

1990 No. 2208

SOCIAL SECURITY
HOUSING, ENGLAND AND WALES
HOUSING, SCOTLAND

The Social Security (Miscellaneous Provisions)
Amendment Regulations 1990 •

Made - - - - - *7th November 1990*

Laid before Parliament *14th November 1990*

Coming into force in accordance with regulation 1(1)

The Secretary of State for Social Security, in exercise of powers conferred by sections 3(2), 35(6), 37A(2C) and (6A), 104(5)(a), 114(2), 165A and 166(2) of, and paragraph 6(1)(gg) and (m) of Schedule 1 and Schedule 20 to, the Social Security Act 1975(a) and sections 51(1), 51B and 84(1) of the Social Security Act 1986(b), sections 30(1) and 31(3) of the Social Security Act 1989(c) and all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that the proposals to make these Regulations need not be referred to it(d) and agreement with organisations appearing to him to be representative of the authorities concerned, that consultations should not be undertaken on proposals to make regulations 17 and 18(e), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Provisions) Amendment Regulations 1990 and shall come into force—

- (a) for the purposes of regulation 6, in relation to the calculation of a particular person's earnings from an employment, on the first day of the first assessment period to commence on or after 5th December 1990 where "assessment period" has the meaning ascribed to it in regulation 5(4) of the Social Security Benefit (Computation of Earnings) Regulations 1978(f);

(a) 1975 c.14. Schedule 20 is cited because of the meaning it ascribes to "Prescribe" and "Regulations". Section 37A was inserted by section 22(1) of the Social Security Pensions Act 1975 (c.60) and subsection (6A) was inserted by section 3(4) of the Social Security Act 1979 (c.18). Section 37A(2C) was inserted by section 71(2) of the Social Security Act 1986 (c.50) ("the 1986 Act"). Section 37A(6A) was amended by section 8(1) of the Social Security Act 1989 (c.24) ("the 1989 Act"). Subsection (5) of section 104 was added by paragraph 10(d) of Schedule 5 to the 1986 Act and was amended by paragraph 11(3) and (4) of Schedule 3 to the 1989 Act. Section 165A was inserted by section 17 of the Social Security Act 1985 (c.53) and substituted by the 1986 Act, Schedule 10, paragraph 87 and amended by paragraph 9(1) of Schedule 8 to the 1989 Act and section 6(1) of the Social Security Act 1990 (c.27). Section 166(2) is applied by section 83(1) of the 1986 Act to the powers conferred by that Act to make Regulations. Sub-paragraph (gg) was inserted in paragraph 6(1) of Schedule 1 by section 2 of the 1989 Act.

(b) 1986 c.50. Section 84(1) is cited because of the meaning it ascribes to the words "prescribed" and "regulations". Section 51(1) was amended by Schedule 10, paragraph 7 to the Local Government Finance Act 1988 (c.41). Section 51B was inserted by Schedule 10, paragraph 8 to the Local Government Finance Act 1988.

(c) 1989 c.24. Section 30(1) is cited for the meaning it ascribes to "regulations".

(d) See section 61(1)(b) and (10) of the Social Security Act 1986; the definition of "regulations" was added to section 61(10) by the Social Security Act 1989 (c.24) Schedule 8, paragraph 12(4).

(e) See section 61(8)(b) of the Social Security Act 1986.

(f) S.I. 1978/1698, to which the relevant amending instruments are S.I. 1979/359 and 1989/1642.

(b) for the purposes of regulation 16(3)(b), in relation to a particular beneficiary, at the first determination to be made by an adjudicating authority under paragraphs 5, 6 or 7 of Schedule 9 to the Social Security (Claims and Payments) Regulations 1987(a) on or after 5th December 1990;

(c) for all other purposes 5th December 1990.

(2) In these Regulations—

“Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987;

“Computation of Earnings Regulations” means the Social Security Benefit (Computation of Earnings) Regulations 1978.

Amendment of the Social Security (Attendance Allowance) (No. 2) Regulations 1975

2.—(1) The Social Security (Attendance Allowance) (No. 2) Regulations 1975(b) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) of regulation 5 (exception from regulations 3 and 4) for the words “4 weeks” there shall be substituted the words “28 days”.

(3) In paragraph (2) of regulation 7 (children in hospital and certain other accommodation) for the words “4 weeks” there shall be substituted the words “28 days”.

