a transitional case, where for any period a person is entitled to an award of long-term incapacity benefit which includes the additional rate and a transitional invalidity allowance, for that period the relevant amount shall be deducted from the appropriate weekly rate of the transitional invalidity allowance ¹.

(5) In paragraph (4) “the relevant amount” means an amount equal to the additional rate reduced by the amount of any reduction in the weekly rate of incapacity benefit made by virtue of regulation 22.

(6) Where the rate of long-term incapacity benefit includes a transitional invalidity allowance no increase shall become payable by virtue of regulations made under section 30B(7) of the 1992 Act **(b)**.

(7) In a transitional case where a person attained pensionable age before the appointed day and is not more than 5 years over that age, he shall continue to be entitled to long-term incapacity benefit until he reaches 5 years over pensionable age ¹ or until the first day on which he is entitled to retirement pension, whichever date is the earlier, payable at the rate at which the basic pension referred to in section 44(4) of the 1992 Act **(c)** is payable.

(8) In determining the rate of long-term incapacity benefit in a transitional case where paragraph (7) applies, any increase of the following descriptions shall be disregarded—

- (a) if he is also entitled to a transitional invalidity allowance under paragraph (1)(c), and increase under section 47(1) or 50(2) of the 1992 Act **(d)**;

(a) Para. 2A in Part I of Sch. 4 was inserted into Social Security Contributions and Benefits Act 1992 by s. 2(2) of the Social Security (Incapacity for Work) Act 1994.

(b) S. 30B(7) was inserted into the Social Security Contributions and Benefits Act 1992 by s. 2(1) of the Social Security (Incapacity for Work) Act 1994.

(c) S. 44(4) of the Social Security Contributions and Benefits Act 1992 was amended by s. 11 of, and Sch. 1, para. 11 to, the Social Security (Incapacity for Work) Act 1994.

(d) S. 47 of the Social Security Contributions and Benefits Act 1992 was amended by s. 11 of, and para. 13 of Sch. 1 to, the Social Security (Incapacity for Work) Act 1994.

- (b) any increase (for married women) under section 53(2) of, or (for deferred retirement) under Schedule 5 to, the 1992 Act;
- (c) any increase (for dependants) under section 80, 83 or 85 of the 1992 Act; and
- (d) any increase (for Category A or Category B pensions) under section 150 of the Administration Act (annual up-rating) of the sums mentioned in subsection (1)(e) of that section.

¹Reg. 18(9) substituted by reg. 3(4) of S.I. 1995/987 with effect from 13.4.95.

►¹(9) For the purposes of Part IV a “transitional case” means a case where a person is entitled to an award of long-term incapacity benefit by virtue of regulation 17 or 17A.◄

Special provisions for persons entitled to long-term incapacity benefit on termination of a period of entitlement to disability working allowance

19.—(1) Where a person who was entitled to a transitional award of long-term incapacity benefit becomes entitled to incapacity benefit by virtue of section 30C(5) of the 1992 Act(**a**) and the rate of that benefit is less than the rate at which the transitional award of long-term incapacity benefit would have been payable had he not ceased to be entitled to that award, incapacity benefit shall be payable at the latter rate until—

- (a) in the case where the transitional award included an increase under regulation 24(1), the conditions in regulation 24(3) or any of the provisions referred to in regulation 25(2) are no longer satisfied;
- (b) in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act(**b**) together with any increase under section 86A of that Act (increase for adult dependants)(**c**) equals or exceeds that rate.

(2) Where a person—

- (a) who was entitled to disability working allowance by virtue of section 129 of the 1992 Act before the appointed day or to disability working allowance at any time in a period of not more than 56 days beginning on or after the appointed day, becomes entitled to incapacity benefit; and
- (b) would have become entitled to invalidity benefit by virtue of section 33(7) or section 42 of the 1992 Act had the 1994 Act not come into force; and
- (c) the rate of incapacity benefit is less than the rate at which a transitional award of long-term incapacity benefit would have been payable had the days of entitlement to invalidity benefit in the period of interruption of employment which arose immediately before the period of entitlement to disability working allowance been days of entitlement to invalidity benefit in a period of interruption of employment running at the appointed day,

incapacity benefit shall be payable at the latter rate until, in the case where the transitional award would have included an increase under regulation 24(1), the conditions in regulation 24(3) or in any of the provisions referred to in regulation 25(2) are no longer satisfied, and in any other case, the rate of long-term incapacity benefit under section 30B of the 1992 Act together with any increase

(a) S. 30C(5) was inserted into the Social Security Contributions and Benefits Act 1992 by s. 3(1) of the Social Security (Incapacity for Work) Act 1994.

(b) S. 30B was inserted into the Social Security Contributions and Benefits Act 1992 by s. 2(1) of the Social Security (Incapacity for Work) Act 1994.

(c) S. 86A was inserted into the Social Security Contributions and Benefits Act 1992 by s. 2(5) of the Social Security (Incapacity for Work) Act 1994.

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- (c) to an adult dependant in respect of whom a claim for an increase of ¹carer's allowance is made or treated as made before 5th October 1998.
- ²(d) to an adult dependant who—
- (i) is a person in respect of whom a claim for an increase of carer's allowance is made;
 - (ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(a); and
 - (iii) has not previously been allocated a national insurance number.

¹Words substituted in reg. 2A(c), heading to Part II & reg. 3(1) by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

²Reg. 2A(d) inserted by reg. 2 of S.I. 2009/471 as from 6.4.09.

PART II

MISCELLANEOUS PROVISIONS RELATING TO ¹CARER'S ALLOWANCE**Prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons**

3.—(1) For the purposes of ³section 70 of the Contributions and Benefits Act (¹carer's allowance) the prescribed payments out of public funds which constitute the persons in respect of whom they are payable as severely disabled persons are—

- (a) a payment under ³section 104 of the Contributions and Benefits Act (increase of disablement pension where constant attendance needed);
- (b) a payment such as is referred to in section 7(3)(b) of the Industrial Injuries and Diseases (Old Cases) Act 1975(b) (increase of an allowance under that Act where the person in respect of whom that allowance is payable requires constant attendance as a result of his disablement);
- (c) a payment under regulation 44 of the Social Security (Industrial Injuries) (Benefit) Regulations 1975(c) in respect of the need of constant attendance;
- (d) a payment by way of an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension,

³Words in reg. 3(1) substituted by reg. 2(3)(a) to (c) respectively of S.I. 1996/2744 as from 25.11.96.

being a payment the weekly rate of which is not less than the amount specified in ³paragraph 2(a) of Part V of Schedule 4 to the Contributions and Benefits Act.

(2) For the purposes of paragraph (1)(d) of this regulation “war disablement pension” means—

- (a) retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the Ministry of Pensions Act 1916(d), the Air Force (Constitution) Act 1917(e), the Personal Injuries (Emergency Provisions) Act 1939(f), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(g), the Polish Resettlement Act 1947(h), the Home Guard Act 1951(i) or the Ulster Defence Regiment Act 1969(j),
- (b) any retired pay or pension to which section 365(1) of the Income and Corporation Taxes Act 1970(k) applies, not being retired pay, pension or allowance to which sub-paragraph (a) of this paragraph applies; or
- (c) any payment which the Secretary of State has certified can be accepted as being analogous to any such retired pay, pension or allowance as is referred to in sub-paragraph (a) or (b) of this paragraph.

(a) 1999 c. 33.

(b) 1975 c. 16.

(c) S.I. 1975/559 (1975 I, p. 1979).

(d) 1916 c. 65.

(e) 1917 c. 51.

(f) 1939 c. 82.

(g) 1939 c. 83.

(h) 1947 c. 19.

(i) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 8.

(j) 1969 c. 65.

(k) 1970 c. 10. [Any ref. to s. 365 of this Act is to be construed as including a ref. to s. 315 of the Income and Corporation Taxes Act 1988 (c. 1) by virtue of para. 21(3) of Sch. 30 *ibid.*]

Regs. 4-6**Circumstances in which persons are or are not to be treated as engaged or regularly and substantially engaged in caring for severely disabled persons**

¹Words in reg. 4(1), & reg. 4(1A) inserted by reg. 2(2) & 2(3) of S.I. 1993/1851 as from 17.8.93.

4.—(1) ¹Subject to paragraph (1A) of this regulation, ²a person shall be treated as engaged and as regularly and substantially engaged in caring for a severely disabled person on every day in a week if, and shall not be treated as engaged or regularly and substantially engaged in caring for a severely disabled person on any day in a week unless, as at that week he is, or is likely to be, engaged and regularly engaged for at least 35 hours a week in caring for that severely disabled person.

¹(1A) A person who is caring for two or more severely disabled persons in a week shall be treated as engaged and regularly and substantially engaged in caring for a severely disabled person only where he is engaged and regularly engaged for at least 35 hours in that week in caring for any one severely disabled person, considered without reference to any other severely disabled person for whom he is caring. ²

(2) A week in respect of which a person fails to satisfy the requirements of paragraph (1) of this regulation shall be treated as a week in respect of which that person satisfies those requirements if he establishes—

- (a) that he has only temporarily ceased to satisfy them; and
- (b) that (disregarding the provisions of this sub-paragraph) he has satisfied them for at least 14 weeks in the period of 26 weeks ending with that week and would have satisfied them for at least 22 weeks in that period but for the fact that either he or the severely disabled person for whom he has been caring was undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Circumstances in which persons are to be regarded as receiving full-time education

²Reg. 5 substituted by reg. 2 of S.I. 1992/470 as from 6.4.92

³Words in reg. 5(1) substituted by reg. 2(4) of S.I. 1996/2744 as from 25.11.96.

²5.—(1) For the purposes of ³section 70(3) of the Contributions and Benefits Act ⁴, a person shall be treated as receiving full-time education for any period during which he attends a course of education at a university, college, school or other educational establishment for twenty-one hours or more a week.

(2) In calculating the hours of attendance under paragraph (1) of this regulation—

- (a) there shall be included the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course; and
- (b) there shall be excluded any time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment.

(3) In determining the duration of a period of full-time education under paragraph (1) of this regulation, a person who has started on a course of education shall be treated as attending it for the usual number of hours per week throughout any vacation or any temporary interruption of his attendance until the end of the course or such earlier date as he abandons it or is dismissed from it. ⁵

⁴Reg. 6 substituted by reg. 2 of S.I. 1981/655 as from 1.6.81.

⁵Words in heading and main body of reg. 6 substituted by reg. 2(5) of S.I. 1996/2744 as from 25.11.96.

