

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF PROFESSIONAL SERVICES)

The Law Relating to Social Security

Volumes 2 - 4 Supplement 97 - December 2011

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [96] includes amendments to the Contents Volume and Volumes 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12 and 13
2. This package contains Volumes 2 - 4 and incorporates the following Acts and S.I's:
2011/2426 2011/2427

as well as various miscellaneous amendments.
3. These supplements are now 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 the 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.
7. The last 2 supplements have amended the following volumes:

Supplement No. 96 [September 2011] Contents, 1, 2, 3, 4, 5, 6, 8, 11, and 13.
Supplement No. 95 [June 2011] Contents, 1, 2, 3, 4, 5, 6, 8, 11, 12 and 13.
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9. Starting in Supplement 76 the triangles ►◄ signifying additions, deletions or amendments to Statutory Instruments will be numbered to aid reference. Numbering will start at 1 on each page however, only those pages being updated will be affected.

Remove

Volume 2

2.11 – 2.12 (-2.100) (1 page)
2.2565 – 2.2568 (-2.2574) (2 pages)
2.2585 – 2.2586 (1 page)
2.2605 – 2.2606 (1 page)
2.2637 – 2.2646 (-2.2650) (2 pages)
2.2661 – 2.2662 (1 page)
2.2725 – 2.2726 (1 page)
2.2795 – 2.2822 (10 pages)
2.3477 – 2.3478 (1 page)
2.7653 – 2.7656 (-2.7660) (2 pages)
2.7795 – 2.7804 (-2.8000) (3 pages)

Volume 3

Part 1

3.13 – 3.24 (3 pages)
3.79 – 3.80 (-3.110) (1 page)
3.841 – 3.842 (1 page)
3.1805 – 3.1808 (-3.1900) (2 pages)
3.2563 – 3.2564 (1 page)
3.2705 – 3.2706 (-3.2710) (1 page)
3.2763 – 3.2764 (-3.2780) (1 page)

Part 2

3.4069 – 3.4070 (1 page)
3.4325 – 3.4330 (3 pages)
3.4385 – 3.4386 (1 page)
3.4389 – 3.4392 (2 pages)
3.4563 – 3.4616 (2 pages)
3.6303 – 3.6352 (-3.6400) (2 pages)

Insert

Volume 2

2.11 – 2.12 (-2.100) (1 page)
2.2565 – 2.2568 (-2.2574) (2 pages)
2.2585 – 2.2586 (1 page)
2.2605 – 2.2606 (1 page)
2.2637 – 2.2646 (-2.2650) (2 pages)
2.2661 – 2.2662 (1 page)
2.2725 – 2.2726 (1 page)
2.2795 – 2.2822 (10 pages)
2.3477 – 2.3478 (1 page)
2.7653 – 2.7656 (-2.7660) (2 pages)
2.7795 – 2.7828 (-2.8000) (9 pages)

Volume 3

Part 1

3.13 – 3.24 (3 pages)
3.79 – 3.80 (-3.110) (1 page)
3.841 – 3.842 (1 page)
3.1805 – 3.1808 (-3.1900) (2 pages)
3.2563 – 3.2564 (1 page)
3.2705 – 3.2706 (-3.2710) (1 page)
3.2763 – 3.2772 (-3.2780) (2 pages)

Part 2

3.4069 – 3.4070 (1 page)
3.4325 – 3.4330 (3 pages)
3.4385 – 3.4386 (1 page)
3.4389 – 3.4392 (2 pages)
3.4563 – 3.4564 (-3.4616) (1 page)
3.6303 – 3.6304 (-3.6400) (1 pages)

CHRONOLOGICAL LIST OF STATUTES

VOLUME 2

<i>Title</i>	<i>Chapter</i>	<i>Page</i>
National Insurance Act 1965	1965 c. 51	2.101
Social Security (Consequential Provisions) Act 1975	1975 c. 18	2.721
Vaccine Damage Payments Act 1979	1979 c. 17	2.1121
Social Security Act 1989	1989 c. 24	2.2051
Annexes		2.2121
Social Security Act 1990	1990 c. 27	2.2151
Disability Living Allowance and Disability Working Allowance Act 1991	1991 c. 21	2.2261
Social Security Contributions and Benefits Act 1992	1992 c. 4	2.2501
Social Security Act 1993	1993 c. 3	2.3401
Pension Schemes Act 1993, ss. 7, 8, 11, 13-18, 39-42B, 45B-49, 67, 68, 109, 128, 155, 156, 168-171; Schs. 2, 4 (For other provisions in that Act, see vol. 5)	1993 c. 48	2.3451
Social Security (Contributions) Act 1994	1994 c. 1	2.3701
Statutory Sick Pay Act 1994	1994 c. 2	2.3711
Social Security (Incapacity for Work) Act 1994	1994 c. 18	2.3751
Pensions Act 1995, ss. 55, 126-134, 136(1) and (2), 137, 139, 140, 148, 151, 155(1) (part) and 177; Sch. 3, paras. 21, 22 and 42; Sch. 4, paras. 1-8, 13, 14 and 16-22; Sch. 5, paras. 26-29, 41, 44, 61, 65, 70, 71, 84 and 85; and Sch. 7 Part II	1995 c. 26	2.3851
Social Security Contributions (Transfer of Functions, etc.) Act 1999	1999 c. 2	2.5001
Welfare Reform and Pensions Act 1999	1999 c. 30	2.6001
Child Support, Pensions and Social Security Act 2000 (extracts)	2000 c. 19	2.7001

CHRONOLOGICAL LIST OF STATUTES

<i>Title</i>	<i>Chapter</i>	<i>Page</i>
National Insurance Contributions Act 2002	2002 c. 19	2.7301
National Insurance Contributions and Statutory Payments Act 2004	2004 c. 3	2.7501
Child Maintenance and Other Payments Act 2008 (extracts)	2008 c. 6	2.7601
Welfare Reform Act 2009	2009 c. 24	2.7651
National Insurance Contributions Act 2011	2011 c. 3	2.8001
The Welfare Reform Act 2009 (Commencement No. 5) Order 2011	2011 c. 86	2.7827

which a person is entitled to credits in respect of weeks before the coming into force of the amending regulations; but not so as to affect any benefit for a period before the coming into force of the amending regulations if it was claimed before 18th March 1977.

[¹(8) In this section, “contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance).]

[²(9) References in this Act or any other Act to earnings factors derived from so much of a person’s earnings as do not exceed the upper accrual point or the upper earnings limit are to be read, in relation to earners paid otherwise than weekly, as references to earnings factors derived from so much of those earnings as do not exceed the prescribed equivalent.]

23.—(1) Earnings factors derived as mentioned in section [³22(1)] above, including earnings factors increased by any order under section 148 of the Administration Act—

Provisions supplemental to sections 21 and 22.

- (a) shall be expressed, subject to subsection (2) below, as whole numbers of pounds; and
- (b) shall be made ascertainable from tables or rules to be drawn up by the Secretary of State and embodied in regulations.

(2) Subsection (1) above does not require earnings factors in respect of the tax year 1978-79 or any subsequent tax year which have been revalued for the purpose of calculating guaranteed minimum pensions under the Pensions Act [⁴or the Social Security Pensions Act 1975] to be expressed as whole numbers of pounds.

(3) The tables and rules referred to in subsection (1) above shall be drawn up so that, in general—

- (a) in respect of the tax year 1987-88 and any subsequent tax year, the amount of earnings [⁵not exceeding the upper earnings limit] upon which primary Class 1 contributions have been paid or treated as paid gives rise, subject to [²subsections (3A) and] (4) below, to an earnings factor for that year equal or approximating to the amount of those earnings; and
- (b) any number of Class 2 or Class 3 contributions in respect of a tax year gives rise to an earnings factor for that tax year equal or approximating to that year’s lower earnings limit for Class I contributions multiplied by the number of contributions.

[²(3A) For the purposes specified in section 22(2)(b) (additional pension), subsection (3)(a) has effect in relation to 2009-10 and subsequent tax years as if the reference to the upper earnings limit were to the upper accrual point.]

(4) The Secretary of State may by regulations make such modifications of subsection (3)(a) above as appear to him to be appropriate in consequence of section 8 (2) above.

[⁶**23A.—(1)** This section applies to the following benefits—

Contributions credits for relevant parents and carers

- (a) a Category A retirement pension in a case where the contributor concerned attains pensionable age on or after 6th April 2010;
- (b) a Category B retirement pension payable by virtue of section 48A below in a case where the contributor concerned attains pensionable age on or after that date;

¹ S. 22(8) inserted (27.10.08) by the Welfare Reform Act 2007 (c. 5) Sch. 3, s. 9(4).

² S. 22(9) added, words in s. 23(3)(a) substituted & subsec. (3A) inserted (21.9.08) by the National Insurance contributions Act 2008 (c. 16), Sch. 1, paras. 2 & 3.

³ Ref. in s. 23(1) substituted (19.7.95) by Pensions Act 1995 (c. 26), s. 134(1).

⁴ Words inserted (7.2.94) in s. 23(2) by Pension Schemes Act 1993 (c. 48), Sch. 8, para. 36.

⁵ Words inserted in s. 23(3)(a) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 8.

⁶ S. 23A inserted (27.9.07) by the Pensions Act 2007, s. 3(1).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 23A-24

- (c) a Category B retirement pension payable by virtue of section 48B below in a case where the contributor concerned dies on or after that date without having attained pensionable age before that date;
- (d) a widowed parent's allowance payable in a case where the contributor concerned dies on or after that date;
- (e) a bereavement allowance payable in a case where the contributor concerned dies on or after that date.

(2) The contributor concerned in the case of a benefit to which this section applies shall be credited with a Class 3 contribution for each week falling after 6th April 2010 in respect of which the contributor was a relevant carer.

(3) A person is a relevant carer in respect of a week if the person—

- (a) is awarded child benefit for any part of that week in respect of a child under the age of 12,
- (b) is a foster parent for any part of that week, or
- (c) is engaged in caring, within the meaning given by regulations, in that week.

(4) Regulations may make provision for a person's entitlement to be credited with Class 3 contributions by virtue of falling within subsection (3)(b) or (c) above to be conditional on the person—

- (a) applying to be so credited in accordance with the prescribed requirements, and
- (b) complying with the prescribed requirements as to the provision of information to the Secretary of State [¹or to the commissioners for Her Majesty's Revenue and Customs.]

(5) The contributor concerned in the case of a benefit to which this section applies shall be credited with 52 Class 3 contributions for each tax year ending before 6th April 2010 in which the contributor was precluded from regular employment by responsibilities at home within the meaning of regulations under paragraph 5(7) of Schedule 3.

(6) But the maximum number of tax years for which a person can be credited with contributions under subsection (5) above is—

- (a) in the case of a benefit mentioned in subsection (1)(a) to (c) above, 22;
- (b) in the case of a benefit mentioned in subsection (1)(d) or (e) above, half the requisite number of years of the person's working life.

(7) The table in paragraph 5(5) of Schedule 3 (requisite number of years of a working life of given duration) applies for the purposes of subsection (6)(b) above as it applies for the purposes of the second condition set out in paragraph 5(3) of that Schedule.

(8) For the purpose of determining entitlement to a benefit to which this section applies, a week that falls partly in one tax year and partly in another is to be treated as falling in the year in which it begins and not in the following year.

(9) In this section—

“the contributor concerned” has the meaning given in section 21(5)(a) above;

“foster parent” has the meaning given by regulations.]

Records of earnings and calculation of earnings factors in absence of records.

24.—(1) Regulations may provide for requiring persons to maintain, in such form and manner as may be prescribed, records of such earnings paid by them as are relevant for the purpose of calculating earnings factors, and to retain such records for so long as may be prescribed.

¹ In s. 23A(4)(b) words inserted (6.4.10) by S.I. 2009/1377, reg. 5.

(2) Where the Secretary of State is satisfied that records of earnings relevant for the purpose of calculating a person's earnings factors for the tax year 1987-88 or any subsequent tax year have not been maintained or retained or are otherwise unobtainable, then, for the purpose of determining those earnings factors, he may—

- (a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of [1so much of that person's earnings as did not exceed the upper earnings limit and] on which primary Class 1 contributions have been paid or treated as paid; or
- (b) take the amount of those earnings to be such sum as he may specify in the particular case.

Unemployment benefit

Unemployment benefit.

25.-30. [...²]

¹ Words in s. 24(2)(a) substituted (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 9.

² Ss. 25-30 repealed (7.10.96) by Sch. 3 to Jobseekers Act 1995 (c. 18).

Incapacity benefit:
entitlement.

[¹*Incapacity benefit*

- 30A.**—(1) Subject to the following provisions of this section, a person who satisfies—
- [²(a) either of the conditions mentioned in subsection (2) below; or
 - (b) if he satisfies neither of those conditions, each of the conditions mentioned in subsection (2A) below,] is entitled to short-term incapacity benefit in respect of any day of incapacity for work [²(“the relevant day”)] which forms part of a period of incapacity for work.
- (2) The conditions [²mentioned in subsection (1)(a) above] are that—
- (a) he is under pensionable age on [²the relevant day] and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, Part I, paragraph 2; or
 - (b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—
 - (i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below, or
 - (ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse [³or deceased civil partner], but for any such deferment or election.

¹ Heading and s. 30A inserted (13.4.95) by s. 1(1) of S.S. (Incapacity for Work) Act 1994 (c. 18).

² Words substituted in s. 30A(1) and inserted in s. 30A(2) (3.11.00 for reg. making purposes, 6.4.01 for all other purposes) by s. 64~(1) & (2) of the Welfare Reform and Pensions Act 1999 (c. 30).

³ Words inserted in s. 30A (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 24, para. 14.

(4) A woman who has become entitled to a maternity allowance shall cease to be entitled to it if she dies before the beginning of the maternity allowance period; and if she dies after the beginning, but before the end, of that period, the allowance shall not be payable for any week subsequent to that in which she dies.

(5) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of a maternity allowance [¹the amount payable by way of that allowance for any day shall be taken as one seventh of the weekly rate of the allowance.]

(6) In this section “confinement” means—

- (a) labour resulting in the issue of a living child, or
- (b) labour after [²24 weeks] of pregnancy resulting in the issue of a child whether alive or dead,

and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them.

[³(6A) In this section “the maternity allowance threshold”, in relation to a tax year, means (subject to subsection (6B) below) £30.

(6B) The Secretary of State may, in relation to any tax year after 2001-2002, by order increase the amount for the time being specified in subsection (6A) above to such amount as is specified in the order.

(6C) When deciding whether, and (if so) by how much, to increase the amount so specified the Secretary of State shall have regard to the movement, over such period as he thinks fit, in the general level of prices obtaining in Great Britain (estimated in such manner as he thinks fit).

(6D) The Secretary of State shall in each tax year carry out such a review of the amount for the time being specified in subsection (6A) above as he thinks fit.]

(7) The fact that the mother of a child is being paid maternity allowance shall not be taken into consideration by any court in deciding whether to order payment of expenses incidental to the birth of the child.

[⁴35A.—[⁵(1) For the purposes of section 35(1) above the appropriate weekly rate is (subject to subsection (5A) below) whichever is the lower rate of—

Appropriate weekly rate of maternity allowance.

- (a) a weekly rate equivalent to 90 per cent of the woman’s average weekly earnings; and
- (b) the weekly rate for the time being prescribed under section 166(1)(b) below.]

(4) For the purposes of this section a woman’s “average weekly earnings” shall be taken to be the average weekly amount (as determined in accordance with regulations) of specified payments which—

- (a) were made to her or for her benefit as an employed earner, or

¹ Words in s. 35(5)(a) & (b) substituted (1.10.06) by the Social Security Act 1998 (c. 14), s. 67.

² Words “24 weeks” in s. 35(6)(b) substituted (1.10.92) for “28 weeks” by Still-Birth Definition) Act 1992 (c. 29), s. 2(1)(a).

³ Subsections (6A)-(6D) inserted in s. 35 (6.4.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 4(4).

⁴ S. 35A inserted (12.1.00 for reg. making purposes, 2.4.00 for all other purposes) by Welfare Reform and Pensions Act 1999 (c. 30), s. 53(3).

⁵ S. 35A(1)-(3) substituted with (1) (6.4.03) & words in s. 35A(5)(c)(i) substituted (24.11.02) by the Employment Act 2002 (c. 22), s. 48(1)(a) & (b). See Sch. 3 of S.I. 2002/2866 at page 1.5943 for details of the extent of the effect of these amendments.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 35A-36

(b) are (in accordance with regulations) to be treated as made to her or for her benefit as a self-employed earner, during the specified period.

(5) Regulations may, for the purposes of subsection (4) above, provide—

- (a) for the amount of any payments falling within paragraph (a) or (b) of that subsection to be calculated or estimated in such manner and on such basis as may be prescribed;
- (b) for a payment made outside the specified period to be treated as made during that period where it was referable to that period or any part of it;
- (c) for a woman engaged in employment as a self-employed earner to be treated as having received a payment in respect of a week—
 - (i) equal to the [¹an amount 90 per cent of which is equal to the weekly rate prescribed under section 166(1)(b) below that is] in force on the last day of the week, if she paid a Class 2 contribution in respect of the week, or
 - (ii) equal to the maternity allowance threshold in force on that day, if she was excepted (under section 11(4) above) from liability for such a contribution in respect of the week;
- (d) for aggregating payments made or treated as made to or for the benefit of a woman where, either in the same week or in different weeks, she was engaged in two or more employments (whether, in each case, as an employed earner or a self-employed earner).

[²(5A) Where subsection (5B) below applies the appropriate weekly rate is the weekly rate for the time being prescribed under section 166(1)(b) below.

(5B) This subsection applies where a woman is treated by virtue of regulations under sub-paragraph (i) of paragraph (c) of subsection (5) above as having received a payment in respect of each week in the specified period equal to the amount mentioned in that sub-paragraph.]

[³(6) In this section “the maternity allowance threshold” has the same meaning as in section 35 above and “specified” means prescribed by or determined in accordance with the regulations.]

Benefits for widows and widowers

Bereavement payment.

[⁴36.—(1) A person whose spouse [⁵or civil partner] dies on or after the appointed day shall be entitled to a bereavement payment if—

- (a) either that person was under pensionable age at the time when the spouse [⁵or civil partner] died or the spouse [⁵or civil partner] was then not entitled to a category A retirement pension under section 44 below; and
- (b) the spouse [⁵or civil partner] satisfied the contribution condition for a bereavement payment specified in Schedule 3, Part I, paragraph 4.

[⁵(2) A bereavement payment shall not be payable to a person if

¹ Words in s. 35A(5)(c)(i) substituted (24.11.02) by the Employment Act 2002 (c. 22), s. 48(1)(a) & (b). See Sch. 3 of S.I. 2001/2866 at page 1.5943 for details of the extent of the effect of these amendments.

² Subsections (5A) & (5B) inserted in s. 35A (6.403) by the Employment Act 2002 (c. 22), s. 48(1)(c).

³ In s. 35A, subsections (6) to (8) substituted by (6) (6.4.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 5.

⁴ S. 36 substituted (24.4.00 for reg. making purposes, 9.4.01 for all other purposes) by s. 54(1) of the Welfare Reform and Pensions Act 1999 (c. 30).

⁵ Words inserted in s. 36(1) & s. 36(2) substituted (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 24, para. 16.

- (2) The conditions referred to in subsection (1) above are that—
- (a) the pensioner would, apart from this section, have an earnings factor for the year—
 - (i) equal to or greater than the qualifying earnings factor for the year; but
 - (ii) less than the low earnings threshold for the year;
 - (b) [¹carer’s allowance]—
 - (i) was payable to the pensioner throughout the year; or
 - (ii) would have been so payable but for the fact that under regulations the amount payable to him was reduced to nil because of his receipt of other benefits;
 - (c) for the purposes of paragraph 5(7)(b) of Schedule 3, the pensioner is taken to be precluded from regular employment by responsibilities at home throughout the year by virtue of—
 - (i) the fact that child benefit was payable to him in respect of a child under the age of six; or
 - (ii) his satisfying such other condition as may be prescribed;
 - (d) the pensioner is a person satisfying the requirement in subsection (3) below to whom long-term incapacity benefit [²or qualifying employment and support allowance] was payable throughout the year, or would have been so payable but for the fact that—
 - (i) he did not satisfy the contribution conditions in paragraph 2 of Schedule 3 [²or, as the case may be, [³in paragraphs 1 and 2] of Schedule 1 to the Welfare Reform Act] [³2007]; or
 - (ii) under regulations the amount payable to him was reduced to nil because of his receipt of other benefits or of payments from an occupational pension scheme or personal pension scheme.
- (3) The requirement referred to in subsection (2)(d) above is that—
- (a) for one or more relevant years the pensioner has paid, or (apart from this section) is treated as having paid, primary Class 1 contributions on earnings equal to or greater than the qualifying earnings factor; and
 - (b) the years for which he has such a factor constitute at least one tenth of his working life.
- (4) For the purposes of subsection (3)(b) above—
- (a) a pensioner’s working life shall not include—
 - (i) any tax year before 1978-79; or
 - (ii) any year in which he is deemed under subsection (1) above to have an earnings factor by virtue of fulfilling the condition in subsection (2)(b) or (c) above; and
 - (b) the figure calculated by dividing his working life by ten shall be rounded to the nearest whole year (and any half year shall be rounded down).

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

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

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

[⁵(5A) In subsection (1)(a) “the applicable limit” has the same meaning as in section 44.]

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

² Words inserted and added in paras. 2(d), ss. (2)(d) and (i) (27.10.08) by reg. 47(2) of S.I. 2008/1554.

³ Words substituted & inserted in s. 44A(2)(d)(i) (28.6.10) by reg. 4(a)(i)-(ii) of S.I. 2010/840.

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

⁵ S. 44A (5A) inserted (21.9.08) by the National Insurance Act 2008 (c. 16), Sch. 1, para. 4(3).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 44A-44B

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

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

- (a) that allowance was payable for a continuous period of 52 weeks;
- (b) that allowance included the support component under section 2(2) of the Welfare Reform Act [²2007]; or
- (c) in the case of—
 - (i) a man born between 6th April 1944 and 5th April 1947; or
 - (ii) a woman born between 6th April 1949 and 5th April 1951, that allowance was payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.]

Deemed earnings factors: 2010-11 onwards.

[³44B—(1) This section applies to 2010-11 and subsequent tax years.

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

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

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

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

(4) Condition B is that the pensioner—

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

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

See Sch. 2, para. 5 of S.I. 2010/1907 on page 13.9423 for details of modifications to s. 44B as from 1.10.10.

