
STATUTORY INSTRUMENTS

1976 No. 965

SOCIAL SECURITY

The Child Benefit (General) Regulations 1976

<i>Made</i>	- - - -	<i>18th June 1976</i>
<i>Laid before Parliament</i>		<i>28th June 1976</i>
<i>Coming into Operation</i>		<i>8th August 1976</i>

The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 2, 3, 9(2)(a), 17(5) and (6), 20(1) and (2)(c) and 24 of, and paragraphs 1 to 4 of Schedule 1 and paragraph 6 of Schedule 2 to, the Child Benefit Act 1975 ^{M1}, and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Marginal Citations

M1 1975 c. 61

PART I

General

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Benefit (General) Regulations 1976 and shall come into operation on 8th August 1976.

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

“the Act” means the Child Benefit Act 1975;

“the Social Security Act” means the Social Security Act 1975 ^{M2};

“the Taxes Act” means the Income and Corporation Taxes Act 1970 ^{M3},

[^{F1}“advanced education” means full-time education for the purposes of—

- (a) [^{F2}a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher diploma of the Technician Education Council or the Scottish Technical Education Council, a higher national diploma of the Business Education Council or the Scottish Business Education Council or a teaching qualification; or]

Status: Point in time view as at 06/08/1984.

Changes to legislation: There are currently no known outstanding effects for the The Child Benefit (General) Regulations 1976 (revoked). (See end of Document for details)

- (b) [^{F2}any other course which is certified by the Secretary of State as being a course of a standard above ordinary national diploma, a diploma of the Technician Education Council or the Scottish Technical Education Council, a national diploma of the Business Education Council or the Scottish Business Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of Sixth Year Studies,]]

“benefit” means child benefit under the Act;

“the Department” means the Department of Health and Social Security;

“full-time education” means full-time education by attendance at a recognised educational establishment,

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

(3) References in these regulations to any condition being satisfied or any facts existing in a week shall, unless they relate to paragraph 1 of Schedule 1 to the Act (children in detention, care etc.) be construed as references to the condition being satisfied or the facts existing at the beginning of that week.

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

- (a) 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;
- (b) 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^{M4} shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

Textual Amendments

F1 Words in reg. 1(2) inserted (3.10.1977) by [The Child Benefit \(General\) Amendment Regulations 1977 \(S.I. 1977/534\)](#), regs. 1, **2(1)**

F2 Words in reg. 1(2) substituted (7.2.1983) by [The Child Benefit \(General\) Amendment Regulations 1983 \(S.I. 1983/3\)](#), regs. 1, **2**

Marginal Citations

M2 1975 c. 14.

M3 1970 c. 10

M4 1889 c. 63.

Special provisions as to contributions and expenditure in respect of a child

2.—(1) Where two or more persons are contributing to the cost of providing for the same child and the aggregate weekly amount of their contributions is, but the weekly amount of each of their individual contributions is not, of an amount not less than the weekly rate of child benefit which would be payable in respect of that child had the aggregate weekly amount of their contributions been contributed by one only of them, the aggregate weekly amount of their contributions shall be treated as having been [^{F3}contributed] by that one of them as they shall by agreement nominate in

writing or, in default of such agreement, by that one of them as the Secretary of State may, in his discretion, determine.

(2) Where pursuant to a nomination or determination under paragraph (1) a person is awarded benefit in respect of a child, the nomination or determination shall cease to have effect in the week following that in which benefit was awarded to that person; and accordingly that person shall himself be required to satisfy the requirement in section 3(1)(b) of the Act, namely, that he is contributing to the cost of providing for the child at a weekly rate which is not less than the weekly rate of benefit payable in respect of the child.

(3) Where spouses are residing together a contribution made or expenditure incurred by one of them in respect of a child shall if they so agree, or in default of such agreement if the Secretary of State in his discretion so determines, be treated as made or incurred by the other.

Textual Amendments

F3 Word in reg. 2(1) substituted (22.11.1976) by [The Child Benefit \(Miscellaneous Minor Amendments\) Regulations 1976 \(S.I. 1976/1758\)](#), regs. 1, **3(1)**

Child in residential accommodation in prescribed circumstances

3. The prescribed circumstances for the purposes of section 3(3)(c) of the Act (subject to section 3(4) of the Act a day of absence of a child from a person to be disregarded for the purposes of section 3(2) if it is due solely to the child's being, in prescribed circumstances, in residential accommodation pursuant to arrangements made under section 12 of the Health Services and Public Health Act 1968 ^{M5} or section 27(1) of the National Health Service (Scotland) Act 1947 ^{M6}) are any circumstances in which a child is in residential accommodation pursuant to arrangements made under the said section 12 or the said section 27(1).

Marginal Citations

M5 1968 c. 46.

M6 1947 c. 27.

Days of absence to be disregarded in determining whether a child is living with a person

4.—(1) The prescribed number of days under section 3(4) of the Act (number of days that may be disregarded by virtue of section 3(3) (b) or (c) of the Act in the case of any child not to exceed such number as may be prescribed unless the person claiming to be responsible for the child regularly incurs expenditure in respect of him) is 84 consecutive days calculated in accordance with paragraph (2).

