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STATUTORY INSTRUMENTS

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**1994 No. 1924**

**The Income-related Benefits Schemes (Miscellaneous Amendments) (No.4) Regulations 1994**

**Amendment of the Disability Working Allowance Regulations**

**3.—**(1) The Disability Working Allowance (General) Regulations 1991<sup>M1</sup> shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (1) of regulation 2 (interpretation) after the definition of “the Contributions and Benefits Act” there shall be inserted the following definition—

““Crown property” means property held by Her Majesty in right of the Crown or by a government department or which is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest held by Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;”.

(3) In paragraph (1) of regulation 15 (calculation of income on a weekly basis)—

(a) after sub-paragraph (a) the word “and” shall be omitted;

(b) after sub-paragraph (b) the word “and” and the following sub-paragraph (c) shall be added—

“(c) by then deducting any relevant child care charges to which regulation 15A (treatment of child care charges) applies from any earnings which form part of the normal weekly income, up to a maximum deduction in respect of the claimant’s family of £40 per week.”.

(4) After regulation 15 there shall be inserted the following regulation—

**“ Treatment of child care charges**

**15A.—**(1) This regulation applies where a claimant is incurring relevant child care charges and—

(a) is a lone parent and is engaged in remunerative work;

(b) is a member of a couple both of whom are engaged in remunerative work; or

(c) is a member of a couple where one member is engaged in remunerative work and the other member is incapacitated.

(2) In this regulation—

“local authority” means, in relation to England and Wales, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly or, in relation to Scotland, a regional, islands or district council;

“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 years, other than charges paid in respect of the child’s compulsory education, 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);

- (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,

and shall be calculated on a weekly basis in accordance with paragraphs (3) to (6);

“school term-time” means the school term-time applicable to the child for whom care is provided.

(3) Subject to paragraphs (4) to (6), 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.

(4) Subject to paragraph (5), 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 average weekly charge paid for care provided in respect of that child in the most recent 4 complete weeks.

(5) Where in any case the charges in respect of child care are paid monthly, the average weekly charge for the purposes of paragraph (3) shall be established—

- (a) where the charges are for a fixed monthly amount, by multiplying that amount by 12 and dividing the product by 52;
- (b) where the charges are for variable monthly amounts, by aggregating the charges for the previous 12 months and dividing the total by 52.

(6) In a case where there is no information or insufficient information for establishing the average weekly charge paid for child care in accordance with paragraphs (3) to (5), the average weekly charge for care shall be estimated in accordance with information provided by the child minder or person providing the care or, if such information is not available, in accordance with information provided by the claimant.

(7) For the purposes of paragraph (1)(c) the other member of a couple is incapacitated where—

- (a) either council tax benefit or housing benefit is payable under Part VII of the Contributions and Benefits Act to the other member or his partner and the applicable amount of the person entitled to the benefit includes—
  - (i) a disability premium; or
  - (ii) a higher pensioner premium by virtue of the satisfaction of—
    - (aa) in the case of council tax benefit, paragraph 11(2)(b) of Schedule 1 to the Council Tax Benefit (General) Regulations 1992;
    - (bb) in the case of housing benefit, paragraph 10(2)(b) of Schedule 2 to the Housing Benefit (General) Regulations 1987<sup>M2</sup>,

- on account of the other member's incapacity;
- (b) there is payable in respect of him one or more of the following pensions or allowances—
- (i) invalidity pension under section 33, 40 or 41 of the Contributions and Benefits Act 1992;
  - (ii) attendance allowance under section 64 of that Act;
  - (iii) severe disablement allowance under section 68 of that Act;
  - (iv) disability living allowance under section 71 of that Act;
  - (v) increase of disablement pension under section 104 of that Act;
  - (vi) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under head (ii), (iv) or (v) above;
- (c) a pension or allowance to which head (ii), (iv), (v) or (vi) of sub-paragraph (b) above refers was payable on account of his incapacity but has ceased to be payable in consequence of his becoming a patient within the meaning of regulation 10(3)(a) (membership of the same household);
- (d) sub-paragraph (b) or (c) above would apply to him if the legislative provisions referred to in those sub-paragraphs were provisions under any corresponding enactment having effect in Northern Ireland; or
- (e) he has an invalid carriage or other vehicle provided to him by the Secretary of State under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977 or under section 46 of the National Health Service (Scotland) Act 1978 or provided by the Department of Health and Social Services for Northern Ireland under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.”.

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**Marginal Citations**

- M1** S.I. 1991/2887; relevant amending instruments S.I. 1992/1101, 2155, 1993/315, 963, 1249 and 2119.  
**M2** S.I. 1987/1971.

**Changes to legislation:**

There are currently no known outstanding effects for the The Income-related Benefits Schemes (Miscellaneous Amendments) (No.4) Regulations 1994, Section 3.