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

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

(7) In this section—

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

¹ Sec. 44A(7) added (27.10.08) by reg. 47(3) of S.I. 2008/1554.

² Reference inserted in s. 44A(7)(b) (28.6.10) by reg. 4(b) of S.I. 2010/840.

³ Ss. 44B & 44C inserted (27.9.07) by the Pensions Act 2007 (c. 22), s. 9(1).

⁴ Words substituted in s. 44B(2)(a) (21.9.08) by the National Insurance Contributions Act 2008 (c. 16) Sch. 1, para. 5.

PART III
NON-CONTRIBUTORY BENEFITS

- 63.** Non-contributory benefits under this Part of this Act are of the following descriptions, namely—
- Description of non-contributory benefits.
- (a) attendance allowance;
 - [¹(b) severe disablement allowance (with age related addition and increase for adult and child dependants);]
 - (c) [²carer’s allowance] (with increase for adult [...³] dependants);
 - (d) disability living allowance;
 - (e) guardian’s allowance;
 - (f) retirement pensions of the following categories—
 - (i) Category C, payable to certain persons who were over pensionable age on 5th July 1948 and their wives and widows (with increase for adult [...⁴] dependants), and
 - (ii) Category D, payable, in the case of persons over the age of 80;
 - (g) age addition payable, in the case of persons over the age of 80, by way of increase of a retirement pension of any category or of some other pension or allowance from the Secretary of State.

Attendance allowance

64.—(1) A person shall be entitled to an attendance allowance if he [⁵has attained pensionable age], he is not entitled to the care component of a disability living allowance and he satisfies either—

Entitlement.

- (a) the condition specified in subsection (2) below (“the day attendance condition”), or
- (b) the condition specified in subsection (3) below (“the night attendance condition”),

and prescribed conditions as to residence and presence in Great Britain.

(2) A person satisfies the day attendance condition if he is so severely disabled physically or mentally that, by day, he requires from another person either—

- (a) frequent attention throughout the day in connection with his bodily functions, or
- (b) continual supervision throughout the day in order to avoid substantial danger to himself or others.

(3) A person satisfies the night attendance condition if he is so severely disabled physically or mentally that, at night,—

- (a) he requires from another person prolonged or repeated attention in connection with his bodily functions, or

See Sch. 3, para. 20 of the SS (C&P) Act 1992 c. 6 for details of modifications to s. 64(3).

- (b) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.

¹ For the purposes of making regs. s. 63(b) repealed (3.11.00) by s. 88 of the Welfare Reform and Pensions Act 1999 (c. 30). These changes are not effective for any other purpose until s. 88 is brought into force for all other purposes.

² In s. 63(c) words “invalid care allowance” substituted by “carer’s allowance” (1.9.02 for the purposes of exercising power to make subordinate legislation, 1.4.03 for all other purposes) by para. 2(b) of the Schedule to S.I. 2002/1457.

³ Words in s. 63(c) revoked (6.4.03) by Sch. 6 to the Tax Credits Act 2002 (c. 21). *See* S.I. 2003/938 at page 3.731 for details as to savings & transitional provisions.

⁴ Words in s. 63(f)(i) revoked (6.4.03) by Sch. 6 to the Tax Credits Act 2002 (c. 21). *See* S.I. 2003/938 at page 3.731 for details as to savings & transitional provisions.

⁵ Words substituted in s. 64(1) (26.9.07) by the Pensions Act 2007 (c. 22), Sch. 1, para. 41.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 64-66

[¹(4) Circumstances may be prescribed in which a person is to be taken to satisfy or not satisfy such of the conditions mentioned in subsections (2) and (3) above as may be prescribed.]

Period and rate of allowance.

65.—(1) Subject to the following provisions of this Act, the period for which a person is entitled to an attendance allowance shall be—

- (a) a period throughout which he has satisfied or is likely to satisfy the day or the night attendance condition or both; and
- (b) a period preceded immediately, or within such period as may be prescribed, by one of not less than 6 months throughout which he satisfied, or is likely to satisfy, one or both of those conditions.

(2) For the purposes of subsection (1) above a person who suffers from renal failure and is undergoing such form of treatment as may be prescribed shall, in such circumstances as may be prescribed, be deemed to satisfy or to be likely to satisfy the day or the night attendance condition or both.

(3) the weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in Schedule 4, Part III, paragraph 1, if both as regards that period and as regards the period of 6 months mentioned in subsection (1)(b) above he has satisfied or is likely to satisfy both the day and the night attendance conditions, and shall be the lower rate in any other case.

(4) A person shall not be entitled to an attendance allowance for any period preceding the date on which he makes or is treated as making a claim for it.

(5) Notwithstanding anything in subsection (4) above, provision may be made by regulations for a person to be entitled to an attendance allowance for a period preceding the date on which he makes or is treated as making a claim for it if such an allowance has previously been paid to or in respect of him.

(6) Except in so far as regulations otherwise provide and subject to section 66(1) below—

- (a) a claim for an attendance allowance may be made during the period of 6 months immediately preceding the period for which the person to whom the claim relates is entitled to the allowance; and
- (b) an award may be made in pursuance of a claim so made, subject to the condition that, throughout that period of 6 months, that person satisfies—
 - (i) both the day and the night attendance conditions, or
 - (ii) if the award is at the lower rate, one of those conditions.

[²(7) A person to whom either Regulation (EC) No. 1408/71 or Regulation (EC) No. 883/2004 applies shall not be entitled to an attendance allowance for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of chapter 1 of title III of the Regulation in question.]

Attendance allowance for the terminally ill.

66.—(1) If a terminally ill person makes a claim expressly on the ground that he is such a person, then—

- (a) he shall be taken—
 - (i) to satisfy, or to be likely to satisfy, both the day attendance condition and the night attendance condition [³for so much of the period for which he is terminally ill as does not fall before the date of the claim]; and
 - (ii) to have satisfied those conditions for the period of 6 months immediately preceding [³the date of the claim or, if later, the first date on which he is terminally ill] (so however that no allowance shall be payable by virtue of this sub-paragraph for any period preceding that date); and

¹ S. 64(4) inserted (12.1.00) by the Welfare Reform and Pensions Act 1999 (c. 30) s. 66(1).

² S. 65(7) inserted (31.10.11) by reg. 5(2) of S.I. 2011/2426.

³ Words substituted in s. 66(1)(a)(i)-(ii) (12.1.00) by the Welfare Reform and Pensions Act 1999 (c. 30) s. 66(2).

(b) the period for which he is entitled to attendance allowance shall be [1]so much of the period for which he is terminally ill as does not fall before the date of the claim].

(2) For the purposes of subsection (1) above—

- (a) a person is “terminally ill” at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months; and
- (b) where a person purports to make a claim for an attendance allowance by virtue of that subsection on behalf of another, that other shall be regarded as making the claim, notwithstanding that it is made without his knowledge or authority.

67.—(1) Regulations may provide that, in such circumstances, and for such purposes as may be prescribed, a person who is, or is treated under the regulations as, undergoing treatment for renal failure in a hospital or other similar institution otherwise than as an in-patient shall be deemed not to satisfy or to be unlikely to satisfy the day attendance condition or the night attendance condition, or both of them.

Exclusions by regulation.

2 Regulations may provide that an attendance allowance shall not be payable in respect of a person for a period when he is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(3) The reference in subsection (2) to a care home is to an establishment that provides accommodation together with nursing or personal care.

(4) The following are qualifying services for the purposes of subsection (2)—

- (a) accommodation,
- (b) board, and
- (c) personal care.

(5) The reference in subsection (2) to a specified enactment is to an enactment which is, or is of a description, specified for the purposes of that subsection by regulations.

(6) The power to specify an enactment for the purposes of subsection (2) includes power to specify it only in relation to its application for a particular purpose.

(7) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

68.- 69. [...³]

¹ Words substituted in s. 66(1)(b) (12.1.00) by the Welfare Reform and Pensions Act 1999 (c. 30) s. 66(2).

² S. 67(2)(7) substituted for s. 67(2) (1.10.07 for reg. making purposes & 29.10.07 for all other purposes) by the Welfare Reform Act 2007 (c. 5), s. 60(1).

³ Ss. 68-69 repealed (6.4.01) by Sch. 13 to the Welfare Reform and Pensions Act 1999 (c. 30). Ss. 68-69 also ceased to have effect for reg. making purposes from 3.1.00 by virtue of s. 65 of the Welfare Reform and Pension Act 1999 (c. 30).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 70

Invalid care allowance

Invalid care allowance

70.—(1) A person shall be entitled to [¹a carer’s allowance] for any day on which he is engaged in caring for a severely disabled person if—

- (a) he is regularly and substantially engaged in caring for that person;
- (b) he is not gainfully employed; and
- (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.

[²(1A) A person who was entitled to an allowance under this section immediately before the death of the severely disabled person referred to in subsection (1) shall continue to be entitled to it, even though he is no longer engaged in caring for a severely disabled person (and the requirements of subsection (1)(a) and (c) are not satisfied), until—

- (a) the end of the week in which he ceases to satisfy any other requirement as to entitlement to the allowance; or
- (b) the expiry of the period of eight weeks beginning with the Sunday following the death (or beginning with the date of death if the death occurred on Sunday),

whichever occurs first.]

(2) In this section, “severely disabled person” means a person in respect of whom there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate or such other payment out of public funds on account of his need for attendance as may be prescribed.

(3) A person shall not be entitled to an allowance under this section if he is under the age of 16 or receiving full-time education.

(4) A person shall not be entitled to an allowance under this section unless he satisfies prescribed conditions as to residence or presence in Great Britain.

[³(4A) A person to whom either Regulation (EC) No. 1408/71 or Regulation (EC) No. 883/2004 applies shall not be entitled to an allowance under this section for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.]

(5) [...⁴]

(6) [...⁴]

(7) No person shall be entitled for the same day to more than one allowance under this section; and where, apart from this subsection, two or more persons would be entitled for the same day to such an allowance in respect of the same severely disabled person, one of them only shall be entitled and that shall be such one of them—

- (a) as they may jointly elect in the prescribed manner, or
- (b) as may, in default of such an election, be determined by the Secretary of State in his discretion.

(8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education.

¹ In s. 70(1) words “invalid care allowance” substituted for “carer’s allowance”, (1.9.02 for the purposes of makers subordinate legislation, 1.4.03 for any other purposes) by para. 2(c) of the Schedule to S.I. 2002/1457.

² Subsection (1A) inserted into s. 70 (1.9.02 for the purposes of exercising power to make subordinate legislation, 28.10.02 for all other purposes) by art. 3 of S.I. 2002/1457.

³ S. 70(4A) inserted (31.10.11) by reg. 5(3) of S.I. 2011/2426.

⁴ Ss. 70(5) & (6) repealed (28.10.02) by S.I. 2002/1457. For transitional provision *see* S.I. 2002/1457.

(6) [¹...]

(7) Subject to [¹subsection (5)] above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.

[¹(7A) Subsection (1A) has effect subject to regulations made under subsection (7) (except as otherwise prescribed).]

[²(7B) A person to whom either Regulation (EC) No. 1408/71 or Regulation (EC) No. 883/2004 applies shall not be entitled to the care component of a disability living allowance for a period unless during that period the United Kingdom is competent for payment of sickness benefits in cash to the person for the purposes of Chapter 1 of Title III of the Regulation in question.]

[³(8) Regulations may provide that no amount in respect of a disability living allowance which is attributable to entitlement to the care component shall be payable in respect of a person for a period when he is a resident of a care home in circumstances in which any of the costs of any qualifying services provided for him are borne out of public or local funds under a specified enactment.

(9) The reference in subsection (8) to a care home is to an establishment that provides accommodation together with nursing or personal care.

(10) The following are qualifying services for the purposes of subsection (8)–

- (a) accommodation,
- (b) board, and
- (c) personal care.

(11) The reference in subsection (8) to a specified enactment is to an enactment which is, or is of a description, specified for the purposes of that subsection by regulations.

(12) The power to specify an enactment for the purposes of subsection (8) includes power to specify it only in relation to its application for a particular purpose.

(13) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

73.—(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over [⁴the relevant age] and throughout which–

The mobility component.

- (a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or
- [⁵(ab) he falls within subsection (1AB) below; or
- (b) he does not fall within that subsection but does fall within subsection (2) below; or]
- (c) he falls within subsection (3) below; or
- (d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

[⁴(1A) In subsection (1) above “the relevant age” means–

¹ In s. 72 (6) ceases to have effect; words substituted in (7); (7A) inserted (1.10.07) by the Welfare Reform Act 2007 (c. 5), s. 52.
² S. 72(7B) inserted (31.10.11) by reg. 5(4) of S.I. 2011/2426.
³ S. 72(8)-(13) substituted for s. 72(8) (1.10.07) for reg. making purposes & 29.10.07 for all purposes) by the Welfare Reform Act 2007 (c. 5), s. 60(2).
⁴ Words substituted (9.4.00) in s. 73(1) and s. 73(1A) inserted by the Welfare Reform and Pensions Act 1999 (c. 30) s. 67(3). Subsection 1(A) does not affect awards made before 9.4.01.
⁵ S. 73(1)(b) substituted and s. 73(1)(ab) inserted (11.4.10) for the purpose only of conferring power to make regulations (15.10.10) for accessing claims & making decisions on eligibility only and (11.4.11) for all other purposes), by the Welfare Reform Act 2009 (c. 24), s. 14(2)-(3).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 73

- (a) in relation to the conditions mentioned in paragraph (a), [¹(ab),] (b) or (c) of that subsection, the age of 3;
- (b) in relation to the conditions mentioned in paragraph (d) of that subsection, the age of 5.]

[¹(1AB) A person falls within this subsection if–

- (a) he has such severe visual impairment as may be prescribed; and
- (b) he satisfies such other conditions as may be prescribed.]

(2) A person falls within this subsection if–

- (a) he is both blind and deaf; and
- (b) he satisfies such other conditions as may be prescribed.

(3) A person falls within this subsection if–

- (a) he is severely mentally impaired; and
- (b) he displays severe behavioural problems; and
- (c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.

[²(4A) In its application to a person in relation to so much of a period as falls before the day on which he reaches the age of 16, subsection (1) has effect subject to the modification that the condition mentioned in paragraph (d) shall not be taken to be satisfied unless–

- (a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require, or
- (b) persons of his age in normal physical and mental health would not require such guidance or supervision.]

(5) [...²] circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.

[²(5A) Subsection (4A) has effect subject to regulations made under subsection (5) (except as otherwise prescribed).]

(6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.

(7) A person who is to be taken for the purposes of section 72 above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.

(8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.

(9) A person shall not be entitled to the mobility component of a disability living allowance unless–

- (a) throughout–
 - (i) the period of 3 months immediately preceding the date on which the award of that component would begin; or
 - (ii) such other period of 3 months as may be prescribed, he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) [³(a) to (d)] above; and

¹ Words in s. 73(1A) and s. 73(1AB) inserted (11.4.10) for the purpose only of conferring power to make regulations (15.10.10) for accessing claims & making decisions on eligibility only and (11.4.11) for all other purposes, by the Welfare Reform Act 2009 (c. 24), s. 14(4).

² In s. 73 (4A) substituted for (4); words omitted in (5); (5A) inserted (1.10.07) by the Welfare Reform Act 2007 (c. 5), s. 53(2)-(4).

³ Words inserted in s. 73(9)(a)(ii) (1.10.07) by the Welfare Reform Act 2007 (c. 5), Sch. 7, para. 2(2).

[¹“excluded employment” has the meaning given by section 63(4) of ITEPA 2003;]

[²“first appointed year” means such tax year, no earlier than 2002-03, as may be appointed by order, and “second appointed year” means such subsequent tax year as may be so appointed;]

[³“the flat rate introduction year” means such tax year as may be designated as such by order;]

[⁴“general earnings” has the meaning given by section 7 of ITEPA 2003 and accordingly sections 3 and 112 of this Act do not apply in relation to the word “earnings” when used in the expression “general earnings”;

“industrial injuries benefit” means benefit under Part V of this Act, other than under Schedule 8;

[...⁴]

“the Inland Revenue” means the Commissioners of Inland Revenue;

[¹“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;]

“late husband”, in relation to a woman who has been more than once married, means her last husband;

“long-term benefit” has the meaning assigned to it by section 20(2) above;

“loss of physical faculty” includes disfigurement whether or not accompanied by any loss of physical faculty;

[⁵“lower earnings limit”, “upper earnings limit” [⁶“primary threshold” and “secondary threshold”] are to be construed in accordance with subsection (1) of section 5 above, and references to the lower or upper earnings limit, or to [⁶the primary or secondary] threshold, of a tax year are to whatever is (or was) for that year the limit or threshold in force under that subsection,]

[...⁷]

[⁸“main Class 4 percentage” is to be construed in accordance with section 15(3ZA) above;

“main primary percentage” is to be construed in accordance with section 8(2) above;]

“medical examination” includes bacteriological and radiographical tests and similar investigations, and “medically examined” has a corresponding meaning;

“medical treatment” means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting himself to medical treatment are to be construed accordingly;

“the Northern Ireland Department” means the Department of Health and Social Services for Northern Ireland;

“Old Cases payments” means payments under Part I or II of Schedule 8 to this Act;

[⁹“PAYE settlement agreement” has the same meaning as in [¹⁰Chapter 5 of Part II of ITEPA 2003;]

“payments by way of occupational or personal pension” means, in relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him—

(a) out of money provided wholly or partly by the employer or under arrangements made by the employer; or

(b) out of money provided under an enactment or instrument having the force of law in any part of the United Kingdom or elsewhere; or

¹ Defns. of “excluding employment”, “general earnings” & “ITEPA 2003” inserted (6.4.03) by the Income Tax (Earnings & Pensions) Act 2003 (c. 1), Sch. 6, para. 178.

² Defn. of “first appointed year” inserted (8.1.01 for reg. & order making purposes, 25.1.01 for certain purposes in art. 2(a)(i) of S.I. 2001/153 page 1.5907, 6.4.02 for all other purposes) by the Child Support, Pensions and Social Security Act 2000 (c. 19), s. 35(14).

³ Defn. of “the flat rate introduction year” inserted (27.9.07) by the Pensions Act 2007 (c. 22), s. 11(4).

⁴ Defns. in s. 122(1) shall cease to have effect (6.4.99) by s. 71(b) Sch.7 of S.S. Act 1998 (c. 14).

⁵ Defns. substituted in s. 122(1) (6.4.99) by s. 71(c) Sch.7 of S.S. Act 1998 (c. 14).

⁶ Words inserted and substituted (6.4.00) by the Welfare Reform and Pensions Act 1999 (c. 30) Sch. 12, para. 77.

⁷ Defns. in s. 122(1) shall cease to have effect (6.4.99) by s. 71(b) Sch.7 of S.S. Act 1998 (c. 14).

⁸ Defns. of “main Class 4 percentage” & “main primary percentage” inserted in s. 122(1) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 12(3).

⁹ Defn. “PAYE” inserted (8.9.98 for reg. making purposes, 6.4.99 for all other purposes) by Sch. 7 para. 71(d) of S.S. Act 1998 (c. 14).

¹⁰ Words substituted in defn. of “PAYE...” (6.4.03) by the Income Tax (Earnings & Pensions) Act 2003 (c. 1), Sch. 6, para. 178(3).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 122

(c) under a personal pension scheme as defined in section 84(1) of the 1986 Act; or

[¹(d) under a pension scheme registered under section 153 of the Finance Act 2004; or]

(e) under a personal pension scheme approved under Chapter IV of that Part of that Act,

and such other payments as are prescribed;

[²“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995];

[³“PPF periodic payments” means—

(a) any periodic compensation payments made in relation to a person, payable under the pension compensation provisions as specified in section 162(2) of the Pensions Act 2004 or Article 146(2) of the Pensions (Northern Ireland) Order 2005 (the pension compensation provisions); or

(b) any periodic payments made in relation to a person, payable under section 166 of the Pensions Act 2004 or Article 150 of the Pensions (Northern Ireland) Order 2005 (duty to pay scheme benefits unpaid at assessment date etc.);]

“pneumoconiosis” means fibrosis of the lungs due to silica dust, asbestos dust, or other dust, and includes the condition of the lungs known as dust-reticulation;

“prescribe” means prescribe by regulations;

[...⁴]

“qualifying earnings factor” means an earnings factor equal to the lower earnings limit for the tax year in question multiplied by 52;

[⁵“qualifying young person” has the same meaning as in Part 9 of this Act;]

OJ No. L28 of
30.1.1997, p. 1.

[⁶“Regulation (EC) No. 1408/71” means Council Regulation (EC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;

OJ L166. 30.4.2004,
p.1.

“Regulation (EC) No. 883/2004” means Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;]

“relative” includes a person who is a relative by marriage [⁷or civil partnership];

“relevant accident” means the accident in respect of which industrial injuries benefit is claimed or payable;

“relevant injury” means the injury in respect of which industrial injuries benefit is claimed or payable;

“relevant loss of faculty” means—

(a) [...⁸]

(b) in relation to industrial injuries benefit, the loss of faculty resulting from the relevant injury;

[⁹“secondary percentage” is to be construed in accordance with section 9(2) above;]

“self-employed earner” has the meaning assigned to it by section 2 above;

“short-term benefit” has the meaning assigned to it by section 20(2) above;

“tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in the case of a tax year ending in a leap year, the last two days) to be treated accordingly as a separate tax week;

“tax year” means the 12 months beginning with 6th April in any year, the expression

¹ Sub-para. (d) substituted in defn. of “payments by way of” (6.4.06) by S.I. 2006/745, art. 4(3)(d).

² Defn. “pensionable age” substituted (19.7.95) in s. 122(1) by Pensions Act 1995 (c. 26), Sch. 4, para. 13(a).

³ Defn. of “PPF periodic payments” inserted (14.2.06) by para. 1(3) of Sch. to S.I. 2006/343.

⁴ Defn. of “primary percentage” repealed (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 2.

⁵ Defn. of “qualifying young person” inserted (10.4.05) by the Child Benefit Act 2005 (c. 6), Sch. 1, para. 8.

⁶ Defn. of “Regulation (EC) No. 1408/71” & “Regulation (EC) No. 883/2004 inserted (30.10.11) by reg. 5(5) of S.I. 2011/2426.

⁷ Words inserted in defn. of “relative” (5.12.05) by the Civil Partnership Act 2004 (c. 33), Sch. 24, para. 41(2).