(2) Two or more distinct relevant periods separated by one or more intervals each not exceeding 28 days, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

(3) In paragraph (2) "relevant periods" means periods to which section 3(3)(b) of the Act (day of absence of a child from a person due solely to the child's undergoing medical or other treatment as an in-patient in a hospital or similar institution to be disregarded in determining whether that child is living with that person) applies; also periods to which section 3(3)(c) of the Act (day of absence of a child from a person due solely to the child's being in residential accommodation pursuant to arrangements made under certain enactments to be disregarded in determining whether that child is living with that person) applies.

Status: Point in time view as at 06/08/1984.

Changes to legislation: There are currently no known outstanding effects for the The Child Benefit (General) Regulations 1976 (revoked). (See end of Document for details)

[^{F4}Circumstances in which a person is to be treated as receiving full-time education

5. A person shall be treated for the purposes of the Act as receiving full -time education if-
- (a) he is receiving-
 - (i) primary or secondary education in England or Wales otherwise than at school, under special arrangements made under section 56 of the Education Act 1944; or
 - (ii) education in Scotland elsewhere than at an educational establishment, under special arrangements made under section 14 of the Education (Scotland) Act 1962; or
 - (b) he is attending a course of education at a recognised educational establishment and in the pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours per week, so however that in calculating the time spent in pursuit of the course, no account shall be taken of time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment.]

Textual Amendments

- F4** Reg. 5 substituted (6.8.1984) by [The Child Benefit \(General\) Amendment \(No. 2\) Regulations 1984 \(S.I. 1984/939\)](#), regs. 1, 2

Interruption of full-time education

6.—^{F5}(1) [^{F6}^{F7}Subject to paragraph (2)] ,] in determining for the purposes of section 2(1)(b) of the Act (persons aged 16 but under 19 who are to be treated as children) whether a person is receiving full-time education [^{F6}not being advanced education], no account shall be taken of a period (whether beginning before or after the person concerned attains age 16) of up to 6 months of any interruption to the extent to which it is accepted that the interruption is attributable to a cause which is reasonable in the particular circumstances of the case; and where the interruption or its continuance is attributable to the illness or disability of mind or body of the person concerned, the period of 6 months may be extended for such further period as is accepted as being reasonable in the particular circumstances of the case.

^{F8}(2) The provisions of paragraph (1) shall not apply to any period of interruption of a person's full-time education which is likely to be followed immediately or which is followed immediately by a period during which:-

- (a) provision is made for his financial support under the Employment and Training Act 1973 ; or
- (b) he is receiving education by virtue of his employment or of any office held by him.]

Textual Amendments

- F5** Reg. 6(1): reg. 6 renumbered as reg. 6(1) (3.10.1977) by [The Child Benefit \(General\) Amendment Regulations 1977 \(S.I. 1977/534\)](#), regs. 1, **2(2)(b)**
- F6** Words in reg. 6(1) inserted (3.10.1977) by [The Child Benefit \(General\) Amendment Regulations 1977 \(S.I. 1977/534\)](#), regs. 1, **2(2)(a)**
- F7** Words in reg. 6(1) substituted (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, 2
- F8** Reg. 6(2) substituted for reg. 6(2)(3) (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, 2

[^{F9}Circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child

7.—(1) [^{F10}Subject to paragraph (3)] a person who has ceased to receive full-time education not being advanced education shall, if:-

- (a) he is under the age of 16 when he so ceases and attains that age on or before the terminal date specified in the next paragraph, from the date on which he attains that age; or
- (b) he is 16 or over when he so ceases, from the date on which he so ceases,

continue to be treated as a child within section 2(1) of the Act up to and including the week including the terminal date or if he attains the age of 19 on or before that date up to and including the week including the last Monday before he attains that age.

(2) In this regulation the "terminal date" means:-

- (a) the first Monday in January; or
- (b) the Monday following Easter Monday; or
- (c) the first Monday in September,

whichever first occurs after the date on which the person's said education ceased.]

[^{F11}(3) Benefit shall not be payable to any person entitled to benefit in respect of a child by virtue of this regulation for any week in which that child is engaged full-time in gainful employment.]

Textual Amendments

- F9** Reg. 7 substituted (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, 3
- F10** Words in reg. 7(1) inserted (31.5.1982) by [The Child Benefit \(General\) Amendment Regulations 1982 \(S.I. 1982/470\)](#), regs. 1(1), 2(1)
- F11** Reg. 7(3) inserted (31.5.1982) by [The Child Benefit \(General\) Amendment Regulations 1982 \(S.I. 1982/470\)](#), regs. 1(1), 2(2)

[^{F12}Exclusion from benefit of children aged 16 but under the age of 19 who are receiving advanced education

7A. Benefit shall not be payable in respect of a child by virtue of section 2(1)(b) of the Act (person to be treated as a child for any week in which he is aged 16 but under the age of 19 and receiving full-time education) if that child is receiving advanced education.]