Amendment of the Mobility Allowance Regulations 1975

3. In paragraph (2) of regulation 4 of the Mobility Allowance Regulations 1975(c) (entitlement to an allowance in respect of weeks before that in which claim is received by Secretary of State) for the words “by virtue of regulation 6” there shall be substituted the words “by virtue of regulation 40 of the Social Security (Claims and Payments) Regulations 1987(d)”.

Amendment of regulation 6 of the Mobility Allowance (Vehicle Scheme Beneficiaries) Regulations 1977

4.—(1) Regulation 6 of the Mobility Allowance (Vehicle Scheme Beneficiaries) Regulations 1977(e) (application of the Social Security Act 1975 etc. in relation to vehicle scheme beneficiaries) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (a) for the reference to “75” there shall be substituted a reference to “80”(f).

(3) In paragraph (c)—

(a) for the reference to “the Social Security (Adjudication) Regulations 1984” there shall be substituted a reference to “the Social Security (Adjudication) Regulations 1986”(g);

(b) in sub-paragraph (i) for the words “regulations 54 after paragraph (1)(b)” there shall be substituted the words “regulation 56 after paragraph (2)(b)”; and

(a) S.I. 1987/1968, to which the relevant amending instruments are S.I. 1988/522 and 1725 and 1989/136 and 1686 and 1990/671 and 725.

(b) S.I. 1975/598, to which the relevant amendments are S.I. 1977/342 and 417, 1979/1684, 1983/1015, 1137 and 1741.

(c) S.I. 1975/1573, to which the relevant amendment is S.I. 1986/1541.

(d) S.I. 1987/1968, to which the relevant amending instrument is S.I. 1990/2208.

(e) S.I. 1977/1229, to which the relevant amending instruments are section 21(4) of and paragraph 32 of Schedule 3 to the Social Security Act 1979 (c.18) and S.I. 1984/458.

(f) See section 8(1) of the Social Security Act 1989 (c.24) which increased the age limit for entitlement to mobility allowance from 75 to 80.

(g) Regulations 54 and 60 of the Social Security (Adjudication) Regulations 1984 (S.I. 1984/451), were revoked, amongst others, by S.I. 1986/2218.

(c) for sub-paragraph (ii) there shall be substituted the following sub-paragraph—

“(ii) in regulation 62 after paragraph (4) there were added—

“(5) Where the grounds of an application under paragraph (2) are that a certificate issued for the purposes of section 13 of the Social Security (Miscellaneous Provisions) Act 1977 has been cancelled, the adjudication officer may himself determine any medical question arising on review adversely to the person in question without referring it to a medical board and the provisions of regulations 57(3) and 58 to 61 shall apply to that determination as if it were an adverse determination under regulation 57(2).””.

Amendment of regulation 3 of the Computation of Earnings Regulations

5. In paragraph (1)(b) of regulation 3 of the Computation of Earnings Regulations (payments to be disregarded)—

(a) after the reference to “37(1)(b),” there shall be inserted a reference to “41(2A)(a),”; and

(b) after the reference to “49” there shall be inserted a reference to “, 64(1A)(b)”.

Amendment of regulation 5 of the Computation of Earnings Regulations

6. In regulation 5 of the Computation of Earnings Regulations (calculation of earnings of certain retirement pensioners and adult dependants of pensioners)—

(a) in paragraph (1)(a) after the words “specified benefit” (and within the brackets) there shall be added the words “or section 41(2A) or section 64(1A)(c) of the Act applies and the beneficiary is entitled to a specified benefit or retirement pension”; and

(b) in paragraph (2) for the words “sections 30(1), 45 to 49 (other than subsection (b) of section 49) and 66(4) of the Act” there shall be substituted the words “sections 30(1), 41, 45 to 49 (other than subsection (b) of section 49), 64 and 66(4) of the Act”.

Amendment of regulation 3 of the Claims and Payments Regulations

7. After paragraph (e) of regulation 3 of the Claims and Payments Regulations (claims not required for entitlement to benefit in certain cases) there shall be added the following paragraph—

“(f) in the case of an invalidity pension, where in any period of interruption of employment, the evidence of incapacity required for determining the beneficiary’s entitlement to sickness benefit in that same period of interruption of employment shows that his incapacity will continue into or beyond the first day on which there could be entitlement to an invalidity pension.”.

Amendment of regulation 4 of the Claims and Payments Regulations

8. In regulation 4(6) of the Claims and Payments Regulations (making a claim for benefit) for the words “if any” there shall be substituted the words “or to such other place”.