⁸ Words in defn. of “relevant loss of faculty” repealed (3.11.00 for reg. making purposes, 6.4.01 for all other purposes) by s. 88 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁹ Defn. of “secondary percentage” inserted in s. 122(1) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 12(4).

(5) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or such of its provisions as may be prescribed—

- (a) two or more employers are to be treated as one;
- (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(6) Where, in consequence of the establishment of one or more National Health Service trusts under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, a person's contract of employment is treated by a Scheme under that Part or Act as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—

1990 c. 19.
1978 c. 29.

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given.
- (d) the information which a person who makes such an election is to provide and the persons to whom, and the time within which, he is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the person's employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract;

and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.

(7) Regulations may provide for periods of work which begin on one day and finish on the following day to be treated, for the purposes of this Part of this Act, as falling solely within one or other of those days.

PART XII

STATUTORY MATERNITY PAY

Statutory maternity pay
- entitlement and
liability to pay.

164.—(1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as “statutory maternity pay”.

(2) The conditions mentioned in subsection (1) above are—

- (a) that she has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but has ceased to work for him, [...¹]
- (b) that her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and
- (c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.

(3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.

[²(4) A woman shall be entitled to payments of statutory maternity pay only if—

- (a) she gives the person who will be liable to pay it notice of the date from which she expects his liability to pay her statutory maternity pay to begin; and
- (b) the notice is given at least 28 days before the date or, if that is not reasonably practicable, as soon as is reasonably practicable.]

(5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.

(6) Any agreement shall be void to the extent that it purports—

- (a) to exclude, limit or otherwise modify any provision of this Part of this Act; or
- (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.

(7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

¹ Words “, wholly or partly because of pregnancy or confinement” in s. 164(2)(a) omitted (24.11.02) by the Employment Act 2002 (c. 22), s. 20(a), but only in relation to women whose expected week of confinement commences on or after 6.4.03.

² In s. 164, subsection (4) substituted (24.11.02) by s. 20(b) & (c) of the Employment Act 2002 (c. 22), but only in relation to women whose expected week of confinement commences on or after 6.4.03.

(8) Regulations shall make provision as to a former employer's liability to pay statutory maternity pay to a woman in any case where the former employer's contract of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.

(9) The Secretary of State may by regulations—

- (a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;
- (b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability [¹ of the Commissioners of the Inland Revenue]
- (c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;
- (d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—
 - (i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
- (e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications [²in such cases as may be prescribed];

[³(ea) provide that subsection (4) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;]

- (f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and
- (g) provide that—
 - (i) the amount of a woman's earnings for any period, or
 - (ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,
 shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.

(10) The provisions mentioned in subsection (9)(e) above are—

- (a) subsection (2)(a) and (b) above; and
- (b) [⁴section 166(1) and (2)] [...⁵] below,

[⁶(11) Any regulations under subsection (a) above which are made by virtue of paragraph (b) of that subsection must be made with the concurrence of the Commissioners of Inland Revenue.]

¹ Words substituted in s. 164(9)(b) (1.4.99) by S.S. Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Sch. 1, para 12(2).

² In s. 164, sub-paras. (i) to (iii) of subsection (9)(e) substituted (24.11.02) by s. 20(b) & (c) of the Employment Act 2002 (c. 22), but only in relation to women whose expected week of confinement commences on or after 6.4.03.

³ Para. (ea) inserted in s. 164(9) (24.11.02) by the Employment Act 2002 (c. 22), s. 20(d), but only in relation to women whose expected date of confinement commences on or after 6.4.03.

⁴ Words in s. 164(10)(b) substituted (6.4.03) by the Employment Act 2002 (c. 22), Sch. 7, para. 6.

⁵ Words in s. 164(10) deleted by reg. 6(1) of S.I. 1994/1230 where expected week of confinement begins on or after 16.10.94.

⁶ S. 164(11) inserted (1.4.99) by S.S. Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Sch. 1, para. 12(3).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 165-66

The maternity pay period

165.—(1) Statutory maternity pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period (“the maternity pay period”) of a duration not exceeding [¹52 weeks].

[¹(2) Subject to subsections (3) and (7), the maternity pay period shall begin with the 11th week before the expected week of confinement.

(3) Cases may be prescribed in which the first day of the period is to be a prescribed day after the beginning of the 11th week before the expected week of confinement, but not later than the day immediately following the day on which she is confined.]

(4) [¹Except in such cases as may be prescribed,] statutory maternity pay shall not be payable to a woman by a person in respect of any week during any part of which she works under a contract of service with him.

(5) It is immaterial for the purposes of subsection (4) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the maternity pay period or a contract of service which did not so exist.

(6) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman in respect of any week after she has been confined and during any part of which she works for any employer who is not liable to pay her statutory maternity pay.

(7) Regulations may provide that this section shall have effect subject to prescribed modifications in relation—

- (a) to cases in which a woman has been confined before the 11th week before the expected week of confinement; and
- (b) to cases in which—
 - (i) a woman is confined [²at any time after the end of the week immediately preceding the 11th week] before the expected week of confinement; and
 - (ii) the maternity pay period has not then commenced for her.

[³(8) In subsections (1), (4) and (6) “week” means a period of seven days beginning with the day of the week on which the maternity pay period begins.]

Rate of statutory maternity pay

[⁴**166**—(1) Statutory maternity pay shall be payable to a woman—

- (a) at the earnings-related rate, in respect of the first 6 weeks in respect of which it is payable; and
- (b) at whichever is the lower of the earnings-related rate and such weekly rate as may be prescribed, in respect of the remaining portion of the maternity pay period.

[⁵(1A) In subsection (1) “week” means any period of seven days.]

(2) The earnings-related rate is a weekly rate equivalent to 90 per cent of a woman’s normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement.

(3) The weekly rate prescribed under subsection (1)(b) above must not be less than the weekly rate of statutory sick pay for the time being specified in section 157(1) above or, if two or more such rates are for the time being so specified, the higher or highest of those rates.]

¹ Words in s 165(1) substituted & s. 165(2) & (3) substituted & words inserted in 165(4) (27.6.06) by the Work and Families Act 2006 (c. 18), s. 1.

² Words in s. 165(7)(b)(i) substituted by reg. 3 of S.I. 1994/1230 where expected week of confinement begins on or after 16.10.94.

³ S. 165(8) inserted (27.6.06) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 7(4).

⁴ S. 166 substituted (6.4.03) by the Employment Act 2002 (c. 22), s. 19. See Sch. 3 of S.I. 2002/2866 at page 1.5943 for details of the extent of the effect of this amendment.

⁵ S. 166(1A) inserted (1.10.06) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 8(2).

[¹(4) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of statutory maternity pay, the amount payable by way of statutory maternity pay for any day shall be taken as one seventh of the weekly rate.]

[²167—(1) Regulations shall make provision for the payment by employers of statutory maternity pay to be funded by the Commissioners of Inland Revenue to such extent as may be prescribed.

Funding of employers' liabilities in respect of statutory maternity pay

(2) Regulations under subsection (1) shall—

- (a) make provision for a person who has made a payment of statutory maternity pay to be entitled, except in prescribed circumstances, to recover an amount equal to the sum of—
 - (i) the aggregate of such of those payments as qualify for small employers' relief; and
 - (ii) an amount equal to 92 per cent of the aggregate of such of those payments as do not so qualify; and
- (b) include provision for a person who has made a payment of statutory maternity pay qualifying for small employers' relief to be entitled, except in prescribed circumstances, to recover an additional amount, determined in such manner as may be prescribed—
 - (i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay;
 - (ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or
 - (iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay.

(3) For the purposes of this section a payment of statutory maternity pay which a person is liable to make to a woman qualifies for small employers' relief if, in relation to that woman's maternity pay period, the person liable to make the payment is a small employer.

(4) For the purposes of this section "small employer", in relation to a woman's maternity pay period, shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—

- (a) may define that expression by reference to the amount of a person's contributions payments for any prescribed period; and
- (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
 - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
 - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.

(5) Regulations under subsection (1) may, in particular, make provision—

- (a) for funding in advance as well as in arrear;
- (b) for funding, or the recovery of amounts due under provision made by virtue of subsection (2)(b), by means of deductions from such amounts for which employers are accountable to the Commissioners of Inland Revenue as may be prescribed, or otherwise;

¹ S. 166(4) inserted (1.10.06) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 8(3).

² S. 167 substituted (6.4.03) by the Employment Act 2002 (c. 22), s. 21(1).

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 167-171

- (c) for the recovery by the Commissioners of Inland Revenue of any sums overpaid to employers under the regulations.

(6) Where in accordance with any provision of regulations under subsection (1) an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions—

- (a) as having been paid (on such date as may be determined in accordance with the regulations), and
(b) as having been received by the Commissioners of Inland Revenue, towards discharging the employer's liability in respect of such contributions.

(7) Regulations under this section must be made with the concurrence of the Commissioners of Inland Revenue.

(8) In this section "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.]

Relationship with benefits and other payments etc.

168. Schedule 13 to this Act has effect with respect to the relationship between statutory maternity pay and certain benefits and payments.

Crown employment - Part XII.

169. The provisions of this Part of this Act apply in relation to women employed by or under the Crown as they apply in relation to women employed otherwise than by or under the crown.

Special classes of persons.

170.—(1) The Secretary of State may [¹with the concurrence of the Treasury] make regulations modifying this Part of this Act in such manner as he thinks proper in their application to any person who is, has been or is to be—

- (a) employed on board any ship, vessel, hovercraft or aircraft;
(b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
(c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.

(2) Regulations under subsection (1) above may in particular provide—

- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
(b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
(c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;
(d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

Interpretation of Part XII and supplementary provisions.

171.—(1) In this Part of this Act—
"confinement" means—

- (a) labour resulting in the issue of a living child, or
(b) labour after [²24 weeks] of pregnancy resulting in the issue of a child whether alive or dead,

¹ Words inserted in s. 170(1) (1.4.99) by Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Sch. 1, para. 14.

² Words "24 weeks" in defn. of "confinement" in s. 171(1) substituted (1.10.92) for "28 weeks" by Still-Birth (Definition) Act 1992 (c. 29), s. 2(1)(b).

and “confined” shall be construed accordingly; and where a woman’s labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them;

“dismissed” is to be construed in accordance with [¹Part X of the Employment Rights Act 1996];

1996 c. 18.

“employee” means a woman who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with [²general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)];
- (b) [...³]

but subject to regulations [⁴made with the concurrence of [⁵Her Majesty’s Revenue and Customs]] which may provide for cases where any such woman is not to be treated as an employee for the purposes of this Part of this Act and for cases where a woman who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

[³“employer”, in relation to a woman who is an employee, means a person who—

- (a) under section 6 above is liable to pay secondary Class 1 contributions in relation to any of her earnings; or
- (b) would be liable to pay such contributions but for—
 - (i) the condition in section 6(1)(b), or
 - (ii) the employee being under the age of 16;]

Defns. of “employee” & “employer”, as in force where the expected week of confinement begins before 14.1.07 is reproduced below:-

“employee” means a woman who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with [²general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)];
- (b) over the age of 16;

but subject to regulations [⁴made with the concurrence of [³Her Majesty’s Revenue and Customs]] which may provide for cases where any such woman is not to be treated as an employee for the purposes of this Part of this Act and for cases where a woman who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

“employer”, in relation to a woman who is an employee, means a person who under section 6 above is, or but for [⁶the condition in] subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of her earnings;

“maternity pay period” has the meaning assigned to it by section 165(1) above;

“modifications” includes additions, omissions and amendments, and related expressions shall be construed accordingly;

“prescribed” means specified in or determined in accordance with regulations; [...⁷]

¹ Words substituted (22.8.96) in s. 171(1) by para. 51(5) of Sch. 1 to Employment Rights Act 1996 (c. 18).

² Words substituted in defn. of “employee” (6.4.03) by the Income Tax (Earnings & Pensions) Act 2003 (c. 1), Sch. 6, para. 182.

³ Para (b) in defn. of “employee” omitted & defn. of “employer” inserted (1.10.06) by S.I. 2006/1031, Sch. 8, para. 10.

⁴ Words inserted in s. 171(1) (1.4.99) by Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Sch. 1, para. 15(2).

⁵ Words inserted in defn. of “employee” by the Commissioners for Revenue and Customs Act 2005 (c. 11), Sch. 4, para. 43.

⁶ Words inserted in defn. of “employer” (6.4.99) by para. 74 of Sch. 7 to S.S. Act 1998 (c. 14).

⁷ Defn. of “week” repealed (1.10.06) by the Work and Families Act 2006 (c. 18), Sch. 2.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 171

[¹(1A) In this Part, except section 165(1), (4) and (6), section 166(1) and paragraph 3(2) of Schedule 13, “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of case.]

(2) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

- (a) two or more employers are to be treated as one;
- (b) two or more contracts of service in respect of which the same woman is an employee are to be treated as one.

(3) Where, in consequence of the establishment of one or more National Health Service trusts under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, a woman’s contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, regulations may make provision enabling her to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—

- (a) the conditions that must be satisfied if a woman is to be entitled to make such an election.
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;
- (e) the time for which such an election is to have effect;
- (f) which one of the woman’s employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one contract;

and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.

(4) For the purposes of this Part of this Act a woman’s normal weekly earnings shall, subject to subsection (6) below, be taken to be the average weekly earnings which in the relevant period have been paid to her or paid for her benefit under the contract of service with the employer in question.

(5) For the purposes of subsection (4) above “earnings” and “relevant period” shall have the meanings given to them by regulations.

(6) In such cases as may be prescribed a woman’s normal weekly earnings shall be calculated in accordance with regulations.

[²(7) Regulations under subsection (6) above must be made with the concurrence of the Commissioners of Inland Revenue].

1990 c.19.
1978 c.29.

¹ S. 171(1A) inserted (27.6.06) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 9(3).

² S. 171(7) inserted (1.4.99) by Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Sch.1, para. 15(3).

[¹PART 12ZA[²ORDINARY AND ADDITIONAL STATUTORY PATERNITY PAY][²Ordinary statutory paternity pay]

171ZA.— (1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “[²ordinary statutory paternity pay]”. Entitlement: birth

(2) The conditions are—

- (a) that he satisfies prescribed conditions—
 - (i) as to relationship with a newborn child, and
 - (ii) as to relationship with the child’s mother;
- (b) that he has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) above at the end of the relevant week; and
- (d) that he has been in employed earner’s employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is born.

(3) The references in subsection (2) above to the relevant week are to the week immediately preceding the 14th week before the expected week of the child’s birth.

(4) A person’s entitlement to [²ordinary statutory paternity pay] under this section shall not be affected by the birth, or expected birth, of more than one child as a result of the same pregnancy.

(5) In this section, “newborn child” includes a child stillborn after twenty-four weeks of pregnancy.

171ZB.—(1) Where a person satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “[²ordinary statutory paternity pay]”. Entitlement: adoption

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(2) The conditions are—

- (a) that he satisfies prescribed conditions—
 - (i) as to relationship with a child who is placed for adoption under the law of any part of the United Kingdom, and
 - (ii) as to relationship with a person with whom the child is so placed for adoption;
- (b) that he has been in employed earner’s employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (c) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week;
- (d) that he has been in employed earner’s employment with the employer by reference to whom the condition in paragraph (b) above is satisfied for a continuous period beginning with the end of the relevant week and ending with the day on which the child is placed for adoption; and

¹ Part 12ZA inserted (8.12.02) by the Employment Act 2002 (c. 22), s. 2. See Sch. 3 of S.I. 2002/2866 at page 1.5943 for details of the extent of the effect of Part 12ZA.

² Words substituted in heading to Part 12ZA, ss. 171ZA(1), (4) & 171ZB(1) & heading to s. 171ZA inserted (6.4.10) by the Work and Families Act 2006 (c. 18), Sch. 1, paras. 10-13.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 171ZB-171ZC

- (e) where he is a person with whom the child is placed for adoption, that he has elected to receive statutory paternity pay.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(3) The references in subsection (2) to the relevant week are to the week in which the adopter is notified of being matched with the child for the purposes of adoption.

(4) A person may not elect to receive [ordinary statutory paternity pay] if he has elected in accordance with section 171ZL below to receive statutory adoption pay.

(5) Regulations may make provision about elections for the purposes of subsection (2)(e) above.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(6) A person's entitlement to [ordinary statutory paternity pay] under this section shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(7) In this section, "adopter", in relation to a person who satisfies the condition under subsection (2)(a)(ii) above, means the person by reference to whom he satisfies that condition.

Entitlement: general

171ZC.—(1) A person shall be entitled to payments of [ordinary statutory paternity pay] in respect of any period only if—

- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him [ordinary statutory paternity pay] to begin; and
- (b) the notice is given at least 28 days before that date or, if that is not reasonably practicable, as soon as is reasonably practicable.

(2) The notice shall be in writing if the person who is liable to pay the [ordinary statutory paternity pay] so requests.

(3) The Secretary of State may by regulations—

- (a) provide that subsection (2)(b), (c) or (d) of section 171ZA or 171ZB above shall have effect subject to prescribed modifications in such cases as may be prescribed;
- (b) provide that subsection (1) above shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
- (c) impose requirements about evidence of entitlement;
- (d) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZA or 171ZB above;
- (e) provide that a person is to be treated for the purposes of section 171ZA or 171ZB above as being employed for a continuous period of at least 26 weeks where—
 - (i) he has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and
 - (ii) those contracts were not continuous;
- (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 171ZA or 171ZB above;
- (g) provide that—

¹ Words substituted in ss. 171ZB(4) & (6) & 171ZC(1) & (2) (6.4.10) by the Work and Families Act 2006 (c. 18), Sch. 1, paras. 13 & 14.

- (i) the amount of a person's earnings for any period, or
 - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,
- shall be calculated or estimated for the purposes of section 171ZA or 171ZB above in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings.

171ZD.—(1) The liability to make payments of [¹ordinary] statutory paternity pay under section 171ZA or 171ZB above is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) and (d) of that section.

Liability to make payments

(2) Regulations shall make provision as to a former employer's liability to pay [¹ordinary statutory paternity pay] to a person in any case where the former employee's contract of service with him has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding [¹liability for ordinary statutory paternity pay or additional statutory paternity pay (or both)].

(3) The Secretary of State may, with the concurrence of the Board, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of statutory paternity pay is to be a liability of the Board.

171ZE.—(1) [¹Ordinary statutory paternity pay] shall be payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.

Rate and period of pay

- (2) [¹Ordinary statutory paternity pay] shall be payable in respect of—
 - (a) a period of two consecutive weeks within the qualifying period beginning on such date within that period as the person entitled may choose in accordance with regulations, or
 - (b) if regulations permit the person entitled to choose to receive [¹ordinary statutory paternity pay] in respect of—
 - (i) a period of a week, or
 - (ii) two non-consecutive periods of a week,

such week or weeks within the qualifying period as he may choose in accordance with regulations.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(3) For the purposes of subsection (2) above, the qualifying period shall be determined in accordance with regulations, which shall secure that it is a period of at least 56 days beginning—

- (a) in the case of a person to whom the conditions in section 171ZA(2) above apply, with the date of the child's birth, and
- (b) in the case of a person to whom the conditions in section 171ZB(2) above apply, with the date of the child's placement for adoption.

(4) [¹Ordinary statutory paternity pay] shall not be payable to a person in respect of a statutory pay week if it is not his purpose at the beginning of the week—

- (a) to care for the child by reference to whom he satisfies the condition in subparagraph (i) of section 171ZA(2)(a) or 171ZB(2)(a) above, or
- (b) to support the person by reference to whom he satisfies the condition in subparagraph (ii) of that provision.

¹ Word inserted in s. 171ZD(1) & words substituted in ss. 171ZD(2) & 171ZE(1), (2) & (4) (6.4.10) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 15 & 16.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 171ZE-171EA

(5) A person shall not be liable to pay [¹ordinary statutory paternity pay] to another in respect of a statutory pay week during any part of which the other works under a contract of service with him.

(6) It is immaterial for the purposes of subsection (5) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the statutory pay week or a contract of service which did not so exist.

(7) Except in such cases as may be prescribed, [¹ordinary statutory paternity pay] shall not be payable to a person in respect of a statutory pay week during any part of which he works for any employer who is not liable to pay him statutory paternity pay.

(8) The Secretary of State may by regulations specify circumstances in which there is to be no liability to pay [¹ordinary statutory paternity pay] in respect of a statutory pay week.

(9) Where more than one child is born as a result of the same pregnancy, the reference in subsection (3)(a) to the date of the child's birth shall be read as a reference to the date of birth of the first child born as a result of the pregnancy.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(10) Where more than one child is placed for adoption as part of the same arrangement, the reference in subsection (3)(b) to the date of the child's placement shall be read as a reference to the date of placement of the first child to be placed as part of the arrangement.

[²(10A) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of ordinary statutory paternity pay, the amount payable by way of ordinary statutory paternity pay for any day shall be taken as one seventh of the weekly rate]

(11) In this section—
“statutory pay week”, in relation to a person entitled to [¹ordinary statutory paternity pay], means a week chosen by him as a week in respect of which [¹ordinary statutory paternity pay] shall be payable;
“week” means any period of seven days.

[³Additional statutory paternity pay

Entitlement to additional statutory paternity pay: birth

171ZEA.—(1) The Secretary of State may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person (“the claimant”), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as “additional statutory paternity pay”.

(2) Those conditions are—

(a) that the claimant satisfies prescribed conditions—

(i) as to relationship with a child, and

(ii) as to relationship with the child's mother;

(b) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;

(c) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;

(d) if regulations so provide, that the claimant continues in employed earner's employment (whether or not with that employer) until a prescribed time;

¹ Words substituted in s. 171ZE(5), (7), (8) & (11) (6.4.10) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 15, 16 & ss. 16(2) & 17.

² S. 171ZE(10A) inserted (1.10.06) by the Sch. to the Work and Families Act 2006 (c. 18).

³ Ss. 171ZEA - 171ZEE inserted (3.3.10) by the Work and Families Act 2006 (c. 18), ss. 6-10.

- (e) that the mother of the child by reference to whom the condition in paragraph (a) is satisfied became entitled, by reference to the birth of the child—
 - (i) to a maternity allowance, or
 - (ii) to statutory maternity pay;
- (f) that the mother has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section her return to work;
- (g) that the day on which the mother is treated as returning to work falls—
 - (i) after the end of a prescribed period beginning with the birth of the child, but
 - (ii) at a time when at least a prescribed part of her maternity allowance period or maternity pay period remains unexpired;
- (h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.

