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## STATUTORY INSTRUMENTS

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# 1977 No. 343

## The Social Security Benefit (Dependency) Regulations 1977

### PART I GENERAL

#### Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefit (Dependency) Regulations 1977 and shall come into operation on 4th April 1977, immediately after the coming into operation of the Social Security (Child Benefit Consequential) Regulations 1977.

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

“the Act” means the Social Security Act 1975;

“the Child Benefit Act” means the Child Benefit Act 1975;

[<sup>F1</sup>“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;]

“entitled to child benefit” includes treated as so entitled;

“parent” has the meaning assigned to it by section 24(3) of the Child Benefit Act;

[<sup>F2</sup>“determining authority” means, as the case may require, the Secretary of State, [<sup>F3</sup>the First-tier Tribunal or the Upper Tribunal;]]

“the standard rate of increase” means the amount specified in Part IV or Part V of Schedule 4 to the Act as the amount of an increase for an adult dependant of the benefit in question,

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

[<sup>F4</sup>(3) Regulations 2(2) and (3), 4 and 5(1) shall, with any necessary modifications, apply to [<sup>F5</sup>carer’s allowance] as they apply to retirement pension.]

[<sup>F6</sup>(3A) Nothing in these Regulations applies for the purposes of incapacity benefit under section 30A of the Contributions and Benefits Act.]

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

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

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

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

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889 shall apply in relation to this instrument and in relation to any revocation effected by it as if this

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instrument, the regulations revoked by it and any regulations revoked by the regulations so revoked were Acts of Parliament, and as if each revocation were a repeal.

#### Textual Amendments

- F1** Words in reg. 1(2) inserted (5.12.1992) by [The Social Security Benefit \(Dependency\) Amendment Regulations 1992 \(S.I. 1992/3041\)](#), **regs. 1(1), 2**
- F2** Words in reg. 1(2) substituted (29.11.1999) by [The Social Security Act 1998 \(Commencement No. 12 and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/3178\)](#), arts. 3(1)(2), **Sch. 2 para. 1**
- F3** Words in reg. 1(2) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 7**
- F4** Reg. 1(3) substituted (13.4.1995) by [The Social Security \(Incapacity Benefit - Increases for Dependents\) Regulations 1994 \(S.I. 1994/2945\)](#), **regs. 1(1), 15(2)(a)**
- F5** Words in reg. 1 substituted (1.4.2003) by [The Social Security Amendment \(Carer's Allowance\) Regulations 2002 \(S.I. 2002/2497\)](#), reg. 1(b), Sch. 2 paras. 12
- F6** Reg. 1(3A) inserted (13.4.1995) by [The Social Security \(Incapacity Benefit - Increases for Dependents\) Regulations 1994 \(S.I. 1994/2945\)](#), **regs. 1(1), 15(2)(b)**

#### Provisions as to maintenance for the purposes of increase of benefit in respect of dependants

2.—(1) Subject to paragraph (2), a beneficiary shall not for the purposes of the Act be deemed to be wholly or mainly maintaining another person unless the beneficiary—

- (a) when <sup>F7</sup>... incapable of work, or, as the case may be, [<sup>F8</sup>entitled to a Category A or Category B retirement pension], contributes towards the maintenance of that person an amount not less than the amount of increase of benefit received in respect of that person; and
- (b) when in employment, or not incapable of work, or, as the case may be, not so [<sup>F9</sup>entitled] (except in a case where the dependency did not arise until after that time) contributed more than half of the actual cost of maintenance of that person.

(2) In a case where—

- (a) a person is partly maintained by each of 2 or more other persons each of whom could be entitled to an increase of benefit under the Act in respect of that person if he were wholly or mainly maintaining that person, and
- (b) the contributions made by those other persons towards the maintenance of that person amount in the aggregate to sums which, if they were contributed by one of them, would be sufficient to satisfy the foregoing requirements of this regulation,

that person shall for purposes of the Act be deemed to be wholly or mainly maintained by that one of the said other persons who—

- (i) makes the larger or largest contributions to the maintenance of that person, or
- (ii) in a case where no person makes the larger or largest contributions as aforesaid, is the elder or eldest of the said other persons, or
- (iii) in any case, is a person designated in that behalf by a notice in writing signed by a majority of the said other persons and addressed to the Secretary of State,

so long as that one of the said other persons continues to be entitled to benefit under the Act and to satisfy the condition contained in paragraph (1)(a) of this regulation.