Textual Amendments

- F12** Reg. 7A inserted (3.10.1977) by [The Child Benefit \(General\) Amendment Regulations 1977 \(S.I. 1977/534\)](#), regs. 1, 2(3)

[^{F13}Child receiving financial support under the Employment and Training Act 1973]

[^{F13}7B. Child benefit shall not be payable in respect of a child over the age of 16 for any week in which financial support for that child is being provided by way of payments under arrangements made by virtue of section 2 of the Employment and Training Act 1973 ^{F14}...].

Status: Point in time view as at 06/08/1984.

Changes to legislation: There are currently no known outstanding effects for the The Child Benefit (General) Regulations 1976 (revoked). (See end of Document for details)

Textual Amendments

- F13** Reg. 7B substituted (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, 4
- F14** Words in reg. 7B revoked (31.5.1982) by [The Child Benefit \(General\) Amendment Regulations 1982 \(S.I. 1982/470\)](#), regs. 1(1), 3

[^{F15}Child receiving supplementary benefit

7C. Child benefit shall not be payable in respect of a child by virtue of section 2(1)(b) of the Act for any week in respect of which that child receives a supplementary allowance under the Supplementary Benefits Act 1976]

Textual Amendments

- F15** Reg. 7C inserted (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, 5

Employed trainees

8.—(1) Where but for the provisions of paragraph 2(1) of Schedule 1 to the Act (a person not to be entitled to benefit by virtue of section 2(1)(b) of the Act in respect of a child if the education in question is received by that child by virtue of his employment or of any office held by him) a person would be entitled to benefit in respect of a child, that child shall not for any week be treated as receiving education by virtue of his employment or of any office held by him if that week—

^{F16}(a) begins in what has been or is likely to be a continuous period of not less than 6 months in respect of which that child receives no financial support by virtue of his employment or any office held by him; ^{F17}...

^{F17}(b)]

^{F18}(1A) Subject to the provisions of paragraph (1), a child who is receiving education in any week shall be treated as receiving such education by virtue of his employment or of any office held by him if, in consideration of that education, that child receives financial support in respect of that week by virtue of his employment or any office held by him.]

(2) [^{F19}For the purposes of this regulation], any reimbursement of the cost of books, equipment, tuition, examination fees, travelling expenses and contributions under the Social Security Act is not to be treated as the receipt by the child of financial support.

Textual Amendments

- F16** Reg. 8(1)(a)(b) substituted for words (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, 6
- F17** Words in reg. 8(1)(a) revoked (31.5.1982) by [The Child Benefit \(General\) Amendment Regulations 1982 \(S.I. 1982/470\)](#), regs. 1(1), 4
- F18** Reg. 8(1A) inserted (31.8.1978) by [The Child Benefit \(General\) Amendment Regulations 1978 \(S.I. 1978/1275\)](#), regs. 1, 2(2)
- F19** Words in reg. 8(2) substituted (31.8.1978) by [The Child Benefit \(General\) Amendment Regulations 1978 \(S.I. 1978/1275\)](#), regs. 1, 2(2)

Persons exempt from tax

9.—(1) For the purposes of paragraph 4 of Schedule 1 to the Act (except where regulations otherwise provide no person to be entitled to benefit in respect of a child if either that person or such other person as may be prescribed is exempt from tax under such provisions as may be prescribed) a person and, if that person is residing with his spouse, his spouse, shall not be entitled to benefit in respect of a child for any week in respect of which he or, where they are residing together, his spouse receives earnings or other emoluments which are exempted from United Kingdom income tax under—

- (a) section 367 or sections 372 to 374 of the Taxes Act (exemption from income tax etc. of visiting forces, staffs of allied headquarters and of Commonwealth and foreign representatives);
- (b) section 2 of, and Article 34 or 37 of Schedule 1 to, the Diplomatic Privileges Act 1964 ^{M7}, or section 1 of, and Article 49 or 66 of Schedule 1 to, the Consular Relations Act 1968 ^{M8} (exemption from income tax etc. of members of diplomatic missions and their staffs etc. and of certain consular officers etc.);
- (c) section 4 of the Arbitration (International Investment Disputes) Act 1966 ^{M9} (status, immunities and privileges conferred by the Convention on the settlement of investment disputes between States and nationals of other States);
- (d) an Order in Council, statutory notice, or regulations, made or given under, or continuing to have effect by virtue of, any of the following enactments—
 - (i) the Bretton Woods Agreements Act 1945 ^{M10}, section 3 (status, immunities and privileges of the International Monetary Fund, the International Bank for Reconstruction and Development and governors, executive directors, alternates, officers and employees of the Fund and Bank);
 - (ii) the Taxes Act, section 497 (relief from double taxation);
 - (iii) the Consular Relations Act 1968, section 3(1) (additional privileges and immunities accorded as a result of agreement) and section 12 (privileges and immunities in connection with Commonwealth and Irish establishments);
 - (iv) the International Finance Corporation Act 1955 ^{M11}, section 3 (status, immunities and privileges of the International Finance Corporation, its governors, directors, alternates, officers and employees);
 - (v) the International Development Association Act 1960 ^{M12}, section 3 (status, immunities and privileges of the Association, its governors, directors, alternates, officers and employees);
 - (vi) the Diplomatic Privileges Act 1964, section 2(6) (certain privileges and immunities admitted by, or certain additional privileges and immunities granted by, the receiving State);
 - (vii) the International Organisations Act 1968 ^{M13}, sections 1, 2, 5 and 6 and 12(5) and paragraphs 9, 15, 21 and 23 of Schedule 1 (privileges and immunities of certain international organisations and their officers etc.);
 - (viii) the European Communities Act 1972 ^{M14}, section 2(2) (giving effect to *inter alia* the Protocol on the Privileges and Immunities of the European Communities—Articles 12 to 15, 20 and 21).