⁶Words substituted in reg. 6, heading to reg. 7 by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

⁴Severely disabled persons prescribed for the purposes of ⁵section 70(1)(c) of the Contributions and Benefits Act ⁶

6. For the purposes of ⁵section 70(1)(c) of the Contributions and Benefits Act ⁶ (condition of entitlement to ⁶a carer's allowance ⁷ that the severely disabled person is either such relative of the person caring for him as may be prescribed or a person of any such other description as may be prescribed) where a severely disabled person is being cared for by another person, that disabled person shall be a prescribed person for the purposes of that section, whether he is related to the person caring for him or not. ⁸

Manner of electing the person entitled to ▶¹a carer’s allowance◀ in respect of a severely disabled person where, but for ▶²section 70(7) of the Contributions and Benefits Act◀, more than one person would be entitled to ▶a carer’s allowance◀ in respect of that severely disabled person

7.—(1) For the purposes of the provision in ▶²section 70(7) of the Contributions and Benefits Act◀ which provides that where, apart from that section, two or more persons would be entitled for the same day to ▶¹a carer’s allowance◀ in respect of the same severely disabled person one of them only shall be entitled, being such one of them as they may jointly elect in the prescribed manner, an election shall be made by giving the Secretary of State a notice in writing signed by the persons who but for the said provision would be entitled to ▶¹a carer’s allowance◀ in respect of the same severely disabled person specifying one of them as the person to be entitled.

(2) An election under paragraph (1) of this regulation shall not be effective to confer entitlement to ▶¹carer’s allowance◀ either for the day on which the election is made or for any earlier day if such day is one for which ▶¹a carer’s allowance◀ has been paid in respect of the severely disabled person in question and has not been repaid or recovered.

Circumstances in which a person is or is not to be treated as gainfully employed

8.—(1) For the purposes of ▶³section 70(1)(b) of the Contributions and Benefits Act◀ (condition of a person being entitled to ▶¹a carer’s allowance◀ for any day that he is not gainfully employed) a person shall not be treated as gainfully employed on any day in a week unless his earnings in the immediately preceding week have exceeded ▶⁴£95◀ and, subject to paragraph (2) of this regulation, shall be treated as gainfully employed on every day in a week if his earnings in the immediately preceding week have exceeded ▶⁴£95◀.

(2) There shall be disregarded for the purposes of paragraph (1) above a person’s earnings—

(a) for any week which under paragraph (2) of regulation 4 of these regulations is treated as a week in which that person satisfies the requirements of paragraph (1) of that regulation; ▶⁵◀

(b) ▶⁶◀

For cases saved under reg. 3 of S.I. 1995/2935, reg. 8(2)(b) is reproduced as follows:-

(b) for any week as an employed earner if that week is one throughout which he is absent from the employment by virtue of which he is an employed earner with the authority of his employer; and

(c) ▶⁷◀

[Regulation 8(3) revoked by Sch. to S.I. 1978/1698 as from 1.1.79.]

Conditions relating to residence and presence in Great Britain

9.—(1) Subject to the following provisions of this regulation, the prescribed conditions for the purposes of ▶⁸section 70(4) of the Contributions and Benefits Act◀ (person not to be entitled to ▶¹a carer’s allowance◀ unless he satisfies prescribed conditions as to residence or presence in Great Britain) in relation to any person in respect of any day shall be—

(a) that he is ordinarily resident in Great Britain; and

▶⁹(ia) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(a) or section 115 of that Act does not apply to him for the purposes of entitlement to ▶¹a carer’s allowance◀ by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and◀

¹Words substituted in heading to reg. 7 & 7(1) and regs. 7(1) & (2), 8(1) & 9(1) by Sch. 2 to S.I. 2002/2497 as from 1.4.03.

²Words in heading and main body of regs. 7 & 8 substituted by reg. 2(6) of S.I. 1996/2744 as from 25.11.96.

³Words in reg. 8(1) substituted by reg. 2(7)(a) of S.I. 1996/2744 as from 25.11.96.

⁴Words in reg. 8(1) substituted by reg. 3(2) of S.I. 2007/2618 as from 1.10.07.

⁵Word “and” deleted from reg. 8(2)(a) by reg. 2(7)(b) of S.I. 1996/2744 as from 25.11.96.

⁶Sub-para. (b) of reg. 8(2) deleted by reg. 2 of S.I. 1995/2935 as from 12.12.95, subj. to saving in reg. 3 *ibid.*

⁷Reg. 8(2)(c) deleted by reg. 2(7)(c) of S.I. 1996/2744 as from 25.11.96. (See saving provision in S.I. 1996/2744 page 3.4493.)

⁸Words in reg. 9(1) substituted by reg. 2(8)(a) of S.I. 1996/2744 as from 25.11.96.

⁹Reg. 9(1)(ia) substituted for reg. 8(2) of S.I. 2000/636 as from 3.4.00.

(a) 1999 c. 33.

Reg. 9

- (b) that he is present in Great Britain; and
- (c) that he has been present in Great Britain for a period of, or periods amounting in the aggregate to, not less than 26 weeks in the 12 months immediately preceding that day.

¹Reg. 9(1A) omitted by reg. 8(3) of S.I. 2000/636 as from 3.4.00.

(1A) ►¹◄

(2) For the purposes of paragraph (1)(b) and (c) of this regulation, a person who is absent from Great Britain on any day shall be treated as being present in Great Britain—

- (a) if his absence is, and when it began was, for a temporary purpose and has not lasted for a continuous period exceeding 4 weeks; or
- (b) if his absence is temporary and for the specific purpose of caring for the severely disabled person who is also absent from Great Britain and where attendance allowance ►², or the care component of disability living allowance at the highest or middle rate prescribed in accordance with ►³section 72(3) of the Contributions and Benefits Act◄◄ or a payment specified in regulation 3(1) of these regulations is payable in respect of that disabled person for that day.

²Words inserted in reg. 9(2)(b) by reg. 3 of S.I. 1991/2742 as from 6.4.92

³Words in reg. 9(2)(b) substituted by reg. 2(8)(b) of S.I. 1996/2744 as from 25.11.96.

⁴Para. (3) substituted by reg. 18(2) of S.I. 1977/342 as from 4.4.77.

►⁴(3) For the purposes of paragraph (1)(b) and (c) notwithstanding that on any day a person is absent from Great Britain he shall be treated as though he were present in Great Britain if his absence is by reason only of the fact that on that day—

- (a) he is abroad in his capacity as—
 - (i) a serving member of the forces within the meaning of the definition of “serving member of the forces” in regulation 1(2) of the Social Security (Contributions) Regulations 1975(a), as amended(b), or
 - (ii) an airman or mariner within the meaning of regulation 72 and regulation 77 respectively of those Regulations; or
- (b) he is in prescribed employment in connection with continental shelf operations within the meaning of regulation 76 of those Regulations; or
- (c) he is living with a person mentioned in sub-paragraph (a)(i) and is the spouse, ►⁵civil partner,◄ son, daughter, father, father-in-law, mother or mother-in-law of that person.◄

⁵Words inserted in reg. 9(3)(c) by para. 6 of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

(a) S.I. 1975/492. [This S.I. and those referred to in the next footnote, were revoked and re-enacted in S.I. 1979/591.]

(b) The relevant amending instruments are S.I. 1975/1855; 1976/1, 507.

1996 No. 2744

SOCIAL SECURITY

**The Social Security (Invalid Care Allowance)
Amendment Regulations 1996**

<i>Made - - - -</i>	<i>28th October 1996</i>
<i>Laid before Parliament</i>	<i>30th October 1996</i>
<i>Coming into force -</i>	<i>25th November 1996</i>

The Secretary of State for Social Security, in exercise of the powers conferred by sections 70 and 175 (1) and (3) of the Social Security Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that the proposals to make these Regulations should not be referred to it(b), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Social Security (Invalid Care Allowance) Amendment Regulations 1996 and shall come into force on 25th November 1996.

[Regulation 2 amends regulations 2, 3, 5, 6, 7, 8, 10 and 11 of S.I. 1976/409].

Saving

3. In a case where regulation 8(2)(c) of the Social Security (Invalid Care Allowance) Regulations 1976 applied immediately before 25th November 1996, that regulation shall continue to apply in respect of any continuous period throughout which a person is entitled to ▶¹a carer's allowance◀ in respect of a severely disabled person and which began on a date before 25th November 1996, as if regulation 2(7)(c) of these Regulations had not been made.

¹Words substituted in reg. 3 by Sch. 2 of S.I. 2002/2497 as from 1.4.03.

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

28th October 1996

Roger Evans
Parliamentary Under-Secretary of State,
Department of Social Security

(a) 1992 c. 4. Section 70 was amended by S.I. 1994/2556.

(b) See section 173(1)(b) and (7) of the Social Security Administration Act 1992 (c. 5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2, except for paragraph (7)(c), substitutes throughout the Social Security (Invalid Care Allowance) Regulations 1976 equivalent references to the Social Security Contributions and Benefits Act 1992 for references to the Social Security Act 1975.

Regulation 8(1) of the Social Security (Invalid Care Allowance) Regulations 1976 provides that a person is not to be treated as gainfully employed on any day in a week unless his earnings in the immediately preceding week have exceeded a specified amount. Paragraph (2)(c) of that regulation provides that there is to be disregarded for the purposes of paragraph (1) a person's earnings in the week immediately preceding the week in respect of which that person (if his earnings in that week were disregarded) would first become entitled to an invalid care allowance.

Regulation 2(7)(c) amends regulation 8(2) of the Social Security (Invalid Care Allowance) Regulations 1976 by omitting sub-paragraph (c). Regulation 3 makes a saving provision in respect of any continuous period of entitlement before 25th November 1996.

These Regulations do not impose any costs on business.

2008 No. 726

SOCIAL SECURITY

**The Social Security Pensions (Low Earnings
Threshold) Order 2008**

<i>Made</i> - - - -	<i>12th March 2008</i>
<i>Laid before Parliament</i>	<i>14th March 2008</i>
<i>Coming into force</i> -	<i>6th April 2008</i>

The Secretary of State for Work and Pensions has reviewed the general level of earnings obtaining in Great Britain as required by section 148A of the Social Security Administration Act 1992(a) and it appears to him that the general level of earnings has increased during the review period.

Accordingly, the Secretary of State, in exercise of the powers conferred on him by section 148A, makes the following Order.

Citation and commencement

1. This Order may be cited as the Social Security Pensions (Low Earnings Threshold) Order 2008 and shall come into force on 6th April 2008.

