
STATUTORY INSTRUMENTS

2003 No. 493

The Child Benefit (General) Regulations 2003

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Benefit (General) Regulations 2003 and shall come into force on 7th April 2003 immediately after the commencement of section 49 of the Tax Credits Act 2002(1).

(2) In these Regulations—

“the 1989 Act” means the Children Act 1989(2);

“the 1995 Act” means the Children (Scotland) Act 1995(3);

“advanced education” means full-time education for the purposes of—

- (a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business & Technology Education Council or the Scottish Vocational Education Council or a teaching qualification; or
- (b) any other course which is of a standard above ordinary national diploma, a national diploma or national certificate of Edexcel or the Scottish Qualifications Authority, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of sixth year studies;

“an appropriate office” means—

- (a) in relation to child benefit under the Contributions and Benefits Act, the Child Benefit Office, Waterview Park, Washington, Tyne and Wear;
- (b) in relation to child benefit under the Contributions and Benefits (NI) Act, the Child Benefit Office (Northern Ireland), Windsor House, Bedford Street, Belfast;
- (c) any Inland Revenue Enquiry Centre;

“the Board” means the Commissioners of Inland Revenue;

“the Careers Service” means—

- (a) in England and Wales, a person with whom the Secretary of State or the National Assembly of Wales has made arrangements under section 10(1) of the Employment and Training Act 1973(4), and a local education authority to whom the Secretary of State or the National Assembly of Wales has given a direction under section 10(2) of that Act;
- (b) in Scotland, a person with whom the Scottish Ministers have made arrangements under section 10(1) of the Employment and Training Act 1973 and any education authority to

(1) 2002 c. 21.

(2) 1989 c. 41.

(3) 1995 c. 36.

(4) 1973 c. 50.

which a direction has been given by the Scottish Ministers under section 10(2) of that Act; and

- (c) in Northern Ireland, the Careers Service of the Department for Employment and Learning;

“child benefit” has the meaning given in section 141 of the Contributions and Benefits Act and section 147 of the Contributions and Benefit (NI) Act (child benefit);

“the Children Order” means the Children (Northern Ireland) Order 1995⁽⁵⁾;

“the Connexions Service” means a person of any description with whom the Secretary of State has made an arrangement under section 114(2)(a) of the Learning and Skills Act 2000⁽⁶⁾ and section 10(1) of the Employment and Training Act 1973, and any person to whom he has given a direction under section 114(2)(b) of the former Act and section 10(2) of the latter Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992⁽⁷⁾;

“the Contributions and Benefits (NI) Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁸⁾;

“court” means any court in the United Kingdom, the Channel Islands or the Isle of Man;

“Crown servant posted overseas” has the meaning given in regulation 30(2);

“full-time education” has the meaning given in regulation 5;

“hospital or similar institution” means a place (not being a prison, a young offenders institution, Secure Training Centre, Local Authority Secure Unit, Juvenile Justice Centre, Young Offenders Centre or, if not in Great Britain or Northern Ireland, any comparable place) in which persons suffering from mental disorders are or may be received for care or treatment;

“married couple” means a man and a woman who are married to each other and are neither—

- (a) separated under a court order, nor
- (b) separated in circumstances in which the separation is likely to be permanent;

“mental disorder” shall be construed as including references to any mental disorder within the meaning of the Mental Health Acts;

“the Mental Health Acts” means the Mental Health Act 1983⁽⁹⁾, the Mental Health (Scotland) Act 1984⁽¹⁰⁾ or the Mental Health (Northern Ireland) Order 1986⁽¹¹⁾;

“partner” means, except in regulation 12, where a person is a member of a married or unmarried couple, the other member of that couple;

“penalty” means, in the case of any court in Great Britain or Northern Ireland—

- (a) in England and Wales, a sentence of a detention and training order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000⁽¹²⁾ or detention in a young offenders institution, and a sentence of detention under sections 90, 91, 92 and 93 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (b) in Scotland, a sentence of detention under sections 44, 205, 207, 208 or 216(7) of the Criminal Procedure (Scotland) Act 1995⁽¹³⁾;

(5) S.I.1995/755 (N.I. 2).

(6) 2000 c. 21.

(7) 1992 c. 4.

(8) 1992 c. 7.

(9) 1983 c. 20.

(10) 1984 c. 36.

(11) S.I. 1986/595 (N.I. 4).

(12) 2000 c. 6.

(13) 1995 c. 44.

- (c) in Northern Ireland, a sentence of imprisonment, or detention under Article 39, 41, 45 or 54 of, or paragraph 6 of Schedule 2 to, the Criminal Justice (Children) (Northern Ireland) Order 1998(14), or an order for detention in a juvenile justice centre or young offenders centre,

and in the case of any court not in Great Britain or Northern Ireland, any comparable sentence or order;

“relevant training programme” means—

- (a) arrangements made under section 2 of the Employment and Training Act 1973(15) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(16) or section 1 of the Employment and Training Act (Northern Ireland) 1950(17);
- (b) provision secured by the Learning and Skills Council for England or the National Council for Education and Training for Wales under Parts I or 2 of the Learning and Skills Act 2000;
- (c) arrangements made by the Secretary of State for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(18) (power of Defence Council to make regulations as to engagement of persons in regular forces); or
- (d) for the purposes of the application of Council Regulation (EEC) No. 1408/71(19), any corresponding provisions operated in another member State;

“remunerative work” means work of not less than 24 hours a week—

- (a) in respect of which payment is made; or
- (b) which is done in expectation of payment;

“the Social Security Act” means the Social Security Act 1975;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(20);

“unmarried couple” means a man and a woman who are not a married couple but are living together as husband and wife;

“relative” means brother, sister, ancestor or lineal descendant;

“writing” includes writing produced by electronic communications used in accordance with regulation 39.