F20(2)

F20(3)

Status: Point in time view as at 06/08/1984.

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[^{F21}(4) Paragraph (1) shall not affect the entitlement to benefit of any person who was so entitled under paragraphs (2) and (3) before their revocation.]

Textual Amendments

- F20** Reg. 9(2)(3) revoked (6.4.1984) by [The Child Benefit \(General\) Amendment Regulations 1984 \(S.I. 1984/337\)](#), regs. 1, **2(3)**
- F21** Reg. 9(4) inserted (6.4.1984) by [The Child Benefit \(General\) Amendment Regulations 1984 \(S.I. 1984/337\)](#), regs. 1, **2(2)**

Marginal Citations

- M7** 1964 c. 81.
- M8** 1968 c. 18.
- M9** 1966 c. 41.
- M10** 9 & 10 Geo. 6. c. 19.
- M11** 4 & 5 Eliz. 2. c. 5.
- M12** 1960 c. 35.
- M13** 1968 c. 48.
- M14** 1972 c. 68

Married child

10. A person shall not be disentitled to benefit in respect of a married child by virtue of paragraph 3 of Schedule 1 to the Act (unless regulations otherwise provide no person to be entitled to benefit in respect of a married child) if—

- (a) that person is not the spouse of that child; and
- (b) that child either is not residing with his spouse or, if he is, the spouse is receiving full-time education.

^{F22}Circumstances in which persons absent from one another are or are not to be treated as residing together

11.—(1) Where a person is married, he and his spouse shall be treated for the purposes of the Act as residing together during any period of absence the one from the other falling before the date in that period of absence on which—

- (a) they are separated under an order of a court of competent jurisdiction or deed of separation; or
- (b) they have been absent the one from the other for at least 91 consecutive days,

and, for any part of that period of absence from one another from the date on which they are separated as specified in sub-paragraph (a) or have already been absent from one another as specified in sub-paragraph (b), the spouses shall be treated for the purposes of the Act as not residing together where such absence is likely to be permanent but as residing together where such absence is not likely to be permanent.

(2) Spouses shall be treated as residing together for the purposes of the Act during any period in which any absence the one from the other is by reason only of the fact that either of them is, or they both are, undergoing medical or other treatment as an in-patient in a hospital or similar institution whether such absence is temporary or not.

(3) Where two persons are parents of a child but not husband and wife they shall be treated as residing together for the purposes of the Act during any period of temporary absence the one from the other where they would be so treated but for such temporary absence.]

Textual Amendments

- F22** Reg. 11 substituted (5.5.1978) by [The Child Benefit \(Miscellaneous Amendments\) Regulations 1978 \(S.I. 1978/540\)](#), regs. 1, **4(1)**

Polygamous marriages

12.—(1) A polygamous marriage shall, for the purposes of Part I of the Act and any regulations thereunder, be treated as having the same consequences as a monogamous marriage for any day, but only for any day, throughout which the polygamous marriage is in fact monogamous.

(2) In paragraph (1)—

- (a) “polygamous marriage” means a marriage celebrated under a law which, as it applies to the particular ceremony and to the parties thereto, permits polygamy;
- (b) “monogamous marriage” means a marriage celebrated under a law which does not permit polygamy;
- (c) a polygamous marriage is referred to as being in fact monogamous when neither party to it has any spouse additional to the other; and
- (d) the day on which a polygamous marriage is contracted, or on which it terminates for any reason, shall be treated as a day throughout which that marriage was in fact monogamous if at all times on that day after it was contracted, or as the case may be, before it terminated, it was in fact monogamous.

Prescribed manner of making an election under Schedule 2 to the Act

13.—(1) An election under Schedule 2 to the Act (any election under that Schedule to be made in the prescribed manner) shall be made by giving notice in writing to the Secretary of State at an office of the Department on a form approved by the Secretary of State or in such other manner being in writing as he may accept as sufficient in the circumstances of any particular case or class of cases.

(2) An election shall not be effective to confer entitlement to benefit in respect of a child for any week earlier than the week following that in which it is made if the earlier week is one in respect of which benefit has been paid in respect of that child and has not been required to be repaid or voluntarily repaid or recovered.