Low earnings threshold

2. It is hereby directed that, for the purposes of the Social Security Contributions and Benefits Act 1992(b), the low earnings threshold(c) for the tax years following the tax year 2007 – 2008 shall be £13,500.

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

12th March 2008

Mike O'Brien
Minister of State,
Department for Work and Pensions

(a) 1992 c. 5. See subsections (1) and (2) of section 148A which was inserted by section 33(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(b) 1992 c. 4.

(c) See section 44A of the Social Security Contributions and Benefits Act 1992 as inserted by section 30(3) of the Child Support, Pensions and Social Security Act 2000.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made following a review by the Secretary of State under section 148A(1) of the Social Security Administration Act (1992 (c. 5) of the general level of earnings in Great Britain with a view to determining whether, and if so by how much, the amount of the low earnings threshold for the purposes of the Social Security Contributions and Benefits Act 1992 (c. 4) should be increased for future tax years. As a result of that review, it appears to the Secretary of State that the general level of such earnings during the period from 1st October 2006 to 30th September 2007 has increased by 4.2 per cent.

This Order directs that the low earnings threshold for the tax years following 2007 – 2008 shall be £13,500. The threshold for the tax year 2007 – 2008 was £13,000 by virtue of S.I. 2007/776. The low earnings threshold is the amount by reference to which the three surplus earnings bands are determined for the purpose of calculating the additional pension (the state second pension) in a state retirement pension.

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

2009 No. 610

SOCIAL SECURITY

**The Social Security Pensions (Low Earnings
Threshold) Order 2009**

<i>Made</i> - - - -	<i>10th March 2009</i>
<i>Laid before Parliament</i>	<i>16th April 2009</i>
<i>Coming into force</i> -	<i>6th April 2009</i>

In accordance with section 148A (revaluation of low earnings threshold) of the Social Security Administration Act 1992(a), the Secretary of State has reviewed the general level of earnings obtaining in Great Britain.

It appears to the Secretary of State that the general level of earnings has increased during the review period.

The Secretary of State makes the following Order in exercise of the powers conferred on him by section 148A of the Social Security Administration Act 1992.

Citation and commencement

1. This Order may be cited as the Social Security Pensions (Low Earnings Threshold) Order 2009 and shall come into force on 6th April 2009.

Low earnings threshold

2. For the purposes of the Social Security Contributions and Benefits Act 1992(b), it is directed that the low earnings threshold(c) for the tax years following the tax year 2008 - 2009 shall be £13,900.

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

10th March 2009

Rosie Winterton.
Minister of State
Department for Work and Pensions

(a) 1992 c. 5. Section 148A was inserted by section 33(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(b) 1992 c. 4.

(c) See section 44A of the Social Security Contributions and Benefits Act 1992 (c. 4) as inserted by section 30(3) of the Child Support, Pensions and Social Security Act 2000 (c. 19).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made following a review by the Secretary of State under section 148A (revaluation of low earnings threshold) of the Social Security Administration Act 1992 (c. 5) of the general level of earnings in Great Britain with a view to determining whether, and if so by how much, the amount of the low earnings threshold for the purposes of the Social Security Contributions and Benefits Act 1992 (c. 4) should be increased for future tax years.

The low earnings threshold is the amount by reference to which the three surplus earnings bands are determined for the purpose of calculating the additional pension (the state second pension) in a state retirement pension.

As a result of that review, it appears to the Secretary of State that the general level of such earnings during the period from 1st October 2007 to 30th September 2008 has increased by 3.1 per cent.

This Order directs that the low earnings threshold for the tax years following 2008 - 2009 shall be £13,900. The threshold for the tax year 2008 - 2009 was directed to be £13,500 by virtue of the Social Security Pensions (Low Earnings Threshold) Order 2008 (S.I. 2008/726).

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

1987 No. 416**SOCIAL SECURITY****The Social Security (Maternity Allowance)
Regulations 1987**

<i>Made</i> - - - -	<i>12th March 1987</i>
<i>Laid before Parliament</i>	<i>16th March 1987</i>
<i>Coming into force</i>	<i>6th April 1987</i>

The Secretary of State for Social Services, in exercise of the powers conferred by section 22(3) of, and Schedule 20 to, the Social Security Act 1975(a) and sections 84(1) and 89(1) of the Social Security Act 1986(b), and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of 12 months from the commencement of the enactments under which it is made, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Maternity Allowance) Regulations 1987 and shall come into force on 6th April 1987.

(2) In these Regulations—

“the Act” means the Social Security Act 1975;

“the 1986 Act” means the Social Security Act 1986.

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

- (a) to a numbered paragraph is a reference to the paragraph bearing that number in that regulation; and
- (b) in these Regulations to a Schedule is to the Schedule to these Regulations.

►¹Disapplication of section 1(1A) of the Administration Act

►²**1A.**Section 1(1A) of the Social Security Administration Act 1992 (requirement to state a national insurance number) shall not apply to an adult dependant who—

- (a) is a person in respect of whom a claim for an increase of maternity allowance is made;
- (b) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(c); and
- (c) has not previously been allocated a national insurance number.◀

¹Reg. 1A inserted by reg. 13 of S.I. 1997/2676 as from 1.12.97

²Reg. 1A substituted by reg. 4 of S.I. 2009/471 as from 6.4.09.

Disqualification for the receipt of a maternity allowance

2.—(1) A woman shall be disqualified for receiving a maternity allowance if—

- (a) 1975 c. 14; section 22(3) was substituted by section 49(2) of and Part II of Schedule 4 to the Social Security Act 1986 (c. 50); Schedule 20 is cited because of the meaning ascribed to the words “prescribed” and “regulations”.
- (b) 1986 c. 50; section 84(1) is cited because of the meaning ascribed to the word “regulations”.
- (c) 1999 c. 33.

Regs. 2-3

¹Reg. 2(1)(a) substituted by reg. 4(2) of S.I. 2006/2379 as from 1.10.06 and whose expected week of confinement falls on or after 1.4.07.

- ▶¹(a) during the maternity allowance period she does any work in employment as an employed or self-employed earner, for more than 10 days, whether consecutive or not, falling within that period and the disqualification shall be for such part of the maternity allowance period as may be reasonable in the circumstances, provided that the disqualification shall, in any event, be for the number of days on which she so worked in excess of 10 days;◀
- (b) during the maternity allowance period she fails without good cause to observe the following rules of behaviour, namely to take due care of her health and to answer reasonable enquiries (not being enquiries relating to medical examination, treatment or advice), by the Secretary of State or his officers directed to ascertaining whether she is doing so, and such disqualification shall be for such part of the maternity allowance period as may be reasonable in the circumstances; or
- (c) at any time before she is confined she fails without good cause to attend for or to submit herself to any medical examination for which she was given at least 3 days notice in writing by or on behalf of the Secretary of State, and such disqualification shall be for such part of the maternity allowance period (being a part beginning not earlier than the day on which the failure occurs) as may be reasonable in the circumstances, except that in the event of her being confined after such failure she shall not by reason of such failure be so disqualified for the day on which the confinement occurs or any day thereafter.

Modification of the maternity allowance period

²Words substituted in reg. 3(1) & reg. 3(2) omitted by reg. 15 of S.I. 2002/2690 as from 24.11.02.

3.—(1) ▶²Section 35(2) of the Social Security Contributions and Benefits Act 1992◀ (which relates to the maternity allowance period) shall be modified in accordance with the following provisions of this regulation.

(2) ▶²◀

³Para. 2(A) inserted into reg. 3 by reg. 7(2) of S.I. 1994/1367, under powers effective where expected week of confinement begins on or after 16.10.94.

▶³(2A) In relation to a woman who—

- (a) is not entitled to maternity allowance at the 11th week before the expected week of confinement; and
- (b) subsequently becomes entitled to maternity allowance before being confined; and
- (c) has stopped work

⁴Words in reg. 3(2A) substituted by reg. 4(3) of S.I. 2006/2379 as from 1.10.06 and whose expected week of confinement falls on or after 1.4.07.

the maternity allowance period shall be a period of ▶⁴39 weeks commencing no earlier than the day she becomes entitled to maternity allowance and no later than the day following the day on which she is confined.◀◀

(3)–(6) ▶⁵◀

⁵Paras. (3) to (6) of reg. 3 deleted by reg. 18 of S.I. 1997/793 as from 7.4.97.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies section 4A of the Social Security Contributions and Benefits Act 1992 in consequence of the modifications made to the provisions of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) by paragraphs 3 and 4 of Schedule 3 to the Finance Act 2007 (c. 11). Those paragraphs extend the scope of Part 2 to managed service companies. Chapter 9 of that Part contains the substantive provisions on the provision of workers’ services through managed service companies.

The effect of this Order is to secure, so far as appropriate, that workers and their earnings are treated, where their services are provided through a managed service company, as if they were employed by the managed service company.

Article 1 provides for the citation and commencement of the Order.

Article 2 effects the modifications of section 4A.

A full Regulatory Impact Assessment was published by HM Revenue and Customs and is available on their website at www.hmrc.gov.uk/ria/full-ria-man-serv-coys.pdf or from the Ministerial Correspondence Unit, HM Revenue and Customs, Yorke House, Castle Meadow, Nottingham. It is also annexed to the Explanatory Memorandum to the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2007 (S.I. 2007/2069) which is available alongside those Regulations on the OPSI website.

2009 No. 659

SOCIAL SECURITY

The Social Security (Additional Class 3 National Insurance Contributions) Amendment Regulations 2009

<i>Made</i> - - - -	<i>11th March 2009</i>
<i>Laid before Parliament</i>	<i>16th March 2009</i>
<i>Coming into force</i> -	<i>6th April 2009</i>

The Secretary of State makes the following Regulations in exercise of the power conferred on him by sections 122(1) and 175(1) and (3) of, and paragraph 8(1)(d) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a) and by sections 9(1), 79(1) and (4) and 84 of the Social Security Act 1998(b).

In respect of regulation 3 and in accordance with paragraph 8(1A) of Schedule 1 to the Social Security Contributions and Benefits Act 1992, these Regulations are made with the concurrence of the Commissioners for Her Majesty's Revenue and Customs(c).

This instrument contains only regulations which are made by virtue of, or consequential upon, section 13A of the Social Security Contributions and Benefits Act 1992(d) and is made before the end of the period of 6 months beginning with the coming into force of that section(e).

Citation and commencement

1. These Regulations may be cited as the Social Security (Additional Class 3 National Insurance Contributions) Amendment Regulations 2009 and shall come into force on 6th April 2009.