(3) The regulations may—

- (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the child's mother has died, and
- (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.

(4) A person's entitlement to additional statutory paternity pay under this section shall not be affected by the birth of more than one child as a result of the same pregnancy.

171ZEB.—(1) The Secretary of State may by regulations provide that, where all the conditions in subsection (2) are satisfied in relation to a person (“the claimant”), the claimant shall be entitled in accordance with the following provisions of this Part to payments to be known as “additional statutory paternity pay”.

Entitlement to additional statutory paternity pay: adoption

(2) Those conditions are—

- (a) that the claimant satisfies prescribed conditions—
 - (i) as to relationship with a child who has been placed for adoption under the law of any part of the United Kingdom, and
 - (ii) as to relationship with a person with whom the child is so placed for adoption (“the adopter”);
- (b) that the claimant has been in employed earner's employment with an employer for a continuous period of at least the prescribed length ending with a prescribed week;
- (c) that the claimant's normal weekly earnings for a prescribed period ending with a prescribed week are not less than the lower earnings limit in force under section 5(1)(a) at the end of that week;
- (d) if regulations so provide, that the claimant continues to work in employed earner's employment (whether or not with that employer) until a prescribed time;
- (e) that the adopter became entitled to statutory adoption pay by reference to the placement of the child for adoption;
- (f) that the adopter has, in relation to employment as an employed or self-employed earner, taken action that is treated by regulations as constituting for the purposes of this section the adopter's return to work;
- (g) that the day on which the adopter is treated as returning to work falls—
 - (i) after the end of a prescribed period beginning with the placement of the child for adoption, but
 - (ii) at a time when at least a prescribed part of the adopter's adoption pay period remains unexpired;

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

Ss. 171ZEB-171ZED

(h) that it is the claimant's intention to care for the child during a period beginning not later than a prescribed time.

(3) The regulations may—

- (a) exclude the application of the conditions mentioned in paragraphs (f) and (g) of subsection (2) in cases where the adopter has died, and
- (b) provide that the condition mentioned in paragraph (e) of that subsection shall have effect with prescribed modifications in such cases.

(4) A person may not elect to receive additional statutory paternity pay if he has elected in accordance with section 171ZL to receive statutory adoption pay.

(5) A person's entitlement to additional statutory paternity pay under this section shall not be affected by the placement for adoption of more than one child as part of the same arrangement.

Entitlement to additional statutory paternity pay: general

171ZEC.—(1) A person shall not be entitled to payments of additional statutory paternity pay in respect of any period unless—

- (a) he gives the person who will be liable to pay it notice of the date from which he expects the liability to pay him additional statutory paternity pay to begin and the date on which he expects that liability to end, and
- (b) the notice is given by such time as may be prescribed.

(2) The notice shall be in writing if the person who is liable to pay the additional statutory paternity pay so requests.

(3) The Secretary of State may by regulations—

- (a) provide that the conditions mentioned in subsection (2)(b) or (c) of section 171ZEA or 171ZEB shall have effect subject to prescribed modifications in such cases as may be prescribed;
- (b) provide that subsection (1) of this section shall not have effect, or shall have effect subject to prescribed modifications, in such cases as may be prescribed;
- (c) impose requirements about evidence of entitlement;
- (d) specify in what circumstances employment is to be treated as continuous for the purposes of section 171ZEA or 171ZEB;
- (e) provide that a person is to be treated for the purposes of section 171ZEA or 171ZEB as being employed for a continuous period of the length prescribed under that section where—
 - (i) he has been employed by the same employer for a period of at least that length under two or more contracts of service, and
 - (ii) those contracts were not continuous;
- (f) provide for amounts earned by a person under separate contracts of service with the same employer to be aggregated for the purposes of section 171ZEA or 171ZEB;
- (g) provide that—
 - (i) the amount of a person's earnings for any period, or
 - (ii) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,

shall be calculated or estimated for the purposes of section 171ZEA or 171ZEB in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of his earnings.

Liability to make payments of additional statutory paternity pay

171ZED.—(1) The liability to make payments of additional statutory paternity pay under section 171ZEA or 171ZEB is a liability of any person of whom the person entitled to the payments has been an employee as mentioned in subsection (2)(b) of that section.

(2) Regulations shall make provision as to a former employer's liability to pay additional statutory paternity pay to a person in any case where the former employee's contract of service with him has been brought to an end solely, or mainly, for the purpose of avoiding liability for additional statutory paternity pay or ordinary statutory paternity pay, or both.

(3) The Secretary of State may, with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, by regulations specify circumstances in which, notwithstanding this section, liability to make payments of additional statutory paternity pay is to be a liability of the Commissioners.

171ZEE.—(1) Additional statutory paternity pay shall be payable at such fixed or earnings-related weekly rate as may be prescribed by regulations, which may prescribe different kinds of rate for different cases.

Rate and period of pay:
additional statutory
paternity pay

(2) Subject to the following provisions of this section, additional statutory paternity pay shall be payable in respect of a period (“the additional paternity pay period”)—

- (a) beginning with such day as may (subject to subsection (3)) be determined in accordance with regulations, and
- (b) ending with—
 - (i) the day on which the additional statutory pay period is ended by virtue of subsection (4) or (8), or
 - (ii) such earlier day as the employee may choose in accordance with regulations.

(3) The first day of the additional paternity pay period must not be earlier than the day on which the child's mother or the person with whom the child is placed for adoption (“the mother or adopter”) is treated for the purpose of section 171ZEA or 171ZEB as returning to work; but this subsection does not apply in a case where the mother or adopter has died.

(4) The additional paternity pay period—

- (a) shall not last longer than any prescribed number of weeks,
- (b) shall not continue after the end of the period of 12 months beginning with the relevant date, and
- (c) shall not continue after the end—
 - (i) in a case falling within section 171ZEA, of the mother's maternity allowance period or maternity pay period, or
 - (ii) in a case falling within section 171ZEB, of the adoption pay period of the person with whom the child is placed for adoption.

(5) In subsection (4)(b), “the relevant date” means—

- (a) in the case of a person to whom the conditions in section 171ZEA(2) apply, the date of the child's birth (or, where more than one child is born as a result of the same pregnancy, the date of birth of the first child born as a result of the pregnancy), and
- (b) in the case of a person to whom the conditions in section 171ZEB(2) apply, the date of the child's placement for adoption (or, where more than one child is placed for adoption as part of the same arrangement, the date of placement of the first child to be placed as part of the arrangement).

(6) Additional statutory paternity pay shall not be payable to a person in respect of a week if it is not his purpose at the beginning of the week to care for the child by reference to whom he satisfies the condition in sub-paragraph (i) of section 171ZEA(2)(a) or 171ZEB(2)(a).

(7) Except in such cases as may be prescribed, additional statutory paternity pay shall not be payable to a person in respect of a week during any part of which he works for any employer.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 171ZE-171ZI

(8) Where subsection (6) or (7) prevents additional statutory paternity pay being payable to a person in respect of any week, the person's additional paternity pay period shall be taken to have ended at the end of the previous week.

(9) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of additional statutory paternity pay, the amount payable by way of additional statutory paternity pay for that day shall be taken to be one seventh of the weekly rate.

(10) In this section "week" means a period of seven days beginning with the day of the week on which the additional paternity pay period began.]

[¹Ordinary and additional statutory paternity pay: supplementary provisions]

Restrictions on
contracting out

171ZF.—(1) Any agreement shall be void to the extent that it purports—

- (a) to exclude, limit or otherwise modify any provision of this Part of this Act, or
- (b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by his employer or former employer under this Part of this Act.

(2) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from [¹ordinary statutory paternity pay or additional statutory paternity pay] which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (1)(a) above if the employer—

- (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
- (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

Relationship with
contractual
remuneration

171ZG.—(1) Subject to subsections (2) and (3) below, any entitlement to statutory paternity pay shall not affect any right of a person in relation to remuneration under any contract of service ("contractual remuneration").

(2) Subject to subsection (3) below—

- (a) any contractual remuneration paid to a person by an employer of his in respect of any period shall go towards discharging any liability of that employer to pay statutory paternity pay to him in respect of that period; and
- (b) any statutory paternity pay paid by an employer to a person who is an employee of his in respect of any period shall go towards discharging any liability of that employer to pay contractual remuneration to him in respect of that period.

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

[²(4) In this section "statutory paternity pay" means ordinary statutory paternity or additional statutory paternity pay.]

Crown employment-Part
12ZA

171ZH. The provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

Special classes of person

171ZI.—(1) The Secretary of State may with the concurrence of the Treasury make regulations modifying any provision of this Part of this Act in such manner as he thinks proper in its application to any person who is, has been or is to be—

¹ Heading to s. 171ZF & words in para. (2) inserted (6.4.10) by the Work and Families Act 2006 (c. 18), Sch. 1 paras. 17 & 18.

² S. 171ZG(4) inserted (3.3.10) by the Work and Families Act 2006 (c. 18), Sch. 1 para. 19.

- (a) employed on board any ship, vessel, hovercraft or aircraft;
- (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
- (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.

(2) Regulations under subsection (1) above may, in particular, provide—

- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
- (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
- (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;
- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

171ZJ.—(1) In this Part of this Act—

“the Board” means the Commissioners of Inland Revenue;

[¹“employer”, in relation to a person who is an employee, means a person who—

- (a) under section 6 above is, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee; or
- (b) would be liable to pay such contributions but for—
 - (i) the condition in section 6(1)(b), or
 - (ii) the employee being under the age of 16;]

Defn. of “employer” as in force for statutory paternity pay, (birth) where the expected week of birth begins before 14.1.07, (adoption) where children have been matched or placed before 1.10.06. See Sch. 8, para. 11(4) of S.I. 2006/1031.

“employer”, in relation to a person who is an employee, means a person who under section 6 above is, or but for the condition in subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of the earnings of the person who is an employee;

“modifications” includes additions, omissions and amendments, and related expressions are to be read accordingly;

“prescribed” means prescribed by regulations.

(2) In this Part of this Act, “employee” means a person who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with [²general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)]; and

[¹...]

S. 171ZJ(2) as in force for statutory paternity pay, (birth) where the expected week of birth begins before 14.1.07, (adoption) where children have been matched or placed before 1.10.06. See Sch. 8, para. 11(4) of S.I. 2006/1031.

(2) In this Part of this Act, “employee” means a person who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with

¹ Defn. of “employer” in s. 171ZJ(1) substituted and words omitted in s. 171ZJ(2) by S.I. 2006/1031, Sch. 8, para. 11 for statutory paternity pay (birth) where the expected week of birth begins before 14.1.07; (adoption) where children have been matched or placed before 1.10.06. See Sch. 8, para. 11(3) *ibid*.

² Words substituted in s. 171ZJ(2)(a) (6.4.03) by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6, para. 183.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 171ZJ

[¹general earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003)]; and

(b) over the age of 16.

(3) Regulations may provide—

- (a) for cases where a person who falls within the definition in subsection (2) above is not to be treated as an employee for the purposes of this Part of this Act, and
- (b) for cases where a person who would not otherwise be an employee for the purposes of this Part of this Act is to be treated as an employee for those purposes.

(4) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

- (a) two or more employers are to be treated as one;
- (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(5) In this Part, except s [²sections 171ZE and 171ZEE], “week” means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(6) For the purposes of this Part of this Act, a person’s normal weekly earnings shall, subject to subsection (8) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under the contract of service with the employer in question.

(7) For the purposes of subsection (6) above, “earnings” and “relevant period” shall have the meanings given to them by regulations.

(8) In such cases as may be prescribed, a person’s normal weekly earnings shall be calculated in accordance with regulations.

(9) Where—

- (a) in consequence of the establishment of one or more National Health Service trusts under Part 1 of the National Health Service and Community Care Act 1990 (c. 19) or the National Health Service (Scotland) Act 1978 (c. 29), a person’s contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, or
- (b) an order under paragraph 23(1) of Schedule 5A to the National Health Service Act 1977 (c. 49) provides that a person’s contract of employment is so divided,

regulations may make provision enabling the person to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or such provisions of this Part of this Act as may be prescribed.

(10) Regulations under subsection (9) above may prescribe—

- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
- (b) the manner in which, and the time within which, such an election is to be made;
- (c) the persons to whom, and the manner in which, notice of such an election is to be given;
- (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
- (e) the time for which such an election is to have effect;

¹ Words substituted in s. 171ZJ(2)(a) (6.4.03) by the Income Tax (Earnings & Pensions) Act 2003 (c. 1), Sch. 6, para. 183.

² Words substituted in s. 171ZJ(5) (3.3.10) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 20(2).

- (f) which one of the person's employers under two or more contracts is to be regarded for the purposes of [ordinary statutory paternity pay or additional statutory paternity pay] as his employer under the contract.

(11) The powers under subsections (9) and (10) are without prejudice to any other power to make regulations under this Part of this Act.

(12) Regulations under any of subsections (4) to (10) above must be made with the concurrence of the Board.

171ZK. The Secretary of State may by regulations provide for this Part to have effect in relation to cases which involve adoption, but not the placement of a child for adoption under the law of any part of the United Kingdom, with such modifications as the regulations may prescribe.]

Power to apply Part 12ZA to adoption cases not involving placement

[²PART 12ZB

STATUTORY ADOPTION PAY

171ZL.—(1) Where a person who is, or has been, an employee satisfies the conditions in subsection (2) below, he shall be entitled in accordance with the following provisions of this Part to payments to be known as “statutory adoption pay”.

Entitlement

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(2) The conditions are—

- (a) that he is a person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom;
- (b) that he has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the relevant week;
- (c) that he has ceased to work for the employer;
- (d) that his normal weekly earnings for the period of 8 weeks ending with the relevant week are not less than the lower earnings limit in force under section 5(1)(a) at the end of the relevant week; and
- (e) that he has elected to receive statutory adoption pay.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(3) The references in subsection (2)(b) and (d) above to the relevant week are to the week in which the person is notified that he has been matched with the child for the purposes of adoption.

See reg. 2 of S.I. 2003/499 at page 3.1801 for details of modifications of this reg. in certain situations.

(4) A person may not elect to receive statutory adoption pay if—

- (a) he has elected in accordance with section 171ZB above to receive statutory paternity pay, or
- [³(b) he falls within subsection (4A).

(4A) A person falls within this subsection if—

- (a) the child is, or is expected to be, placed for adoption with him as a member of a couple;

¹ Words in s. 171ZJ(10)(f) substituted (3.3.10) by the Work and Families Act 2006 (c. 18), Sch. 1, para. 20(3).

² Part 12ZB inserted (8.12.02) by the Employment Act 2002 (c. 22), s. 4. See Sch. 3 of S.I. 2002/2866 at page 1.5943 for details of the extent of the effect of Part 12ZB.

³ S. 171ZL 4(b) substituted & s. 171ZL (4A) & (4B) inserted (1.10.06) by S.I. 2006/2012, reg. 3.

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992 (c. 4)

S. 171ZL

- (b) the other member of the couple is a person to whom the conditions in subsection (2) above apply; and
- (c) the other member of the couple has elected to receive statutory adoption pay.

(4B) For the purposes of subsection (4A), a person is a member of a couple if—

- (a) in the case of an adoption or expected adoption under the law of England and Wales, he is a member of a couple within the meaning of section 144(4) of the Adoption and Children Act 2002;
- (b) in the case of an adoption or an expected adoption under the law [...] of Northern Ireland, he is a member of a married couple.]

[¹(c) in the case of an adoption or expected adoption under the law of Scotland he is a member of a relevant couple within the meaning of section 29(3) of the Adoption and Children (Scotland) Act 2007.]

Section 144(4) was amended by section 79(1) & (12) of the Civil Partnership Act 2004.

¹ Words in s. 171ZL(4B)(b) repealed & s. 171ZL(4B)(c) inserted (15.7.11) by S.I. 2011/1740, Sch. 1, Part 1, para. 4 & Part 3.

(5) No alteration of those percentages shall introduce any distinction on grounds of age or sex.

(6) A draft of an order making alterations in either or both of those percentages may contain consequential provisions altering any percentage for the time being specified in [¹the definition of “the percentage for contributing earners” or “the percentage for non-contributing earners” in paragraph 2(5)] of Schedule 4 as that percentage applies in relation to earnings paid or payable on or after the day as from which the order is to have effect.

[¹(7) Until paragraph 60(4) of Schedule 4 to the Pensions Act 2007 comes into force, subsection (6) has effect as if the reference to the definition of “the percentage for contributing earners” or “the percentage for non-contributing earners” were a reference to paragraph (a) of either of those definitions.]

For the first report under s 42(1)(a) laid after 19.7.95, s. 42 applies subject to the amendments in s. 137(4) of the Pensions Act 1995 (c. 26). S. 42 as so amended is reproduced below:-

42.—(1) The Secretary of State may from time to time, and shall when required by subsection (2), lay before each House of Parliament—

Review and alteration of rates of contributions applicable under s. 41.

(a) a report by the Government Actuary or the Deputy Government Actuary on [...²] the factors in his opinion affecting the cost of providing benefits of an actuarial value equivalent to that of the benefits which, under section 48A, are foregone by or in respect of members of salary related contracted-out schemes; and

[³(b) a report by the Secretary of State stating what, in view of the report under paragraph (a), he considers the percentages under section 41(1A)(a) should be].

(2) The Secretary of State shall lay such reports at intervals of not more than five years.

[⁴(3) The Secretary of State shall prepare and lay before each House of Parliament with the report the draft of an order specifying the percentages; and if the draft is approved by resolution of each House the Secretary of State shall make the order in the form of the draft.

(4) An order under subsection (3) shall have effect from the beginning of the tax year which begins with the principal appointed day*, not being a tax year earlier than the second after that in which the order is made].

(5) No [⁴determination] of those percentages shall introduce any distinction on grounds of age or sex.

(6) A draft of [⁴such an order] may contain consequential provisions altering any percentage for the time being specified in paragraph 2(3) of Schedule 4 as that percentage applies in relation to earnings paid or payable on or after the day as from which the order is to have effect.

**6.4.97. (See art. 2(7) of S.I. 1996/778 (c. 13).)*

42A.—[⁴(1) Subsections (2) to [⁵(2D and (3))] apply where—

- (a) the earnings paid to or for the benefit of an earner in any tax week are in respect of an employment which is contracted-out employment at the time of the payment, and
- (b) the earner’s service in the employment is service which qualifies him for a pension provided by a money purchase contracted-out scheme.

Reduced rates of Class 1 contributions, and rebates.

¹ Words substituted in s. 42(6) and para. (7) added (3.1.12) by the Pensions Act 2011, s. 28(1) & (2).

² Words in s. 42(1)(a) deleted by, and in the circumstances described in s. 137(4) of Pensions Act 1995 (c. 26).

³ Text in s. 42 substituted by, and in the circumstances described in, s. 137(4) of Pensions Act 1995 (c. 26).

⁴ Ss. 42A(1) and (2) substituted (6.4.99) by Sch. 7, para. 128 of S.S. Act 1998 (c. 8).

⁵ Words substituted (22.12.99 for reg. making purposes, 6.4.00 for all other purposes) by the Welfare Reform and Pensions 1999 (c. 30), Sch. 9, para. 7(2).

S. 42A

[¹(2) The amount of any primary Class 1 contribution [²attributable to section 8(1)(a) of the Social Security Contributions and Benefits Act 1992] in respect of the earnings shall be reduced by an amount equal to the appropriate flat-rate percentage of the relevant part of the earnings (“Amount R1”).

(2A) The amount of any secondary Class 1 contribution in respect of the earnings shall be reduced by an amount equal to the appropriate flat-rate percentage of the relevant part of the earnings (“Amount R2”).

(2B) The aggregate of Amounts R1 and R2 shall be set off—

- (a) first against the aggregate amount which the secondary contributor is liable to pay in respect of the contributions mentioned in subsections (2) and (2A); and
- (b) then (as to any balance) against any amount which the secondary contributor is liable to pay in respect of a primary or secondary Class 1 contribution in respect of earnings—
 - (i) paid to or for the benefit of any other employed earner (whether in contracted-out employment or not), and
 - (ii) in relation to which the secondary contributor is such a contributor;

and in this subsection any reference to a liability to pay an amount in respect of a primary Class 1 contribution is a reference to such a liability under paragraph 3 of Schedule 1 to the Social Security Contributions and Benefits Act 1992.

(2C) If—

- (a) any balance remains, and
- (b) the secondary contributor makes an application for the purpose to the Inland Revenue,

the Inland Revenue shall, in such manner and at such time (or within such period) as may be prescribed, pay to the secondary contributor an amount equal to the remaining balance.

But regulations may make provision for the adjustment of an amount that would otherwise be payable under this subsection so as to avoid the payment of trivial or fractional amounts.

(2D) If the Inland Revenue pay any amount under subsection (2C) which they are not required to pay, they may recover that amount from the secondary contributor in such manner and at such time (or within such period) as may be prescribed.]

(3) The [³Inland Revenue] shall except in prescribed circumstances or in respect of prescribed periods pay in respect of that earner and that tax week to the trustees or managers of the scheme or, in prescribed circumstances, to a prescribed person the amount by which—

- (a) the appropriate age-related percentage of that part of those earnings, exceeds
- (b) the appropriate flat-rate percentage of that part of those earnings.

The appropriate flat-rate and age-related percentages referred to in s. 42A(2) and (3) above are specified in S.I. 1996/1055, reproduced in Part II of this volume.

(4) Regulations may make provision—

- (a) as to the manner in which and time at which or period within which payments under subsection (3) are to be made,
- (b) for the adjustment of the amount which would otherwise be payable under that subsection so as to avoid the payment of trivial or fractional amounts.
- (c) for earnings to be calculated or estimated in such manner and on such basis as may be prescribed for the purpose of determining whether any, and if so what, payments under subsection (3) are to be made.

¹ Paras. (2) to (2D) substituted for paras. (2) to (2B) (22.12.99 for reg. making purposes, 6.4.00 for all other purposes) by the Welfare Reform & Pensions Act 1999 (c. 30), Sch. 9, para. 7(3).

² Words inserted in s. 42A(2) (6.4.03) by the National Insurance Contributions Act 2002 (c. 19), Sch. 1, para. 37.

³ Words in s. 42A(3) substituted (1.4.99) by the Social Security Contributions (Transfer of Functions, etc.) Act (c. 2), Sch. 1, para. 46.

- 43. Exercise of rights on behalf of persons who lack capacity
- 44. Pilot schemes.