(3) Any election as above may be superseded by another subsequent election made in accordance with the foregoing provisions of this regulation.

Modification of priority provisions in Schedule 2 to the Act

14.—(1) Where a person has claimed benefit in respect of a child in respect of whom he would be entitled to benefit but for the fact that under the provisions of Schedule 2 to the Act (priority between persons entitled) some other person is entitled to benefit in respect of that child in priority to him, if that other person gives the Secretary of State notice in writing at an office of the Department that he does not wish to have priority of title to benefit in respect of that child the provisions of the said Schedule 2 shall, subject to paragraph (2), have effect with the modification that that other person does not have such priority.

(2) A notice under paragraph (1) shall—

- (a) subject to sub-paragraph (b) below, have effect unless and until the said other person, subsequent to the giving of the notice, makes a further claim to benefit in respect of the said child; but

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- (b) not be effective as respects any week in respect of which benefit in respect of the said child is paid to the said other person or to a person on his behalf.

Set-off of benefit against arrears of non-contributory invalidity pension and of non-contributory invalidity pension against arrears of benefit

15.—(1) Benefit paid shall, unless it is required to be repaid, be treated as properly paid for any period for which it is not in fact payable in cases where, in consequence of a subsequent decision under the Social Security Act, the person in respect of whom it was paid is entitled to a non-contributory invalidity pension under that Act for that period; and any arrears payable by virtue of the subsequent decision for that period shall be reduced by the amount of the benefit treated as properly paid or, if that amount is equal to or greater than any such arrears, withheld.

(2) Non-contributory invalidity pension paid to a person which it is subsequently decided was not payable shall, unless it is required to be repaid, be treated as properly paid for any period for which it is not in fact payable in cases where, in consequence of a subsequent decision under the Act, another person is entitled to benefit in respect of the first mentioned person for that period; and any arrears payable by virtue of that subsequent decision for that period shall be reduced by the amount of the pension treated as properly paid or, if that amount is equal to or greater than any such arrears, withheld.

[^{F23}(3) For any period for which—

- (a) a person would have been entitled to benefit in respect of a child but for the provisions of paragraph 5 of Schedule 1 to the Act (except where regulations otherwise provide, no person to be entitled to benefit in respect of a child for any week in which the child is entitled to a non-contributory invalidity pension under the Social Security Act); and
- (b) benefit paid in respect of that child is treated as properly paid under paragraph (1),

the said paragraph 5 shall not apply in relation to that person and that child for the purpose, but only for the purpose, of determining the weekly rate of benefit to which that person is entitled in respect of any other child.]

Textual Amendments

F23 Reg. 15(3) added (22.11.1976) by [The Child Benefit \(Miscellaneous Minor Amendments\) Regulations 1976 \(S.I. 1976/1758\)](#), regs. 1, **3(2)**

Children in detention, care etc.

16.—(1) [^{F24}In its application to any case to which there also applies] of paragraph 1 of Schedule 1 to the Act (exclusion from entitlement to benefit in respect of children in detention, care etc.) section 24(2) of the Act (subject to any provision made by regulations, references in the Act to any condition being satisfied or any facts existing in a week to be construed as references to the condition being satisfied or the facts existing at the beginning of that week) shall have effect as if for the words “at the beginning of that week” there were substituted the words “throughout any day in that week”.

(2) For the purposes of paragraph 1(a) of the said Schedule (child undergoing imprisonment or detention in legal custody) a child shall not be regarded as undergoing imprisonment or detention in legal custody in any week unless in connection with a charge brought or intended to be brought against him in criminal proceedings at the conclusion of those proceedings or, in the case of default of payment of a sum adjudged to be paid on conviction, in respect of such default, a court imposes a penalty upon him; and for those purposes—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man; and

- (b) ‘penalty’ means, in the case of any court in Great Britain—
- (i) a sentence of imprisonment or borstal training;
 - (ii) a sentence of detention under section 53 of the Children and Young Persons Act 1933^{M15} or section 206 of the Criminal Procedure (Scotland) Act 1975^{M16}; or
 - (iii) an order for detention in a remand centre, a detention centre or a young offenders institution, or made under or by virtue of section 198, 406 or 413 of the said Act of 1975,

and in the case of any court not in Great Britain, any comparable sentence or order.

(3) The said paragraph (1)(a) shall not apply to a child in respect of any week in which that child is liable to be detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless, subsequent to the imposition of a penalty—

- (a) he has undergone detention in a prison, a detention centre, a borstal institution, a young offenders institution or, if not in Great Britain, any comparable place;
- (b) he was removed to the hospital or similar institution while still liable to be detained as a result of the said penalty and, in the case of a person who is liable to be detained in the hospital or similar institution by virtue of any provisions of the Mental Health Act 1959^{M17} or the Mental Health (Scotland) Act 1960^{M18}, a direction restricting his discharge has been given under either of those Acts and is still in force,

and in this paragraph—

- (i) “hospital or similar institution” means a place (not being a prison, a detention centre, a borstal institution, a young offenders institution, a remand centre or, if not in Great Britain, any comparable place and not being at or in any such place) in which persons suffering from mental disorder are or may be received for care or treatment;
- (ii) “mental disorder” shall be construed as including references to any mental disorder within the meaning of the said Act of 1959 or the said Act of 1960; and
- (iii) a person who is liable to be detained by virtue of any provision of the said Act of 1959 or the said Act of 1960 shall be treated as if a direction restricting his discharge had been given under those Acts if he is to be so treated for the purposes of either of them.

