
STATUTORY INSTRUMENTS

1982 No. 1408

The Social Security (General Benefit) Regulations 1982

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (General Benefit) Regulations 1982 and shall come into operation 4th November 1982.

(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;

“child benefit” means benefit under Part I of the Child Benefit Act;

“determining authority” means, as the case may require, an insurance officer appointed under section 97(1) of the Act, a local tribunal constituted under section 97(2) of the Act, or the Chief Social Security Commissioner appointed under section 97(3) of the Act or any other Social Security Commissioner so appointed, or any Tribunal of Commissioners constituted under section 116(1) of the Act;

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

“industrial injuries benefit” means injury benefit, disablement benefit and industrial death benefit payable under section 50 of the Act;

“parent” has the meaning assigned to it by section 24(3) of the Child Benefit Act⁽¹⁾;

“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 of the benefit in question for an adult dependant;

“the Workmen's Compensation Act” means the Workmen's Compensation Acts 1925 to 1945, or the enactments repealed by the Workmen's Compensation Act 1925 or the enactments repealed by the Workmen's Compensation Act 1906;

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

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

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

(b) to 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.

⁽¹⁾ Section 24(3)(c) was repealed by the Children Act 1975 (c. 72), Schedule 4, Part I.

Exceptions from disqualification for imprisonment etc

2.—(1) The following provisions of this regulation shall have effect to except benefit from the operation of section 82(5)(b) of the Act which provides that (except where regulations otherwise provide) a person shall be disqualified for receiving any benefit and an increase of benefit shall not be payable in respect of any person as the beneficiary's wife or husband, for any period during which that person is undergoing imprisonment or detention in legal custody (hereinafter in this regulation referred to as “the said provisions”).

(2) The said provisions shall not operate to disqualify a person for receiving sickness benefit, invalidity benefit, mobility allowance, widow's benefit, child's special allowance, maternity allowance, retirement pension of any category, age addition, non-contributory invalidity pension, injury benefit, disablement benefit or industrial death benefit or to make an increase of benefit not payable in respect of a person as the beneficiary's wife or husband, for any period during which that person is undergoing imprisonment or detention in legal custody in connection with a charge brought or intended to be brought against him in criminal proceedings, or pursuant to any sentence or order for detention made by a court in such proceedings, unless, in relation to him, a penalty is imposed at the conclusion of those proceedings or, in the case of default of payment of a sum adjudged to be paid on conviction, a penalty is imposed in respect of such default.

(3) The said provisions shall not operate to disqualify a person for receiving any benefit (not being a guardian's allowance or death grant), or to make an increase of benefit not payable in respect of a person as the beneficiary's wife or husband, for any period during which that person is undergoing detention in legal custody after the conclusion of criminal proceedings if it is a period during which he is liable to be detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless—

- (a) pursuant to any sentence or order for detention made by the court at the conclusion of those proceedings, he has undergone detention by way of penalty in a prison, a detention centre, a Borstal institution or a young offenders institution; and
- (b) he was removed to the hospital or similar institution while liable to be detained as a result of that sentence or order, and, in the case of a person who is liable to be detained in the hospital or similar institution by virtue or any provision of the Mental Health Act 1959 or the Mental Health (Scotland) Act 1960, a direction restricting his discharge has been given under either of those Acts and is still in force.

(4) Where, as respects a person 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 the 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 person would have been expected to be discharged from detention pursuant to the said sentence or order 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 person as from the day next following that date.

(5) The said provisions shall not operate to disqualify a person for receiving a guardian's allowance or death grant.

(6) Subject to the next succeeding paragraph of this regulation, the said provisions shall not operate to disqualify a person for receiving disablement benefit, other than any increase thereof, for any period during which he is undergoing imprisonment or detention in legal custody.

(7) The amount payable by virtue of the last preceding paragraph by way of any disablement pension or pensions in respect of any period, other than a period in respect of which that person is excepted from disqualification by virtue of the provisions of paragraph (3) of this regulation, during which that person is and has continuously been undergoing imprisonment or detention in legal custody, shall not exceed the total amount payable by way of such pension or all such pensions for a period of one year.