Amendment of regulation 6 of the Claims and Payments Regulations

9. In regulation 6(6) of the Claims and Payments Regulations (date of claim) after the words “on the date” there shall be inserted the words “not later than 5th December 1990”.

Amendment of regulation 24 of the Claims and Payments Regulations

10. In regulation 24(3) of the Claims and Payments Regulations (unemployment benefit, sickness or invalidity benefit, maternity allowance and severe disablement allowance) after the words “sickness or invalidity benefit” there shall be added the words “or severe disablement allowance”.

(a) Subsection (2A) of section 41 was inserted by paragraph 3(c) of Schedule 5 to the Health and Social Security Act 1984 (c.48) (“the 1984 Act”).

(b) Subsection (1A) of section 64 was inserted by paragraph 4 of Schedule 5 to the 1984 Act.

(c) Subsection (2A) of section 41 was inserted by paragraph 3(c) of Schedule 5 to the 1984 Act and subsection (1A) of section 64 was inserted by paragraph 4 of Schedule 5 to the 1984 Act.

Amendment of regulation 30 of the Claims and Payments Regulations

11.—(1) Regulation 30 of the Claims and Payments Regulations (payments on death) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (5) after the words “the Social Security Act 1986” there shall be inserted the words “, or reduced earnings allowance or disablement benefit”.

(3) After paragraph (6) there shall be inserted the following paragraph—

“(6A) Where the conditions specified in paragraph (6B) are satisfied, a person may make a claim for reduced earnings allowance or disablement benefit, including any increase under section 61 or 63 of the Social Security Act 1975(a), in the name of a person who has died.

(6B) The conditions specified for the purposes of paragraph (6A) are—

- (a) that the person who has died would have been entitled to the benefit claimed if he had made a claim for it in the prescribed manner and within the prescribed time;
- (b) that within 6 months of a death certificate being issued in respect of the person who has died, the person making the claim has applied to the Secretary of State to be made an appointee of the person who has died and the Secretary of State has appointed him;
- (c) the claim is made within 6 months of the appointment.”.

(4) In paragraph (7) after the words “in accordance with paragraph (5)” there shall be inserted the words “or paragraph (6A)”.

Amendment of regulation 40 of the Claims and Payments Regulations

12. In regulation 40 of the Claims and Payments Regulations (claim received within 6 months after the end of a period for which mobility allowance awarded) for the reference to “75” there shall be substituted a reference to “80”(b).

Amendment of regulation 44 of the Claims and Payments Regulations

13. For regulation 44(5) of the Claims and Payments Regulations (payment of mobility allowance on behalf of a beneficiary) there shall be substituted the following paragraph—

“(5) In this regulation “Motability” means the company, set up under that name as a charity and originally incorporated under the Companies Act 1985(c) and subsequently incorporated by Royal Charter.”.

Amendment of Schedule 1 to the Claims and Payments Regulations

14. In Part I of Schedule 1 to the Claims and Payments Regulations (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative) in Column (1) (benefit claimed) there shall be added at the end “Widow’s benefit” and in Column (2) (alternative benefit) (so as to correspond with the entry for “Widow’s benefit”) there shall be added “A retirement pension of any category or graduated retirement benefit.”.

Amendment of Schedule 7 to the Claims and Payments Regulations

15. For paragraph 7 of Schedule 7 to the Claims and Payments Regulations (manner and time of payment etc. in income support cases) there shall be substituted the following paragraph.

(a) Subsections (3) and (4) were inserted into section 61 by paragraph 6 of Schedule 3 to the Social Security Act 1986 (c.50).

(b) See section 8(1) of the Social Security Act 1989 (c.24) which increased the age limit for entitlement to mobility allowance from 75 to 80.

(c) 1985 c.6.

“Date when change of circumstances is to take effect

7.—(1) Subject to the following sub-paragraphs where the amount of income support payable under an award is changed because of a change of circumstances that change of circumstances shall have effect—

- (i) where income support is paid in arrears, from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur; or
- (ii) where income support is paid in advance, from the date of the relevant change of circumstances, or the day on which the relevant change of circumstances is expected to occur, if either of those days is the first day of the benefit week and otherwise from the next following such day, and

for the purposes of this paragraph any period of residence in temporary accommodation under arrangements for training made under section 2 of the Employment and Training Act 1973(a) for a period which is expected to last for seven days or less shall not be regarded as a change of circumstances.