(4) Where, as respects a child in relation to whom each of the conditions specified in paragraph (3) (a) and (b) is satisfied, a certificate given by or on behalf of the Secretary of State for the Home Department or the Secretary of State for Scotland and furnished to the Secretary of State for Social Services shows the earliest date on which that child would have been expected to be discharged from detention pursuant to the said penalty if he had not been transferred to a hospital or similar institution, the said conditions shall be deemed not to be satisfied in relation to that child as from the day next following that date.

(5) For the purposes of paragraph 1(c) of Schedule 1 to the Act (child in care of a local authority in such circumstances as may be prescribed) the prescribed circumstances are that the child is—

- (a) received into care under [F25]section 2 of the Child Care Act 1980] or section 15 of the Social Work (Scotland) Act 1968^{M19} or pursuant to a resolution under section 16A(1) of the said Act of 1968 or [F26]section 65(1) of the Child Care Act 1980];
- (b) in the care of a local authority pursuant to the making of a supervision requirement to which section 44(1)(a) of the Social Work (Scotland) Act 1968 applies and is boarded out by that authority in the home of any person in accordance with the provisions of the Boarding-Out of Children (Scotland) Regulations 1959^{M20};
- (c) committed to the care of a local authority in pursuance of an order made or deemed to be made under the Children and Young Persons Act 1969^{M21};

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Changes to legislation: There are currently no known outstanding effects for the The Child Benefit (General) Regulations 1976 (revoked). (See end of Document for details)

- (d) committed to the care of a local authority under a care order made under—
- (i) section 2(1)(e) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960^{M22} [F27 or section 10(1) of the Domestic Proceedings and Magistrates' Courts Act 1978]; or
 - (ii) section 7(2) of the Family Law Reform Act 1969^{M23}; or
 - (iii) section 43 of the Matrimonial Causes Act 1973^{M24}; or
 - (iv) section 2(2) or 11(1) of the Guardianship Act 1973^{M25}; or
 - (v) sections 17(1)(A) or 36(2) or (3)(a) of the Children Act 1975; or
- (e) committed to the care of a local authority pursuant to an order of a court made under section 10(1) of the Matrimonial Proceedings (Children) Act 1958^{M26}.
- (6) A person, shall not be disentitled to benefit in respect of a child for any week by virtue of the fact that sub-paragraph (a), (b) or (c) of paragraph 1 of Schedule 1 to the Act (except where regulations otherwise provide no person to be entitled to benefit in respect of a child for any week if in that week the child is in detention, care etc.) applies to that child—
- (a) unless that week is the 9th or a subsequent week in a series of consecutive weeks in which any of those sub-paragraphs have applied to that child; or
 - (b) notwithstanding that that week is the 9th or a subsequent week in a series of consecutive weeks in which any of those sub-paragraphs have applied to that child, if—
 - [F28(i) that week is one in which falls the first day in a period of 7 consecutive days in which the child lives with that person for at least a part of the first day and throughout the following 6 days; or
 - (ii) that week is one in which falls the first day in a period of 7 consecutive days throughout which the child lives with that person, being a period of 7 consecutive days which immediately follows either a similar period of 7 consecutive days or the period of 7 consecutive days referred to in head (i) above, or
 - (iii) that week is one in which falls the day, or the first day in a period of less than 7 consecutive days, throughout which the child lives with that person, being a day or days which immediately follow the period of 7 consecutive days referred to in head (i) above or a period of 7 consecutive days referred to in head (ii).]
 - [F29(iv)] as at that week that person establishes that he is a person with whom the child, while the said sub-paragraph (a), (b) or (c) applies to him, ordinarily lives throughout at least one day in each week.
- (7) For the purposes of paragraph (6), a person shall not be regarded as having a child living with him throughout any day or week unless he actually has that child living with him throughout that day or week.
- (8) For any week in which a child is boarded out by a local authority in the home of any person in accordance with the provisions of the Boarding-Out of Children Regulations 1955^{M27} or the Boarding-Out of Children (Scotland) Regulations 1959, paragraph (6) shall not apply to that person in relation to that child.

