
STATUTORY INSTRUMENTS

1994 No. 2945

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

PART II

Child Dependants

Circumstances in which a person who is not entitled to child benefit is to be treated as if so entitled

6.—(1) For the purposes of section 80 (increase of benefit in respect of dependent children), in so far as it relates to incapacity benefit, a person shall be treated as if he were entitled to child benefit in respect of a child for any period throughout which—

- (a) child benefit has been awarded to a parent of that child with whom that child is living and with whom that person is residing and either—
 - (i) the child is being wholly or mainly maintained by that person; or
 - (ii) that person is also a parent of the child; or
- (b) he, or his spouse with whom he is residing, would have been entitled to child benefit in respect of that child had the child been born at the end of the week immediately preceding the week in which the birth occurred.

(2) Where for any period a person who is in Great Britain could have been entitled to receive payment of an amount by way of an increase of incapacity benefit in respect of a child but for the fact that in pursuance of any agreement with the government of a country outside the United Kingdom he, or his spouse who is residing with him, is entitled in respect of the child in question to the family benefits of that country and is not entitled to child benefit, he shall for the purposes of entitlement to the said payment be treated as if he were entitled to child benefit for the period in question.

(3) For the purposes of paragraph (1)—

- (a) “week” means a period of 7 days beginning with a Monday; and
- (b) a child shall not be regarded as living with a person unless he can be so regarded for the purposes of section 143 (meaning of “person responsible for child”).

Circumstances in which a person entitled to child benefit is to be treated as if he were not so entitled

7.—(1) For the purposes of section 80 (increase of benefit in respect of dependent children) in so far as they relate to incapacity benefit a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for—

- (a) any period throughout which—
 - (i) that person, not being a parent of the child, does not fall to be treated as responsible for the child under section 143 (meaning of “person responsible for child”); and

- (ii) a parent of that child falls to be treated as responsible for the child under that section;
or
- (b) any period throughout which—
 - (i) that person, not being a parent of that child, falls to be treated as responsible for the child under section 143; and
 - (ii) a parent of that child also falls to be treated as responsible for the child under that section; or
- (c) any day following the day on which that child died.

(2) Sub-paragraph (b) of paragraph (1) shall not apply in the case of a person who is wholly or mainly maintaining the child referred to in that sub-paragraph.

(3) For the purposes of section 80 (increase of benefit in respect of dependent children) a person who is entitled to child benefit in respect of a child shall be treated as not so entitled for any period for which that benefit is not payable by virtue of any of the provisions of regulations 7 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child), 7A (exclusion from benefit of children aged 16 but under the age of 19 who are receiving advanced education), 7B (child receiving training under the youth training scheme) or 7C (child receiving income support) of the Child Benefit (General) Regulations 1976(1) or any provision contained in regulations made under section 144(1)(a) (meaning of “child”) in so far as those regulations provide that child benefit is not to be payable by virtue of paragraph (b) of section 142(1) (exclusions and priority) and regulations made under that paragraph.

Contribution towards cost of providing for child

8.—(1) Where, apart from section 81(1), a person is entitled to receive, in respect of a particular child, an increase of incapacity benefit under any of the provisions of section 80 for any period, and neither of the conditions set out in paragraph (2) is satisfied, that person shall, for the purposes of section 81(2), be deemed as respects that period to be making the contributions so required at a weekly rate not less than that required by that section if—

- (a) he gives an undertaking in writing to make such contributions; and
- (b) on receiving the amount of the benefit or increase in question, he in fact makes such contributions.

(2) The conditions referred to in paragraph (1) are—

- (a) that the person would be treated for the purposes of Part IX of the Contributions and Benefits Act as having the child living with him; or
- (b) that contributions are being made to the cost of providing for the child at a rate equal to the amount of the relevant increase of benefit.

(3) Where, in respect of any period, a person fails to make contributions which he has undertaken to make in accordance with paragraph (1), the decision awarding the increase for that period in respect of the child shall be revised.

(4) Except in a case to which applies either—

- (a) regulation 13A of the Social Security Benefit (Persons Abroad) Regulations 1975(2) (modification of the Contributions and Benefits Act in relation to title to benefit for beneficiary’s child dependants); or

(1) S.I.1976/965: the relevant amending instruments are S.I. 1977/534, 1980/1045, 1982/470, 1987/357, 1988/521, 1227 and 1843 and 1991/387.

(2) S.I. 1975/563: the relevant amending instrument is S.I. 1977/342.

(b) any regulation made under section 4(10) of the Social Security (Incapacity for Work) Act 1994 which provides, subject to the regulations for regulation 15 of the Social Security (Dependency) Regulations 1977(3) to have effect,
paragraph (b) of section 81(2) (contributions mentioned in that paragraph to be over and above those required for the purposes of section 143(1)(b)) shall not apply in a case where neither the beneficiary nor his spouse (if he has a spouse and his spouse is residing with him) is in fact entitled to child benefit in respect of the child in question.