Supplementary

- 45. The appropriate authority by which regulations under section 41 are made
- 46. Regulations under section 41: supplementary provisions
- 47. Consultation
- 48. Power to repeal exclusion of community care services
- 49. Regulations and orders: control by Parliament or other legislature
- 50. Interpretation of Part 2.

PART 3

CHILD MAINTENANCE

- 51. Disqualification for holding etc. driving licence or travel authorisation
- 52. Report on operation of driving licence amendments
- 53. Report on operation of travel authorisation amendments
- 54. Payments of child support maintenance
- 55. Child support maintenance: offences relating to information.

PART 4

BIRTH REGISTRATION

- 56. Registration of births.

PART 5

GENERAL

- 57. Consequential amendments of subordinate legislation
- 58. Repeals and revocations
- 59. Financial provisions
- 60. Extent
- 61. Commencement
- 62. Short title.

Schedule 1	—	Amendments connected to section 4
Part 1	—	Amendments of Jobseekers Act 1995
Part 2	—	Amendments of other Acts
Schedule 2	—	Abolition of income support: consequential amendments
Schedule 3	—	Claimants dependent on drugs etc.
Part 1	—	Jobseeker's allowance
Part 2	—	Employment and support allowance
Schedule 4	—	Loss of benefit provisions: further amendments
Part 1	—	Further amendments of Social Security Fraud Act 2001
Part 2	—	Related amendments of other Acts
Schedule 5	—	Section 51: consequential amendments etc.
Schedule 6	—	Registration of births
Part 1	—	Amendments of Births and Deaths Registration Act 1953
Part 2	—	Other amendments
Schedule 7	—	Repeals and revocations
Part 1	—	Abolition of income support
Part 2	—	Abolition of adult dependency increases
Part 3	—	Social security: other repeals and revocations
Part 4	—	Child maintenance
Part 5	—	Birth registration.

WELFARE REFORM ACT 2009 (c. 24)

Ss. 1-4

An Act to amend the law relating to social security; to make provision enabling disabled people to be given greater control over the way in which certain public services are provided for them; to amend the law relating to child support; to make provision about the registration of births; and for connected purposes.

[12th November 2009]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART 1

SOCIAL SECURITY

"Work for your benefit" schemes etc.

1.amends 1995 c. 18, see Annex 1, page 2.7795

Revised system of working-age benefits

2.amends 1992 (c. 5) and 1999 (c. 30), see Annex 1, page 2.7795

Lone parents

3.—(1) *In section 124 of the Social Security Contributions and Benefits Act 1992 (c. 4) (conditions for income support), after subsection (1) insert—*

"(1A) Regulations under paragraph (e) of subsection (1) must secure that a person who—

(a) is not a member of a couple, and

(b) is responsible for, and a member of the same household as, a child under the age of 7,

falls within a category of person prescribed under that paragraph.

(1B) Subsection (1A) does not apply if regulations under subsection (4)(c) of section 1A of the Jobseekers Act 1995 containing the provision mentioned in subsection (5) of that section are in force."

(2) amend 1992 (c. 5), see Annex 1, page 2.7795

(3) amends 2007 (c. 5), see Annex 1, page 2.7795

(4) *In section 13 of that Act (employment and support allowance: work-related activity)—*

(a) in subsection (1), after "section 12(1)" insert ", and who is not a lone parent of a child under the age of 3," and

(b) after subsection (6) insert—

"(6A) Regulations under this section shall include provision for securing that lone parents are entitled (subject to meeting any prescribed conditions) to restrict the times at which they are required to undertake work-related activity."

(5) amends 2007 (c. 5), see Annex 1, page 2.7795

Entitlement to jobseeker's allowance without seeking employment etc.

4.—(1) *The Jobseekers Act 1995 (c. 18) is amended as follows.*

(2) *In section 1 (the jobseeker's allowance)—*

(a) for subsections (2) to (2D) substitute—

“(1A) The circumstances in which a claimant is entitled to a jobseeker’s allowance are set out in–

- (a) section 1A (jobseeker’s allowance other than joint-claim jobseeker’s allowance), and*
 - (b) section 1B (joint-claim jobseeker’s allowance);” and*
- (b) in subsection (4), for the definition of “a joint-claim couple” substitute–*
- ““a joint-claim couple” means a couple other than a couple of a prescribed description;”*

(3) After section 1 insert–

“1A Jobseeker’s allowance other than joint-claim jobseeker’s allowance

(1) A claimant is entitled to a jobseeker’s allowance if the claimant meets–

- (a) the basic conditions; and*
- (b) the conditions set out in section 2 (the contribution-based conditions).*

(2) A claimant who–

- (a) is not a member of a joint-claim couple, or*
- (b) is a member of a joint-claim couple the other member of which has limited capability for work,*

is entitled to a jobseeker’s allowance if the claimant meets condition A or B.

(3) Condition A is that the claimant meets–

- (a) the basic conditions; and*

WELFARE REFORM ACT 2009 (c. 24)

S. 4

(b) the applicable conditions set out in section 3 (the income-based conditions).

(4) Condition B is that the claimant—

(a) is not otherwise entitled to a jobseeker's allowance;

(b) meets the basic conditions other than the jobseeking conditions;

(c) falls within a prescribed description of person; and

(d) meets the applicable conditions set out in section 3.

ANNEX 1

LIST OF OMISSIONS

The following provisions have been omitted from the text for the reasons stated:–

- s. 1 inserts (12.11.09) Ss. 17A & 17B in the Jobseekers Act 1995 (c. 18)
- s. 2 inserts (12.11.09) Ss. 2D - 2H and amends Ss. 2A 189(7A) & 72(3) in the SS Administration Act 1992 (c. 5)
- s.10 substitutes s. 15(1)-(2) & inserts s. 15(1A) (10.2.10) of the Welfare Reform Act 2007 (c. 5)
- s. 3(2) inserts 2(2), (2A) & (2B) into the Social Security Admin. Act 1992 (c. 5)
- s. 3(3) substitutes words in s. 12 of the Welfare Reform Act 2007 (c. 5)
- s. 3(5) amends s. 24 of the Welfare Reform Act 2007 (c. 5)
- s. 12(1) & (3) inserts (1.10.10) s. 2(2A) into the Jobseeker's Act 1995 (c. 18) substitutes (1.11.10) s. 2(2)(b) & words in s. 2(3A) in the Jobseeker's Act 1995 (c. 18)
- s.12(6) substitutes words (1.11.10) in para. 45 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19)
- s. 13(1) & (4) substitutes (1.10.10 for the purpose only of conferring power to make regulations) para. 1(2) & (3) of Schedule 1 to the Welfare Reform Act 2007 (c. 5)
- s.13(2)-(4) substitutes (1.11.10) para. 1(1)(c) & (2)-(3) & words in para. 1(1)(a) of Schedule 1 to the Welfare Reform Act 2007 (c. 5)
- s. 14 inserts s. 73(1)(ab), 73(1AB) & words in 73(1A)(a) & (11)(a) and substitutes s. 73(1)(b) ((11.04.10) for the purpose only of conferring power to make regulations (15.10.10) for the purpose only of accessing & making decisions on eligibility and (11.04.2011) for all other purposes) in the Social Security Contributions and Benefits Act 1992 (c. 4)
- s. 24 inserts ss. 6A-6C ((12.1.10) for the purpose only of conferring power to make regulations and (1.4.10) for all other purposes), into the Social Security Fraud Act 2001 (c. 11)
- s. 26 omits ss. 62-66 (22.03.10) of the Child Support, Pensions and Social Security Act 2000 (c. 19)
- s. 27 inserts (12.11.09) s. 18A in the State Pension Credit Act 2002 (c. 16)
- s. 28 amends (12.11.09) s. 29 in the Jobseekers Act 1995 (c. 18) & s. 19 in the Welfare Reform Act 2007 (c. 5)

WELFARE REFORM ACT 2009 (c. 24)

Annex 1

- s. 32(1) & (2)... ... inserts (9.3.11) s. 20E(3)-(12) into the Jobseekers Act 1995 (c. 18). See art. 2 of S.I. 2011/682 for details of when to apply
- s. 33(1)-(3) substitutes s. 8(2)(a)-(c) and inserts s. 8(2A) ((10.2.10) for the purpose only of conferring power to make regulations (6.4.10) for all other purposes), in the Jobseekers Act 1995 (c. 18)
- s. 34 inserts (12.01.10) ss. 2A(7A), 2AA(6A) & para. 19 to Schedule 1 of the SS Administration Act 1992 (c. 5) and makes amendments to s. 72 of the Welfare Reform and Pensions Act (c. 30)
- s. 35 amends (10.2.10) ss. 2A & 2AA of the Social Security Administration Act 1992 (c. 5)
- s. 55 substitutes s. 14A(3A) & inserts (14.1.10) into the Child Support Act 1991 (c. 48)
- Sch. 3
- Paras. 1 - 3 amend (12.11.09) ss. 36 & 37, para. 19 of Sch. 1 & inserts Schedule A1 into the Jobseekers Act 1995 (c. 18) SS Administration Act 1992 (c. 5)
- Para. 6 inserts (12.11.09) s. 15A into the Welfare Reform Act 2007 (c. 5)
- Para. 7 inserts (12.11.09) Schedule 1A into the Welfare Reform Act 2007 (c. 5)
- Para. 8 amends (12.11.09) ss. 16, 25, 26 & Sch. 2 of the Welfare Reform Act 2007 (c. 5)
- Sch. 7
- part 2 repeals text (12.01.10) in the Social Security Contributions and Benefits Act 1992 (c. 4) ss. 20(1), 63(c) & 114(4)
- repeals (12.01.10) ss. 82, 88-92 and paras. 3 & 9 in part 4 of Sch. 4
- repeals (12.01.10) Sch. 1, paras. 25 - 27 of the Social Security (Incapacity for Work) Act 1994 (c. 18).
- repeals (12.01.10) Sch. 2, paras. 24 & 27 of the Jobseekers Act 1995 (c. 18)
- repeals (12.01.10) Sch. 8, para. 26 of the Welfare Reform and Pensions Act 1999 (c. 30)
- repeals (12.01.10) Sch. 3, para. 34 of the Tax Credits Act 2002 (c. 21)
- repeals (12.01.10) the Sch., para. 2(d) of the Regulatory Reform (Carer's Allowance) Order 2002 (S.I. 2002/1457)
- repeals Sch. 24, para. 35 of the Civil Partnership Act 2004 (c. 33)

repeals (12.01.10) Sch. 1, para. 5 of the Child Benefit Act 2005 (c. 6)

repeals (12.01.10) the Sch., para. 1(2) of the Pensions Act 2004 (PPF Payments and FAS Payments) (Consequential Provisions) Order 2006 (S.I. 2006/343)

repeals (12.01.10) Sch. 3, para. 9(7) & (8) of the Welfare Reform Act 2007 (c. 5)

repeals (12.01.10) Sch. 1, paras. 14 & 15 of the Pensions Act 2007 (c. 22)

Sch. 4

- | | | |
|------------|--------|--|
| Paras. 1-8 | | amends ((12.1.10) for the purpose only of conferring power to make regulations and (1.4.10) for all other purposes), ss. 7 - 11, 13 & 21 of the Social Security Fraud Act 2001 (c. 11) |
| Para. 9 | | amends ((12.1.10) for the purpose only of conferring power to make regulations and (1.4.10) for all other purposes), s. 170 of the Social Security Administration Act 1992 (c. 5) |
| Para. 10 | | amends ((12.1.10) for the purpose only of conferring power to make regulations and (1.4.10) for all other purposes), para. 3 to Sch. 3 of the Social Security Act 1998 (c. 14) |

ANNEX 2

WELFARE REFORM ACT 2009

COMMENCEMENT DATES

(a) List of Commencement Orders

<i>S.I. No.</i>	<i>Title of Order</i>	<i>Page No. (if reproduced in these volumes)</i>
2010/45	The Welfare Reform Act 2009 (Commencement No. 1) Order 2010	2.7815
2010/293	The Welfare Reform Act 2009 (Commencement No. 2 and Transitory Provision) Order 2010	2.7817
2010/2377	The Welfare Reform Act 2009 (Commencement No. 3) Order 2010	2.7821
2011/682	The Welfare Reform Act 2009 (Commencement No. 4) Order 2011	2.7825
2011/2427	The Welfare Reform Act 2009 (Commencement No. 5) Order 2011	2.7827

(b) dates on which provisions of the Welfare Reform Act 2009 came into force
 [Note: In the list below only those sections commenced will be included]

Sections etc. of Welfare Reform Act 2009	Date of Commencement	Commencing Authority
Section 1	12th November 2009	Royal Assent
Section 2	12th November 2009	Royal Assent
Section 3(2), (3) and (5)	31st October 2011	2011/2427
Section 8	12th November 2009	Royal Assent
Section 10	10th February 2010	2010/293
Section 11	12th November 2009	Royal Assent
Section 12 (partially)	1st October 2010	2010/2377
Section 12 (partially)	1st November 2010	2010/2377
Section 13 (partially)	1st October 2010	2010/2377
Section 13 (partially)	1st November 2010	2010/2377
Section 14 (for the purpose of conferring the power to make regulations)	11th April 2010	2010/293
Section 14 (partially)	15th October 2010	2010/293
Section 14 (for all other purposes)	11th April 2011	2010/293
Section 15	12th January 2010	Royal Assent
Section 23	12th November 2009	Royal Assent
Section 24 (for the purpose of conferring the power to make regulations)	12th January 2010	2010/45
Section 24 (for all other purposes)	1st April 2010	2010/45
Section 26	22nd March 2010	2010/293
Section 27	12th November 2009	Royal Assent
Section 28	12th November 2009	Royal Assent
Section 32 (partially)	9th March 2011	2011/682

WELFARE REFORM ACT 2009 (c. 24)**Annex 2**

Sections etc. of Welfare Reform Act 2009	Date of Commencement	Commencing Authority
Section 33 (for the purpose of conferring the power to make regulations)	10th February 2010	2010/293
Section 33 (for all other purposes)	6th April 2010	2010/293
Section 34	12th January 2010	Royal Assent
Section 35	10th February 2010	2010/293
Section 37	12th November 2009	Royal Assent
Section 38 to 50	12th January 2010	Royal Assent
Section 55(3) and section 55(1) (in so far as it relates to section 55(3))	14th January 2010	2010/45
Section 57	12th November 2009	Royal Assent
Section 58(1) (partially)	22nd March 2010	2010/293
Section 58(1) (partially)	1st April 2010	2010/293
Section 58(2) & (3)	12th January 2010	Royal Assent
Section 59	12th November 2009	Royal Assent
Section 60	12th November 2009	Royal Assent
Section 61	12th November 2009	Royal Assent
Section 62	12th November 2009	Royal Assent
Schedule 3	12th November 2009	Royal Assent
Section 4 (for the purpose of conferring the power to make regulations)	12th January 2010	2010/45
Section 4 (for all other purposes)	1st April 2010	2010/45
Section 15	12th January 2010	Royal Assent
Part 2 of Schedule 7 (partially)	12th January 2010	Royal Assent
Part 3 of Schedule 7 (partially)	22nd March 2010	2010/293
Part 3 of Schedule 7 (partially)	1st April 2010	2010/293

2010 No. 45 (C. 7)

SOCIAL SECURITY

**The Welfare Reform Act 2009 (Commencement No. 1)
Order 2010**

Made - - - -

7th January 2010

The Secretary of State makes the following Order in exercise of the powers conferred by section 61(3) and (4)(a) of the Welfare Reform Act 2009(a):

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 1) Order 2010.

(2) In this Order “the Act” means the Welfare Reform Act 2009.

Appointed days

2.—(1) The day appointed for the coming into force of section 24 (loss of benefit provisions) of, and Schedule 4 (loss of benefit provisions: further amendments) to, the Act for the purpose only of conferring power to make regulations is 12th January 2010.

(2) The day appointed for the coming into force of section 24 of, and Schedule 4 to, the Act for all other purposes is 1st April 2010.

(3) The day appointed for the coming into force of section 55(3) of the Act (which relates to child support maintenance: offences relating to information) and section 55(1) of the Act in so far as it relates to that subsection is 14th January 2010.

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

7th January 2010

Helen Goodman
Parliamentary Under-secretary of State
Department for Work and Pensions

(a) 2009 c. 24.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 12th January 2010, for regulation making purposes, and 1st April 2010, for all other purposes, section 24 of and Schedule 4 to the Welfare Reform Act 2009 (c. 24) (“the Act”). These provisions insert new sections, concerning sanctions leading to benefit loss, into the Social Security Fraud Act 2001 (c. 11), the Social Security Administration Act 1992 (c. 5) and the Social Security Act 1998 (c. 14).

Section 24 inserts the following new sections into the Social Security Fraud Act 2001:

- section 6A, which provides the meaning of “disqualifying benefit” and “sanctionable benefit” in relation to benefit sanctions for offenders;
- section 6B, which provides for loss of benefit in case of conviction, penalty or caution for benefit offences;
- section 6C, which provides supplementary provisions for section 6B, including action to take where convictions are quashed, successfully appealed, or where a new penalty is imposed.

Schedule 4 makes amendments to the Social Security Fraud Act 2001, the Social Security Administration Act 1992 and the Social Security Act 1998 in relation to loss of benefit provisions. These amendments are mainly concerned with changes to accommodate the new sections inserted into the Social Security Fraud Act 2001 and changes to certain definitions connected with sanctions.

This Order also brings into force on 14th January 2010 section 55(3) of the Act. Section 55 amends section 14A (offences relating to information) of the Child Support Act 1991 (c. 48) (“the 1991 Act”). Section 14A(2) of the 1991 Act provides that it is an offence for a person to knowingly make a false statement or representation or knowingly provide, or cause or allow to be provided, a document or other information which is false. Section 55(3) inserts new subsections (6) to (8) into section 14A of the 1991 Act, setting a time limit of 12 months in which to commence proceedings for prosecution of the offence.

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

2010 No. 293 (C. 22)

SOCIAL SECURITY

The Welfare Reform Act 2009 (Commencement No. 2 and Transitory Provision) Order 2010

Made - - - -

3rd February 2010

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 61(3) and (4) of the Welfare Reform Act 2009(a).

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 2 and Transitory Provision) Order 2010.

(2) In this Order—

“the Act” means the Welfare Reform Act 2009;

“benefit week” has the meaning ascribed to that expression in regulation 3(7) of the Social Security (Breach of Community Order) Regulations 2001(b).

Appointed days

2.—(1) 10th February 2010 is the day appointed for the coming into force of—

- (a) section 10 of the Act (power to direct claimant to undertake specific work-related activity); and
- (b) section 35 of the Act (persons under pensionable age to take part in work-focused interviews etc.).

(2) The day appointed for the coming into force of section 14 of the Act (mobility component) is—

- (a) 11th April 2010, for the purpose only of conferring power to make regulations;
- (b) 15th October 2010, for the purposes only of assessing claims and making decisions on eligibility; and
- (c) 11th April 2011 for all other purposes.

(3) Subject to paragraph (4), 22nd March 2010 is the day appointed for the coming into force of—

- (a) section 26 of the Act (repeal of sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000)(c);
- (b) the entries in Part 3 of Schedule 7 to the Act (social security: other repeals and revocations) in respect of—
 - (i) in section 170(5) of the Social Security Administration Act 1992(d), paragraph (af) of the definition of “the relevant enactments” and paragraph (af) of the definition of “the relevant Northern Ireland enactments”;
 - (ii) paragraph 3(e) of Schedule 3 to the Social Security Act 1998(e);
 - (iii) the Child Support, Pensions and Social Security Act 2000;

(a) 2009 c. 24.

(b) S.I. 2001/1395.

(c) 2000 c. 19.

(d) 1992 c. 5.

(e) 1998 c. 14.

- (iv) the Criminal Justice and Court Services Act 2000(**a**);
- (v) section 8(2)(b)(ii) (and the word “or” before it) and section 12(1) of the Social Security Fraud Act 2001(**b**);
- (vi) the Criminal Justice Act 2003(**c**);
- (vii) paragraph 20 of Schedule 3 to the Welfare Reform Act 2007(**d**);
- (viii) the Criminal Justice and Immigration Act 2008(**e**); and
- (c) section 58(1) of the Act (repeals and revocations) so far as relating to the entries in sub-paragraph (b).

(4) In the case of a person who immediately before 22nd March 2010 is subject to a restriction under section 62 or 63 of the Child Support, Pensions and Social Security Act 2000, the day appointed for the coming into force of the provisions of the Act referred to in paragraph (3) is the first day of the first benefit week to commence for that person on or after 22nd March 2010.

(5) 1st April 2010 is the day appointed for the coming into force of—

- (a) the entries in Part 3 of Schedule 7 to the Act (social security: other repeals and revocations) in respect of—
 - (i) the Social Security Fraud Act 2001 (so far as they are not already in force);
 - (ii) the State Pension Credit Act 2002(**f**);
 - (iii) paragraph 23(3) of Schedule 3 to the Welfare Reform Act 2007; and
- (b) section 58(1) of the Act (repeals and revocations) so far as relating to the entries in sub-paragraph (a).

(6) Subject to article 3, the day appointed for the coming into force of section 33 of the Act (attendance in connection with jobseeker's allowance: sanctions) is—

- (a) 10th February 2010 for the purpose only of conferring power to make regulations; and
- (b) 6th April 2010 for all other purposes.

Transitory provision

3. Until the day appointed under section 61(3) of the Act for the coming into force of section 32(3) and (4) of the Act—

- (a) section 8(2) of the Jobseekers Act 1995(**g**) (as amended by section 33(2) of the Act) has effect as if for “officer of the Secretary of State” there were substituted (in both places) “employment officer”; and
- (b) section 8(3) of the Jobseekers Act 1995(**h**) has effect as if for “subsection (1)” there were substituted “subsections (1) and (2)”.

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

3rd February 2010

Jim Knight
Minister of State
Department of Work and Pensions

(a) 2000 c. 43.

(b) 2001 c. 11.

(c) 2003 c. 44.

(d) 2007 c. 5.

(e) 2008 c. 4.

(f) 2002 c. 16.

(g) 1995 c. 18.

(h) Section 8(3) was inserted by paragraph 29 of Schedule 8 to the Welfare Reform and Pensions Act 1999 (c. 30). It is repealed (on a day to be appointed) by Part 3 of Schedule 7 to the Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force (in whole or in part) the following provisions of the Welfare Reform Act 2009—

- a) section 10 (power to direct claimant to undertake specific work-related activity);
- b) section 14 (mobility component);
- c) section 26 (repeal of sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000);
- d) section 33 (attendance in connection with jobseeker's allowance: sanctions);
- e) section 35 (persons under pensionable age to take part in work-focused interviews etc.);
- f) section 58 (repeals and revocations);
- g) Schedule 7, Part 3 (social security: other repeals and revocations).