Textual Amendments

F24 Words in reg. 16(1) substituted (5.5.1978) by [The Child Benefit \(Miscellaneous Amendments\) Regulations 1978 \(S.I. 1978/540\)](#), regs. 1, **4(2)**

F25 Words in reg. 16(5)(a) substituted (7.2.1983) by [The Child Benefit \(General\) Amendment Regulations 1983 \(S.I. 1983/3\)](#), regs. 1, **3(2)(a)**

- F26** Words in reg. 16(5)(a) substituted (6.4.1984) by [The Child Benefit \(General\) Amendment Regulations 1984 \(S.I. 1984/337\)](#), regs. 1, **2(4)**
- F27** Words in reg. 16(5)(d)(i) inserted (7.2.1983) by [The Child Benefit \(General\) Amendment Regulations 1983 \(S.I. 1983/3\)](#), regs. 1, **3(2)(b)**
- F28** Reg. 16(6)(b)(i)-(iii) substituted for (7.2.1983) by [The Child Benefit \(General\) Amendment Regulations 1983 \(S.I. 1983/3\)](#), regs. 1, **3(3)**
- F29** Reg. 16(6)(b)(iii); reg. 16(6)(b)(iii) renumbered as reg. 16(6)(b)(iv) (7.2.1983) by [The Child Benefit \(General\) Amendment Regulations 1983 \(S.I. 1983/3\)](#), regs. 1, **3(3)**

Marginal Citations

- M15** 1933 c. 12.
- M16** 1975 c. 21.
- M17** 1959 c. 72.
- M18** 1960 c. 61.
- M19** 1968 c. 49.
- M20** S.I. 1959/835 (1959 I, p. 579).
- M21** 1969 c. 54.
- M22** 1960 c. 48.
- M23** 1969 c. 46.
- M24** 1973 c. 18.
- M25** 1973 c. 29.
- M26** 1958 c. 40.
- M27** S.I. 1955/1377 (1955 I, p. 286).

Right to benefit of voluntary organisations

17.—(1) Subject to the following provisions of this regulation, a voluntary organisation shall for the purposes of benefit be regarded as a person with whom a child is living, and the only person with whom that child is living, for any week in which that child is—

- (a) living in premises which are provided or managed by the voluntary organisation, being premises which are required to be registered with a Government Department or local authority or which are otherwise regulated under or by virtue of any enactment relating to England and Wales or Scotland; or
- (b) boarded out by the voluntary organisation in the home of any person in accordance with the provisions of the Boarding-Out of Children Regulations 1955 or the Boarding-Out of Children (Scotland) Regulations 1959.

(2) A voluntary organisation shall not be regarded as a person with whom a child is living in any week unless in that week the child is actually living with the voluntary organisation in accordance with the provisions of paragraph (1); so however that a voluntary organisation shall not be regarded as having ceased to have a child living with it by reason only of any temporary absence of that child

^{F30}...—

- (a) if the child is undergoing medical or other treatment as an in-patient in a hospital, [^{F31}until such absence has lasted] for more than 84 days; or
- (b) if the child is temporarily absent for any other reason, [^{F32}until such absence has lasted] for more than 56 days.

(3) In calculating for the purposes of paragraph (2)(a) whether a child has been temporarily absent for not more than 84 days, two or more distinct periods of temporary absence separated by one or more intervals each not exceeding 28 days shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

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(4) A voluntary organisation shall not be regarded as a person with whom a child is living in any week if in that week—

- (a) that child is in residential accommodation pursuant to arrangements made under section 12 of the Health Services and Public Health Act 1968 ^{M28} or section 27(1) of the National Health Service (Scotland) Act 1947 ^{M29}; or
- (b) paragraph 1 of Schedule 1 to the Act (exclusion from entitlement to benefit in respect of children in detention, care etc.) applies to that child.

(5) Where immediately before the week in which paragraph (1) applies to a child that child was living with a person who was then entitled to benefit in respect of it, the said paragraph (1) shall, while under section 3(2) of the Act that child would be treated as continuing to live with that person, have effect in relation to that person as if the words “and the only person with whom that child is living” were omitted.

(6) Section 3(1)(6) of the Act (person to be treated as responsible for a child in any week if he is contributing to the cost of providing for the child at a weekly rate not less than the weekly rate of benefit payable in respect of the child for that week) and regulation 16(6) shall not apply to a voluntary organisation.

[^{F33}(7) Where a person makes a claim for child benefit in respect of a child on or after 24th November 1980, that person shall not be treated for the purposes of section 3(1)(b) of the Act as contributing to the cost of providing for that child for any week in which that child is boarded-out by a voluntary organisation in the home of that person in accordance with the provisions of the Boarding-Out of Children Regulations 1955 or the Boarding-Out of Children (Scotland) Regulations 1959.]

Textual Amendments

- F30** Words in reg. 17(2) revoked (5.5.1978) by [The Child Benefit \(Miscellaneous Amendments\) Regulations 1978 \(S.I. 1978/540\)](#), regs. 1, **4(3)**
- F31** Words in reg. 17(2)(a) substituted (5.5.1978) by [The Child Benefit \(Miscellaneous Amendments\) Regulations 1978 \(S.I. 1978/540\)](#), regs. 1, **4(3)**
- F32** Words in reg. 17(2)(b) substituted (5.5.1978) by [The Child Benefit \(Miscellaneous Amendments\) Regulations 1978 \(S.I. 1978/540\)](#), regs. 1, **4(3)**
- F33** Reg. 17(7) added (24.11.1980) by [The Child Benefit \(General\) Amendment Regulations 1980 \(S.I. 1980/1045\)](#), regs. 1, **7**

Marginal Citations

- M28** 1968 c. 46.
- M29** 1947 c. 27.