(8) For the purposes of this regulation—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man or in any place to which the Colonial Prisoners Removal Act 1884 applies or any naval court-martial, army court-martial or air force court-martial within the meaning of the Courts-Martial (Appeals) Act 1968, or the Courts-Martial Appeal Court;
- (b) “hospital or similar institution” means any place (not being a prison, a detention centre, a Borstal institution, a young offenders institution or a remand centre, 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;
- (c) “penalty” means a sentence of imprisonment, Borstal training or detention under section 53 of the Children and Young Persons Act 1933 or under 1937 c. 37 section 57(3) of the Children and Young Persons (Scotland) Act 1937 or under section 208(3) and 416(4) of the Criminal Proceedings (Scotland) Act 1975 or an order for detention in a detention centre;
- (d) in relation to a person who is liable to be detained in Great Britain as a result of any order made under the Colonial Prisoners Removal Act 1884, references to a prison shall be construed as including references to a prison within the meaning of that Act;
- (e) a person who is liable to be detained by virtue of any provision of the Mental Health Act 1959 or the Mental Health (Scotland) Act 1960 shall be treated as if a direction restricting his discharge had been given under one or other of those Acts if for the purposes thereof he is to be so treated;
- (f) references to mental disorder shall be construed as including references to any mental disorder within the meaning of the Mental Health Act 1959 or the Mental Health (Scotland) Act 1960;
- (g) criminal proceedings against any person shall be deemed to be concluded upon his being found insane in those proceedings so that he cannot be tried or his trial cannot proceed.

(9) Where a person outside Great Britain is undergoing imprisonment or detention in legal custody and, in similar circumstances in Great Britain, he would have been excepted, by the operation of any of the preceding paragraphs of this regulation, from disqualification under the said provisions (referred to in paragraph (1)) for receiving the benefit claimed, he shall not be disqualified for receiving that benefit by reason only of his said imprisonment or detention.

(10) Paragraph (9) applies to increases of benefit not payable under the said provisions as it applies to disqualification for receiving benefit.

Suspension of payment of benefit during imprisonment etc

3.—(1) Subject to the following provisions of this regulation, the payment to any person of any benefit—

- (a) which is excepted from the operation of section 82(5)(b) of the Act by virtue of the provisions of regulation 2(2), (5) or (6) or by any of those paragraphs as applied by regulation 2(9); or
- (b) which is payable otherwise than in respect of a period during which he is undergoing imprisonment or detention in legal custody;

shall be suspended while that person is undergoing imprisonment or detention in legal custody.

(2) Paragraph (1) shall not operate to require the payment of any benefit to be suspended while the beneficiary is liable to be detained in a hospital or similar institution as defined in regulation 2(8) (b) during a period for which in his case, benefit to which regulation 2(3) applies is or would be excepted from the operation of the said section 82(5) by virtue of the provision of regulation 2(3) .

(3) A guardian's allowance or death grant, or any benefit to which paragraph (1)(b) applies may nevertheless be paid while the beneficiary is undergoing imprisonment or detention in legal custody to any person appointed for the purpose by the Secretary of State to receive and deal with any sums payable on behalf of the beneficiary on account of that benefit, and the receipt of any person so appointed shall be a good discharge to the Secretary of State and the National Insurance Fund for any sum so paid.

(4) Where, by virtue of this regulation, payment of benefit under Chapter IV or V of Part II of the Act is suspended for any period, the period of suspension shall not be taken into account in calculating any period under the provisions of regulation 22 of the Social Security (Claims and Payments) Regulations 1979 (extinguishment of right to sums payable by way of benefit which are not obtained within the prescribed time).

Interim payments by way of benefit under the Act

4.—(1) Where, under arrangements made by the Secretary of State with the consent of the Treasury, payment by way of benefit has been made pending determination of a claim for it without due proof of the fulfilment of the relevant conditions or otherwise than in accordance with the provisions of the Act and orders and regulations made under it, the payment so made shall, for the purposes of those provisions, but subject to the following provisions of this regulation, be deemed to be a payment of benefit duly made.