Section 10 amends section 15 of the Welfare Reform Act 2007 to allow the Secretary of State, in prescribed circumstances, to impose a requirement to undertake specific work-related activity on a claimant of employment and support allowance.

Section 14 amends section 73 of the Social Security Contributions and Benefits Act 1992 to allow people with prescribed severe visual impairments to claim the higher rate mobility component of disability living allowance.

Section 26 of the Act and related provisions in Part 3 of Schedule 7 to the Act repeal sections 62 to 66 of the Child Support, Pensions and Social Security Act 2000 which provided for the reduction of benefit payments where a person failed without reasonable excuse to comply with the requirements of a relevant community order made in respect of that person.

Section 33 of the Act amends section 8 of the Jobseekers Act 1995 to allow a sanction of one or two weeks loss of benefit to be imposed on claimants who fail to attend mandatory interviews and appointments and do not show good cause for their failure to attend within a prescribed period. Entitlement to benefit will cease if the claimant does not make contact with an officer of the Secretary of State within the prescribed period.

Sections 32(3) and (4) of the Act, which amend the Jobseekers Act 1995 to substitute “officer of the Secretary of State” for references to “employment officer” and “the Secretary of State”, have not yet been commenced. Article 3 makes transitory modifications to section 8 of the 1995 Act, as amended by section 33 of the Act (which is brought into force by article 2(6)), until the commencement of these subsections.

Section 35 of the Act amends the powers in sections 2A and 2AA of the Social Security Administration Act 1992 to make regulations in connection with the requirement to take part in one or more work-focused interviews. The powers are amended to remove the references to a person being under 60 years of age and replace them with references to a person who has not attained pensionable age.

A full impact assessment has not been published for this instrument as it has no impact on the costs of businesses, charities and the voluntary sector.

[See Annex 2 on page 2.7802 for details as to earlier commencements.]

2010 No. 2377 (C. 116)

SOCIAL SECURITY

The Welfare Reform Act 2009 (Commencement No. 3) Order 2010

Made - - - - 27th September 2010

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 61(3) and (4) of the Welfare Reform Act 2009(a).

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 3) Order 2010.

(2) In this Order “the Act” means the Welfare Reform Act 2009.

Appointed days

2.—(1) 1st October 2010 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 12(1) and (3) (conditions for contributory jobseeker’s allowance);
- (b) section 13(1) (conditions for contributory employment and support allowance);
- (c) section 13(4) for the purpose only of conferring power to make regulations.

(2) 1st November 2010 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 12(2), (4) and (6);
- (b) section 13(2) and (3);
- (c) section 13(4) (so far as that provision is not already in force).

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

27th September 2010

Freud
Parliamentary Under-Secretary of State
Department for Work and Pensions

(a) 2009 c. 24.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the following provisions of the Welfare Reform Act 2009—

- (a) section 12(1) to (4) and (6) (conditions for contributory jobseeker's allowance), and
- (b) section 13(1) to (4) (conditions for contributory employment and support allowance).

Section 12 amends the Jobseekers Act 1995 so that the first contribution condition for jobseeker's allowance is met by the claimant having paid, or being treated as having paid, at least 26 weeks of Class 1 contributions on relevant earnings at the base year's lower earnings limit in one of the two tax years prior to the claim. Subsection (3) of that section provides for a regulation-making power which will be used to make provision for determining the claimant's relevant earnings.

Section 13 makes similar amendments to the Welfare Reform Act 2007 in relation to the first contribution condition for an employment and support allowance. Subsection (2) of that section further amends that Act so that the number of tax years in which a person can pay national insurance contributions and qualify for an employment and support allowance is reduced from three years to two.

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

[See Annex 2 at page 2.7802 for detail of earlier commencements.]

2011 No. 682 (C. 24)**SOCIAL SECURITY****The Welfare Reform Act 2009 (Commencement No. 4)
Order 2011***Made* - - - -*8th March 2011*

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 61(3) and (4) of the Welfare Reform Act 2009(a).

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 4) Order 2011.

(2) In this Order—

“the Act” means the Welfare Reform Act 2009;

“the 1995 Act” means the Jobseekers Act 1995(b).

Appointed day

2. 9th March 2011 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 32(1) (contracting out functions under the 1995 Act) in so far as is necessary for the purposes of paragraphs (b) and (c) of this article;
- (b) section 32(2), but only in so far as it confers power to make regulations under section 20E(3) of the 1995 Act (contracting out) in relation to the functions of the Secretary of State under regulations under section 17A (schemes for assisting persons to obtain employment: “work for your benefit” schemes etc.) of the 1995 Act; and
- (c) section 32(2) in so far as it relates to section 20E(4) to (12) of the 1995 Act, but only in so far as those provisions apply in connection with or for the purposes of regulations under section 20E(3) of the 1995 Act in relation to the functions of the Secretary of State under regulations under section 17A of the 1995 Act.

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

8th March 2011

Chris Grayling
Minister of State,
Department for Work and Pensions

(a) 2009 c. 24.

(b) 1995 c. 18.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the following provisions of the Welfare Reform Act 2009—

- (a) section 32(1) (contracting out functions under the Jobseekers Act 1995), in so far as it relates to certain provisions in section 32(2) below, and
- (b) section 32(2) (contracting out), in so far as it is necessary in relation to regulations to enable the Secretary of State's functions under regulations under section 17A of the Jobseekers Act 1995 (schemes for assisting persons to obtain employment: "work for your benefit" schemes etc.) to be exercised by other persons.

Section 32(1) amends the Jobseekers Act 1995 and section 32(2) inserts a new section 20E into that Act. Section 20E of the Jobseekers Act 1995 allows the Secretary of State to make regulations which enable persons to be authorised to exercise functions of the Secretary of State.

A full impact assessment has not been published for this instrument as it has no impact on the private sectors and civil society organisations.

[See Annex 2 at page 2.7802 for details of earlier commencements.]

2011 No. 2427 (C. 86)

SOCIAL SECURITY

Welfare Reform Act 2009 (Commencement No. 5) Order 2011

Made - - - -

5th October 2011

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by section 61(3) and (4) of the Welfare Reform Act 2009(a).

Citation and interpretation

1.—(1) This Order may be cited as the Welfare Reform Act 2009 (Commencement No. 5) Order 2011.

(2) In this Order—

“the Act” means the Welfare Reform Act 2009.

Appointed day

2.—(1) The day appointed for the coming into force of section 3(2) and (5) (lone parents) of the Act is—

(a) 6th October 2011, for the purpose only of conferring the power to make regulations under section 2A(2B) (claim or full entitlement to certain benefits conditional on work-focused interview) of the Social Security Administration Act 1992(b) and section 24(3B) (interpretation) of the Welfare Reform Act 2007(c); and

(b) 31st October 2011, for all other purposes.

(2) The day appointed for the coming into force of section 3(3) lone parents of the Act is 31st October 2011.

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

5th October 2011

Maria Miller
Parliamentary Under-Secretary of State
Department for Work and Pensions

(a) 2009 c. 24.

(b) 1992 c. 5.

(c) 2007 c. 5.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force section 3(2) and (5) (lone parents) of the Welfare Reform Act 2009. Those provisions are brought into force on 6th October 2011 for the purpose of making regulations and on 31st October for all other purposes.

Section 3(2) inserts a new subsection (2A) into section 2A of the Social Security Administration Act 1992 so that no work-focused interview requirement can be imposed by virtue of regulations made under that section on a lone parent who is responsible for and a member of the same household as a child under one. It also inserts new subsection (2B) into section 2A, which enables regulations to be made making provision for the circumstances in which one person is to be treated as being or not being responsible for another person, and as being or not being a member of the same household as another person, for the purpose of section 2A(2A).

Section 3(3) amends section 12 of the Welfare Reform Act 2007 so that work-focused interview requirements may not be imposed on an Employment and Support Allowance claimant if they are a lone parent who is responsible for and a member of the same household as a child under the age of one.

Section 3(5) amends section 24 of the Welfare Reform Act 2007 to insert a new definition of “lone parent” into that Act, into Part 1 of that Act in relation to Employment and Support Allowance. It also inserts powers to make provision for the circumstances in which one person is to be treated as being or not being responsible for another person, and as being or not being a member of the same household as another person, for the purpose of the definition of lone parent in section 24(3A).

A full impact assessment has not been produced for this instrument as it has no impact on the private sector and civil society organisations.

ALPHABETICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
2008/636	The Social Security (Contributions) (Amendment No. 3) Regulations 2008	3.1525
2008/1431	The Social Security (Contributions) (Amendment No. 4) Regulations 2008	3.1529
2010/834	The Social Security (Contributions) (Amendment) Regulations 2010	3.1721
2010/188	The Social Security (Contributions) (Amendment No. 2) Regulations 2010	3.1723
2010/646	The Social Security (Contributions) (Amendment No. 3) Regulations 2010	3.1725
2010/721	The Social Security (Contributions) (Amendment No. 4) Regulations 2010	3.1727
2011/225	The Social Security (Contributions) (Amendment) Regulations 2011	3.1741
2011/940	The Social Security (Contributions) (Amendment No. 2) Regulations 2011	3.1751
2011/797	The Social Security (Contributions) (Amendment No. 3) Regulations 2011	3.1761
2011/1000	The Social Security (Contributions) (Amendment No. 4) Regulations 2011	3.1771
2003/499	The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003	3.1801
2010/153	The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (Amendment) Regulations 2010	3.1901
1977/622	The Social Security (Contributions) (Employment Protection) Regulations 1977	3.2001
2000/727	The Social Security Contributions (Intermediaries) Regulations 2000	3.2011
2003/2079	The Social Security Contributions (Intermediaries) (Amendment) Regulations 2003	3.2033
2005/3131	The Social Security Contributions (Intermediaries) (Amendment) Regulations 2005	3.2037
2007/2070	The Social Security Contributions (Managed Service Companies) Regulations 2007	3.2045
2000/747	The Social Security Contributions (Notional Payment of Primary Class 1 Contribution) Regulations 2000	3.2051
2000/755	The Social Security (Contributions) (Re-rating and National Insurance Fund Payments) Order 2000	3.2113
2005/878	The Social Security (Contributions) (Re-rating and National Insurance Funds Payments) Order 2005	3.2133
2006/624	The Social Security (Contributions) (Re-rating and National Insurance Funds Payments) Order 2006	3.2137

ALPHABETICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
2011/938	The Social Security (Contributions) (Re-rating) Regulations 2011	3.2151
2011/1001	The Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 2011	3.2155
2001/769	The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001	3.2201
1975/566	The Social Security (Credits) Regulations 1975	3.2351
1988/1545	The Social Security (Credits) Amendment (No. 4) Regulations 1988	3.2401
2010/385	The Social Security (Credits) (Amendment) Regulations 2010	3.2421
1996/2367	The Social Security (Credits and Contributions) (Jobseeker's Allowance Consequential and Miscellaneous Amendments) Regulations 1996	3.2403
2005/453	The Social Security (Deferral of Retirement Pensions) Regulations 2005	3.2441
2011/634	The Social Security (Deferral of Retirement Pensions) Regulations 2011	3.2447
2011/786	The Social Security (Deferral of Retirement Pensions) (Amendment) Regulations 2011	3.2453
2005/2677	The Social Security (Deferral of Retirement Pensions, Shared Additional Pensions and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005	3.2461
1977/343	The Social Security Benefit (Dependency) Regulations 1977	3.2501
1984/1698	The Social Security Benefit (Dependency) Amendment Regulations 1984	3.2651
1992/3041	The Social Security Benefit (Dependency) Amendment Regulations 1992	3.2667
1991/2890	The Social Security (Disability Living Allowance) Regulations 1991	3.2701
2010/1651	The Social Security (Disability Living Allowance) (Amendment) Regulations 2010	3.2751
2011/2426	The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011	3.2771
1991/1746	The Disability Living Allowance Advisory Board Regulations 1991	3.2761
2000/3188	The Social Security (Disclosure of State Pension Information) Regulations 2000	3.2781
1979/676	The Social Security (Earnings Factor) Regulations 1979	3.2801
2003/608	The Social Security (Earnings Factor) Amendment Regulations 2003	3.2851
1995/2559	The Social Security (Effect of Family Credit on Earnings Factors) Regulations 1995	3.2941

ALPHABETICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
2011/1498	The Social Security (Electronic Communications) Regulations 2011	3.2945
1996/195	The Employer's Contributions Reimbursement Regulations 1996	3.2951
1988/1409	The Social Security (Employment Training: Payments) Order 1988	3.2981
1988/529	The Social Security (Financial Adjustments) Order 1988	3.3051
1982/1408	The Social Security (General Benefit) Regulations 1982	3.3201
1978/391	The Social Security (Graduated Retirement Benefit) Regulations 1978	3.3701
1978/393	The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978	3.3703
2005/454	The Social Security (Graduated Retirement Benefit) Regulations 2005	3.3721
1975/515	The Social Security (Guardian's Allowances) Regulations 1975	3.3851
1978/508	The Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Regulations 1978	3.4051
1994/704	The Social Security Pensions (Home Responsibilities) (Amendment) Regulations 1994	3.4055
2001/1323	The Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001	3.4065
2005/3360	The Social Security (Hospital In-Patients) Regulations 2005	3.4081
2002/491	The Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002	3.4451
1994/2946	The Social Security (Incapacity Benefit) Regulations 1994	3.4171
2000/3120	The Social Security (Incapacity Benefit) Miscellaneous Amendments Regulations 2000	3.4193
1995/829	The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995	3.4211
1994/2945	The Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994	3.4225
1995/310	The Social Security (Incapacity Benefit) (Transitional) Regulations 1995	3.4261
2003/2439	The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003	3.4301
2008/2928	The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008	3.4325
2009/1541	The Social Security (Incapacity Benefit Work-focused Interviews) (Amendment) Regulations 2009	3.4351

ALPHABETICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
1995/311	The Social Security (Incapacity for Work) (General) Regulations 1995	3.4381
2006/757	The Social Security (Incapacity for Work) Amendment Regulations 2006	3.4419
1997/1009	The Social Security (Incapacity for Work and Severe Disablement Allowance) Amendment Regulations 1997	3.4441
1991/2891	The Social Security (Introduction of Disability Living Allowance) Regulations 1991	3.4491
1976/409	The Social Security (Invalid Care Allowance) Regulations 1976	3.4531
1995/2935	The Social Security (Invalid Care Allowance) Amendment Regulations 1995	3.4561
1996/2744	The Social Security (Invalid Care Allowance) Amendment Regulations 1996	3.4563
2010/468	The Social Security Pensions (Low Earnings Threshold) Order 2010	3.4617
2011/477	The Social Security Pensions (Low Earnings Threshold) Order 2011	3.4651
1975/529	The Social Security (Mariners' Benefits) Regulations 1975	3.4901
1975/552	The Social Security (Mariners - Transitional Provisions) Regulations 1975	3.4971
1975/562	The Social Security Benefit (Married Women and Widows) (Amendments and Transitional Provisions) Regulations 1975	3.5101
1974/2010	The Social Security (Benefit) (Married Women and Widows Special Provisions) Regulations 1974	3.5201
1987/416	The Social Security (Maternity Allowance) Regulations 1987	3.5401
2000/688	The Social Security (Maternity Allowance) (Earnings) Regulations 2000	3.5421
1987/417	The Social Security (Maternity Allowance) (Work Abroad) Regulations 1987	3.5451
1987/406	The Maternity Pay and Maternity Allowance (Transitional) Regulations 1987	3.5501
2010/426	The Social Security (Maximum Additional Pension) Regulations 2010	3.5601
1976/615	The Social Security (Medical Evidence) Regulations 1976	3.5751
1975/493	The Social Security (Benefit) (Members of the Forces) Regulations 1975	3.5901
1975/566	The Social Security (Miscellaneous Amend- ments and Transitional Provisions) Regulations 1975	3.6051
1975/458	The Social Security (Miscellaneous and Conse- quential Provisions) Regulations 1975	3.6201

ALPHABETICAL LIST OF STATUTORY INSTRUMENTS

<i>S.I. No.</i>	<i>Title</i>	<i>Page</i>
1989/893	The Social Security Miscellaneous Provisions Regulations 1989	3.6251
2003/737	The Social Security Contributions and Benefits Act 1992 (Modifications for Her Majesty's Forces and Incapacity Benefit) Regulations 2003	3.6301
2011/709	The National Insurance Contributions Credits (Miscellaneous Amendments) Regulations 2011	3.6401
1987/250	The Social Security (Notification of Deaths) Regulations 1987	3.7001
2006/2379	The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006	3.7371
1975/563	The Social Security Benefit (Persons Abroad) Regulations 1975	3.7601
1994/268	The Social Security Benefit (Persons Abroad) Amendment Regulations 1994	3.7643
2010/788	The Social Security Benefit (Persons Abroad) (Amendment) Regulations 2010	3.7661
1996/30	The Social Security (Persons From Abroad) Miscellaneous Amendments Regulations 1996: see volume 1 page 1.6521.	
1977/956	The Social Security Benefit (Persons Residing Together) Regulations 1977	3.7751
2010/442	The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010	3.7801
1975/561	The Social Security and Family Allowances (Polygamous Marriages) Regulations 1975	3.7831
1996/1054	The Social Security (Reduced Rates of Class 1 Contributions) (Salary Related Contracted-out Schemes) Order 1996	3.7955
1996/1055	The Social Security (Reduced Rates of Class 1 Contributions and Rebates) (Money Purchase Contracted-out Schemes) Order 1996	3.7951
1998/945	The Social Security (Reduced Rates of Class 1 Contributions and Rebates) (Money Purchase Contracted-out Schemes) Order 1998	3.7961
2001/1355	The Social Security (Reduced Rates of Class 1 Contributions and Rebates) (Money Purchase Contracted-out Schemes) Order 2001	3.7965
2001/1356	The Social Security (Reduced Rates of Class 1 Contributions) (Salary Related Contracted-out Schemes) Order 2001	3.7969
1990/536	The Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990	3.8001
2005/469	The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005	3.8051

ALPHABETICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
1979/832	The Social Security Revaluation of Earnings Factors Order 1979 (tabular entry only)	3.8201
1980/728	The Social Security Revaluation of Earnings Factors Order 1980 (tabular entry only)	
1981/598	The Social Security Revaluation of Earnings Factors Order 1981 (tabular entry only)	
1982/607	The Social Security Revaluation of Earnings Factors Order 1982 (tabular entry only)	
1983/655	The Social Security Revaluation of Earnings Factors Order 1983 (tabular entry only)	
1984/581	The Social Security Revaluation of Earnings Factors Order 1984 (tabular entry only)	
1985/688	The Social Security Revaluation of Earnings Factors Order 1985 (tabular entry only)	
1986/809	The Social Security Revaluation of Earnings Factors Order 1986 (tabular entry only)	3.8202
1987/861	The Social Security Revaluation of Earnings Factors Order 1987 (tabular entry only)	
1988/867	The Social Security Revaluation of Earnings Factors Order 1988 (tabular entry only)	
1989/805	The Social Security Revaluation of Earnings Factors Order 1989 (tabular entry only)	3.8203
1990/1412	The Social Security Revaluation of Earnings Factors Order 1990 (tabular entry only)	
1991/1108	The Social Security Revaluation of Earnings Factors Order 1991 (tabular entry only)	
1992/1102	The Social Security Revaluation of Earnings Factors Order 1992 (tabular entry only)	
1993/1159	The Social Security Revaluation of Earnings Factors Order 1993 (tabular entry only)	
1994/1105	The Social Security Revaluation of Earnings Factors Order 1994 (tabular entry only)	3.8204
1995/1070	The Social Security Revaluation of Earnings Factors Order 1995 (tabular entry only)	
1996/1133	The Social Security Revaluation of Earnings Factors Order 1996 (tabular entry only)	
1997/1117	The Social Security Revaluation of Earnings Factors Order 1997 (Tabular Entry only)	3.8205
1998/1137	The Social Security Revaluation of Earnings Factors Order 1998 (Tabular Entry only)	
1999/1235	The Social Security Revaluation of Earnings Factors Order 1999 (Tabular Entry only)	3.8206
2000/1365	The Social Security Revaluation of Earnings Factors Order 2000 (Tabular Entry only)	
2001/631	The Social Security Revaluation of Earnings Factors Order 2001 (Tabular Entry only)	
2002/519	The Social Security Revaluation of Earnings Factors Order 2002 (Tabular Entry only)	

CHRONOLOGICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
2005 3360	The Social Security (Hospital In-Patients) Regulations 2005	3.4081
2006 496	The Social Security Revaluation of Earning Factors Order 2006 (Tabular entry only)	3.8208
624	The Social Security (Contributions) (Re-rating and National Insurance Funds Payments) Order 2006	3.2139
757	The Social Security (Incapacity for Work) Amendment Regulations 2006	3.4419
2379	The Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) (Amendment) Regulations 2006	3.7371
2007 2070	The Social Security Contributions (Managed Service Companies) Regulations 2007	3.2045
2445	The Social Security Act 1989 (Commencement No. 6) Order 2007	3.661
2875	The Social Security (Attendance Allowance and Disability Living Allowance) (Amendment) Regulations 2007	3.303
2008 2928	The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008	3.4325
2009 1541	The Social Security (Incapacity Benefit Work-focused Interviews) (Amendment) Regulations 2009	3.4351
2206	The Social Security (State Pension and National Insurance Credits) Regulations 2009	3.8701
2010 153	The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 (Amendment) Regulations 2010	3.1901
188	The Social Security (Contributions) (Amendment No. 2) Regulations 2010	3.1723
385	The Social Security (Credits) (Amendment) Regulations 2010	3.2421
426	The Social Security (Maximum Additional Pension) Regulations 2010	3.5601
442	The Social Security (Persons Serving a Sentence of Imprisonment Detained in Hospital) Regulations 2010 ...	3.7801
468	The Social Security Pensions (Low Earnings Threshold) Order 2010	3.4617
646	The Social Security (Contributions) (Amendment No. 3) Regulations 2010	3.1725
2010 721	The Social Security (Contributions) (Amendment No. 4) Regulations 2010	3.1727
788	The Social Security Benefit (Persons Abroad) Amendment) Regulations 2010	3.7661
834	The Social Security (Contributions) (Amendment) Regulations 2010	3.1721
1651	The Social Security (Disability Living Allowance) (Amendment) Regulations 2010	3.2751

CHRONOLOGICAL LIST OF STATUTORY INSTRUMENTS

<i>SI No.</i>	<i>Title</i>	<i>Page</i>
2010 2446	The Social Security (Contribution Conditions for Jobseeker's Allowance and Employment and Support Allowance) Regulations 2010	3.955
2011 225	The Social Security (Contributions) (Amendment) Regulations 2011	3.1741
475	The Social Security Revaluation of Earnings Factors Order 2011	3.8169
477	The Social Security Pensions (Low Earnings Threshold) Order 2011	3.4651
634	The Social Security (Deferral of Retirement Pensions) Regulations 2011	3.2447
709	The National Insurance Contributions Credits (Miscellaneous Amendments) Regulations 2011	3.6401
786	The Social Security (Deferral of Retirement Pensions) (Amendment) Regulations 2011	3.2453
797	The Social Security (Contributions) (Amendment No. 3) Regulations 2011	3.1761
940	The Social Security (Contributions) (Amendment No. 2) Regulations 2011	3.1751
938	The Social Security (Contributions) (Re-rating) Order 2011	3.2151
1000	The Social Security (Contributions) (Amendment No. 4) Regulations 2011	3.1771
1001	The Social Security (Contributions) (Re-rating) Consequential Amendment Regulations 2011	3.2155
1498	The Social Security (Electronic Communications) Order 2011	3.2945
2426	The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011	3.2771

- ▶¹(ab) a part-time fire-fighter employed by a fire and rescue authority (as defined in section 1 of the Fire (Scotland) Act 2005 (asp 5)) or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;◀
- (b) an auxiliary coastguard in respect of coast rescue activities;
- (c) a person engaged part-time in the manning or launching of a lifeboat;
- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(a).

