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STATUTORY INSTRUMENTS

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**1994 No. 2945**

**The Social Security (Incapacity Benefit —  
Increases for Dependents) Regulations 1994**

**PART I**

**General**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Social Security (Incapacity Benefit — Increases for Dependents) Regulations 1994 and shall come into force as follows—

except for regulation 15(6)(b)(i) and (c)(i), on 13th April 1995;  
regulation 15(6)(b)(i) and (c)(i) on 13th May 1995.

(2) In these Regulations—

“the Administration Act” means the Social Security Administration Act 1992<sup>(1)</sup>;

“benefit week” means a period of seven days ending with the day on which the benefit is due to be paid;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

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

“parent” has the meaning that it bears for the purposes of Part IX of the Contributions and Benefits Act (child benefit);

“standard rate of increase” means the amount specified in column (3) of Part IV of Schedule 4 to the Contributions and Benefits Act which is appropriate in the case of the beneficiary.

(3) In these Regulations, except where the context otherwise requires—

(a) a reference to a numbered section is a reference to the section of the Contributions and Benefits Act which bears that number;

(b) a reference to a numbered regulation is a reference to the regulation in these Regulations which bears that number; and

(c) a reference in a regulation to a numbered paragraph is a reference to the paragraph in that regulation which bears that number.

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

2.—(1) Subject to paragraph (2), a beneficiary shall not, for the purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit and of these Regulations, be deemed to be wholly or mainly maintaining another person unless the beneficiary—

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(1) 1992 c. 5.

- (a) when incapable of work, contributes towards the maintenance of that person an amount not less than the amount of increase of benefit received in respect of that person; and
- (b) when in employment, or not incapable of work, (except in a case where the dependency did not arise until after that time) contributed more than half of the actual cost of maintenance of that person.

(2) In a case where—

- (a) a person is partly maintained by each of 2 or more other persons each of whom could be entitled to an increase of benefit under the Contributions and Benefits Act in respect of that person if he were wholly or mainly maintaining that person, and
- (b) the contributions made by those other persons towards the maintenance of that person amount in the aggregate to sums which, if they were contributed by one of them, would be sufficient to satisfy the requirements of paragraph (1),

that person shall for purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit, be deemed to be wholly or mainly maintained by that one of the said other persons who—

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

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

(3) A notice given under paragraph (2) and the designation contained in it may be revoked at any time by a fresh notice signed by a majority of such persons and another one of their number may be designated thereby, and accordingly the provisions of that paragraph shall apply to the one so last designated.

#### **Allocation of contributions for a spouse or child**

3.—(1) Subject to the provisions of this regulation, for the purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit any sum paid by a person by way of contribution towards—

- (a) the maintenance of his spouse;
- (b) the cost of providing for a relevant child; or
- (c) both that maintenance and that cost,

shall be treated for the purposes of section 81(2)(b) (conditions as to cost of providing for a child) and regulations 9 and 12 as such contributions of such respective amounts equal in the aggregate to the sum in respect of his spouse or any relevant child, as may be determined by the adjudicating authority so as to secure as large a payment as possible by way of benefit in respect of dependants.

(2) Any sum paid by way of contribution towards the maintenance of a spouse shall not be treated by virtue of this regulation as a sum paid by way of contribution towards the cost of providing for a relevant child, and any sum paid by way of contribution towards the cost of providing for a relevant child shall not be treated as a sum paid by way of contribution towards the maintenance of a spouse, unless in either case the spouse is entitled to child benefit in respect of that relevant child.

(3) In this regulation—

“adjudicating authority” means any person or body with responsibility under the Administration Act and regulations made under that Act, for the determination of claims for

benefit and questions arising in connection with a claim for, or award of, or disqualification for receiving benefits;

“relevant child” means a child in respect of whom, in the period for which the sum in question is paid by a person, that person is entitled to child benefit or would have been so entitled had he contributed to the cost of providing for the child at a sufficient weekly rate.

#### **Deeming abated benefit to be a contribution for the maintenance of child or adult dependants**

4. Where for any period a person (in this regulation referred to as A) is entitled to, or to an increase in the amount of, any benefit prescribed under section 74(3)(a) of the Administration Act (income support and other payments) in respect of another person (in this regulation referred to as B) and the amount of, or of the increase in, any such benefit is abated under that section, then in determining for the purpose of the Contributions and Benefits Act whether A is wholly or mainly maintaining or is contributing at any weekly rate to the maintenance of, or is or has been contributing at any weekly rate to the cost of providing for, B, the amount by which such benefit for any week has been so abated shall be deemed to be a contribution of that amount for that week made by A for the maintenance of B.

#### **Attribution of earnings**

5.—(1) Subject to paragraph (4), for the purposes of section 80(3) and (4) (Beneficiary’s dependant children) and regulation 10 the week to which a person’s earnings are to be attributed shall be determined in accordance with the following provisions of this regulation.

(2) Earnings derived from employment as an employed earner or as a self-employed earner (determined in accordance with regulations 2, 3, 4 and 7 of the Social Security Benefit (Computation of Earnings) Regulations 1978(2)) which are payable in respect of a period shall be attributed at a weekly amount to a period equal in length to the period in respect of which they are paid beginning with the date on which they are treated as paid under paragraph (3).

(3) A payment of earnings to which paragraph (2) applies shall be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid; and
- (b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This regulation does not apply in any case to which regulation 5 of the Social Security Benefit (Computation of Earnings) Regulations 1978 applies.

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(2) S.I.1978/1698. The relevant amending instruments are S.I. 1979/359, 1984/1303, 1984/1697, 1987/606, 1989/1642, 1690 and 2123, 1990/2208 and 1992/300, and paragraph 1(3)(a) of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41).