(3) A notice and the designation contained therein given under the foregoing paragraph may be revoked at any time by a fresh notice signed by a majority of such persons and another one of their

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number may be designated thereby, and accordingly the provisions of that paragraph shall apply to the one so last designated.

#### Textual Amendments

- F7** Words in reg. 2(1)(a) omitted (7.10.1996) by virtue of [The Social Security and Child Support \(Jobseeker's Allowance\) \(Consequential Amendments\) Regulations 1996 \(S.I. 1996/1345\)](#), regs. 1, **12(2)**
- F8** Words in reg. 2(1)(a) substituted (1.10.1989) by [The Social Security \(Abolition of Earnings Rule\) \(Consequential\) Regulations 1989 \(S.I. 1989/1642\)](#), regs. 1, **4**
- F9** Word in reg. 2(1)(b) substituted (1.10.1989) by [The Social Security \(Abolition of Earnings Rule\) \(Consequential\) Regulations 1989 \(S.I. 1989/1642\)](#), regs. 1, **4**

#### Allocation of contributions for <sup>F10</sup>spouse][<sup>F11</sup> or civil partner]<sup>F12</sup>...

3.—(1) Subject to the provisions of this regulation, any sum or sums paid by a person by way of contribution towards either or both of the following, that is to say the maintenance of his <sup>F13</sup>spouse][<sup>F14</sup> or civil partner] and the cost of providing for one or more children to whom this regulation refers, shall be treated for the purposes of section 31(c)(i), <sup>F15</sup> ... <sup>F16</sup> ... [<sup>F17</sup>44(3)(a),] 45(2)(b), [<sup>F17</sup>45A(2)(b), <sup>F18</sup> ...] 65(1), 66(1)(a) or [<sup>F19</sup>70(2)] (conditions as to maintenance) as such contributions of such respective amounts equal in the aggregate to the said sum or sums, in respect of such of the persons hereinafter mentioned, that is to say, his <sup>F13</sup>spouse][<sup>F14</sup> or civil partner] or any child or children to whom this regulation refers, as may be determined by the determining authority so as to secure as large a payment as possible by way of benefit in respect of dependants.

(2) A sum paid by way of contribution towards the maintenance of a <sup>F20</sup>spouse][<sup>F21</sup> or civil partner] shall not be treated by virtue of this regulation as a sum paid by way of contribution towards the cost of providing for a child or children, and a sum paid by way of contribution towards the cost of providing for a child or children shall not be so treated as a sum paid by way of contribution towards the maintenance of a <sup>F20</sup>spouse][<sup>F21</sup> or civil partner], unless in either case the wife is entitled to child benefit in respect of the child or children.

(3) Except for the purposes of section 31(c)(i) (child's special allowance), the children to whom this regulation refers are any children in respect of whom, in the period for which the sum in question is paid by the person, that person is entitled to child benefit or could have been so entitled by virtue of regulations had he contributed to the cost of providing for the child at a sufficient weekly rate.

(4) For the purposes of section 31(c)(i)—

- (a) the children to whom this regulation refers are any such children to whom section 31(b) applies;
- (b) a determination made under paragraph (1) in order to ascertain the weekly rate at which the husband had before his death been contributing to the cost of providing for a child may be <sup>F22</sup>superseded] from time to time by [<sup>F23</sup>the Secretary of State] so often as may be necessary to secure as large a payment as possible by way of the child's special allowance, so however that no such [<sup>F24</sup>supersession] shall affect entitlement in respect of any period before the date of the [<sup>F24</sup>supersession]; and
- (c) the condition in paragraph (2) shall be deemed to be satisfied if it would have been satisfied but for the fact that the child was not then in Great Britain.

<sup>F25</sup>(5) In the heading to this regulation and in paragraphs (1) and (2) the word “spouse” includes both husband and wife except in relation to maintenance contributions for the purposes of [<sup>F26</sup>section]

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45(2)(b) where it means wife only, and in relation to maintenance contributions for the purposes of sections 44(3)(a) [<sup>F27</sup> and 45A(2)(b)] where it means husband only.]