PART II

Transitional Provisions

Definitions for the purposes of Part II of these Regulations

18. In this Part of these Regulations, “the Act of 1965” means the Family Allowances Act 1965 ^{M30} and “family allowance” means an allowance under the Act of 1965.

Marginal Citations

M30 1965 c. 53.

Transitional modification of section 11 of the Family Allowances Act 1965 and of regulations 12 and 13 of the Family Allowances (Qualifications) Regulations 1969

19. Section 11 of the Act of 1965 (child not to be treated as included in any family in certain circumstances) except subsections (6) and (8) of that section shall not apply to a child for any period which does not begin before 1st February 1977; and in a case where the absence of a child from a person does not begin before that date and is by reason of the fact that the child, whether residing in a residential establishment or boarded out under the Children Act 1948^{M31} or the Social Work (Scotland) Act 1968 or otherwise, has been kept in the care of a local authority under the said Act of 1948 or the said Act of 1968, regulations 12 and 13 of the Family Allowances (Qualifications) Regulations 1969^{M32} (rules for determining, *inter alia*, whether the absence of a child from a parent or a person other than a parent is temporary) shall have effect in relation to such an absence as if references in them to 4 weeks were references to 8 weeks.

Marginal Citations

M31 1948 c. 43.

M32 S.I. 1969/212 (1969 I, p.543).

Transitional provisions relating to apprentices under the Act of 1965

20.—(1) Where immediately before the appointed day a family allowance is payable in respect of a person aged 16 but under the age of 19 as being an apprentice within the meaning of the Act of 1965, then notwithstanding that that person does not satisfy the requirement in section 2(1)(b) of the Act that he is receiving full-time education, he shall be treated as satisfying that requirement while he continues without a break to be an apprentice within the meaning of the Act of 1965; so however that the weekly rate of benefit payable in respect of him shall be the weekly rate at which family allowance was payable in respect of him immediately before the appointed day.

(2) Where in respect of a period ending immediately before the appointed day a person is entitled to a family allowance and the elder or eldest child included in the family of that person for the purposes of the Act of 1965 is an apprentice within the meaning of that Act, then for any period beginning with that day throughout which—

- (a) that child continues to be an apprentice within the meaning of the Act of 1965; and
- (b) that person would be entitled to benefit in respect of that child if that child satisfied the requirement in section 2(\)(b) of the Act that he is receiving full-time education,

benefit to which that person may be entitled in respect of a younger child in respect of whom he was entitled to a family allowance immediately before that day shall be payable at the weekly rate appropriate to a child who is not the only, elder or eldest child in respect of whom a person is entitled to benefit.

Transitional provisions relating to circumstances in which spouses are to be treated as residing otherwise than together

21.—(1) Where immediately before the appointed day a married person is entitled to a family allowance and for the purposes of the Act of 1965 he then fell to be regarded as living otherwise than together with his spouse, while he and that spouse would continue without a break to be regarded as

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living otherwise than together for the purposes of the Act of 1965 they shall be treated as residing otherwise than together for the purposes of benefit.

(2) Where for the purposes of section 16 of the Act (interim benefit for unmarried or separated parents with children) a person who was married—

(a) fell to be regarded as not residing with his spouse immediately before the appointed day; and

(b) was entitled to benefit under that section for a period ending immediately before that day, then while without any break that person would continue to be regarded as not residing with his spouse for the purposes of that section he shall be treated as not residing with his spouse for the purposes of benefit.

Transitional provision relating to calculation of contributions and expenditure in respect of a child

22. Where in connection with benefit a question arises whether in relation to the week beginning with the appointed day a person is—

(a) contributing to the cost of providing for a child at a weekly rate which is not less than the weekly rate of benefit payable in respect of the child for that week; or

(b) regularly incurring expenditure in respect of a child,

and in determining that question account falls to be taken of contributions made or expenditure incurred by that person before the appointed day, that person shall be treated as having been so contributing or as so regularly incurring expenditure before the appointed day if immediately before that day—

(i) he could be treated as satisfying in respect of the child the maintenance requirements in paragraph 1 of the Schedule to the Act of 1965; or

(ii) that child was, or could have been, treated as included in his family for the purposes of the Act of 1965.

David Ennals,
Secretary of State for Social Services

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain miscellaneous provisions relating to the right to child benefit under the Child Benefit Act 1975 (Part I of the Regulations) and to the transition from family allowances under the Family Allowances Act 1965 and the interim benefit under section 16 of the 1975 Act to child benefit (Part II of the Regulations). The subject matter of each regulation is shown in the table of arrangement at the beginning of the Regulations.

The appointed day, the day on which child benefit first becomes payable, is 4th April 1977 (see the Child Benefit Act 1975 (Commencement No. 2) Order 1976 (S.I. 1976 No. 961)).

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Changes to legislation:

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