(2) When a claim for benefit in connection with which a payment has been made under arrangements such as are referred to in paragraph (1) above is determined by a determining authority—

- (a) if that authority decides that nothing was properly payable by way of the benefit in respect of which the payment was made or that the amount properly payable by way of that benefit was less than the amount of the payment, it may, if appropriate, direct that the whole or part of the overpayment be treated as paid on account of benefit (whether benefit under the Act or the Supplementary Benefits Act 1976(2)) which is properly payable, but subject as aforesaid shall require repayment of the overpayment; and
- (b) if that authority decides that the amount properly payable by way of the benefit in respect of which the payment was made equals or exceeds the amount of that payment, it shall treat that payment as paid on account of the benefit properly payable.

(3) Unless before a payment made under arrangements such as are mentioned in paragraph (1) above has been made to a person that person had been informed of the effect of sub-paragraph (a) of paragraph (2) above as it relates to repayment of an overpayment, repayment of an overpayment shall not be required except where the determining authority is satisfied that in the obtaining and receipt of such a payment the person to whom it has been made, and any person acting for him, has not throughout exercised due care and diligence to avoid overpayment.

(4) An overpayment required to be repaid under the provisions of this regulation shall, without prejudice to any other method of recovery, be recoverable by deduction from any benefit then or thereafter payable to the person by whom it is to be repaid or any persons entitled to receive his benefit on his death.

Deduction of benefit required to be repaid

5. Where, in accordance with a decision given on a review or appeal or a decision under section 119(2A) of the Act (repayment required where on facts subsequently established benefit would not have been paid) any benefit is required to be repaid to the Secretary of State or as the case

(2) the Act (other than sections 31, 32, 35 and 36 and Schedules 4 and 6 to 8) as amended is set out in Part II of Schedule 2 to the Social Security Act 1980 (c. 30).

may be, to a local authority, then, without prejudice to any other method of recovery, such benefit shall be recoverable by deduction from any benefit then or thereafter payable to the person by whom it is to be repaid or any persons entitled to receive his benefit on his death.

Set-off of benefit against earlier payment of dependency benefit

6. Benefit paid to one person in respect of another as being a child in respect of whom the payee is entitled to child benefit or as being the wife or husband, or an adult dependant of the first-mentioned person shall, unless it is required to be repaid, be treated as having been properly paid for any period for which it is not in fact payable in cases where under a subsequent decision either—

- (a) that other person is himself entitled to benefit under the Act for that period; or
- (b) a third person is entitled to benefit for that period in respect of that other person in priority to the first-mentioned person,

and any arrears of benefit payable for that period by virtue of the subsequent decision shall be reduced or withheld accordingly.

Repayment by a person who has received payment of benefit on behalf of a beneficiary

7.—(1) Subsections (1), (2) and (2A) of section 119 of the Act (effect of adjudication on payment and recovery) are modified in accordance with the following paragraphs of this regulation in relation to payments of benefit under the Act, other than mobility allowance, made not to the beneficiary but to some other person on his behalf.

(2) After the words “require repayment”, where they first occur in each of those subsections, there is inserted in each case the words “to be made by the beneficiary” .

(3) At the end of subsection (1) there is added—
“and, subject to paragraphs (a) and (b), where benefit was paid to a person acting on behalf of the beneficiary that decision shall require repayment to be made to the Secretary of State by that person.”.

(4) At the end of subsection (2) there is added—
“and shall not require repayment to be made by a person to whom any payment on behalf of the beneficiary was made where it is shown, to the satisfaction of the person or tribunal determining the appeal or review, that in the obtaining and receipt of the benefit the person to whom such payment was made has throughout used due care and diligence to avoid overpayment.”.

(5) At the end of subsection (2A) there is added—
“and where payment in respect of such amount of benefit under the earlier decision was made to a person acting on behalf of the beneficiary, the subsequent decision shall require repayment to the Secretary of State under this subsection to be made by the person to whom the payment was made unless it is shown to the satisfaction of the insurance officer, tribunal or Commissioner that in the obtaining and receipt of the benefit that person throughout used due care and diligence to avoid overpayment.”.

Rounding of sums payable by way of benefit

8. Except as otherwise provided where payment falls to be made of a sum payable by way of benefit and that sum is not a penny or a multiple thereof, the sum payable shall be paid by rounding the payment to the nearest penny, a half penny being rounded to the next penny above.