
STATUTORY INSTRUMENTS

1995 No. 2303

**The Income-related Benefits Schemes and
Social Security (Claims and Payments)
(Miscellaneous Amendments) Regulations 1995**

Amendment of the Disability Working Allowance Regulations

3.—(1) The Disability Working Allowance Regulations^{M1} shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “payment” there shall be inserted the following definition—

““pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;”

(b) in the definition of “personal pension scheme” for the words “section 84(1) of the Act” there shall be substituted the words “section 1 of the Pension Schemes Act 1993”;

(c) after the definition of “qualifying person”^{M2} there shall be inserted the following definition—

““retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”

(3) In regulation 25(14) (calculation of net profit of self-employed earners) the definition of “retirement annuity contract” shall be omitted.

(4) In regulation 29 (notional income)—

(a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted the following words—

“Except in the case of—

(a) a discretionary trust;

(b) a trust derived from a payment made in consequence of a personal injury; or

(c) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;”

(b) after paragraph (2), there shall be inserted the following paragraphs—

“(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

(a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

- (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid; or
 - (iii) income withdrawal is not available to him under that scheme; or
- (b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations 1987 (evidence and information) ^{M3}.

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2a)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).”.

(5) In regulation 37(2) (notional capital) after sub-paragraph (c) there shall be inserted the word “or” and the following sub-paragraph shall be added—

“(d) a personal pension scheme or retirement annuity contract.”.

(6) In regulation 39 (capital jointly held) for the words from “to the whole beneficial interest” to the end of the regulation there shall be substituted the following words—

“to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

(a) that interest is solely owned by the claimant; and

(b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned, and dividing the same by the number of persons who have a beneficial interest in the capital in question.”.

(7) In Schedule 1 (disability which puts a person at a disadvantage in getting a job), in paragraph 6, for the words “pick up with each hand” there shall be substituted the words “, with one hand, pick up”.

(8) In Schedule 3 (sums to be disregarded in the calculation of income other than earnings)—

(a) after paragraph 11 there shall be inserted the following paragraph—

“**11A.** Any Jobmatch Allowance payable pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973 ^{M4} where the payments will cease by the date on which the period under section 129(6) of the Contributions and Benefits Act 1992 (period of award) is to begin.”;

(b) in paragraph 49 ^{M5}—

(i) after the words “Benefits Act”, there shall be inserted the words “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”; and

- (ii) after the words “that Act” there shall be inserted the words “or the rate of that pension under that Order”.
- (9) In Schedule 4 (capital to be disregarded)—
- (a) for paragraph 5 there shall be substituted the following paragraph—
- “5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;
- (b) after paragraph 24 there shall be inserted the following paragraph—
- “24A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;
- (c) in paragraph 25 at the end there shall be added the words “except where the claimant has a reversionary interest in the property in respect of which rent is due.”.

Marginal Citations

- M1** [S.I. 1991/2887](#); relevant amending instruments [S.I. 1992/1101](#), 2155, 1993/315, 963, 1249, 1994/527, 2139 and 1995/516.
- M2** The definition of “qualifying person” was inserted by [S.I. 1992/1101](#), [regulation 36\(b\)](#); relevant amending instrument [S.I. 1993/1249](#).
- M3** Paragraph (5) of regulation 7 is inserted in the Claims and Payments Regulation 10(3) of these Regulations.
- M4** 1973, c. 50; [section 2](#) was amended by sections 9 and 11 of, and paragraph 9 of Schedule 2 and Schedule 3 to, the [Employment and Training Act 1981 \(c. 57\)](#).
- M5** [Paragraph 49](#) was inserted in Schedule 3 by [S.I. 1994/527](#).

Changes to legislation:

There are currently no known outstanding effects for the The Income-related Benefits Schemes and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations 1995, Section 3.