(14) S.I. 1998/1504 (N.I. 9).

(15) Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(16) 1990 c. 35.

(17) 1950 c. 29 (NI); section 1(1) and (1A) were substituted by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I.10)) and section 1(2) and (3) were substituted by Article 5 of the Employment and Training (Amendment) (Northern Ireland) Order 1990 (S.I. 1990/1200 (N.I. 8)).

(18) 1966 c. 45.

(19) O.J. No. L149, 5.7.1971; Regulations (EEC) No. 1408/71 and No. 574/72 were restated in amended form in Council Regulation (EEC) No. 2001/83 (O.J. No. L230, 22.8.1983) and further amended by Council Regulations (EEC) Nos. 1660/85 (O.J. No. L160, 20.6.1985); 1661/85 (O.J. No. L160, 20.6.1985); and 3811/86 (O.J. No. L355, 16.12.1986); Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986) and Articles 60 and 220 of, and Point 1, Part VIII of Annex 1 to the Act of Accession to the European Communities of Spain and Portugal.

(20) 1988 c. 1.

PART 2

Meaning of “person responsible for child”

Child in residential accommodation in prescribed circumstances

2. For the purposes of section 143(3)(c) of the Contributions and Benefits Act and section 139(3)(c) of the Contributions and Benefits (NI) Act (absence of child in residential accommodation), the prescribed circumstances are circumstances where the residential accommodation has been provided solely on account of the child’s disability or because his health would be likely to be significantly impaired, or further impaired, unless such accommodation was provided.

Days of absence to be disregarded in determining whether a child is living with a person

3.—(1) For the purpose of section 143(4) of the Contributions and Benefits Act and section 139(4) of the Contributions and Benefits (NI) Act (number of days that may be disregarded), the prescribed number of days is 84 consecutive days calculated in accordance with paragraph (2).

(2) Two or more distinct relevant periods separated by one or more intervals each not exceeding 28 days are treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

(3) In paragraph (2) “relevant periods” means—

- (a) periods to which section 143(3)(b) of the Contributions and Benefits Act or section 139(3)(b) of the Contributions and Benefits (NI) Act (absence of a child undergoing medical or other treatment) applies;
- (b) periods to which section 143(3)(c) of the Contributions and Benefits Act or section 139(3)(c) of the Contributions and Benefits (NI) Act (absence of a child in residential accommodation) applies.

Prescribed circumstances relating to contributions and expenditure in respect of a child

4.—(1) Subject to paragraph (3), for the purposes of section 143(5)(a) of the Contributions and Benefits Act and section 139(5)(a) of the Contributions and Benefits (NI) Act (contributing to the cost of providing for a child) the prescribed circumstances are circumstances where—

- (a) two or more persons are contributing to the cost of providing for the same child;
- (b) the aggregate weekly amount of their contributions is, but the weekly amount of each of their individual contributions is not, less than the weekly rate of child benefit which would be payable in respect of that child had the aggregate weekly amount of their contributions been contributed by one only of them, and
- (c) they by agreement nominate in writing or, in default of such agreement, the Board in their discretion determine, that the aggregate weekly amount of their contributions is to be treated as having been made by the person so nominated or determined.

(2) The contribution subject to the nomination or determination made under paragraph (1) is to be treated as made by the person nominated or determined.

(3) Where pursuant to a nomination or determination made under paragraph (1) a person is awarded child benefit, the nomination or determination ceases to have effect in the week following that in which child benefit is awarded to that person.

(4) Where spouses are residing together a contribution made or expenditure incurred by one of them in respect of a child shall if they agree, or in default of such agreement if the Board in their discretion so determine, be treated as made or incurred by the other.

PART 3

Meaning of “child”

Prescribed circumstances in which education is to be treated as full-time education

5.—(1) For the purposes of Part 9 of the Contributions and Benefits Act and Part 9 of the Contributions and Benefits (NI) Act, the circumstances in which education received by a person attending a course of education at a recognised educational establishment is treated as full-time education are circumstances where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours a week in normal term-time, and shall include normal gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course.

(2) In calculating the time spent in pursuit of the course, no account shall be taken of time occupied by meal breaks or spent on unsupervised study.

Prescribed interruptions to full-time education

6.—(1) Subject to paragraph (2), for the purposes of section 142(4) of the Contributions and Benefits Act and section 138(4) of the Contributions and Benefits (NI) Act (prescribed interruptions to full-time education) the prescribed interruptions are—

- (a) an interruption for a period of up to six months, whether beginning before or after the person concerned attains age 16, to the extent to which in the opinion of the Board the interruption is reasonable; and
- (b) an interruption attributable to the illness or disability of mind or body of the person concerned for such period as is reasonable in the opinion of the Board.

(2) Paragraph (1) does not apply to any period of interruption of a person’s full-time education which is or is likely to be followed immediately by a period during which—

- (a) provision is made for the training of that person, and for an allowance to be payable to that person, under a relevant training programme;
- (b) he is receiving education by virtue of his employment or of any office held by him; or
- (c) provision is made for his financial support under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(21) or Article 16 of the Industrial Training (Northern Ireland) Order 1984(22).

Prescribed period for which a person who has ceased to receive full-time education is to continue to be treated as a child

7.—(1) Subject to paragraph (2), for the purposes of section 142(5) of the Contributions and Benefits Act and section 138(5) of the Contributions and Benefits (NI) Act (prescribed period for which a person is to continue to be treated as a child), the prescribed period is specified in Cases 1 and 2.

Case 1

1.1 The prescribed period is—

- (a) from—

(21) 1945 c. 6 (N.I.).

(22) S.R.1984/1159 (N.I. 9).