(2) In the cases set out in sub-paragraph (3), the decision given on review shall have effect on the day on which the relevant change of circumstances occurs or is expected to occur.

(3) The cases referred to in sub-paragraph (2) are where—

- (a) income support is paid in arrears and entitlement ends, or is expected to end, for a reason other than that the claimant no longer satisfies the provisions of section 20(3)(b) of the Social Security Act 1986(b);
- (b) a child or young person referred to in regulation 16(6) of the Income Support Regulations (child in care of local authority or detained in custody) lives, or is expected to live, with the claimant for part only of the benefit week;
- (c) a claimant or his partner (as defined in regulation 2(1) of the Income Support Regulations) enters, or is expected to enter, a nursing home or a residential care home (as defined in regulation 19(3) of those Regulations or residential accommodation (as defined in regulation 21(3)(a) to (d) of those Regulations) for a period of not more than 8 weeks;
- (d) a person referred to in paragraphs 1, 2, 3 or 18 of Schedule 7 to the Income Support Regulations either—
 - (i) ceases, or is expected to cease, to be a patient, or
 - (ii) a member of his family ceases, or is expected to cease, to be a patient,in either case for a period of less than a week;
- (e) a person to whom section 23 of the Social Security Act 1986 (trade disputes) applies either—
 - (i) becomes incapable of work by reason of disease or bodily or mental disablement, or
 - (ii) enters the maternity period (as defined in section 23(2) of that Act) or the day is known on which that person is expected to enter the maternity period;
- (f) during the currency of the claim, a claimant makes a claim for a relevant social security benefit—
 - (i) the result of which is that his benefit week changes; or
 - (ii) under regulation 13 and an award of that benefit on the relevant day for the purposes of that regulation means that his benefit week is expected to change.

(4) Where income is treated as paid on a particular day under regulation 31(1)(b) or (2) of the Income Support Regulations (date on which income is treated as paid) any relevant change of circumstances which occurs, or which is expected to occur, resulting from that payment shall have effect on the day on which it is treated as paid.

(5) Where the relevant change of circumstances requires, or is expected to require, a reduction in the amount of income support then, if the Secretary of State certifies that it will be impracticable to give effect to that reduction from the day prescribed in the preceding sub-paragraphs, except where (3)(f) or (4) apply, the change shall have effect either from the first day of the following benefit week or, where the relevant change of circumstances is expected to occur, from the first day of the benefit week following that in which that change of circumstances is expected to occur.

(a) 1973 c.50.

(b) 1986 c.50.

(6) Where, in the cases set out in sub-paragraphs (b), (c), (d), (e) and (f) of paragraph (3) the review has been carried out under section 104(1)(b) of the Social Security Act 1975(a) and the circumstances which have caused the award to be revised cease to apply and the award is reviewed and revised again that second change of circumstances shall take effect from the date of the second change.”

Amendment of Schedule 9 to the Claims and Payments Regulations

16.—(1) Schedule 9 to the Claims and Payments Regulations (deductions from benefit and direct payment to third parties) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph 6(1) (fuel costs) after the words “any item of mains gas or mains electricity” there shall be inserted the words “including any charges for reconnection of gas or electricity”.

(3) In paragraph 8(2) (maximum amount of payments to third parties)—

(a) after the word “maximum” there shall be inserted the word “aggregate”; and

(b) for the words “sub-paragraphs 5(5) and 6(6)” there shall be substituted the words “paragraphs 5(5), 6(6) and 7”.

Amendment of the Housing Benefit (General) Regulations 1987

17. In regulation 72(16) of the Housing Benefit (General) Regulations 1987(b) (time and manner in which claims are to be made) after the words “on the date” there shall be inserted the words “not later than 5th December 1990”.

Amendment of the Community Charge Benefits (General) Regulations 1989

18. In regulation 60(19) of the Community Charge Benefits (General) Regulations 1989(c) (time and manner in which claims are to be made) after the words “on the date” there shall be inserted the words “not later than 5th December 1990”.

Amendment of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990

19. In regulation 3 of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990(d) (refund of part of contributions) for the words “the amount” there shall be substituted the words “that amount”.

Signed by authority of the Secretary of State for Social Security.

7th November 1990

Henley
Parliamentary Under-Secretary of State,
Department of Social Security

(a) 1975 c.14. Sub-section (1) of section 104 was substituted by paragraph 10(a) of Schedule 5 to the Social Security Act 1986 (c.50).