(a) 1992 c. 4. Section 122(1) is cited because of the meanings ascribed to "prescribe" and "Inland Revenue". Section 175(1) was amended by paragraph 29(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Paragraph 8(1A) of Schedule 1 was inserted by paragraph 39(1) and (3) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and amended by paragraphs 1 and 3 of Schedule 11 to the Welfare Reform and Pensions Act 1999 (c. 30).

(b) 1998 c. 14. Section 79(1) was amended by paragraphs 12 and 13(1) and (2) of Schedule 4 to the Tax Credits Act 2002 (c. 21) and by S.I. 2008/2833. Section 84 is cited due to the meaning ascribed to the word "prescribe".

(c) By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11) references to the Commissioners of Inland Revenue in enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

(d) Section 13A was inserted by section 135 of the Pensions Act 2008 (c. 30).

(e) Section 173(5)(b) of the Social Security Administration Act 1992 (c. 5) provides that a statutory instrument which states that it contains only regulations made by virtue of, or consequential upon, a specified enactment and which is made before the end of the period of 6 months beginning with the coming into force of that specified enactment is not required to be referred to the Social Security Advisory Committee under Part 13 of that Act.

SOCIAL SECURITY (ADDITIONAL CLASS 3 NATIONAL INSURANCE CONTRIBUTIONS) AMENDMENT REGULATIONS 2009

[Regulation 2 amends regulation 3 of S.I. 1999/991.]

[Regulation 3 amends regulation 4(1) and inserts regulation 6C into S.I. 2001/769.]

Signed by authority of the Secretary for Work and Pensions

10th March 2009

Rosie Winterton.
Minister of State
Department for Work and Pensions

We concur in respect of regulation 3

11th March 2009

Mike Eland.
Dave Hartnett.
Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments consequential to section 13A (right to pay additional Class 3 contributions in certain cases) of the Social Security Contributions and Benefits Act 1992 (c. 4).

Regulation 2 amends regulation 3 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) to provide that a payment of additional Class 3 contributions under section 13A may give rise to a revision of an earlier decision on benefit.

Regulation 3 amends the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (S.I. 2001/769) to provide for when additional Class 3 contributions paid under section 13A are to be treated as paid.

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

2007 No. 2582

SOCIAL SECURITY

The Social Security (National Insurance Credits) Amendment Regulations 2007

<i>Made</i> - - - -	<i>4th September 2007</i>
<i>Laid before Parliament</i>	<i>7th September 2007</i>
<i>Coming into force</i> -	<i>1st October 2007</i>

The Secretary of State for Work and Pensions, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs in relation to regulation 4, makes the following Regulations in exercise of the powers conferred by sections 22(5), 122(1) and 175(1) and (3) of, and paragraph 8(1)(d) and (1A) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(a) and sections 9(1)(a), 79(4) and 84 of the Social Security Act 1998(b).

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

Citation and commencement

1. These Regulations may be cited as the Social Security (National Insurance Credits) Amendment Regulations 2007 and shall come into force on 1st October 2007.

[Regulation 2 inserts regulations 8D to F into S.I. 1975/556.]

[Regulation 3 amends regulation 3 of S.I. 1999/991.]

[Regulation 4 amends regulations 1, 4 & inserts regulation 6B into S.I. 2001/769.]

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

1st September 2007

Mike O'Brien
Minister of State,
Department for Work and Pensions.

(a) 1992 c. 4. Section 122(1) is cited because of the meanings ascribed to "prescribe" and "Inland Revenue". Section 175(1) is amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 3, paragraph 29(3). Paragraph 8(1A) is inserted by that Act, Schedule 3, paragraph 39(3) and amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 11, paragraph 3. Under section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11), references to the Commissioners of Inland Revenue in enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.

(b) 1998 c. 14. Section 84 is cited because of the meaning ascribed to the word "prescribe".

(c) See section 173(1)(b) of the Social Security Administration Act 1992 (c. 5). Paragraph 104(a) of Schedule 7 to the Social Security Act 1998 added that Act to the list of "relevant enactments" in respect of which regulations must normally be referred to the Committee.

The Commissioners for Her Majesty's Revenue and Customs hereby concur in relation to regulation 4.

*Mike Eland
Paul Gray*

4th September 2007

Two of the Commissioners for Her Majesty's Revenue and Customs.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend three sets of regulations—

- (a) the Social Security (Credits) Regulations 1975 (S.I.1975/556) so that certain claimants—
 - (i) previously entitled to incapacity benefit as a result of satisfying the contribution condition referred to in paragraph 2(3)(a) of Schedule 3(1) to the Social Security Contributions and Benefits Act 1992 (c. 4); or
 - (ii) who wish to satisfy the condition referred to in paragraph 5(3)(a) of Schedule 3 to that Act for a retirement pension or in section 2 of the Jobseekers Act 1995 (c. 18) for contribution-based jobseeker's allowance,

and whose National Insurance contributions record had previously contained earnings credited by virtue of official error deriving from a failure to transpose correctly certain information from the Department for Work and Pensions' computer system to Her Majesty's Revenue and Customs' computer system (NIRS2) will be credited with earnings to enable them to be entitled to incapacity benefit, a retirement pension or a contribution-based jobseeker's allowance (regulation 2);

- (b) the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I.1999/991) so that decisions to award retirement pensions, contribution-based jobseeker's allowance, incapacity benefit and bereavement benefits, need not be revised for the official error referred to above (regulation 3);
- (c) the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 (S.I.2001/769) so that certain Class 2 and Class 3 contributions which may have been paid after the due date as a result of official error but less than six years after the end of the year in which they were advised of the error, are to be treated as paid on the day on which they are paid so as to give rise to entitlement to contributory benefits (regulation 4).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

(1) Amended by Correction Slip. Page 6, in the Explanatory Note, paragraph (a)(i), line two: "...paragraph 2(3)(b) of Schedule 3..." should read, "...paragraph 2(3)(a) of Schedule 3...".

2009 No. 471

SOCIAL SECURITY

**The Social Security (National Insurance Number
Information: Exemption) Regulations 2009**

<i>Made</i> - - - -	<i>4th March 2009</i>
<i>Laid before Parliament</i>	<i>9th March 2009</i>
<i>Coming into force</i> -	<i>6th April 2009</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 1(1C)(a) and (c), 189(1) and (4) and 191 of the Social Security Administration Act 1992(a), makes the following Regulations.

In accordance with section 173(1)(b)(b) of the Social Security Administration Act 1992, the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it.

In accordance with section 176(1) of the Social Security Administration Act 1992, the Secretary of State has consulted with organisations appearing to the Secretary of State to be representative of the authorities concerned.

Citation and commencement

1. These Regulations may be cited as the Social Security (National Insurance Number Information: Exemption) Regulations 2009 and shall come into force on 6th April 2009.

[Regulation 2 amends regulation 2A of S.I. 1976/409 and Section 1(1A) of S.I. 1997/2676.]

[Regulation 3 amends regulation 1A of S.I. 1979/642.]

[Regulation 4 amends regulation 1A of S.I. 1987/416.]

[Regulation 5 amends regulation 2A of S.I. 1987/1967.]

[Regulation 6 amends regulation 2A of S.I. 1994/2946.]

[Regulation 7 amends regulation 2A of S.I. 1996/207.]

[Regulation 8 amends regulation 1 of S.I. 2002/1792.]

[Regulation 9 amends regulation 4 of S.I. 2006/213.]

[Regulation 10 amends regulation 4 of S.I. 2006/214.]

[Regulation 11 amends regulation 4 of S.I. 2006/215.]

(a) 1992 c. 5. Section 1(1C) was inserted by section 19 of the Social Security Administration (Fraud) Act 1997 (c. 47). Section 189(1) and (4) 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 Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and Schedule 6 to the Tax Credits Act 2002 (c. 21). Section 191 is cited for the meaning of the word "prescribe".

(b) See section 172(1) of the Social Security Administration Act 1992 (c. 5).

[Regulation 12 amends regulation 4 of S.I. 2006/216.]

[Regulation 13 amends regulation 2 of S.I. 2008/794.]

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

4th March 2009

Tony McNulty
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409), the Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 (S.I. 1979/642), the Social Security (Maternity Allowance) Regulations 1987 (S.I. 1987/416), the Income Support (General) Regulations 1987 (S.I. 1987/1967), the Social Security (Incapacity Benefit) Regulations 1994 (S.I. 1994/2496), the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207), the State Pension Credit Regulations 2002 (S.I. 2002/1792), the Housing Benefit Regulations 2006 (S.I. 2006/213), the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214), the Council Tax Benefit Regulations 2006 (S.I. 2006/215), the Council Tax (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/216) and the Employment and Support Allowance Regulations 2008 (S.I. 2008/794).

The amendments to these instruments provide that where a person is the partner of a benefit claimant, has no right to enter or remain in the UK, is not entitled to social security benefits and does not already have a national insurance number ("NINO"), the claimant will not be required to state a NINO in relation to that person on a claim form.

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

2009 No. 608

SOCIAL SECURITY

The Social Security Revaluation of Earnings Factors Order 2009

<i>Made</i> - - - -	<i>10th March 2009</i>
<i>Laid before Parliament</i>	<i>16th March 2009</i>
<i>Coming into force</i> -	<i>6th April 2009</i>

In accordance with subsection (2) of section 148 (revaluation of earnings factors) of the Social Security Administration Act 1992(a), the Secretary of State has reviewed the general level of earnings obtaining in Great Britain.

The Secretary of State has concluded, having regard to earlier orders made under that section(b), that earnings factors(c) for the relevant previous tax years have not, during the period taken into account for that review, maintained their value in relation to the general level of earnings.

The Secretary of State makes the following Order in exercise of the powers conferred upon him by section 148(3) and (4) and section 189(1), (4) and (5) of the Social Security Administration Act 1992(d).