- (i) if the person is under the age of 16 when he ceases to receive full-time education not being advanced education, the date on which he attains that age; or
 - (ii) if the person is 16 or over when he ceases to receive full-time education not being advanced education, the date on which he so ceases,
- (b) up to and including—
- (i) the week including the terminal date, or
 - (ii) if he attains the age of 19 on or before that date, the week including the last Monday before he attains that age.
- 1.2 For the purposes of paragraph 1.1, the “terminal date” means—
- (a) the first Monday in January; or
 - (b) the Monday following Easter Monday; or
 - (c) the first Monday in September,
- whichever first occurs after the date on which the person’s full-time education ceased, or where the person had not attained compulsory school age when he ceased to receive full-time education, whichever next follows the date on which he would have attained that age.
- 1.3 For the purposes of paragraph 1.2, “compulsory school age” means the upper limit of compulsory school age as determined in accordance with—
- (a) in England and Wales, section 9 of the Education Act 1962⁽²³⁾;
 - (b) in Scotland, sections 31 and 33 of the Education (Scotland) Act 1980⁽²⁴⁾
 - (c) in Northern Ireland, Article 46 of the Education and Libraries (Northern Ireland) Order 1986⁽²⁵⁾.

Case 2

- 2.1 Where a person’s name is entered as a candidate for any external examination in connection with full-time education not being advanced education which he is receiving at that time, so long as his name continues to be so entered before ceasing to receive such education, the prescribed period is—
- (a) from—
 - (i) the period beginning with the date when that person ceased to receive full-time education, or
 - (ii) where a person has not attained the age of 16 when he ceased to receive full-time education, the date on which he attained that age,
 - (b) up to and including—
 - (i) whichever of the dates in sub-paragraph (a), (b) and (c) of paragraph 1.2 first occurs after the conclusion of the examination (or the last of them if there are more than one), or
 - (ii) the expiry of the week which includes the last Monday before his 19th birthday,
 whichever is the earlier.

⁽²³⁾ 1962 c. 12 as amended by the Education (School-leaving Dates) Act 1976 (c. 5).

⁽²⁴⁾ 1980 c. 44.

⁽²⁵⁾ S.I. 1986/594 (N.I. 3).

(2) Child benefit shall not be payable to any person entitled to child benefit in respect of a child by virtue of this regulation for any week in which that child is engaged in remunerative work.

Prescribed conditions for a person under the age of 18 and not receiving full-time education to be treated as a child

8.—(1) For the purposes of section 142(1)(b) of the Contributions and Benefits Act and section 138(1)(b) of the Contributions and Benefits (NI) Act (person under the age of 18 not receiving full-time education and satisfying prescribed conditions to be treated as a child), the prescribed conditions are that—

- (a) the person is registered for work or for training under a relevant training programme with—
 - (i) the Careers Service or Connexions Service;
 - (ii) the Ministry of Defence;
 - (iii) in Northern Ireland, the Department for Employment and Learning or an education and library board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986; or
 - (iv) for the purposes of applying Council Regulation (EEC) No. 1408/71, any corresponding body in another member State;
 - (b) the person is not engaged in remunerative work;
 - (c) the extension period which applies in the case of that person has not expired;
 - (d) immediately before the extension period begins, the person who is responsible for him is entitled to child benefit in respect of him without regard to this regulation; and
 - (e) the person who is responsible for him has made a written request to the Board for the payment of child benefit during the extension period.
- (2) For the purposes of paragraph (1)(c), (d) and (e), the extension period—
- (a) begins on the first day of the week in which child benefit would cease to be payable in respect of a person but for this regulation; and
 - (b) ends—
 - (i) on the last day of the week which falls immediately before the week which includes the first Monday in January in that year where a person attains the age of 16 or, if later, where the prescribed period in regulation 7 ends, on or after the first Monday in September, but before the first Monday in January of the following year;
 - (ii) on the last day of the week which falls 12 weeks after the week which includes the first Monday in January in that year where a person attains the age of 16 or, if later, where the prescribed period in regulation 7 ends, on or after the first Monday in January but before the Monday following Easter Monday in that year;
 - (iii) on the last day of the week which falls 12 weeks after the week which includes the Monday following Easter Monday in that year where a person attains the age of 16 or, if later, where the prescribed period in regulation 7 ends, at any other time of the year.

PART 4

Exclusions and priority

Exclusion from child benefit of children aged 16 but under the age of 19 who are receiving advanced education or training under a relevant training programme

9. For the purposes of section 144(1)(a) of the Contributions and Benefits Act and section 140(1)(a) of the Contributions and Benefits (NI) Act (child benefit not payable by virtue of section 142(1)(b) of the Contributions and Benefits Act or section 138(1)(b) of the Contributions and Benefits (NI) Act in such cases as may be prescribed), the prescribed cases are where—

- (a) the child is receiving advanced education; or
- (b) training is being provided for the child under a relevant training programme and an allowance is payable under that programme to that child.

Exclusion from child benefit where certain financial support is payable to the child

10. For the purposes of section 144(1)(b) of the Contributions and Benefits Act and section 140(1)(b) of the Contributions and Benefits (NI) Act (child benefit is not payable by virtue of section 142(1)(c) of the Contributions and Benefits Act or section 138(1)(c) of the Contributions and Benefits (NI) Act in such cases as may be prescribed), the prescribed cases are where for any week—

- (a) income support;
- (b) income-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995 or Article 3(4) of the Jobseekers (Northern Ireland) Order 1995;
- (c) incapacity benefit by virtue of being a person to whom section 30A(1)(b) of the Contributions and Benefits Act(26) or section 30A(1)(b) of the Contributions and Benefits (NI) Act(27) applies;
- (d) payments made under section 4 of the Disabled Persons (Employment) Act (Northern Ireland) 1945 or Article 16 of the Industrial Training (Northern Ireland) Order 1984; or
- (e) tax credit under the Tax Credits Act 2002,

is payable to the child.