(b) S.I. 1987/1971; the relevant amending instrument is S.I. 1990/671.

(c) S.I. 1989/1321; the relevant amending instruments are S.I. 1990/835 and 1773.

(d) S.I. 1990/536.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Attendance Allowance) (No. 2) Regulations 1975, the Mobility Allowance Regulations 1975, the Mobility Allowance (Vehicle Scheme Beneficiaries) Regulations 1977, the Social Security Benefit (Computation of Earnings) Regulations 1978, the Social Security (Claims and Payments) Regulations 1987, the Housing Benefit (General) Regulations 1987, the Community Charge Benefits (General) Regulations 1989 and the Social Security (Refunds) (Repayments of Contractual Maternity Pay) Regulations 1990.

The amendment to the Social Security (Attendance Allowance) (No. 2) Regulations 1975 ensures that attendance allowance remains payable in respect of the first 28 days of a beneficiary's stay in hospital or accommodation specified in the Schedule to those Regulations (regulation 2).

The Mobility Allowance (Vehicle Scheme Beneficiaries) Regulations 1977 are amended in the following respects—

- (1) regulation 6 is amended to take account of the increase of the age limit for mobility allowance from 75 to 80 (regulation 4(2)); and
- (2) the references in regulation 6 to the Social Security (Adjudication) Regulations 1984 are updated to refer to the Social Security (Adjudication) Regulations 1986 (regulation 4(3)).

The Social Security Benefit (Computation of Earnings) Regulations 1978 are amended so as to provide—

- (1) for the disregard of the first £10.00, for the purposes of child dependency increase earnings rules, of a Christmas bonus paid by an employer (regulation 5); and
- (2) that those earnings of a spouse or partner of a beneficiary which are not immediately ascertainable are to be calculated in accordance with regulation 5 for the purposes of determining a person's earnings under child dependency increase rules (regulation 6).

The Social Security (Claims and Payments) Regulations 1987 are amended as follows—

- (1) where a person has been entitled to sickness benefit and medical evidence shows that his incapacity will continue, no claim for invalidity pension is required (regulation 7);
- (2) regulation 4 is amended to enable claims for benefit to be received other than at an office of the Department of Social Security or the Department of Employment (regulation 8);
- (3) regulation 24 is amended to include severe disablement allowance in those benefits which may be paid in arrears at intervals of 4 weeks where the weekly amount of the benefit is less than £1.00 (regulation 10);
- (4) where a person has died and that person would have been entitled to reduced earnings allowance or disablement benefit before his death had a claim for it been made, then the time limit for application to the Secretary of State for an appointment to make a claim on behalf of the deceased is extended to a period of 6 months beginning with the issue of the death certificate (regulation 11);
- (5) regulation 40 which deals with claims received within 6 months after the end of a period for which mobility allowance is awarded, is amended to take account of the increase of the age limit for mobility allowance from 75 to 80 (regulation 12);
- (6) regulation 44 is amended to take account of the change in status of the Motability organisation from a public company to a society incorporated by Royal Charter (regulation 13);
- (7) Schedule 1 is amended to enable a claim for widow's benefit to be treated in the alternative as a claim for a retirement pension of any category or graduated retirement benefit (regulation 14);

- (8) Schedule 7 is amended to ensure that when a person returns to hospital and that change constitutes a change of circumstances, the change in circumstances affecting his benefit is treated as having taken place from the day after his return and provision is made for anticipated changes of circumstances following a review under section 104(bb) of the Social Security Act 1975 (regulation 15);
- (9) Schedule 9, paragraph 6 is amended to provide for the inclusion of reconnection charges in fuel costs (regulation 16(2)); and
- (10) Schedule 9, paragraph 8 is amended to include water charges in the maximum amount which may be deducted from benefit and paid to a third party without the consent of the beneficiary (regulation 16(3)).

The Regulations further provide that where a person has made a claim to income support, housing benefit or community charge benefit because of changes in the capital limit relevant to the particular benefit, any claim made before 27th May 1990 shall be treated as made on a date no later than 5th December 1990 (regulations 9, 17 and 18).

Regulation 19 amends regulation 3 of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations 1990 so that any deduction from the amount of contributions refundable is limited to deductions of amounts paid by way of contributory benefit which would not have been paid had any of the refundable contributions not been originally paid.

Minor amendments of a drafting nature are also made.

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