-
- (a) 1992 c. 5. Section 148 was amended by paragraph 27 of Schedule 8 to the Pension Schemes Act 1993 (c. 48) and by section 37 of the Child Support, Pensions and Social Security Act 2000 (c. 19).
- (b) The earlier orders are: S.I. 1979/832, 1980/728, 1981/598, 1982/607, 1983/655, 1984/581, 1985/688, 1986/809, 1987/861, 1988/867, 1989/805, 1990/1412, 1991/1108, 1992/1102, 1993/1159, 1994/1105, 1995/1070, 1996/1133, 1997/1117, 1998/1137, 1999/1235, 2000/1365, 2001/631, 2002/519, 2003/517, 2004/262, 2005/216, 2006/496, 2007/781 and 2008/730. Also, section 148(7)(b) of the Social Security Administration Act 1992 (c. 5) provides that orders under section 21 (revaluation of earnings factors) of the Social Security Pensions Act 1975 (c. 60) are to be treated as orders under section 148.
- (c) See sections 22 and 23 of the Social Security Contributions and Benefits Act 1992 (c. 4). Section 22 was amended by paragraph 22 of Schedule 2 to the Jobseekers Act 1995 (c. 18), paragraph 61 of Schedule 7 to the Social Security Act 1998 (c. 14), section 30(1) of the Child Support, Pensions and Social Security Act 2000, paragraph 7 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19), section 12(1) of, and paragraphs 9 and 33 of Schedule 1 to, the Pensions Act 2007 (c. 22) and paragraph 9(1), (3) and (4) of the Welfare Reform Act 2007 (c. 5). Section 23 was amended by paragraph 36 of Schedule 8 to the Pension Schemes Act 1993 (c. 48), section 134(1) of the Pensions Act 1995 (c. 26) and paragraph 8 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19). See also sections 45B(6), 55A(5) and 55B(6) of the Social Security Contributions and Benefits Act 1992 (c. 4), inserted by paragraphs 2 and 3 of Schedule 6 to the Welfare Reform and Pensions Act 1999 (c. 30), under which state scheme pension debits and credits are to be increased by reference to percentage figures specified in orders under section 148 of the Social Security Administration Act 1992 (c. 5).
- (d) Relevant amendments to section 189 are paragraph 109 of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14), paragraph 57(1) and (2) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and by Schedule 6 to the Tax Credits Act 2002 (c. 21).

Citation and commencement

1. This Order may be cited as the Social Security Revaluation of Earnings Factors Order 2009 and shall come into force on 6th April 2009.

Revaluation of earnings factors

2. The earnings factors for tax years specified in the Schedule to this Order in so far as they are relevant—

- (a) to the calculation—
 - (i) of the additional pension in the rate of any long-term benefit; or
 - (ii) of any guaranteed minimum pension(a); or
- (b) to any other calculation required under Part 3 of the Pension Schemes Act 1993(b) (including that Part as modified by or under any other enactment),

are directed to be increased for those tax years by the percentage of their amount shown opposite those tax years in that Schedule.

Rounding of fractional amounts

3. Where any earnings factor relevant to the calculation specified in article 2(a)(i) of this Order, as increased in accordance with this Order, would not but for this article be expressed as a whole number of pounds, it shall be so expressed by rounding down any fraction of a pound less than one half and rounding up any other fraction of a pound.

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

10th March 2009

Rosie Winterton.
Minister of State
Department for Work and Pensions

SCHEDULE

Article 2

Percentage increase of earnings factor for specified tax years

<i>Tax year</i>	<i>Percentage increase</i>
1978 - 1979	677.6
1979 - 1980	586.3
1980 - 1981	473.3
1981 - 1982	380.2
1982 - 1983	336.1

(a) Earnings factors for any tax year after 1996 - 97 are not relevant to the calculation of any guaranteed minimum pension: section 14(8) of the Pension Schemes Act 1993 (c. 48) as amended by paragraph 27(b) of Schedule 5 to the Pensions Act 1995 (c. 26).

(b) 1993 c. 48.

<i>Tax year</i>	<i>Percentage increase</i>
1983 - 1984	305.0
1984 - 1985	275.0
1985 - 1986	251.7
1986 - 1987	223.0
1987 - 1988	200.7
1988 - 1989	176.7
1989 - 1990	149.7
1990 - 1991	132.7
1991 - 1992	111.4
1992 - 1993	98.5
1993 - 1994	89.0
1994 - 1995	83.3
1995 - 1996	75.6
1996 - 1997	70.8
1997 - 1998	62.7
1998 - 1999	55.5
1999 - 2000	49.3
2000 - 2001	40.4
2001 - 2002	35.0
2002 - 2003	29.5
2003 - 2004	25.0
2004 - 2005	20.4
2005 - 2006	15.6
2006 - 2007	11.8
2007 - 2008	7.4
2008 - 2009	3.1

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made following a review under section 148 (revaluation of earnings factors) of the Social Security Administration Act 1992 (c. 5).

This Order directs that the earnings factors relevant to the calculation of the additional pension in the rate of any long-term benefit or of any guaranteed minimum pension, or to any other calculation required under Part 3 of the Pension Schemes Act 1993 (c. 48), are to be increased for the tax years specified in the Schedule to the Order by the percentage of their amount specified in that Schedule.

The percentages specified in this Order for the tax years from and including 2000 - 2001 are also relevant for the purposes of revaluing state scheme pension debits and credits in accordance with sections 45B(6), 55A(5) and 55B(6) of the Social Security Contributions and Benefits Act 1992 (c. 4).

The percentage for the tax year 2008 - 2009 is 3.1 per cent. The percentages for earlier tax years have been increased so that the earnings factors for those years are revalued at 2008 - 2009 earnings levels.

This Order also provides for rounding fractional amounts for earnings factors relevant to the calculation of the additional pension in the rate of any long-term benefit. By virtue of section 23(2) of the Social Security Contributions and Benefits Act 1992, rounding is not required for the purpose of the calculation of any guaranteed minimum pension.

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

under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council, or the Air Council;

▶¹“shared additional pension” means a shared additional pension under section 55A of the Social Security Contributions and Benefits Act 1992;◀

“1914–1918 War Injuries Scheme” means any scheme made under the Injuries in War (Compensation) Act 1914(a) or under the Injuries in War Compensation Act 1914 (Session 2)(b) 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;

“unemployability supplement” has the extended meaning assigned to it in regulation 2 of the Social Security (Overlapping Benefits) Regulations 1979(c) and further includes benefit corresponding to an unemployability supplement by virtue of regulations under section 159(3)(a) of the Act;

▶²“widowed parent’s allowance” means an allowance referred to in section 39A of the Social Security Contributions Act 1992;◀

“year” means tax year.

¹Defn. of “shared additional pension” inserted by reg. 6(2) of S.I. 2005/1551 as from 6.7.05.

²Defn. of “widowed parent’s allowance” inserted by reg. 7(2) of S.I. 2000/1483 as from 9.4.01.

(3) For the purposes of these regulations a person who has obtained a decree absolute of presumption of death and dissolution of marriage under the Matrimonial Causes Act 1973(d) shall, notwithstanding that the spouse whose death has been presumed is dead, be treated as a person whose marriage has been terminated otherwise than by the death of his spouse unless the date of his death is established to the satisfaction of ▶³◀ the determining authority, ▶³◀; and, in relation to a person who is so treated, the marriage in question shall be treated as having been terminated on the date of the decree absolute.

³Words omitted from reg. 1(3) by para. 1(b) of Sch. 3 to S.I. 1999/2422 as from 6.9.99.

▶⁴(3A) For the purposes of regulation 8 of these Regulations, where, before the coming into force of the Nullity of Marriages Act 1971(e) a decree of nullity was granted in relation to a person on the ground that the marriage was voidable, that person shall be treated as a person whose marriage has been terminated by divorce from the date on which that decree was made absolute.◀

⁴Para. (3A) added to reg. 1 by reg. 2 of S.I. 1995/74 as from 10.2.95.

(4) For the purposes of regulations 11(1)(d), 12(3) and 13(2) a person shall be deemed to be, or to have been, entitled to a pension or benefit if he would have been so entitled had he made a claim for it.

▶⁵**Disapplication of section 1(1A) of the Administration Act for the purposes of Retirement Pension.**

⁵Reg. 1A inserted by reg. 15(2) of S.I. 1997/2676 as from 1.12.97.

1A. Section 1(1A) of the Administration Act (requirement to state national insurance number) shall not apply—

(a) ▶⁶◀

(b) to an adult dependant in respect of whom a claim for an increase of retirement pension is made or treated as made before 5th October 1988.◀

▶⁷(c) to an adult dependant who—

(i) is a person in respect of whom a claim for an increase of retirement pension is made;

(ii) is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(f); and

(iii) has not previously been allocated a national insurance number.◀

⁶Reg. 1A(a) omitted by reg. 2(4)(a) of S.I. 2003/937 as from 6.4.03.

⁷Reg. 1A(c) inserted by reg. 3 of S.I. 2009/471 as from 6.4.09.

Election to be treated as not having retired

2.—(1) Subject to the provisions of these regulations, where any person (other than one mentioned in paragraph (2))—

(a) 1914 c. 30.

(b) 1914 c. 18 (5 & 6 Geo. 5).

(c) S.I. 1979/597.

(d) 1973 c. 18.

(e) 1971 c. 44. The Act came into force on 1 August 1971; see section 7(5).

(f) 1999 c. 33.

Regs. 2-3

¹Words deleted from reg. 2(1) by reg. 11(3) of S.I. 1989/1642 as from 1.10.89.

²Words inserted in regs. 2(1)(a) and 3(a) by reg. 6(3) and (4) of S.I. 2005/1551 as from 6.7.05.

³Words omitted in reg. 2(1)(a) and 2(5)(a) by reg. 4(3)(a), (b) and (c) of S.I. 2005/453 as from 6.4.05.

⁴Reg. 2(3) and (4) substituted by reg. 4(3)(b) of S.I. 2005/453 as from 6.4.05.

- (a) has ¹ become entitled to either a Category A or a Category B retirement pension ² or a shared additional pension ³ and
- (b) elects that this regulation apply in his case,

the Act shall have effect as if that person had not ¹ become entitled as aforesaid.

(2) Paragraph (1) shall not apply to:—

- (a) a person who has previously made such an election;
- (b) in relation to a Category A retirement pension, a husband whose wife is entitled, by virtue of his contributions, to a Category B retirement pension or a section 10(2) increase and who does not consent to his election, unless that consent is unreasonably withheld.

⁴(3) Notice of election for the purpose of this regulation may be given by telephone call to the telephone number specified by the Secretary of State unless the Secretary of State directs in any particular case that the notice or consent must be given in writing.

(4) Subject to paragraphs (5) and (6), an election shall take effect—

- (a) on the date on which it is given; or
- (b) on such other date specified by the person making the election, being no earlier than the date on which it is given and no later than 28 days after the date on which it is given.