Employed trainees

11.—(1) For the purposes of paragraph 2(2) of Schedule 9 to the Contributions and Benefits Act and paragraph 2(2) of Schedule 9 to the Contributions and Benefits (NI) Act (child receiving education by virtue of his employment or of any office held by him), the specified circumstances in which—

- (a) a child is not for any week to be treated as receiving education by virtue of his employment or any office held by him, are circumstances where that week begins in what has been or is likely to be a continuous period of not less than 6 months in respect of which that child receives no financial support by virtue of his employment or any office held by him;
- (b) a child is for any week to be treated as receiving education by virtue of his employment or of any office held by him, are circumstances where in consideration of that education, that child receives financial support in respect of that week by virtue of his employment or any office held by him.

(26) Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30).

(27) Section 30A was inserted by Article 1(1) of the Social Security (Incapacity for Work) (N.I.) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by Article 61(1) of the Welfare Reform and Pensions (N.I.) Order 1999 (S.I. 1999/3147 (N.I. 11)).

(2) For the purposes of paragraph (1), “financial support” does not include any reimbursement of the cost of books, equipment, tuition, examination fees, travelling expenses or contributions under the Social Security Act.

Child living with another person as his spouse

12.—(1) Except in the circumstances specified in paragraph (2), child benefit is not payable to any person in respect of a child for any week in which that child is living with another person as his spouse (referred to in this regulation as “the partner”).

(2) The specified circumstances are that—

- (a) the person to whom child benefit is payable is not the partner of that child; and
- (b) the partner of that child is receiving full-time education.

Married child

13. A person is not disentitled to child benefit in respect of a married child by virtue of paragraph 3 of Schedule 9 to the Contributions and Benefits Act or paragraph 3 of Schedule 9 to the Contributions and Benefits (NI) Act (unless regulations otherwise provide no person to be entitled to child benefit in respect of a married child) if—

- (a) that person is not the spouse of that child; and
- (b) that child is not residing with his spouse or, if he is, the spouse is receiving full-time education.

Prescribed manner of making an election under Schedule 10 to the Contributions and Benefits Act and Schedule 10 to the Contributions and Benefits (NI) Act

14.—(1) The prescribed manner of making an election under Schedule 10 to the Contributions and Benefits Act and Schedule 10 to the Contributions and Benefits (NI) Act (any election under that Schedule to be made in the prescribed manner) is by giving notice in writing to the Board at an appropriate office on a form approved by the Board or in such other manner being in writing as the Board may accept as sufficient in the circumstances of any particular case or class of cases.

(2) An election is not effective to confer entitlement to child benefit in respect of a child for any week earlier than the week following that in which it is made if the earlier week is one in respect of which child benefit has been paid in respect of that child and has not been required to be repaid or voluntarily repaid or recovered.

(3) An election may be superseded by a subsequent election made in accordance with this regulation.

Modification of priority between persons entitled to child benefit

15.—(1) Subject to paragraph (2), where a person entitled to child benefit in respect of a child in priority to another person gives the Board notice in writing at an appropriate office that he does not wish to have such priority, the provisions of the Schedule 10 to the Contributions and Benefits Act and Schedule 10 to the Contributions and Benefits (NI) Act (priority between persons entitled) have effect with the modification that that person does not have such priority.

(2) A notice under paragraph (1)—

- (a) ceases to have effect if the said person makes a further claim to child benefit in respect of the said child;
- (b) is not effective in relation to any week for which child benefit in respect of the said child is paid to the said person or to a person on his behalf.

Children in detention, care etc.

16.—(1) Subject to paragraphs (3) and (4) below, paragraph 1 of Schedule 9 to the Contributions and Benefits Act and paragraph 1 of Schedule 9 to the Contributions and Benefits (NI) Act do not apply to disentitle a person to child benefit in respect of a child for any week—

- (a) unless that week is the 9th or a subsequent week in a series of consecutive weeks in which either of those paragraphs has applied to that child; or
- (b) notwithstanding paragraph (a), if—
 - (i) that week is one in which falls the first day in a period of seven consecutive days in which the child lives with that person for at least a part of the first day and throughout the following six days;
 - (ii) that week is one in which falls the first day in a period of seven consecutive days throughout which the child lives with that person, being a period of seven consecutive days which immediately follows either a similar period of seven consecutive days or the period of seven consecutive days referred to in head (i) above;
 - (iii) that week is one in which falls the day, or the first day in a period of less than seven consecutive days, throughout which the child lives with that person, being a day or days which immediately follow the period of seven consecutive days referred to in head (i) above or a period of seven consecutive days referred to in head (ii), or
 - (iv) as at that week that person establishes that he is a person with whom the child ordinarily lives throughout at least one day in each week.

(2) For the purposes of paragraph (1), a person shall not be regarded as having a child living with him throughout any day or week unless he actually has that child living with him throughout that day or week.

(3) Paragraph (1) does not apply—

- (a) in Great Britain, for any day in any week in which a child is placed by a local authority in the home of any person in accordance with the provisions of—
 - (i) the Arrangements for Placements of Children (General) Regulations 1991⁽²⁸⁾;
 - (ii) the Arrangements to Look After Children (Scotland) Regulations 1996⁽²⁹⁾;
 - (iii) the Foster Placement (Children) Regulations 1991⁽³⁰⁾; or
 - (iv) the Fostering of Children (Scotland) Regulations 1996⁽³¹⁾,
 and that local authority is making a payment in respect of either the child's accommodation or maintenance or both under section 23 of the 1989 Act or under section 26 of the 1995 Act;
- (b) in Northern Ireland, for any day in any week in which a child is placed by an authority in the home of any person in accordance with the provisions of the Foster Placement (Children) Regulations (Northern Ireland) 1996⁽³²⁾ and the authority has a duty to provide accommodation and maintenance for the child under the Arrangements for Placement of Children (General) Regulations (Northern Ireland) 1996⁽³³⁾.