¹Para. 9(ab) inserted by para. 11 of Sch. to S.I. 2005/2060 as from 2.8.05.

10. Any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E.

11. In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer.

▶²**12.**—(1) Any earnings, other than items to which sub-paragraph (2) applies, paid or due to be paid from the claimant's employment as an employed earner which ended before the day in respect of which the claimant first satisfies the conditions for entitlement to the benefit, pension or allowance to which the claim relates.

²Para. 12 added to Sch. 1 by reg. 2(5) of S.I. 2007/2613 as from 1.10.07.

(2) This sub-paragraph applies to—

- (a) any payment by way of occupational or personal pension; and
- (b) except in a case where the claimant's employment terminated by reason of retirement at a time when he had attained pensionable age (within the meaning given by rules in paragraph 1 of Schedule 4 to the Pensions Act 1995(b)—
 - (i) any payment or remuneration of the nature described in regulation 9(1)(e) or (j), and
 - (ii) any award or sum of the nature described in regulation 9(1)(g) or (h) (including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings).

(3) Sub-paragraph (1) is subject to the following provisions.

(4) Sub-paragraph (1) does not apply in relation to a claim for, or an award of, incapacity benefit (within the meaning given by paragraph 11 of Schedule 4 to the Welfare Reform Act 2007(c) or severe disablement allowance (also within the meaning given by that paragraph).

(5) Sub-paragraph (1) applies in relation to a claim for an increase in benefit under Part IV of the Contributions and Benefits Act (increases in respect of dependants) only in a case where—

- (a) the spouse or partner or other adult in respect of whom that claim is made was in employment as an employed earner, but
- (b) that employment ended before the day referred to in sub-paragraph (1).◀

SCHEDULE 2

Regulations 10(2) and 13(2)

CHILD CARE CHARGES TO BE DEDUCTED IN THE CALCULATION OF EARNINGS

1. This Schedule applies where a claimant is incurring relevant child care charges and—

- (a) is a lone parent;
- (b) is a member of a couple both of whom are engaged in employment; or
- (c) is a member of a couple where one member is engaged in employment and the other member is incapacitated.

2. In this Schedule—

“relevant child care charges” means the charges paid by the claimant for care provided for any child of the claimant's family who is under the age of 11

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

(b) 1995 c. 26.

(c) 2007 c. 5.

Sch. 2

years, other than charges paid in respect of the child's compulsory education or charges paid by a claimant to a partner or by a partner to a claimant in respect of any child for whom either or any of them is responsible in accordance with section 143 of the Contributions and Benefits Act^(a) (circumstances in which a person is to be treated as responsible or not responsible for another), where the care is provided—

- (a) by persons registered under section 71 of the Children Act 1989 (registration of child minders and persons providing day care for young children); or
- (b) for children aged 8 and over but under 11, out of school hours, by a school on school premises or by a local authority; or
- (c) by a child care scheme operating on Crown property where registration under section 71 of the Children Act 1989 is not required, or
- (d) in schools or establishments which are exempted from registration under section 71 of the Children Act 1989 by virtue of section 71(16) of, and paragraph 3 or 4 of Schedule 9 to, that Act, ¹or
- (e) by persons registered under ²Part 2 of the Children and Families (Wales) Measure 2010³; or
- ²(f) by a person who is excepted from registration under Part 2 of the Children and Families (Wales) Measure 2010 because the child care that person provides is in a school referred to in article 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010;⁴ or
- (g) by
 - (i) persons registered under section 7(1) of the Regulation of Care (Scotland) Act 2001^(d); or
 - (ii) local authorities registered under section 33(1) of that Act, where the care provided is child minding or day care of children within the meaning of that Act,⁴

and shall be calculated on a weekly basis in accordance with paragraphs 4 to 7; “school term-time” means the school term-time applicable to the child for whom care is provided.

3. The age of a child referred to in paragraph 2 shall be determined by reference to the age of the child at the date on which the benefit week begins.

4. Subject to paragraphs 5 to 7, relevant child care charges shall be calculated in accordance with the formula—

$$\frac{X+Y}{52}$$

where—

X is the average weekly charge paid for child care in the most recent 4 complete weeks which fall in school term-time in respect of the child or children concerned, multiplied by 39; and

Y is the average weekly charge paid for child care in the most recent 2 complete weeks which fall out of school term-time in respect of that child or those children, multiplied by 13.

5. Subject to paragraph 6, where child care charges are being incurred in respect of a child who does not yet attend school, the relevant child care charges shall mean the

(a) Section 143(3)(c)(i)-(iii) came into force on 1.4.93 under the Social Security (Consequential Provisions) Act 1992 (c. 6) section 6, Schedule 4, paragraph 5 by virtue of the Schedule to S.I. 1992/2975 (c. 91) to have effect until a day appointed under the Social Security (Consequential Provisions) Act 1992 (c. 6) section 6, Schedule 4, paragraph 1.

(b) Schedule 9A to the Children Act 1989 was inserted by Schedule 3 to the Care Standards Act 2000.

(c) 2001 asp 8.

¹Sub-paras. (e)-(g) inserted in para. 2 by reg. 2 of S.I. 2002/842 as from 1.4.02.

²Words in Sch. 2, para. (e) & para. (f) substituted by reg. 3(2) of S.I. 2011/577 as from 4.3.11.

<i>Provision</i>	<i>Modification</i>
	<p>confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;”</p> <p>“ “relevant domestic authority” means–</p> <p>(a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations 2003 apply and who is habitually resident in Wales, the National Assembly of Wales;</p> <p>(b) in the case of an adopter to whom the ¹Adoptions With a Foreign Element (Scotland) Regulations 2009[◀] apply and who is habitually resident in Scotland, the Scottish Ministers;</p> <p>(c) in any other case, the Secretary of State.”.</p>

¹Words substituted in section 171ZJ(1) para. (b) by reg. 7(2) of Part 2, Schedule 2 of S.I. 2011/1740 as from 15.7.11.

SCHEDULE 2

Regulation 3

Application of Part 12ZB of the Act to adoptions from overseas

<i>Provision</i>	<i>Modification</i>
Section 171ZL(2)	<p>For “The conditions are” substitute “Subject to subsection (3A), the conditions are”.</p> <p>In paragraph (a), for “with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom” substitute “who is, or is expected to be, an adopter of a child from overseas”.</p>
Section 171ZL(3)	<p>For “is notified that he has been matched with the child for the purposes of adoption” substitute “is sent official notification”.</p> <p>After subsection (3), insert the following subsection–</p> <p>“(3A) Where, at the time that the adopter is sent official notification, he has been in employed earner’s employment with an employer for less than a continuous period of 26 weeks–</p>

SOCIAL SECURITY **CONTRIBUTIONS AND BENEFITS ACT** 1992
(APPLICATION OF PARTS 12ZA AND 12ZB TO ADOPTIONS FROM OVERSEAS)
REGULATIONS 2003

<i>Provision</i>	<i>Modification</i>
	<p>(a) subsection (2)(b) shall have effect as if the words “ending with the relevant week” were omitted;</p> <p>(b) subsection (3) shall have effect as if the words “(2)(b) and” were omitted.”.</p>
Section 171ZL(4)	In paragraph (b), for “placed for adoption with him” substitute “adopted by him”.
Section 171ZL(5)	For “the placement, or expected placement, for adoption of more than one child” substitute “the adoption, or expected adoption, from overseas of more than one child”.
Section 171ZS(1)	<p>In the appropriate places in the alphabetical order, insert—</p> <p>“ “adopter”, in relation to a child, means a person by whom a child has been or is to be adopted;”</p> <p>“ “adoption from overseas” means the adoption of a child who enters Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of any part of the United Kingdom, and the reference to an adopter from overseas shall be construed accordingly;”</p> <p>“ “official notification” means written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent;”</p> <p>“ “relevant domestic authority” means—</p> <p>(a) in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations 2003 apply and who is habitually resident in Wales, the National Assembly of Wales;</p>

<i>Provision</i>	<i>Modification</i>
	(b) in the case of an adopter to whom the ▶ ¹ Adoptions With a Foreign Element (Scotland) Regulations 2009◀ apply and who is habitually resident in Scotland, the Scottish Ministers;
	(c) in any other case, the Secretary of State.”.

¹Words substituted in section 171ZS(1)(b) by reg. 7(3) of Part 2, Schedule 2 of S.I. 2011/1740 as from 15.7.11.

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument contains only regulations made by virtue of sections 2 and 4 of the Employment Act 2002, which came into force on 8th December 2002. The instrument is made before the end of the period of 6 months beginning with the coming into force of those provisions. The regulations in it are therefore exempted by section 173(5)(b) of the Social Security Administration Act 1992 from the requirement under section 172 of that Act to refer the proposals to make the regulations to the Social Security Advisory Committee and they are made without reference to the Committee.

These Regulations, made under provisions inserted into the Social Security Contributions and Benefits Act 1992 by the Employment Act 2002, apply Parts 12ZA and 12ZB of that Act, as modified by these Regulations, to adoptions from overseas, which are adoptions of children who enter Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of a child for adoption under the law of any part of the United Kingdom. The Regulations relating to statutory paternity pay and statutory adoption pay in connection with adoptions from overseas are the Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) Regulations 2003 (SI 2003/500).

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£205[◀] or more; and
- (b) in respect of a further child for each complete ⁴£27[◀] by which the earnings exceeded ⁴£205[◀].

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,

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;[◀]

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 in para. 2B of Sch. 2 by reg. 4 of S.I. 2011/830 as from 11.4.11.

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.

Sch. 2

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

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

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.

⁴Words substituted in para. 6 & 7 by reg. 5 of S.I. 2011/2425 as from 31.10.11.

⁵Sub-para. (a) and (b) substituted retrospectively from 22.12.84 by Social Security Act 1986 (c. 50), s. 37(2).

⁶Sub-para. (a) of para. 7 substituted by reg. 5(a) of S.I. 1988/554 as from 11.4.88.

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

⁸Words omitted by reg. 5(b) of S.I. 1987/355 as from 6.4.87.

⁹Head (iii) of para. 7(b) substituted by reg. 5(b) of S.I. 1988/554 as from 11.4.88.

▶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.◀◀

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.

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 ▶⁴section 90 of the Contributions and Benefits Act(a)◀, 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 ▶⁴the Contributions and Benefits Act◀ for any period during which the beneficiary is residing with—

- ▶⁵▶⁶ (a) a spouse ▶³or civil partner◀ whose weekly earnings do not exceed that amount;◀ or
- (b) some person (not being a child ▶⁷or qualifying young person◀) who—
 - (i) has the care of a child or children ▶⁷or a qualifying young person or persons◀ in respect of whom the beneficiary is entitled to child benefit ▶⁸◀◀ ;
 - (ii) is not undergoing imprisonment or detention in legal custody;
 - ▶⁹(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 ▶⁷or a qualifying young person or persons◀ in respect of whom the beneficiary is entitled to child benefit;◀

(a) Section 49 of the Social Security Act 1975 (c. 14) was repealed, along with the rest of that Act, by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 3 and Schedule 1. It was substantively re-enacted in respect of increases for adult dependants by section 90 of the Social Security Contributions and Benefits Act 1992. Section 90 was repealed but continued with savings by virtue of article 4 of S.I. 2000/2958. The remaining provisions of section 90 (in relation to carer’s allowance) were repealed on 6th April 2010 with savings by section 15 of the Welfare Reform Act 2009 (c. 24).

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.

²(3A) A person shall not be precluded from entitlement to the care component of disability living allowance by reason only that he has attained the age of 65 years if the claim is treated as made on 18th October 2007 in accordance with regulation 6(35) of the Social Security (Claims and Payments) Regulations 1987 (date of claim).

²Reg. 3(3A) inserted by reg. 4 of S.I. 2011/2426 as from 31.10.11.

(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 ³section 72(4)(a) of the Act, ⁴£73.60;
- (b) the middle rate, payable in accordance with ³section 72(4)(b) of the Act, ⁴£49.30;
- (c) the lowest rate, payable in accordance with ³section 72(4)(c) of the Act, ⁴£19.55.

³Words substituted in reg. 4 by reg. 2(4) and (5) of S.I. 1993/1939 as from 26.8.93.

⁴Amounts in reg. 4(1) & (2) substituted by art. 13(a)-(e) of S.I. 2011/821 as from 11.4.11.

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

- (a) the higher rate, payable in accordance with ³section 73(11)(a) of the Act, ⁴£51.40; and
- (b) the lower rate, payable in accordance with ³section 73(11)(b) of the Act, ⁴£19.55.

5. ⁵

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

5A.-5C. ⁶

⁶Regs. 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

EXPLANATORY NOTE

(This note is not part of the Regulations)

This instrument is made before the end of the period of 6 months beginning with the coming into force of the enactments under which the Regulations are made (3rd July 1991). The Regulations contained in this instrument are accordingly exempt by section 61(5) of the Social Security Act 1986 (c. 50) as amended by the Social Security Act 1989 (c. 24), Schedule 8, paragraph 12(3), from reference to the Social Security Advisory Committee and have not been so referred.

These Regulations make provision for the Disability Living Allowance Advisory Board which was established under section 3(1) of the Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21).

Regulation 2 sets out the functions and powers of the Board.

Regulation 3 provides for the membership of the Board, and regulations 4 and 5 provide for the period of appointment and the removal from office of the chairman and other members.

Regulation 6 provides for the procedure of the Board.

Regulation 7 provides for expenses of non-members.

Regulation 8 provides for officers and servants of the Board.

2011 No. 2426

SOCIAL SECURITY

Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011

<i>Made</i> - - - -	<i>5th October 2011</i>
<i>Laid before Parliament</i>	<i>10th October 2011</i>
<i>Coming into force</i> -	<i>31st October 2011</i>

The Secretary of State for Work and Pensions is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to social security(b).

Accordingly the Secretary of State makes these Regulations in exercise of the powers conferred by:

- section 2(2) of the European Communities Act 1972;
- sections 5(1)(b), 189(4) and 191 of the Social Security Administration Act 1992(c);
- sections 75(1) and 175(3) of the Social Security Contributions and Benefits Act 1992(d); and
- sections 10(6), 79(4) and 84 of the Social Security Act 1998(e).

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

Citation and commencement

1. These Regulations may be cited as the Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011 and come into force on 31st October 2011.

[Regulation 2 amends regulation 7 of S.I. 1999/991.]

[Regulation 3 amends regulation 6 of S.I. 1987/1968.]

[Regulation 4 inserts paragraph (3A) into regulation 3 of S.I. 1991/2890.]

[Regulation 5 makes amendments to sections 65, 70, 72 and 122 of the Contributions and Benefits Act 1992.]

(a) 1972 c. 68.

(b) S.I. 2010/2473.

(c) 1992 c. 5. Section 189(4) is amended by paragraph 109(c) of Schedule 7, and Schedule 8, to the Social Security Act 1998 (c. 14). Section 191 is an interpretation provision and is cited for the meaning of the word "prescribe". The definition of "prescribe" is amended by paragraphs 2 and 10 of Schedule 5 to the Welfare Reform Act 2007 (c. 5).

(d) 1992 c. 4. Section 75(1) is amended prospectively by paragraph 42 of Schedule 1 to the Pensions Act 2007 (c. 22).

(e) 1998 c. 14. Section 84 is an interpretation provision and is cited for the meaning of the word "prescribe".

SOCIAL SECURITY (DISABILITY LIVING ALLOWANCE, ATTENDANCE ALLOWANCE AND CARER'S ALLOWANCE) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2011

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

5th October 2011

Maria Miller
Parliamentary Under-Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulations 2 to 4 of these Regulations amend three sets of regulations as a result of a judgment in the European Court of Justice (ECJ) in October 2007 in case C-299/05 *Commission of the European Communities v European Parliament and Council of the European Union* ([2007] ECR I-8695). This judgment determined that it was unlawful for the Department for Work and Pensions to terminate an award of attendance allowance, carer's allowance or the care component of disability living allowance when a person moves from Great Britain to elsewhere in the European Economic Area or to Switzerland. These Regulations ensure that persons whose award of one of these benefits was terminated upon such a move or a proposed move, may be re-awarded benefit from the date of the ECJ judgment.

Regulation 2 amends the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991) so that where, as a result of the ECJ judgment, the Secretary of State supersedes the original decision to terminate entitlement to those benefits, this new supersession decision takes effect from the date of the ECJ judgment (allowing claimants to reclaim benefit from this date).

Regulation 3 amends the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) so that where there was an earlier award and the decision to terminate entitlement could not be superseded, a claim can be backdated to the date of that judgment, provided that the claimant has not already received an extra-statutory payment for the same period.

Regulation 4 amends the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890) to ensure that the normal condition that new claims for disability living allowance are not payable to those aged 65 or over, is not applicable where a person who lost entitlement to the care component of that allowance on such a move or proposed move, reclaims that benefit following the ECJ judgment.

In addition, regulation 5 amends the Social Security Contributions and Benefits Act 1992 (c. 4) to ensure that a person to whom either Regulation (EC) No 1408/71 or Regulation (EC) No 883/2004 applies shall only be entitled to an attendance allowance, a carer's allowance or the care component of a disability living allowance when the United Kingdom (rather than another EEA Member State or Switzerland) is responsible under the EU Regulations for payment of sickness benefits to that person.

Regulation 5 refers to both Regulation (EC) No 1408/71 and Regulation (EC) No 883/2004 given that whilst Regulation (EC) No 883/2004 came into force on 1 May 2010 replacing Regulation (EC) No 1408/71, Regulation (EC) No 1408/71 remains in force for the purposes described in Article 90 of Regulation (EC) No 883/2004.

A full impact assessment has not been produced for this instrument as it has no impact on the private sector or civil society organisations.

- (iii) deduct from the amount found under head (ii) above an amount equal to the qualifying earnings factor for that year,
- (iv) calculate the part of the amount found under head (iii) above falling into each of the bands specified in the appropriate table,
- (v) multiply the amount of each such part in accordance with the last order under section 148 of the Administration Act to come into force before the end of the final relevant year,
- (vi) multiply each amount found under head (v) above by such percentage specified in the appropriate table in relation to the appropriate band as is applicable in the case of the earner;
- (vii) add together the amounts calculated under head (vi) above.

►¹**Earnings factor credits eligibility for pensioners to whom employment and support allowance was payable**

¹Reg. 5A inserted by reg. 27 of S.I. 2009/2206 as from 6.4.10.

5A.—(1) For the purposes of subsection (3) of section 44C (earnings factor credits) of the Contributions and Benefits Act(**a**), a pensioner is eligible for earnings factor enhancement in respect of a week if that pensioner satisfies one or more of the conditions in paragraph (2) and was—

- (a) a person to whom employment and support allowance was payable for any part of that week;
- (b) a person to whom that allowance would have been payable but for the fact that that person did not satisfy the contribution condition in paragraph 1 or paragraph 2 of Schedule 1 to the 2007 Act; or
- (c) a person to whom that allowance would have been payable but for the fact that under regulations the amount was reduced to nil because of—
 - (i) receipt of other benefits; or
 - (ii) receipt of payments from an occupational pension scheme or personal pension scheme.

(2) The conditions are—

- (a) immediately prior to that week, employment and support allowance was payable or would have been payable for—
 - (i) a continuous period of 52 weeks; or
 - (ii) a period of 52 weeks treated as continuous by virtue of regulations made under paragraph 4 of Schedule 2 to the 2007 Act;
- (b) that allowance included or would have included the support component under section 2(2) of the 2007 Act; or
- (c) immediately prior to that week, in the case of—
 - (i) a man born in the period beginning with 6th April 1946 and ending with 5th April 1947; or
 - (ii) a woman born in the period beginning with 6th October 1950 and ending with 5th April 1951,

that allowance was payable or would have been payable for a continuous period of 13 weeks immediately following a period throughout which statutory sick pay was payable.

(3) In this regulation, “employment and support allowance” means an employment and support allowance under Part 1 (employment and support allowance) of the 2007 Act. ◀

See Sch. 2, para. 26 of S.I. 2010/1907 at page 13.9431 for details of modifications to reg. 5A(2) as from 1.10.10.

(a) Section 44C was inserted by section 9 of the Pensions Act 2007 (c. 22).

Preclusion from regular employment

6. The condition referred to in section 44A(2)(c)(ii) of the Contributions and Benefits Act (which relates to the condition to be satisfied for a person to be taken to be precluded from regular employment by responsibilities at home throughout a year for the purposes of paragraph 5(7)(b) of Schedule 3 to that Act) is that specified in regulation 2(2)(b) or (3) of the 1994 Regulations (which refer respectively to a person to whom income support is payable and a person regularly engaged in caring for at least 35 hours a week for someone in receipt of certain benefits).

[Regulation 7 amends regulation 2(5) of S.I. 1994/704.]