#### Textual Amendments

- F10** Word in heading to reg. 3 substituted (21.11.1983) by The Social Security Benefit (Dependency) Amendment Regulations 1983 (S.I. 1983/1001), **regs. 1, 2(2)**
- F11** Words in reg. 3 heading inserted (5.12.2005) by The Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2877), art. 1, **Sch. 3 para. 7(2)(a)** (with art. 3)
- F12** Words in reg. 3 heading omitted (6.4.2003) by virtue of The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) (No. 2) Regulations 2003 (S.I. 2003/937), regs. 1(b), **2(2)(a)(i)**
- F13** Word in reg. 3(1) substituted (21.11.1983) by The Social Security Benefit (Dependency) Amendment Regulations 1983 (S.I. 1983/1001), **regs. 1, 2(3)**
- F14** Words in reg. 3(1) inserted (5.12.2005) by The Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2877), art. 1, **Sch. 3 para. 7(2)(b)** (with art. 3)
- F15** Word in reg. 3(1) omitted (6.4.2003) by virtue of The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) (No. 2) Regulations 2003 (S.I. 2003/937), regs. 1(b), **2(2)(a)(ii)**
- F16** Words in reg. 3(1) omitted (7.10.1996) by virtue of The Social Security and Child Support (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996 (S.I. 1996/1345), regs. 1, **12(3)(a)**
- F17** Words in reg. 3(1) inserted (16.9.1985) by The Social Security Benefit (Dependency) Amendment (No. 2) Regulations 1985 (S.I. 1985/1305), regs. 1, 2(2)
- F18** Words in reg. 3(1) omitted (13.4.1995) by The Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 (S.I. 1994/2945), **regs. 1(1), 15(3)(a)**
- F19** Word in reg. 3(1) substituted (28.11.1984) by The Social Security Benefit (Dependency, Claims and Payments and Hospital In-Patients) Amendment Regulations 1984 (S.I. 1984/1699), regs. 1, 3(a)
- F20** Word in reg. 3(2) substituted (21.11.1983) by The Social Security Benefit (Dependency) Amendment Regulations 1983 (S.I. 1983/1001), **regs. 1, 2(4)**
- F21** Words in reg. 3(2) inserted (5.12.2005) by The Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc. Provisions) Order 2005 (S.I. 2005/2877), art. 1, **Sch. 3 para. 7(2)(c)** (with art. 3)
- F22** Words in reg. 3(4)(b) substituted (29.11.1999) by The Social Security Act 1998 (Commencement No. 12 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/3178), arts. 3(1)(2), **Sch. 2 para. 2(a)**
- F23** Words in reg. 3(4)(b) substituted (29.11.1999) by The Social Security Act 1998 (Commencement No. 12 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/3178), arts. 3(1)(2), **Sch. 2 para. 2(b)**
- F24** Words in reg. 3(4)(b) substituted (29.11.1999) by The Social Security Act 1998 (Commencement No. 12 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/3178), arts. 3(1)(2), **Sch. 2 para. 2(c)**
- F25** Reg. 3(5) substituted (16.9.1985) by The Social Security Benefit (Dependency) Amendment (No. 2) Regulations 1985 (S.I. 1985/1305), regs. 1, 2(3)
- F26** Word in reg. 3(5) substituted (7.10.1996) by The Social Security and Child Support (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996 (S.I. 1996/1345), regs. 1, **12(3)(b)**
- F27** Words in reg. 3(5) substituted (13.4.1995) by The Social Security (Incapacity Benefit - Increases for Dependents) Regulations 1994 (S.I. 1994/2945), **regs. 1(1), 15(3)(b)**

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**[<sup>F28</sup> Deeming benefit under the Act abated under section 27(3) of the Social Security Act 1986 to be a contribution for the maintenance of children or adult dependants**

4. Where for any period a person (in this regulation referred to as A) is entitled to, or to an increase in the amount of, any benefit prescribed under section 27(3)(a) of the Social Security Act 1986 (prevention of duplication of payments) in respect of another person (in this regulation referred to as B) and the amount of, or of the increase in, any such benefit is abated under section 27(3) of the Social Security Act 1986, then in determining for the purpose of the Social Security Act 1975 whether A is wholly or mainly maintaining or is contributing at any weekly rate to the maintenance of, or is or has been contributing at any weekly rate to the cost of providing for, B, the amount by which such benefit for any week has been so abated shall be deemed to be a contribution of that amount for that week made by A for the maintenance of B.]