(4) Paragraph (1) does not apply in respect of any child who—

- (a) is being looked after by a local authority or authority; and

⁽²⁸⁾ S.I. 1991/890.

⁽²⁹⁾ S.I. 1996/3262 (S. 252).

⁽³⁰⁾ S.I. 1991/910

⁽³¹⁾ S.I. 1996/3263 (S. 253).

⁽³²⁾ S.R. 1996 No. 467.

⁽³³⁾ S.R. 1996 No. 453.

- (b) has been placed for adoption by that authority in the home of a person proposing to adopt him,

provided that the local authority or authority is making a payment in respect of either the child's accommodation or maintenance or both, under section 23 of the 1989 Act, under section 26 of the 1995 Act or under Article 27 of the Children Order.

(5) For the purposes of paragraph (4), placing for adoption means placing for adoption in accordance with the Adoption Agencies Regulations 1983⁽³⁴⁾, the Adoption Agencies (Scotland) Regulations 1984⁽³⁵⁾, or the Adoption Agencies Regulations (Northern Ireland) 1989⁽³⁶⁾.

Child undergoing imprisonment or detention in legal custody

17.—(1) For the purposes of paragraph 1(a) of Schedule 9 to the Contributions and Benefits Act and paragraph 1(1)(a) of Schedule 9 to the Contributions and Benefits (NI) Act, a child is not regarded as undergoing imprisonment or detention in legal custody in any week unless—

- (a) in connection with a charge brought or intended to be brought against him in criminal proceedings at the conclusion of those proceedings, or
- (b) in the case of default of payment of a sum adjudged to be paid on conviction, in respect of such default,

a court imposes a penalty upon him.

(2) Subject to paragraph (3), paragraph 1(a) of Schedule 9 to the Contributions and Benefits Act and paragraph 1(1)(a) of Schedule 9 to the Contributions and Benefits (NI) Act do not apply to a child in respect of any week in which that child is liable to be detained in a hospital or similar institution in Great Britain or Northern Ireland as a person suffering from a mental disorder.

(3) Subject to paragraph (5), paragraph (2) does not apply where subsequent to the imposition of a penalty, the child was removed to the hospital or similar institution while still liable to be detained as a result of the said penalty and, in the case of a person who is liable to be detained in the hospital or similar institution by virtue of any provisions of the Mental Health Acts, a direction restricting his discharge has been given under any of those Acts and is still in force.

(4) In paragraph (3) a person who is liable to be detained by virtue of any provision of the Mental Health Acts shall be treated as if a direction restricting his discharge had been given under those Acts if he is to be so treated for the purposes of any of them.

(5) Where a certificate given by or on behalf of the Secretary of State shows the earliest date on which the child would have been expected to be discharged from detention pursuant to the penalty if he had not been transferred to a hospital or similar institution, paragraph (3) shall not apply from the day following that date.

Child in care in such circumstances as may be prescribed

18. For the purposes of paragraph 1(c) of Schedule 9 to the Contributions and Benefits Act and paragraph 1(c) of Schedule 9 to the Contributions and Benefits (NI) Act (child in care in such circumstances as may be prescribed), the prescribed circumstances are circumstances where—

- (a) the child is provided with, or placed in, accommodation under Part 3 of the 1989 Act, under Part 2 of the 1995 Act or under Part 4 of the Children Order and the cost of that child's accommodation or maintenance is borne wholly or partly out of local authority funds, authority funds or any other public funds, and

⁽³⁴⁾ S.I. 1983/1964.

⁽³⁵⁾ S.I. 1984/988.

⁽³⁶⁾ S.R. 1989 No. 253.

- (b) the child is not in residential accommodation in the circumstances prescribed in regulation 3.

Interpretation of facts existing in a week

19. Where paragraph 1 of Schedule 9 to the Contributions and Benefits Act or paragraph 1 of Schedule 9 to the Contributions and Benefits (NI) Act applies, section 147(2) of the Contributions and Benefits Act and section 143(2) of the Contributions and Benefits (NI) Act (references to any condition being satisfied or any facts existing in a week to be construed as references to the condition being satisfied or the facts existing at the beginning of that week) has effect as if the words “at the beginning of that week” were substituted by “throughout any day in that week”.

PART 5

Entitlement after death of child

Entitlement after death of child

20. The prescribed period for the purposes of section 145A of the Contributions and Benefits Act(37) and section 141A of the Contributions and Benefits (NI) Act(38) (entitlement after death of child) is the shorter of—

- (a) eight weeks, and
- (b) the period commencing the week in which his death occurred and finishing on the Monday in the week following the week in which the child would have attained the age of 19.

PART 6

Residence

Circumstances in which a person is treated as not being in Great Britain

21.—(1) A person shall be treated as not being in Great Britain for the purposes of section 146(2)(39) of the Contributions and Benefits Act if he is not ordinarily resident in the United Kingdom.

(2) Paragraph (1) does not apply to a Crown servant posted overseas or his partner.

(3) A person who is in Great Britain as a result of his deportation, expulsion or other removal by compulsion of law from another country to Great Britain shall be treated as being ordinarily resident in the United Kingdom.

Persons temporarily absent from Great Britain

22.—(1) A person who is ordinarily resident in the United Kingdom and is temporarily absent from Great Britain shall be treated as being in Great Britain during the first—

- (a) 8 weeks of any period of absence; or

(37) Section 145A inserted by section 55 of the Tax Credits Act 2002 (c. 21).