Signed by authority of the Secretary of State for Social Security

31st March 2001

Jeff Rooker
Minister of State,
Department of Social Security

2008 No. 2928

SOCIAL SECURITY

The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008

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

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

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

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“the 1998 Act” means the Social Security Act 1998(c);

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

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

“the 2002 Regulations” means the Social Security (Jobcentre Plus Interviews) Regulations 2002(f);

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

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

(c) 1998 c. 14.

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

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

(f) S.I. 2002/1703.

“the 2003 Regulations” means the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003(a);

“action plan” has the meaning given by regulation 7;

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

¹Defn. of “lone parent” inserted in reg. 2(1) & para. (3) added by reg. 6(2)(a) & (b) of S.I. 2011/2428 as from 31.10.11.

►¹“lone parent” has the meaning it bears in section 24(3A) of the Welfare Reform Act 2007;◄

²Defn. of “pensionable age” inserted by reg. 8(2) of S.I. 2010/563 as from 6.4.10.

►²“pensionable age”, in the case of a man born before 6th April 1955, means the age when a woman born on the same day as the man would attain pensionable age;◄

“relevant claimant” has the meaning given by regulation 3;

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

“specified benefit” means—

- (a) incapacity benefit;
- (b) income support, if any of the following paragraphs of Schedule 1B (prescribed categories of person) to the Income Support (General) Regulations 1987(b) applies—
 - (i) paragraph 7 (►³persons treated as capable of work and persons entitled to statutory sick pay◄);
 - (ii) paragraph 24 or 25 (persons appealing against a decision which embodies a determination that they are not ►⁴incapable◄ of work);
- (c) severe disablement allowance;

³Words in defn. of “specified benefit” substituted by reg. 3(6) of S.I. 2009/3152 as from 30.12.09 but also see reg. 2(7) of the S.I.

⁴Words in defn. of “specified benefit” & reg. 3(3) substituted by reg. 2(2) & (3) of S.I. 2009/1541 as from 26.10.09.

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

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

►¹(3) For the purposes of section 2A(2A) of the Social Security Administration Act 1992, and regulation 3(6), a lone parent is to be treated as responsible for, and a member of the same household as, a child under the age of one only where the lone parent would be treated as responsible for and a member of the same household as such a child under regulations 15 and 16 of the Income Support (General) Regulations 1987(c) if references in those regulations to income support were to a specified benefit.◄

Relevant claimant

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

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

►⁴(3) The second condition is that at least one of the following sub-paragraphs applies to the person—

- (a) immediately before 15th December 2008 the person was a “relevant person” within the meaning of—
 - (i) the 2000 Regulations or the 2001 Regulations, as saved by regulation 16(2) of the 2002 Regulations, or
 - (ii) the 2003 Regulations;
- (b) the person—
 - (i) is under 25 years of age,
 - (ii) is ordinarily resident in a Jobcentre Plus Pathways area identified in the Schedule, and

(a) S.I. 2003/2439.

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

(c) S.I. 1987/1967.

- (iii) has been in receipt of a specified benefit for a continuous period of at least 12 months;
- (c) at any time before 26th October 2009, the person has been required to take part in an interview under the 2002 Regulations by virtue of having made a claim for, or being entitled to, a specified benefit;
- (d) the person makes a claim for a specified benefit in respect of a period beginning after 26th October 2008 and that claim is of a description referred to in regulation 2(2) of the Employment and Support Allowance (Transitional Provisions) Regulations 2008(a).◀

(4) The third condition is that the person has not attained ►¹pensionable age◀.

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

►²(6) The fifth condition is that the person is not a lone parent who is responsible for, and a member of the same household as, a child under the age of one.◀

¹Words substituted in reg. 3(4) by reg. 8(3) of S.I. 2010/563 as from 6.4.10.

²Reg. 3(6) inserted by reg. 6(3) of S.I. 2011/2428 as from 31.10.11.

Purposes of a work-focused interview

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

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

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

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

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

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

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

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

(a) S.I. 2008/795 amended by S.I. 2008/2783.

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

SOCIAL SECURITY (INCAPACITY BENEFIT WORK-FOCUSED INTERVIEWS) REGULATIONS 2008

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

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

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

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

The work-focused interview

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

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

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

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

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

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

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

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

Action plan

7.—(1) An action plan is a written document completed by the Secretary of State, which contains a record of the discussions a relevant claimant has participated in with the Secretary of State in relation to the relevant claimant's employability, including any action the relevant claimant and the Secretary of State agree is reasonable and the

relevant claimant is willing to take in order to help that relevant claimant enhance his or her employment prospects.

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

Failure to take part in a work-focused interview

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

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

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

(3) If the Secretary of State determines that a relevant claimant has failed to take part in a work-focused interview and ►¹the claimant has not shown good cause in accordance with regulation 8(1)◄, the Secretary of State shall make a relevant decision for the purposes of section 2B of the Social Security Administration Act 1992.

¹Words in reg. 8(3) substituted by reg. 2(4) of S.I. 2009/1541 as from 26.10.09.

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

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

- (a) by ►²an amount equivalent to◄ 50% of the “work-related activity component” in each of the first four benefit weeks to which, by virtue of section 10(5) of the 1998 Act or regulations made under section 10(6) of that Act, the reduction applies;

²Words inserted in reg. 9(1)(a) by reg. 12(a) of S.I. 2010/2429 as from 1.11.10.

Reg. 9

¹Words inserted in reg. 9(1)(b) by reg. 12(b) of S.I. 2010/2429 as from 1.11.10.

²Words substituted in reg. 9(2) & reg. 9(6) omitted by reg. 25(a) & (b) of S.I. 2011/2425 as from 31.10.11.

(b) by ¹an amount equivalent to ²100% of that component for each subsequent benefit week.

(2) If two or more specified benefits are in payment to a relevant claimant, a reduction made in accordance with paragraph (1) shall be applied, subject to paragraphs (3) to ²(5)³, to the specified benefits in the following order of priority—

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

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

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

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

(6) ²

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

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

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

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

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

- (a) brings new facts to the notice of the Secretary of State within one month of the date on which the initial determination was notified to that person and—
 - (i) those facts could not reasonably have been brought to the Secretary of State's notice within five working days of the date on which the notification of the initial determination was received; and
 - (ii) those facts show that there is good cause for the person's failure to take part in the work-focused interview;
- (b) is no longer required to take part in a work-focused interview as a condition of continuing to be entitled to the full amount of the specified benefit that is payable to that person apart from these Regulations; or
- (c) attains ³pensionable age⁴.

³Words in reg. 9(11)(c) substituted by reg. 8(4) of S.I. 2010/563 as from 6.4.10.

PART II
GENERAL PROVISIONS RELATING TO INCAPACITY FOR
WORK

CHAPTER I

OWN OCCUPATION TEST

Definition of “remunerative work”

4.—(1) For the purposes of section 171B of the Contributions and Benefits Act (the own occupation test) “remunerative work” in relation to the period of 21 weeks referred to in that section means work—

- (a) in one occupation in which a person was engaged for 16 or more hours a week for more than 8 weeks; and
- (b) for which payment was made or which was done in expectation of payment

(2) For the purposes of this regulation and regulation 5—

- (a) one occupation comprises either—
 - (i) all work of the same kind, whether or not it is for the same employer and whether a person is employed or self-employed; or
 - (ii) all work for the same employer; and
- (b) a person who was normally engaged in one occupation for 16 or more hours a week shall be treated as if he had been engaged in that occupation in relation to any week when he was on paid or unpaid leave from that occupation.

Person with more than one occupation

5. Where a person was engaged in more than one occupation which qualified as remunerative work in the period of 21 weeks referred to in regulation 4, his occupation for the purposes of the own occupation test is the last such occupation in which he was engaged during that period; but if, during his last week of remunerative work in that period, he was engaged in more than one such occupation he must satisfy the own occupation test in respect of each.

CHAPTER II

INFORMATION AND EVIDENCE

Information required for determining capacity for work

6.—(1) ¹Subject to paragraphs (2) and (3) ²the information or evidence required for the purposes of determining whether a person is capable or incapable of work ³and the information or evidence required which is capable of being used for assisting or encouraging a person to obtain work or to enhance his prospects of obtaining it ⁴is—

- (a) where the own occupation test ⁵applies, ⁶or where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment ⁷evidence of incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976(a) (which prescribe the form of doctor’s statement or other evidence required in each case);
- ⁸(b) ⁹where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment ¹⁰, such information—

¹Words in reg. 6(1) substituted by reg. 2(2)(a) of S.I. 1995/987 with effect from 13.4.95.

²Words inserted in reg. 6(1) by reg. 2(2)(a) of S.I. 1999/3109 as from 13.12.99.

³Words omitted and substituted in reg. 6(1)(a) and (1)(b), by reg. 2(2)(b), (d), (e), (f) of S.I. 1999/3109 as from 3.4.00.

⁴Reg 6(1)(b) substituted by reg. 2(2)(c) of S.I. 1999/3109 as from 13.12.99.

(a) S.I. 1976/615; relevant amending instruments are S.I. 1982/599, S.I. 1989/1686, S.I. 1992/247 and S.I. 1994/2975.

Regs. 6-9

- (i) relating to a person's ability to perform the activities referred to in the Schedule, or
- (ii) capable of being used for assisting or encouraging a person to obtain work or to enhance his prospects of obtaining it,

as the Secretary of State may request in the form of a questionnaire;◀

- (c) such additional information ▶¹as is capable of being used for the purpose referred to in paragraph (b)(ii), or relating to the own occupation test or the personal capability assessment◀ as the Secretary of State may request.

¹Words inserted in reg. 6(1)(c) and (2) by reg. 2(2)(e), (f), (g) of S.I. 1999/3109 as from 3.4.00.

(2) Where the Secretary of State is satisfied that he has sufficient information for a determination whether a person is capable or incapable of work without the information specified in ▶¹paragraph (1)(b)(i)◀, that information shall not be required for the purposes of that determination.

²Reg. 6(3) substituted by reg. 2(2)(b) of S.I. 1995/987 with effect from 13.4.95.

³Words substituted in reg. 6(3)(a) by reg. 20(2) of S.I. 1996/1345 as from 7.10.96.

⁴Words substituted in reg. 6(3)(b) by reg. 4(2) of S.I. 2000/678 as from 3.4.00.

⁵Para. 6(4) added by reg. 2(2)(g) of S.I. 1999/3109 as from 3.4.00.

⁶Words deleted in reg. 7(1) by reg. 2(3) of S.I. 1999/3109 as from 3.4.00.

⁷Words in reg. 7(2)(a) & (b) substituted by reg. 9(2) of S.I. 2011/2425 as from 31.10.11.

▶²(3) Paragraph (1) shall not apply in relation to a determination—

- (a) whether a person is capable of work for the purposes of a claim for ▶³jobseeker's allowance◀; or
- (b) whether a person is to be treated as incapable of work under any of ▶⁴regulations 10,11 to 14.◀◀

▶⁵(4) Information requested for the purpose referred to in paragraph (1)(b)(ii) shall not be used for the purposes of determining whether a person is capable or incapable of work in accordance with Part XIAA of the Contributions and Benefits Act.◀

Failure to provide information

7.—(1) Where a person fails without good cause to comply with a request of the Secretary of State to provide the information referred to in regulation 6(1)(b) ▶⁶◀ he shall, subject to paragraph (2), be treated as capable of work.

(2) A person shall not be treated as capable of work under paragraph (1) unless—

- (a) at least ▶⁷4 weeks◀ have elapsed since the Secretary of State sent that person the first request for that information; and
- (b) the Secretary of State has sent that person a further request at least ▶⁷3 weeks◀ after the first, and at least ▶⁷1 week has◀ elapsed since that further request was sent.

Person may be called for a medical examination

8.—(1) Where ▶⁸it falls to be determined◀ whether a person is capable of work, he may be called by or on behalf of a ▶⁹health care professional◀ approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend for or submit himself to such an examination, he shall be treated as capable of work.

(3) A person shall not be treated as capable of work under paragraph (2) unless written notice of the time and place for the examination was sent to him at least 7 days beforehand, or unless he agreed to accept a shorter period of notice.

Matters to be taken into account in determining good cause

9. The matters which are to be taken into account in determining whether a person has good cause under regulation 7 or 8 (failure to provide information or attend a medical examination) shall include—

- (a) whether he was outside Great Britain at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability from which he suffers.

⁸Words substituted in reg. 8(1) by reg. 2(4) of S.I. 1999/3109 as from 3.4.00.

⁹Words substituted in reg. 8(1) by reg. 3(4) of S.I. 2007/1626 as from 3.7.07.

- (ab) that evidence in accordance with regulation 10 of the Social Security (Severe Disablement Allowance) Regulations 1984(a) establishes that he suffers from a loss of physical or mental faculty such that the extent of the resulting disablement amounts to not less than 80 per cent.;◀
- (b) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (c) that he is a blind person whose name is on a register compiled and maintained by a local authority under section 29 of the National Assistance Act 1948(b) (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council;
- (d) that he is suffering from any of the following conditions—
 - (i) tetraplegia;
 - (ii) persistent vegetative state;
 - (iii) dementia;
 - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- ▶¹(e) that he is suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of the—◀
 - (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
 - (ii) a severe and progressive neurological ▶¹or muscle◀ wasting disease;
 - (iii) an active and progressive form of inflammatory polyarthritis;
 - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
 - (v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;
 - (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;
- ▶²(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;◀
- ▶¹(viii) a severe mental illness, involving the presence of mental disease, which severely and adversely affects a person's mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment.◀

¹Words substituted in reg. 10(2)(e)(ii) & (viii) by reg. 3(a) of S.I. 1996/3207 as from 6.1.97.

²Reg. 10(2)(e)(vii) substituted by reg. 2(3)(b)(ii) of S.I. 1995/987 with effect from 13.4.95.

▶³**Certain persons participating in approved work to be treated as incapable of work**

³Reg. 10A inserted by reg. 4(3) of S.I. 2000/678 as from 3.4.00.

10A.—(1) A person to whom this regulation applies shall be treated as incapable of work on any day in a period of incapacity for work on which he does any approved work in respect of which no payment in the nature of earnings is expected or made.

- (2) Subject to paragraph (3), this regulation applies to a person who is—
 - (a) incapable of work or treated as incapable of work;
 - (b) receiving a prescribed benefit; and
 - (c) engaged in approved work on a trial basis.

(3) Where a person to whom this regulation applies is determined to be capable of work, paragraph (1) shall cease to apply in his case.

(a) S.I. 1984/1303. Regulations was amended by S.I. 1986/1933, 1988/1843 and 1991/2742.
(b) 1948 c. 29.

¹Words in defn. of “approved work” substituted by reg. 2(a) of S.I. 2002/491 as from 8.4.02.

²Words substituted in defn. of “trial basis” by reg. 2(b) of S.I. 2002/491 as from 8.4.02.

³Heading, words in reg. 11(1) & defn. of “relevant infection or contamination” in reg. 11(2) substituted by reg. 9(3) of S.I. 2011/2425 as from 31.10.11.
⁴Reg. 11 substituted by reg. 12(2) of S.I. 2006/2378 as from 1.10.06.

(4) In this regulation—

“approved work” means, in relation to a person, work arranged in writing ¹with an employer in respect of him by an officer of, or a person providing services to, the Secretary of State who has been authorised by the Secretary of State for the purpose ²;

“a prescribed benefit” means any benefit, allowance or advantage under the Contributions and Benefits Act (other than statutory sick pay, statutory maternity pay or industrial injuries benefit) or the Jobseekers Act 1995, and for which entitlement is dependent on incapacity for work;

“trial basis” means such trial period and other related matters as may be agreed ²between—

- (a) the person;
- (b) an officer of, or a person providing services to, the Secretary of State who has been authorised by the Secretary of State for the purpose; and
- (c) an employer, in relation to approved work. ³

³**Person with a relevant infection or contamination** ⁴

⁴**11.**—(1) A person shall be treated as incapable of work on any day in respect of which he is—

- (a) excluded or abstains from work pursuant to a request or notice in writing lawfully made under an enactment; or
- (b) otherwise prevented from working pursuant to an enactment,

³by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination. ⁴

(2) For the purposes of paragraph (1)—

“enactment” means an enactment comprised in, or in an instrument made under—

- (a) an Act; or
- (b) an Act of the Scottish Parliament; and

³“relevant infection or contamination” means—

- (a) in England and Wales—
 - (i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984(a) in respect of which regulations are made under Part 2A of that Act(b) (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread, or
 - (ii) any disease, food poisoning, infection, infectious disease or notifiable disease to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979(c) applies or to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979(d) applies; and
- (b) in Scotland, any—
 - (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008(e), or exposure to an organism causing that disease, or

(a) 1984 c. 22.

(b) Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

(c) S.I. 1979/1434.

(d) S.I. 1979/1435. Regulation 9 has been amended but not in a way material to these Regulations.

(e) 2008 asp 5.

- (ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,
to which sections 56 to 58 of that Act (compensation) apply.◀

Hospital in-patients

12. A person shall be treated as incapable of work on any day on which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Person receiving certain regular treatment

13.—(1) The following provisions of this regulation apply to a person receiving—

- (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.

(2) A person referred to in paragraph (1) shall be treated as incapable of work on any day on which he is engaged in that treatment.

(3) A person who works during any week in which he receives treatment referred to in paragraph (1) shall be treated as capable of work for the purposes of regulation 16 only on the actual day or days on which he works in that week.

(4) Section 171B(3) of the Contributions and Benefits Act (which defines a spell of incapacity) shall have effect in relation to a person referred to in paragraph (1) as if the period of 4 days mentioned in that section were a period of 2 days, whether consecutive or not, in a period of 7 consecutive days.

▶¹Welfare to work beneficiary

13A.—(1) Subject to paragraph (3), a person is a “welfare to work beneficiary” on any day in a linking term, where he—

- (a) was incapable of work for a period of incapacity for work of more than 196 days in his immediate past period of incapacity for work;
- (b) ceased to be entitled to the benefit at the end of that immediate past period of incapacity for work on a day which falls on or after 5th October 1998; ▶²and◀
- (c) became engaged in remunerative work within ▶²one month◀ of so ceasing to be entitled to that benefit at the end of that immediate past period of incapacity for work; ▶²◀

(2) A welfare to work beneficiary shall be treated as incapable of work on any day in a period, consisting of a cumulative number of days of incapacity for work not exceeding 91 days in total, beginning within the linking term and ending on a day not later than 13 weeks from the end of that linking term, where he—

- (a) claims benefit for any day falling within that linking term;
- (b) submits evidence in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976(a); and
- (c) in his immediate past period of incapacity for work—

¹Reg. 13A inserted by reg. 4(2) of S.I. 1998/2231 as from 5.10.98.

²Words added and substituted in reg. 13A(1)(b) & (c), “and” and sub-para. (d) omitted by reg. 12(3)(a)-(c) of S.I. 2006/2378 as from 1.10.06.

(a) S.I. 1976/615; regulation 2 was amended by S.I. 1982/699, 1987/409, 1992/247, 1994/2975 and 1995/987.

Regs. 13A-14

¹Words substituted in reg. 13A(2)(c)(i) by reg. 2(6)(b) of S.I. 1999/3109 as from 3.4.00.

²Reg. 13A (3) substituted, para. (3A) added and words in defn. of “linking term” substituted and added to defn. of “immediate past period of incapacity for work” by reg. 12(3)(d)-(f) of S.I. 2006/2378 as from 1.10.06.

³Defn. of “immediate past period of incapacity for work” substituted by reg. 2(b) of S.I. 2006/757 as from 10.4.06.

⁴Words substituted in reg. 14(a)(ii) by reg. 2(7) of S.I. 1999/3109 as from 3.4.00.

- (i) had been assessed and ¹determined to be incapable of work in accordance with the personal capability assessment under Part III[◀], or
- (ii) had been treated under regulation 10 (certain persons with a severe condition to be treated as incapable of work) as incapable of work.

²(3) A person is not a welfare to work beneficiary under paragraph (1) his immediate past period of incapacity for work was ended by a determination, other than a determination in the circumstances set out in paragraph (1) or (3A), that he was, or was treated as, capable of work.

(3A) The circumstances are that the person had successfully appealed against a determination made in respect of the personal capability assessment or the own occupation test in relation to his immediate past period of incapacity for work.[◀]

(4) For the purposes of this regulation—

“benefit” means any benefit, allowance or advantage under the Contributions and Benefits Act (other than statutory sick pay), or under the Jobseekers Act 1995(a), for which entitlement is dependent on incapacity for work;

“linking term” means a period of ²104 weeks[◀] (whether or not broken by days of incapacity for work) fixed on the first day immediately following the last day of incapacity in a period of incapacity for work;

³“immediate past period of incapacity for work” means ²the most recent of[◀]—

- (i) a period of incapacity for work under section 30C(1) of the Contributions and Benefits Act,
- (ii) a period of incapacity for work under section 152 of the Contributions and Benefits Act, or
- (iii) a term composed of a period of incapacity for work under section 30C(1) and a period of incapacity for work under section 152 and includes any two such periods of incapacity for work which are separated by a period of not more than 8 weeks.[◀]

“remunerative work” means—

- (a) work (other than exempt work under regulation 17) for which payment is made or which is done in expectation of payment, or
- (b) attendance on a training course in respect of which the person receives a training allowance in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973(b) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(c).[◀]

Pregnancy

14. A pregnant woman shall be treated as incapable of work—

- (a) on any day on which, because of her pregnancy, there is a serious risk of damage to her health or to the health of her unborn child if—
 - (i) in a case where the own occupation test applies, she does not refrain from work in the occupation which is relevant for the purposes of that test; or
 - (ii) in a case ⁴where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment,[◀] she does not refrain from work in any occupation; or

(a) 1995 c. 18.
(b) 1973 c. 50.
(c) 1990 c. 35.

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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify the Social Security Contributions and Benefits Act 1992 (c. 4) in its application to persons who are discharged from Her Majesty's forces after 3rd May 2003, who were on sickness absence from duty while in the forces and who claim incapacity benefit.

Regulation 2 modifies section 30A, inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18), by exempting certain former members of the forces from the requirement to wait 3 days before becoming entitled to incapacity benefit.

Regulation 3 modifies section 30D, inserted by section 3(1) of the 1994 Act, to enable regulations made by the Secretary of State to prescribe the days to be included when calculating the number of days for which the ex-members of the forces have been entitled to short-term incapacity benefit.

Regulation 4 modifies paragraph 2(6) of Schedule 3 by inserting a new definition of "relevant benefit year" in connection with the National Insurance contribution conditions to be satisfied by former members of the forces who claim incapacity benefit.