(5) In the case of a man whose wife is entitled, by virtue of his contributions, to a Category B retirement pension or a section 10(2) increase—

- (a) if she consents ³ to the election, the election shall not take effect earlier than the date of her consent; or
- (b) if she does not so consent and the determining authority decides that her consent has been unreasonably withheld, the election shall take effect in accordance with the provisions of paragraph (4) or on such later date (if any) as that authority, having regard to all the circumstances of the case, may determine.

(6) Where a woman entitled to a Category B retirement pension under section 29(4) of the Act has, on or after 6th April 1979, made an election and has not revoked it, then, for the purpose only of determining her right to increments under paragraph 2 of Schedule 1 to the Pensions Act, her election shall be treated as if it took effect from 6th April 1979 or, if later, the date of the death of her husband by virtue of whose contributions she is so entitled.

Provisions applying after election

3. Where an election has been made in accordance with regulation 2—

- (a) subject to the provisions of regulations made under section 81(2)(a) of the Act (adjustment to prevent payments for periods of less than a week or at different rates for different parts of a week), no Category A or B retirement pension ² or a shared additional pension shall be payable to a person and no Category B retirement pension or section 10(2) increase shall be payable to a man's wife by virtue of his contributions for any period on or after the date of his election and before he subsequently ⁵ becomes entitled to a Category A or Category B retirement pension ² or a shared additional pension or dies; and
- (b) where the person who has made the election is a woman who became entitled to a Category B retirement pension ⁵ in accordance with section 29(4) of the Act, and she revokes her election, she shall cease to be treated as if she had not become entitled to such a retirement pension; and
- (c) where the person who has made the election is a man whose wife is entitled to a Category B retirement pension or a section 10(2) increase by virtue of his contributions and he subsequently ⁵ claims a retirement pension, his claim may be treated as including a claim by his wife, by virtue of his contributions, for a Category B retirement pension or a section 10(2) increase.

⁵Words substituted and words deleted in reg. 3 by reg. 11(4) of S.I. 1989/1642 as from 1.10.89.

►¹Calculating periods of incapacity for work for welfare to work beneficiaries entitled to an increase of long-term incapacity benefit

¹Reg. 3A inserted by reg. 7 of S.I. 1998/2231 as from 5.10.98.

3A. Section 47(1) of the Social Security Contributions and Benefits Act 1992(a) (increase of Category A retirement pension for long-term incapacity) shall have effect, in any case where a person is treated in accordance with Regulation 13A of the Social Security (Incapacity for Work) (General) Regulations 1995 as a welfare to work beneficiary, as if for the reference to 8 weeks there substituted a reference to ►²104 weeks◄.

²Words substituted in reg. 3A by reg. 2 of S.I. 2006/2378 as from 1.10.06.

Days to be treated as days of increment

4.—(1) For the purposes of paragraph 2 of Schedule 1 to the Pensions Act a day shall be treated as a day of increment in relation to any person if it is a day in that person's ►³period of ►⁴deferment◄◄, other than a Sunday, in respect of which—

³Words substituted in reg. 4(1) by reg. 11(5) (a) of S.I. 1989/1642 as from 1.10.89.

- ⁵(a) if that person had not deferred his entitlement to a Category A or Category B retirement pension, or, in the case of a married woman and her Category B retirement pension or section 10(2) increase, if both she and her husband had not deferred their entitlement to, respectively, a Category A and a Category B retirement pension, that person would have been entitled to such a pension (and would not have been disqualified for receiving it by reason of imprisonment or detention in legal custody); and◄
- (b) that person had not received any of the following benefits:—
 - (i) any benefit under Chapters I and II of Part II of the Act other than child's special allowance, attendance allowance, ►⁶disability living allowance◄ and guardian's allowance; or
 - ⁷(ii) graduated retirement benefit where that person's period of deferment ended on or before 5th April 2006; or
 - (iii) an unemployability supplement; and◄
- (c) in the case of a married woman who would have been entitled to a Category B retirement pension or a section 10(2) increase ►⁴and whose period of deferment began before 6th April 2005◄, her husband had not received an increase of any of the benefits mentioned in paragraph (1)(b) in respect of her ►⁴and
- (d) in the case of a person who would have been entitled to a Category A or Category B retirement pension ("the deferrer") and whose period of deferment begins on or after 6th April 2005—
 - (i) no other person has received an increase of any of the benefits mentioned in sub-paragraph (b) in respect of the deferrer; or
 - (ii) another person has received such an increase in respect of the deferrer and the deferrer is neither married to, ►⁸or in a civil partnership with,◄ nor residing with, that other person◄

⁴Words substituted in reg. 4(1), inserted in reg. 4(1)(c) & reg. 4(1)(d) inserted by reg. 4(4)(a)-(b) of S.I. 2005/453 as from 6.4.05.

⁵Sub-para. (a) of reg. 4(1) substituted by reg. 11(5)(b) of S.I. 1989/1642 as from 1.10.89.

⁶Words substituted in reg. 4(1)(b)(i) by reg. 6 of S.I. 1991/2742 as from 6.4.92.

⁷Reg. 4(1)(b)(ii) substituted and head (iii) added by reg. 2 of S.I. 2006/516 as from 6.4.06.

⁸Words inserted in reg. 4(1)(d)(ii) by reg. 2(3) of S.I. 2005/2878 as from 5.12.05.

(2) Subject to the following paragraph, for the purposes of this regulation, where in respect of any day—

- (a) a person has received one or more of the benefits mentioned in paragraph (1)(b) of (c), and
- (b) either—
 - (i) ►⁹◄ the determining authority ►⁹◄ has determined that in respect of that day he was not entitled to that benefit; or
 - (ii) by virtue of the provisions of the Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977(b) the Secretary of State has recovered from that person's employer sums on account of ►¹⁰a contribution-based jobseeker's allowance◄ received by that person in respect of that day; and

⁹Words omitted from reg. 4(2)(b)(i) by para. 2 of Sch. 3 to S.I. 1999/2422 as from 6.9.99.

¹⁰Words in reg. 4(2)(b)(ii) substituted for "unemployment benefit" by reg. 26 of S.I. 1996/1345 as from 7.10.96.

(a) S.I. 1992/1814; relevant amending instruments are S.I. 1993/688, 1994/2137, 1995/560, 626, 2303.

(b) S.I. 1977/674.

(c) the whole of the benefit or sum on account of benefit in respect of that day has been repaid or, as the case may be, recovered before the relevant date, that day shall be treated as a day in respect of which he did not receive that benefit; and in this paragraph "relevant date" means—

- (i) where a person's entitlement to increments under paragraph 2 of Schedule 1 to the Pensions Act is in question, the end of his ¹period of ²deferment~~◀◀~~; or
- (ii) where a person's entitlement to increments under paragraph 4 or 4A of that Schedule in relation to the ¹deferred retirement~~◀~~ of a deceased spouse is in question, the date of the death of that spouse.

¹Words substituted in reg. 4(2)(c)(i) and (ii) by reg. 11(5)(c) of S.I. 1989/1642 as from 1.10.89.

²Word substituted in reg. 4(2)(i) by reg. 4(4)(a) of S.I. 2005/453 as from 6.4.05.

(3) Where the benefit or sum on account of benefit in respect of a day to which paragraph (2)(a) and (b) applies is repaid or, as the case may be, recovered on or after the said relevant date, that day shall not be treated as a day in respect of which that person did not receive that benefit until the benefit has been repaid or, as the case may be, sums on account of the benefit have been recovered in respect of all the days to which those sub-paragraphs relate and which fall within the period to which this regulation applies.

³Para. (4) inserted in reg. 4 by reg. 6(5) of S.I. 2005/1551 as from 6.7.05.

³(4) For the purposes of paragraph 3 of the Schedule 5A to the Social Security Contributions and Benefits Act 1992 a day shall be treated as a day of increment in relation to any person if it is a day in that person's period of deferment, other than a Sunday, in respect of which if that person had not deferred his entitlement to a shared additional pension he would have been entitled to it (and would not have been disqualified from receiving it by reason of imprisonment or detention in legal custody)~~◀~~.

Modification of paragraph 2(1) to (3) of Schedule 1 to the Pensions Act

5.—(1) This regulation applies to a person referred to in paragraph 1 of Schedule 1 to the Pensions Act during whose ⁴period of ⁵deferment~~◀◀~~ there has been an increase, other than an increase made by an order under ⁶section 63 of the Social Security Act 1986~~◀(a)~~ in the rate of the Category A or Category B retirement pension to which he would have been entitled ⁴if his entitlement to the pension had commenced on the day on which he attained pensionable age~~◀~~.

⁴Words substituted in reg. 5(1), 5(3)(a) & (b) and deleted from reg. 5(4)(c) by reg. 11(6)(a)-(d) of S.I. 1989/1642 as from 1.10.89.

⁵Words substituted in reg. 5(1), 5(3)(a) and (5)(a) by reg. 4(5)(a) and (b) of S.I. 2005/453 as from 6.4.05.

⁶Words in reg. 5(1) substituted by reg. 2(2) of S.I. 1987/1854 as from 11.4.88.

(2) In relation to a person to whom this regulation applies, paragraph 2(1) to (3) of the said Schedule 1 shall have effect with the additions, omissions and amendments prescribed below.

(3) In paragraph 2(1) for the words after "incremental period" there shall be substituted—

- "(a) in his ⁴period of ⁵deferment~~◀◀~~; and
- (b) in each period beginning with the day on which an increase in the weekly rate of his pension took place and ending with the day before ⁵his entitlement arose~~◀~~."

(4) After paragraph 2(2)(b) there shall be added—
"and

- (c) 'weekly rate of his pension' means the weekly rate of the Category A or Category B retirement pension to which that person would have been entitled ⁴◀ on attaining pensionable age; and
- (d) 'increase' means an increase in the weekly rate of his pension other than an increase made by such an order as is mentioned in sub-paragraph (5) below."

(5) In paragraph 2(3) for the words after "incremental period" there shall be substituted—

- "(a) in the case of an incremental period specified in paragraph 2(1)(a) above, shall be ⁵1/5th per cent~~◀~~ of the weekly rate of his pension immediately after he attained pensionable age; and

(a) 1986 c. 50.

- (b) in the case of an incremental period specified in paragraph 2(1)(b) above, shall be ►¹1/5th per cent◄ of that increase.”

¹Words substituted in reg. (5)(b) by reg. 4(5)(b) of S.I. 2005/453 as from 6.4.05.

Benefit at reduced rates for those who do not satisfy the contribution conditions in full

6.—►²(1) Subject to paragraph (2) of this regulation, where the second contribution condition specified in paragraph 5(3) of Schedule 3 to the Act is not satisfied a person shall be entitled to—

²Paras. (1) to (3B) of reg. 6 substituted for paras. (1) to (3) by reg. 2(2) of S.I. 1990/2642 as from 29.1.91.