(38) Section 141A inserted by section 55 of the Tax Credits Act 2002 (c. 21).

(39) Section 146 of the Social Security Contributions and Benefits Act 1992 (c. 4) is substituted by section 56 of the Tax Credits Act 2002 (c. 21).

- (b) 12 weeks of any period of absence where that period of absence, or any extension to that period of absence, is in connection with—
 - (i) the treatment of his illness or physical or mental disability;
 - (ii) the treatment of his partner’s illness or physical or mental disability;
 - (iii) the death of a person who, immediately prior to the date of death, was his partner;
 - (iv) the death, or the treatment of the illness or physical or mental disability, of a child for whom either he or his partner is, or both of them are, responsible; or
 - (v) the death, or the treatment of the illness or physical or mental disability, of his or his partner’s relative.

(2) A person is temporarily absent from Great Britain if at the beginning of the period of absence his absence is unlikely to exceed 52 weeks.

Application of regulation 22 where the person is in Northern Ireland

23. Where a person who is in Northern Ireland is treated as being in Great Britain in accordance with regulation 22, he is treated as not being in Northern Ireland for the purposes of section 142(40) of the Contributions and Benefits (NI) Act.

Circumstances in which a child is to be treated as being in Great Britain

24.—(1) For the purposes of section 146(1) of the Contributions and Benefits Act a child who is temporarily absent from Great Britain shall be treated as being in Great Britain during—

- (a) the first 12 weeks of any period of absence;
- (b) any period during which the child is absent by reason only of—
 - (i) his receiving full-time education by attendance at a recognised educational establishment in another State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(41) as adjusted by the Protocol signed at Brussels on 17th March 1993(42) or in Switzerland; or
 - (ii) his being engaged in an educational exchange or visit made with the written approval of the recognised educational establishment which he normally attends;
- (c) any period as is determined by the Board during which the child is absent for the specific purpose of being treated for an illness or physical or mental disability which commenced before his absence began; or
- (d) any period when he is in Northern Ireland.

(2) For the purposes of section 146(1) of the Contributions and Benefits Act, where a child is born while his mother is absent from Great Britain in accordance with regulation 22, he shall be treated as being in Great Britain during such period of absence after his birth as is within 12 weeks of the date on which his mother became absent from Great Britain.

Circumstances in which a person is treated as not being in Northern Ireland

25.—(1) A person shall be treated as not being in Northern Ireland for the purposes of section 142(2) of the Contributions and Benefits (NI) Act if he is not ordinarily resident in the United Kingdom.

(40) Section 142 of the [Social Security Contributions and Benefits \(Northern Ireland\) Act \(c.4\)](#) is substituted by section 56 of the [Tax Credits Act 2002 \(c. 21\)](#).

(41) OJ No. L1, 3.1.94, p.3.

(42) OJ No. L1, 3.1.94, p.572.

(2) A person who is in Northern Ireland as a result of his deportation, expulsion or other removal by compulsion of law from another country to Northern Ireland shall be treated as being ordinarily resident in the United Kingdom.

Persons temporarily absent from Northern Ireland

26.—(1) A person who is ordinarily resident in the United Kingdom and is temporarily absent from Northern Ireland shall be treated as being in Northern Ireland during the first—

- (a) 8 weeks of any period of absence; or
- (b) 12 weeks of any period of absence where that period of absence, or any extension to that period of absence, is in connection with—
 - (i) the treatment of his illness or physical or mental disability;
 - (ii) the treatment of his partner's illness or physical or mental disability;
 - (iii) the death of a person who, immediately prior to the date of death, was his partner;
 - (iv) the death, or the treatment of the illness or physical or mental disability, of a child for whom either he or his partner is, or both of them are, responsible; or
 - (v) the death, or the treatment of the illness or physical or mental disability, of his or his partner's relative.

(2) A person is temporarily absent from Northern Ireland if at the beginning of the period of absence his absence is unlikely to exceed 52 weeks.

Application of regulation 26 where the person is in Great Britain

27. Where a person who is in Great Britain is treated as being in Northern Ireland in accordance with regulation 26, he is treated as not being in Great Britain for the purposes of section 146 of the Contributions and Benefits Act.

Circumstances in which a child is to be treated as being in Northern Ireland

28.—(1) For the purposes of section 142(1) of the Contributions and Benefits (NI) Act a child who is temporarily absent from Northern Ireland shall be treated as being in Northern Ireland during—

- (a) the first 12 weeks of any period of absence;
- (b) any period during which the child is absent by reason only of—
 - (i) his receiving full-time education by attendance at a recognised educational establishment in another State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 or in Switzerland; or
 - (ii) his being engaged in an educational exchange or visit made with the written approval of the recognised educational establishment which he normally attends;
- (c) any period as is determined by the Board during which the child is absent for the specific purpose of being treated for an illness or physical or mental disability which commenced before his absence began; or
- (d) any period when he is in Great Britain.

(2) For the purposes of section 142(1) of the Contributions and Benefits (NI) Act, where a child is born while his mother is absent from Northern Ireland in accordance with regulation 26, he shall be treated as being in Northern Ireland during such period of absence after his birth as is within 12 weeks of the date on which his mother became absent from Northern Ireland.

Overlap of entitlement to child benefit under both the legislation of Northern Ireland and Great Britain

29.—(1) Where by virtue of these Regulations two or more persons would be entitled to child benefit in respect of the same child for the same week under both the legislation of Northern Ireland and Great Britain, one of them only shall be so entitled.

(2) Where the child is in Great Britain (except where regulation 28(1)(d) applies) or is treated as being in Great Britain, the question of which of the persons is entitled shall be determined in accordance with the legislation applying to Great Britain.