**Textual Amendments**

**F28** Reg. 4 substituted (11.4.1988) by [The Social Security Benefit \(Dependency\) Amendment Regulations 1988 \(S.I. 1988/554\)](#), **regs. 1(1), 2**

**[<sup>F29</sup> Circumstances in which a person who is not entitled to child benefit is to be treated as if he were so entitled**

**4A.**—(1) For the purposes of section 38 (guardian's allowance) or sections <sup>F30</sup> ... 44(3)(c), 46(2), 49, 64(1) and 66(1)(d) (increase of benefit in respect of dependent children, and <sup>F31</sup> ... persons having care of dependent children) a person shall be treated as if he were entitled to child benefit in respect of a child for any period throughout which—

- (a) child benefit has been awarded to a parent of that child with whom that child is living and with whom that person is residing and either—
  - (i) the child is being wholly or mainly maintained by that person; or
  - (ii) that person is also a parent of the child; or
- (b) he, or his spouse [<sup>F32</sup>or civil partner] with whom he is residing, would have been entitled to child benefit in respect of that child had the child been born at the end of the week immediately preceding the week in which birth occurred.

<sup>F33</sup>(2) .....

(3) For the purpose of determining whether a person is entitled to a guardian's allowance under section 38, where in respect of a child that allowance is payable to a person for a continuous period of 7 days and would have been payable to that person for the immediately preceding 7 days had he been entitled to child benefit in respect of that child for an earlier week, he shall be treated as if he were entitled to child benefit in respect of that child for that earlier week.

(4) If for any period a person who is in Great Britain could have been entitled to receive payment of an amount by way of a benefit or allowance or an increase of a benefit or an allowance under the Act in respect of a child or a <sup>F34</sup> ... person who has the care of a child but for the fact that in pursuance of any agreement with the government of a country outside the United Kingdom he, or his [<sup>F35</sup>spouse][<sup>F36</sup>or civil partner] who is residing with him, is entitled in respect of the child in question to the family benefits of that country and is not entitled to child benefit, he shall for the purposes of entitlement to the said payment be treated as if he were entitled to child benefit for the period in question.

(5) The expression “earlier week” in paragraph (3) means the week immediately preceding the first week for which the person referred to in that paragraph was entitled to child benefit in respect of the child referred to in that paragraph.

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(6) For the purposes of paragraph (1) the word “week” has the meaning assigned to it by section 24(1) of the Child Benefit Act; and for the purposes of paragraphs (1) and (2) a child shall not be regarded as living with a person unless he can be so regarded for the purposes of section 3 (meaning of “person responsible for child” ) of the said Act.]

**Textual Amendments**

- F29** Reg. 4A inserted (2.6.1980) by [The Social Security Benefit \(Dependency\) Amendment Regulations 1980 \(S.I. 1980/585\)](#), **regs. 1(1), 2**
- F30** Word in reg. 4A(1) omitted (6.4.2003) by virtue of [The Social Security \(Working Tax Credit and Child Tax Credit\) \(Consequential Amendments\) \(No. 2\) Regulations 2003 \(S.I. 2003/937\)](#), regs. 1(b), **2(2)(b)**
- F31** Word in reg. 4A(1) omitted (11.4.1989) by virtue of [The Social Security Benefit \(Dependency\) Amendment Regulations 1989 \(S.I. 1989/523\)](#), **regs. 1(1), 2**
- F32** Words in reg. 4A(1)(b) inserted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 3 para. 7(3)(a)** (with art. 3)
- F33** Reg. 4A(2) revoked (26.11.1984) by [The Social Security Benefit \(Dependency\) Amendment Regulations 1984 \(S.I. 1984/1698\)](#), **regs. 1, 2(13)**
- F34** Word in reg. 4A(4) omitted (26.11.1984) by virtue of [The Social Security Benefit \(Dependency\) Amendment Regulations 1984 \(S.I. 1984/1698\)](#), **regs. 1, 2(3)**
- F35** Word in reg. 4A(4) substituted (26.11.1984) by [The Social Security Benefit \(Dependency\) Amendment Regulations 1984 \(S.I. 1984/1698\)](#), **regs. 1, 2(3)**
- F36** Words in reg. 4A(4) inserted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 3 para. 7(3)(b)** (with art. 3)