- (a) widowed mother's allowance;
- ³(aa) widowed parent's allowance;
- (ab) bereavement allowance;◄
- (b) widow's pension;
- (c) Category A retirement pension; or
- (d) Category B retirement pension,

³Regs. 6(1)(aa) and reg. 6(1)(ab) inserted by reg. 7(3) of S.I. 2000/1483 as from 9.4.01.

provided the percentage of the number of qualifying years in the working life of that person calculated in accordance with paragraph (3B) of this regulation is 25 per cent. or more.

(2) Where a person to whom paragraph (1) alone would otherwise apply is not entitled to benefit under that paragraph because the percentage of the number of qualifying years in his working life, calculated in accordance with paragraph (3B) of this regulation, is less than 25 per cent, but there are one or more surpluses in

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**SOCIAL SECURITY (WIDOW'S BENEFIT AND RETIREMENT
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Major incapacity allowances under scheme

4.—(1) Subject to the following provisions of this scheme, a major incapacity allowance shall be payable out of ►¹money provided by Parliament◄ to a person who is or has since 5th July 1956 been entitled to weekly payments by way of workmen's compensation—

¹Words substituted in art. 4(1) by art. 2(2)(a) of S.I. 1990/2538 as from 9.1.91.

- (a) in respect of any injury or disease other than pneumoconiosis or byssinosis if he is as a result of that injury or disease totally incapable of work and likely to remain so for a considerable period; or
- (b) in respect of pneumoconiosis if he is certified under a compensation scheme or is determined in accordance with article 14 of this scheme, to be totally disabled; or
- (c) in respect of byssinosis; or
- (d) in respect of 2 or more injuries or diseases such as are mentioned in the 3 foregoing sub-paragraphs, if he is as the joint result of those injuries or diseases totally incapable of work and likely to remain so for a considerable period;

so long as he is ordinarily resident in the United Kingdom.

(2) The weekly rate of a major incapacity allowance payable to a person shall be the corresponding disablement pension rate ►²◄.

[Article 4(2), in the unamended form set out in square brackets below, continues to apply to people who before 6.4.87 had retired or were treated as retired (art. 2(2) of S.I. 1987/419).]

[(2)The weekly rate of a major incapacity allowance payable to a person shall be the corresponding disablement pension rate less the amount of any workmen's compensation and less the amount of any basic allowance payable to him for that week.]

²Words deleted from art. 4(2) by art. 2(1)(a) of S.I. 1987/419 as from 6.4.87, subject to saving for persons retired since before 6.4.87 (art. 2(2) *ibid.*).

(3) For the purposes of this article an allowance payable by virtue of any scheme under the 1951 Act in force immediately before 1st March 1966 shall be treated as a weekly payment by way of workmen's compensation.

Lesser incapacity allowances under scheme

5.—(1) Subject to the following provisions of this scheme, a lesser incapacity allowance shall be payable out of ►³money provided by Parliament◄ to a person, not being a person entitled to a major incapacity allowance, who was immediately before 1st March 1966 receiving an allowance payable by virtue of a scheme under the 1951 Act in force at that time, or who is or has since the commencement of the 1965 Act been entitled or may be expected to be entitled to a basic allowance or to weekly payments by way of workmen's compensation, other than notional payments, for any period during which he is either totally or partially incapable of work as a result of the relevant injury or disease, and is ordinarily resident in the United Kingdom.

³Words substituted in art. 5(1) by art. 2(2)(a) of S.I. 1990/2538 as from 9.1.91.

(2) In any case where the lesser incapacity allowance awarded to a beneficiary was, immediately before ►⁴8th April 2009◄, of an amount which is shown in the first column of Part I of Schedule 1 hereto, the rate of lesser incapacity allowance thereafter shall be the corresponding amount set out in the second column thereof.

⁴Date substituted in Art. 5(2) by Art. 2 of S.I. 2009/664 as from 8.4.09.

(3) In a case to which article 5(2) of this scheme does not apply and subject to the provisions of the next succeeding paragraph, the weekly rate of a lesser incapacity allowance payable to a person shall be determined by reference to the loss of earnings (ascertained in accordance with the provisions of article 7 (suffered by that person due to the relevant injury or disease; and where the loss of earnings, ascertained as aforesaid, is of an amount shown in the first column of Part II of Schedule 1 hereto, shall be the rate opposite thereto in the second column of that Part and where such loss of earnings is of an amount (not less than 5 pence) not so shown, shall be the rate in the said column opposite to the next larger amount which is so shown.

(4) For the purposes of this article:—

- (a) where the loss of earnings, ascertained as aforesaid, is in excess of the largest amount shown in the said first column, the weekly rate of lesser incapacity allowance shall be the rate in the second column opposite to such largest amount;
- (b) the weekly rate of lesser incapacity allowance payable to any person shall be reduced by the amount of any workmen's compensation payable to him for that week in excess of £2.00.

(5) In this article the expression "notional payment" means a payment by way of workmen's compensation awarded or paid for the purpose of safeguarding a potential entitlement to compensation and not related to any existing loss of earnings.

(6) For the purpose of this article a weekly payment by way of workmen's compensation made to a person shall be deemed to be a notional payment if—

- (a) the amount of such weekly payment is less than 2½ pence; or
- (b) during the period of 12 months immediately preceding 30th November 1965 either—
 - (i) no weekly payments by way of such compensation were made to that person; or
 - (ii) any such weekly payments made to him were of an amount less than 2½ pence;

unless that person proves that such weekly payment is not a notional payment.

Amount of workmen's compensation

6.—(1) Subject to the following provisions of this article, any reference in articles 2 ¹ and 5 to the amount of a person's workmen's compensation shall be taken as referring to the amount (if any) of the weekly payments to which for the time being he is, or would but for the determination of his right be, entitled in respect of the relevant injury or disease.

(2) For the purposes of paragraph (1) of this article:—

- (a) where in fixing the amount of those weekly payments under the provisions relating thereto regard was had to any payment, allowance or benefit which he might receive during the period of this incapacity from the person liable for the compensation and the amount is shown to have been reduced in consequence, the amount of those weekly payments shall for the purposes of this article be taken to be the reduced amount so fixed with the addition of the amount of the reduction;
- (b) where the amount to those weekly payments has not been fixed under the provisions relating thereto, it shall be fixed for the purpose of this article without regard to any such payment, allowance or benefit as aforesaid;
- (c) where an allowance or allowances under this scheme would, apart from the provisions of this sub-paragraph, be payable or be payable at a higher rate by reason of the amount of those weekly payments, fixed under the provisions relating thereto, not being the amount which ought reasonable and properly to be so fixed, the amount of those weekly payments shall, for the purposes of this article, be taken to be such as ought reasonable and properly to be so fixed, having regard to the rules for calculating such weekly payments under the provisions relating to his workmen's compensation.

¹Ref. in art. 6(1) to art. 4 deleted by art. 2(1)(b) of S.I. 1987/419 as from 6.4.97, subject to saving for persons retired since before 6.4.87 (art. 2(2) *ibid.*).

Breach of requirements of scheme

37. If any person contravenes or fails to comply with any requirement of article 16 or 19 of this scheme he shall for such offence be liable on summary conviction to a penalty not exceeding £10.

Service by post

38. Any notice or other document required or authorised to be given or sent to any person under the provisions of this scheme may be sent by post to that person at his ordinary or last known address.

Revocation of earlier schemes

39. The schemes specified in column 1 of Schedule 3 hereto are, subject to the transitional provisions contained in Part VII of this scheme, hereby revoked to the extent mentioned in column 3; and nothing in the said Part VII shall be taken as restricting the general application of sections 16 and 17 of the Interpretation Act 1978(a) with regard to the effect of these revocations.

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

1st October 1982

Hugh Rossi
Minister of State,
Department of Health and Social Security

We consent.

19th October 1982

Robert Boscawen
J.A. Cope
Two of the Lords Commissioners of Her Majesty's Treasury

(a) 1978 c. 30.

Sch. 1

¹Sch. 1 substituted by
art. 3 of S.I. 2009/664
as from 8.4.09.

►¹SCHEDULE 1

Article 5

PART 1

TABLE OF RATES OF LESSER INCAPACITY ALLOWANCE FOR BENEFICIARIES TO
WHOM ARTICLE 5(2) APPLIES

<i>Rate of lesser incapacity allowance from 9th April 2008 to 7th April 2009</i>	<i>Rate of lesser incapacity allowance from 8th April 2009</i>
£	£
4.20	4.40
11.35	11.90
19.05	20.00
27.60	29.00
39.70	41.70
50.55	53.10

PART 2

TABLE OF LOSS OF EARNINGS AND CORRESPONDING RATES OF LESSER INCAPACITY
ALLOWANCE

<i>Loss of earnings</i>	<i>Rate of lesser incapacity allowance</i>
£	£
14.40	4.40
31.50	11.90
48.85	20.00
57.65	29.00
70.35	41.70
Over 70.35	53.10◀

2008 No. 721

SOCIAL SECURITY

The Workmen's Compensation (Supplementation) (Amendment) Scheme 2008

<i>Made</i> - - - -	<i>12th March 2008</i>
<i>Laid before Parliament</i>	<i>18th March 2008</i>
<i>Coming into force</i> -	<i>9th April 2008</i>

The Secretary of State for Work and Pensions makes the following Scheme, with the consent of Treasury, in exercise of the powers conferred by paragraph 2 of Schedule 8 to the Social Security Contributions and Benefits Act 1992(a) and paragraph 1 of Schedule 9 to the Social Security Administration Act 1992(b).

Citation, commencement and interpretation

1.—(1) This Scheme may be cited as the Workmen's Compensation (Supplementation) (Amendment) Scheme 2008 and shall come into force on 9th April 2008.

(2) In this Scheme—

"lesser incapacity allowance" means the allowance payable in accordance with article 5 of the principal Scheme;

"the operative date" means 9th April 2008;

"the principal Scheme" means the Workmen's Compensation (Supplementation) Scheme 1982(c).

[Article 2 amends article 5 of S.I. 1982/1489.]

[Article 3 amends Schedule 1 of S.I. 1982/1489.]

Transitional Provision

4.—(1) Where a beneficiary was, before the operative date, in receipt of lesser incapacity allowance and the final calculation of loss of earnings required by article 7(2) of the principal Scheme had not been made in respect of the beneficiary by that date, the beneficiary is treated as entitled, from that date, to an allowance at the same rate as if the final calculation had been made before that date.