(3) Where the child is in Northern Ireland (except where regulation 24(1)(d) applies) or is treated as being in Northern Ireland, the question of which of the persons is entitled shall be determined in accordance with the legislation applying to Northern Ireland.

Crown servants posted overseas

30.—(1) For the purposes of section 146(1) of the Social Security and Contributions and Benefits Act a Crown servant posted overseas shall be treated as being in Great Britain.

(2) A Crown servant posted overseas is a person performing overseas (but not in Northern Ireland) the duties of any office or employment under the Crown in right of the United Kingdom —

- (a) who is, or was, immediately prior to his posting or his first of consecutive postings, ordinarily resident in the United Kingdom; or
- (b) who, immediately prior to his posting or his first of consecutive postings, was in the United Kingdom in connection with that posting.

Partners of Crown servants posted overseas

31.—(1) For the purposes of section 146(1) of the Social Security and Contributions and Benefits Act the partner of a Crown servant posted overseas who is accompanying the Crown servant posted overseas shall be treated as being in Great Britain when he is either—

- (a) in the country where the Crown servant is posted, or
- (b) absent from that country in accordance with regulation 22 as modified by paragraphs (3) and (4).

(2) Regulations 22 and 23 apply to the partner of a Crown servant posted overseas with the modifications set out in paragraphs (3) and (4).

(3) In regulation 22 omit the words “ordinarily resident in the United Kingdom and is”.

(4) In relation to a partner who is accompanying the Crown servant posted overseas the references to “Great Britain” in the phrase “temporarily absent from Great Britain” in paragraphs (1) and (2) of regulation 22 shall be construed as references to the country where the Crown servant is posted and regulation 24(2) shall apply, where appropriate, accordingly.

Children of Crown servants posted overseas

32.—(1) For the purposes of section 146(2) of the Social Security and Contributions and Benefits Act a child who normally lives with a Crown servant posted overseas shall be treated as being in Great Britain when he is either —

- (a) in the country where the Crown servant is posted, or
- (b) absent from that country in accordance with regulation 24 as modified by paragraph (2).

(2) The reference to “Great Britain” in paragraph (1), in the first place where it occurs, shall be construed as a reference to the country where the Crown servant is posted.

Transitional provisions for Part 6

33.—(1) A person is exempt from the requirement to be ordinarily resident in the United Kingdom (which is set out in regulations 21(1) and 25(1)) if he was, or will be on the making of a claim, entitled to child benefit for the week beginning 31st March 2003 until—

- (a) his entitlement ceases, or
- (b) 2nd April 2006,

whichever first occurs.

(2) For the purposes of paragraph (1)(a), a person's entitlement to child benefit shall be treated as continuing where that person's entitlement—

- (a) ceases under the legislation of Great Britain and immediately commences under the legislation of Northern Ireland; or
- (b) ceases under the legislation of Northern Ireland and immediately commences under the legislation of Great Britain.

(3) In relation to a period of temporary absence which commenced before and continues on or after 7th April 2003, regulations 22 and 26 shall have effect from 7th April 2003 subject to the modifications in paragraphs (4) and (5).

(4) For regulation 22(2) substitute—

“(2) A person is temporarily absent from Great Britain if at the beginning of the period of absence his absence was intended to be temporary and has throughout continued to be so intended.”.

(5) For regulation 26(2) substitute—

“(2) A person is temporarily absent from Northern Ireland if at the beginning of the period of absence his absence was intended to be temporary and has throughout continued to be so intended.”.

PART 7**General and supplementary provisions****Persons treated as residing together**

34. For the purposes of Part 9 of the Contributions and Benefits Act and Part 9 of the Contributions and Benefits (NI) Act, the prescribed circumstances in which persons are treated as residing together are circumstances where—

- (a) spouses or two persons who are parents of a child but not husband and wife are absent from one another where such absence is not likely to be permanent; and
- (b) spouses are absent from one another by reason only of the fact that either of them is, or they both are, undergoing medical or other treatment as an in-patient in a hospital or similar institution whether such absence is temporary or not.

Polygamous marriages

35.—(1) For the purposes of Part 9 of the Contributions and Benefits Act and Part 9 of the Contributions and Benefits (NI) Act, a polygamous marriage is treated as having the same consequences as a monogamous marriage for any day, but only for any day, throughout which the polygamous marriage is in fact monogamous.

(2) In paragraph (1)—

- (a) “polygamous marriage” means a marriage celebrated under a law which, as it applies to the particular ceremony and to the parties thereto, permits polygamy;
- (b) “monogamous marriage” means a marriage celebrated under a law which does not permit polygamy;
- (c) a polygamous marriage is referred to as being in fact monogamous when neither party to it has any spouse additional to the other; and
- (d) the day on which a polygamous marriage is contracted, or on which it terminates for any reason, shall be treated as a day throughout which that marriage was in fact monogamous if at all times on that day after it was contracted, or as the case may be, before it terminated, it was in fact monogamous.

Right to child benefit of voluntary organisations

36.—(1) Subject to paragraph (4) and (5), for the purposes of section 147(6) of the Contributions and Benefits Act and section 143(6) of the Contributions and Benefits (NI) Act (right to child benefit of voluntary organisations), a voluntary organisation is regarded as the only person with whom a child is living for any week in which that child is—

- (a) living in premises which are provided or managed by the voluntary organisation, being premises which are required to be registered with a Government Department or local authority or which are otherwise regulated under or by virtue of any enactment relating to England and Wales, Scotland, or Northern Ireland; or
- (b) placed by the voluntary organisation in the home of any person in accordance with the provisions of the Foster Placement (Children) Regulations 1991, the Fostering of Children (Scotland) Regulations 1996 or the Foster Placement (Children) Regulations (Northern Ireland) 1996.