**[<sup>F37</sup> Circumstances in which a person entitled to child benefit is to be treated as if he were not so entitled**

**4B.—(1)** For the purposes of—

- (a) section 56 (child’s special allowance);
- (b) section 77 (guardian’s allowance);
- <sup>F38</sup>(c) . . . . .
- (d) section 82(4) (short-term benefits—increase for adult dependents);
- (e) section 85(2) (pension increase (person with care of children));
- (f) section 90 (increase in benefits for beneficiaries under sections 68 and 70),

of the Contributions and Benefits Act, and

- (g) paragraphs 4(1) (unemployability supplement: increase for beneficiary’s dependent children) and 6(1) (unemployability supplement: increase for dependent adults) of Schedule 7 to,

that Act, a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for the periods referred to in paragraph (2) below.

(2) The periods referred to in paragraph (1) above are—

- (a) any period throughout which—
  - (i) the person referred to in that paragraph, not being a parent of the child, does not fall to be treated as responsible for the child under section 143(1)(a) of the Contributions and Benefits Act, and

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- (ii) a parent of that child falls to be treated as responsible for the child under the said section 143(1)(a); or
  - (b) any period throughout which—
    - (i) that person, not being a parent of that child, falls to be treated as responsible for the child under section 143(1)(a) of the Contributions and Benefits Act, and
    - (ii) a parent of that child also falls to be treated as responsible for the child under the said section 143(1)(a); or
  - (c) any day following the day on which that child died.
- (3) Sub-paragraph (b) of paragraph (2) shall not apply in the case of a person who is wholly or mainly maintaining the child referred to in that sub-paragraph.
- (4) For the purposes of—
- (a) section 37(1) (entitlement to a widowed mother’s allowance);
  - (b) section 39A(2) (entitlement to a widowed parent’s allowance);
  - (c) section 56(1)(b);
  - (d) section 77(1);
  - <sup>F39</sup>(e) .....
  - (f) section 82(4);
  - (g) section 85(2);
  - (h) section 90;
- of the Contributions and Benefits Act, and
- (i) paragraphs 4(1), 6(1) and 18(1)(a)(ii) of Schedule 7 (industrial death benefit: child of deceased’s family) to,
- that Act, a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for any period for which that benefit is not payable by virtue of any of the provisions referred to in paragraph (5) below.
- (5) The provisions referred to in paragraph (4) above are—
- (a) regulation 7 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child);
  - (b) regulation 7A (exclusion from benefit of children aged 16 but under the age of 19 who are receiving advanced education);
  - (c) regulation 7B (child receiving training under the youth training scheme); or
  - (d) regulation 7C (child receiving income support),
- of the Child Benefit (General) Regulations 1976 or any provision contained in regulations made under section 144(1) of the Contributions and Benefits Act in so far as those regulations provide that child benefit is not to be payable by virtue of section 142(1)(b) of that Act and regulations made thereunder.]

**Textual Amendments**

- F37** Reg. 4B substituted (9.4.2001) by [The Social Security \(Benefits for Widows and Widowers\) \(Consequential Amendments\) Regulations 2000 \(S.I. 2000/1483\)](#), regs. 1, **5(2)**
- F38** Reg. 4B(1)(c) omitted (6.4.2003) by virtue of [The Social Security \(Working Tax Credit and Child Tax Credit\) \(Consequential Amendments\) \(No. 2\) Regulations 2003 \(S.I. 2003/937\)](#), regs. 1(b), **2(2)(c)**

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**F39** Reg. 4B(4)(e) omitted (6.4.2003) by virtue of The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) (No. 2) Regulations 2003 (S.I. 2003/937), regs. 1(b), **2(2)(c)**



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