(2) This paragraph applies to a case where lesser incapacity allowance is payable in respect of a period before the operative date and the claim for the allowance was either—

- (a) not made before the operative date and the allowance is awarded for a period beginning on or after that date at one of the rates shown in the second column of Part 2 of Schedule 1 to the principal Scheme (as amended by this Scheme);
- or

(a) 1992 c. 4. Paragraph 2(6)(c) of Schedule 8 was amended by S.I. 2008/[DN: insert SI no for Social Security Benefits Upating Order 2008].

(b) 1992 c. 5. Paragraph 1(6) of Schedule 9 was amended by section 86(1) of, and paragraph 115 of Schedule 7 to, the Social Security Act 1998 (c. 14).

(c) S.I. 1982/1489; relevant amending instruments are S.I. 1990/2538 and 2007/804.

**WORKMEN'S COMPENSATION (SUPPLEMENTATION)
(AMENDMENT) SCHEME 2008**

Art. 4.

(b) made but not determined before the operative date.

(3) In a case to which paragraph (2) applies, the rate payable in respect of the period before the operative date is that which would have been payable had the amendment to the principal Scheme made by article 3 of this Scheme not been made.

(4) Where a lesser incapacity allowance has been awarded before the operative date and a question arises as to the weekly rate payable in consequence of this Scheme-

(a) the case shall be reconsidered in the light of the amendments made by, and transitional provisions contained in, this Scheme; and

(b) the allowance continues to be payable at the weekly rate specified in the award until the question has been determined in accordance with the provisions of the principal Scheme.

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

11th March 2008

Mike O'Brien
Minister of State
Department of Work and Pensions

We consent,

12th March 2008

Frank Roy
Alan Campbell
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme amends the Workmen's Compensation (Supplementation) Scheme 1982 (S.I. 1982/1489) by making adjustments to the rate of lesser incapacity allowance, such adjustments being consequential upon the increase in the maximum rate of that allowance made by the Social Security Benefits Up-rating Order 2008 (S.I. 2008/632). The Scheme also makes transitional provision.

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or voluntary bodies.

2009 No. 664

SOCIAL SECURITY

The Workmen's Compensation (Supplementation) (Amendment) Scheme 2009

<i>Made</i> - - - -	<i>12th March 2009</i>
<i>Laid before Parliament</i>	<i>18th March 2009</i>
<i>Coming into force</i> -	<i>8th April 2009</i>

The Secretary of State for Work and Pensions makes the following Scheme, with the consent of Treasury, in exercise of the powers conferred by paragraph 2 of Schedule 8 to the Social Security Contributions and Benefits Act 1992(a) and paragraph 1 of Schedule 9 to the Social Security Administration Act 1992(b).

Citation, commencement and interpretation

1.—(1) This Scheme may be cited as the Workmen's Compensation (Supplementation) (Amendment) Scheme 2009 and shall come into force on 8th April 2009.

(2) In this Scheme—

"lesser incapacity allowance" means the allowance payable in accordance with article 5 of the principal Scheme;

"operative date" means 8th April 2009;

"principal Scheme" means the Workmen's Compensation (Supplementation) Scheme 1982(c).

[Article 2 makes amendments to article 5(2) of S.I. 1982/1489.]

[Article 3 makes amendments to Schedule 1 of S.I. 1982/1489.]

Transitional Provision

4.—(1) Where a beneficiary was, before the operative date, in receipt of lesser incapacity allowance and the final calculation of loss of earnings required by article 7(2) of the principal Scheme had not been made in respect of the beneficiary by that date, the beneficiary is treated as entitled, from that date, to an allowance at the same rate as if the final calculation had been made before that date.

(2) Where lesser incapacity allowance is payable for a period before the operative date and the claim for the allowance was either—

(a) not made before the operative date and the allowance is awarded for a period beginning on or after that date at one of the rates shown in the second column of Part 2 of Schedule 1 to the principal Scheme (as amended by this Scheme);
or

(b) made but not determined before the operative date,

(a) 1992 c. 4. Paragraph 2(6)(c) of Schedule 8 was amended by S.I. 2009/497.

(b) 1992 c. 5. Paragraph 1(6) of Schedule 9 was amended by section 86(1) of, and paragraph 115 of Schedule 7 to, the Social Security Act 1998 (c. 14).

(c) S.I. 1982/1489; relevant amending instruments are S.I. 1990/2538 and 2008/721.

the rate payable in respect of the period before the operative date is that which would have been payable had the amendment to the principal Scheme made by article 3 of this Scheme not been made.

(3) Where a lesser incapacity allowance has been awarded before the operative date and a question arises as to the weekly rate payable in consequence of this Scheme—

- (a) the case shall be reconsidered in the light of the amendments made by, and transitional provisions contained in, this Scheme; and
- (b) the allowance continues to be payable at the weekly rate specified in the award until the question has been determined in accordance with the provisions of the principal Scheme.

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

10th March 2009

Rosie Winteron.
Minister of State
Department of Work and Pensions

We consent,

12th March 2009

Frank Roy
Tony Cunningham.
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Scheme amends the Workmen's Compensation (Supplementation) Scheme 1982 (S.I. 1982/1489) by making adjustments to the rate of lesser incapacity allowance. This is consequential upon the increase in the maximum rate of that allowance made by the Social Security Benefits Up-rating Order 2009 (S.I. 2009/497). The Scheme also makes transitional provision.

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

Contributions and Benefits Act¹ immediately before the commencement of the week of her confinement.

►¹(3) In relation to a woman to whom paragraph (2) applies, section 166 of the Contributions and Benefits Act shall be modified so that subsection (2) has effect as if the reference to the period of 8 weeks immediately preceding the 14th week before the expected week of confinement was a reference to the period of 8 weeks immediately preceding the week in which her confinement occurred. ◀

¹Reg. 4(3) substituted by reg. 3(4) of S.I. 1994/1367, under powers effective where expected week of confinement begins on or after 16.10.94.

Treatment of more than one contract of service as one

5. Where 2 or more contracts of service exist concurrently between one employer and one employee, they shall be treated as one for the purposes of Part V of the 1986 Act, except where, by virtue of regulation 11 of the Social Security (Contributions) Regulations 1979^(a) the earnings from those contracts of service are not aggregated for the purposes of earnings-related contributions.

►²**Prescribed rate of statutory maternity pay**

6. The rate of statutory maternity pay prescribed under section 166(1)(b) of the Contributions and Benefits Act^(b) is a weekly rate of ►³£123.06◀. ◀

²Reg. 6 substituted by reg. 3 of S.I. 2002/2690 as from 6.4.03.

³Amount in reg. 6 substituted by art. 10 of S.I. 2009/497. See art. 1(e) for the relevant effective dates.

Liability of Secretary of State to pay Statutory Maternity Pay

7.—(1) Where—

- (a) an adjudicating authority has determined that an employer is liable to make payments of statutory maternity pay to a woman, and
- (b) the time for appealing against the determination has expired, and
- (c) no appeal against the determination has been lodged or leave to appeal against the determination is required and has been refused,

then for any week in respect of which the employer was liable to make payments of statutory maternity pay but did not do so, and for any subsequent weeks in the maternity pay period the liability to make those payments shall, notwithstanding section 46(3) of the 1986 Act, be that of the Secretary of State and not the employer.

(2) In paragraph (1) adjudicating authority means, as the case may be, the Chief or any other adjudication officer, a Social Security Appeal Tribunal or the Chief or any other Social Security Commissioner.

(3) Liability to make payments of statutory maternity pay shall, notwithstanding section 46(3) of the 1986 Act, be a liability of the Secretary of State and not the employer as from the week in which the employer first becomes insolvent until the end of the maternity pay period.

(4) For the purposes of paragraph (3) an employer shall be taken to be insolvent if, and only if—

- (a) in England and Wales—
 - (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
 - (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986^(c); or
 - (iii) where an employer is a company, a winding-up order or an administration order is made or a resolution for voluntary winding-up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part;
- (b) in Scotland—

(a) S.I. 1979/591.

(b) S. 166 was substituted by s. 19 of the Employment Act 2002 (c. 22).

(c) 1986 c. 45.

Regs. 7-10

- (i) an award of sequestration is made on his estate or he executes a trust deed for his creditors or enters into a composition contract;
- (ii) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889^(a) is required by that section to divide his insolvent estate among his creditors; or
- (iii) where the employer is a company, a winding-up order or an administration order is made or a resolution for voluntary winding-up is passed with respect to it or a receiver of its undertaking is duly appointed or a voluntary arrangement proposed for the purposes of Part I of the Insolvency Act 1986 is approved under that Part.

Work after confinement

8.—(1) Where in the week immediately preceding the 14th week before the expected week of confinement a woman had 2 or more employers but one or more of them were not liable to make payments to her of statutory maternity pay (“non-liable employer”), section 47(6) of the 1986 Act shall not apply in respect of any week after the week of confinement but within the maternity pay period in which she works only for a non-liable employer.

(2) Where after her confinement a woman—

- (a) works for an employer who is not liable to pay her statutory maternity pay and is not a non-liable employer, but
- (b) before the end of her maternity pay period ceases to work for that employer,

the person who before she commenced work was liable to make payments of statutory maternity pay to her shall, notwithstanding section 46 of the 1986 Act, not be liable to make such payments to her for any weeks in the maternity pay period after she ceases work.

No liability to pay statutory maternity pay

9. Notwithstanding the provisions of section 46(1) of the 1986 Act, no liability to make payments of statutory maternity pay to a woman shall arise in respect of a week within the maternity pay period for any part of which she is detained in legal custody or sentenced to a term of imprisonment (except where the sentence is suspended), or of any subsequent week within that period.

►¹Working for not more than 10 days in the Maternity Pay Period

9A. In a case where a woman does any work under a contract of service with her employer on any day, but for not more than 10 days (whether consecutive or not), during her maternity pay period, statutory maternity pay shall continue to be payable to the employee by the employer. ◀

Death of woman

10. An employer shall not be liable to make payments of statutory maternity pay in respect of a woman for any week within the maternity pay period which falls after the week in which she dies.

¹Reg. 9A added by reg. 3(3) of S.I. 2006/2379 as from 1.10.06 and where expected week of confinement begins on or after 1.4.07.

(a) 1889 c. 39, section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), section 75(1), Schedule 7, paragraph 4.

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Supp. means Supplement No.

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