(2) A voluntary organisation shall not be regarded as having ceased to have a child living with it by reason only of any temporary absence of that child—

- (a) if the child is undergoing medical or other treatment as an in-patient in a hospital, until such absence has lasted for more than 84 days; or
- (b) if the child is temporarily absent for any other reason, until such absence has lasted for more than 56 days.

(3) In calculating the period of 84 days for the purposes of paragraph (2)(a), two or more distinct periods of temporary absence separated by one or more intervals each not exceeding 28 days shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

(4) A voluntary organisation shall not be regarded as a person with whom a child is living in any week if in that week—

- (a) that child is in residential accommodation in the circumstances prescribed in regulation 3; or
- (b) paragraph 1 of Schedule 9 to the Contributions and Benefits Act or paragraph 1 of Schedule 9 to the Contributions and Benefits (NI) Act applies to that child.

(5) Where immediately before the week in which paragraph (1) applies to a child, that child was living with a person who was then entitled to child benefit in respect of him, paragraph (1) shall have effect in relation to that person as if the words “the only person” were omitted for so long as the child is treated as continuing to live with that person by virtue of section 143(2) of the Contributions and Benefits Act or section 139(2) of the Contributions and Benefits (NI) Act.

(6) Section 143(1)(b) of the Contributions and Benefits Act and section 139(1)(b) of the Contributions and Benefits (NI) Act (person to be treated as responsible for a child in any week if

he is contributing to the cost of providing for the child at a weekly rate not less than the weekly rate of child benefit payable in respect of the child for that week) and regulation 16(1) (children in detention shall not apply to a voluntary organisation).

Disapplication of section 13(1A) of the Social Security Administration Act 1992 and section 11(1A) of the Social Security Administration (Northern Ireland) Act 1992

37. For the purposes of section 147(6) of the Contributions and Benefits Act and section 143(6) of the Contributions and Benefits (NI) Act, section 13(1A) of the Social Security Administration Act 1992⁽⁴³⁾ and section 11(1A) of the Social Security Administration (Northern Ireland) Act 1992⁽⁴⁴⁾ (requirement to state national insurance number) shall not apply to a claim for child benefit in respect of a child who is treated as living with a voluntary organisation by virtue of regulation 36.

Exception to section 13(2) of the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992

38.—(1) A person is not disentitled to child benefit in respect of a child by virtue of section 13(2) of the Social Security Administration Act 1992 and section 11(2) of the Social Security Administration (Northern Ireland) Act 1992 (persons not entitled to benefit for any week if benefit already paid for that week to another person, whether or not that other person was entitled to it) if in respect of that week—

- (a) the determining authority has decided that the Board is entitled to recover the child benefit paid in respect of that child from a person in consequence of his misrepresentation of, or his failure to disclose, any material fact and, where that determining authority is one from whose decision an appeal lies, the time limit for appealing has expired and no appeal has been made; or
- (b) the child benefit paid to the other person has been voluntarily repaid to, or recovered by, the Board in a case where the determining authority has decided under section 9 or 10 of the Social Security Act 1998⁽⁴⁵⁾ or under Article 10 or 11 of the Social Security (Northern Ireland) Order 1998⁽⁴⁶⁾ either—
 - (i) that while there was no entitlement to benefit it is not recoverable, or
 - (ii) that there was no entitlement to benefit but has made no decision as to its recoverability.

(2) In this regulation “determining authority” means, as the case may require—

- (a) the Board;
- (b) an appeal tribunal constituted under section 7 of the Social Security Act 1998 or Article 8 of the Social Security (Northern Ireland) Act 1998;
- (c) the Chief or any other Social Security Commissioner, or a tribunal consisting of any three or more such Commissioners constituted in accordance with section 16(7) of the Social Security Act 1998 or Article 16(7) of the Social Security (Northern Ireland) Act 1998;
- (d) an appeal tribunal to which there is a right of appeal pursuant to Article 13 of the Social Security (Northern Ireland) Order 1998⁽⁴⁷⁾; or

⁽⁴³⁾ 1992 c. 5. Section 13(1A) was inserted by section 69 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽⁴⁴⁾ 1992 c. 8. Section 11(1A) was inserted by Article 66 of the Welfare Reform and Pensions (NI) Order 1999 (S.I. 1999/3147 (N.I. 11)).

⁽⁴⁵⁾ 1998 c. 14.

⁽⁴⁶⁾ S.I. 1998/1506 (N.I. 10).

⁽⁴⁷⁾ Article 13 was amended by Schedules 6 and 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Act 1999 (S.I. 1999 No. 671).

- (e) a Commissioner to whom an appeal lies under Article 15 of the Social Security (Northern Ireland) Order 1998(48).

Use of electronic communications

39.—(1) Schedule 2 to the Child Benefit and Guardian’s Allowance (Administration) Regulations 2003(49) (the use of electronic communications) applies to the delivery of information to or by the Board which is authorised or required by these Regulations in the same manner as it applies to the delivery of information to or by the Board which is authorised or required by the Child Benefit and Guardian’s Allowance (Administration) Regulations.

(2) References in paragraph (1) to the delivery of information shall be construed in accordance with section 132(8) of the Finance Act 1999(50).

PART 8

Revocations

Revocations

40. The Regulations specified in column 1 of Parts 1 and 2 of Schedule 2 are revoked to the extent specified in column 3 of that Schedule.

5th March 2003

Nick Ainger
Jim Fitzpatrick
Two of the Lords Commissioners of Her
Majesty’s Treasury

(48) Article 15 was amended by Schedules 6 and 9 to the [Social Security Contributions \(Transfer of Functions, etc.\) \(Northern Ireland\) Act 1999 \(S.I. 1999 No. 671\)](#).

(49) [S.I. 2003/ 492](#).

(50) [1999 c. 16](#).