



Statutory Document No. 123/00

THE SOCIAL SECURITY ACT 1982

THE SOCIAL SECURITY LEGISLATION (APPLICATION) (No. 5) ORDER 2000

Approved by Tynwald *11th April 2000*

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Social Security Act 1982(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Social Security Legislation (Application) (No. 5) Order 2000 and shall, subject to section 1(6) of the Social Security Act 1982, come into force as provided in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall come into force on *1st May 2000*.

Interpretation

2. (1) In this Order "the applied legislation" means -

- (a) the Social Security Benefit (Computation of Earnings) Regulations 1996(b);
- (b) the Social Security (Miscellaneous Amendments) (No. 2) Regulations 1997(c);
- (c) the Social Security (Claims and Payments and Adjudication) Amendment No. 2 Regulations 1997(d).

(a) 1982 c.9; (b) S.I. 1996/2745; (c) S.I. 1997/793; (d) S.I. 1997/2290.

Price: £3.30

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 1982 or section 1 of the Pension Schemes Act 1995(a), shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedules to this Order, shall apply to the Island as part of the law of the Island.

(a) 1995 c.11.

SCHEDULE 1

This Schedule sets out the text of the Social Security Benefit (Computation of Earnings) Regulations 1996 (S.I. 1996/2745) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type.

STATUTORY INSTRUMENTS

1996 No. 2745

SOCIAL SECURITY

The Social Security Benefit (Computation of Earnings)
Regulations 1996

PART I

General

Citation and commencement

1. These Regulations may be cited as the Social Security Benefit (Computation of Earnings) Regulations 1996 and shall come into force on *1st May 2000*.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires -

"adjudicating authority" means any person or body with responsibility under the Social Security Administration Act 1992, and regulations made thereunder, for the determination of claims for benefit and questions arising in connection with a claim for, or award of, or disqualification for receiving benefits;

"benefit week" means -

- (a) any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid, and, where appropriate in respect of payments due to be paid before that week,
- (b) the period of 7 days ending on the day before the first day of the first such week following the date of claim or any one of the consecutive periods of seven days prior to that period;

"board and lodging accommodation" means -

- (a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises; or

"*standard rate*" where it relates to rates of tax has the same meaning as in the *Income Tax Act 1970* by virtue of section 1(2)(a)(i) of that Act;

"maternity leave" means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work either under the terms of her contract of employment or under *section 33 of the Employment Act 1991 (an Act of Tynwald)*;

"net earnings" means such earnings as are calculated in accordance with regulation 10(4);

"net profit" means such profit as is calculated in accordance with regulation 13(4);

"occupational pension scheme" has the same meaning as in section 1 of the Pension Schemes Act 1993(a);

"partner" means where a claimant -

- (a) is a member of a married or an unmarried couple, the other member of that couple;
- (b) is married polygamously to two or more members of his household, any such member;

"payment" includes a part of a payment;

"pay period" means the period in respect of which a claimant is, or expects to be, normally paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;

"personal pension scheme" has the same meaning as in section 1 of the Pension Schemes Act 1993 in respect of an employed earner and, in the case of a self-employed earner, includes a scheme approved by the *Assessor of Income Tax under the Income Tax (Retirement Benefit Schemes) Act 1978 (an Act of Tynwald)*;

"polygamous marriage" means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;

"relevant earnings limit" means the amount of a claimant's earnings in excess of which the benefit, supplement, allowance, pension or increase in question is not payable;

"retirement annuity contract" means a contract or trust scheme approved by *the Assessor of Income Tax*;

"self-employed earner" means a person who is in gainful employment in *the Isle of Man* otherwise than as an employed earner and includes -

- (a) a person in any employment which would be such employment if it were in *the Isle of Man*, and
- (b) a person in any such employment which, in accordance with the provisions of the Contributions and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

"voluntary organisation" means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

(a) 1993 c.48.

"week" means a period of 7 days and for the purposes of section 80 of, and paragraph 4(6) of Schedule 7 to, the Contributions and Benefits Act, a period of 7 days being the relevant benefit week;

"year of assessment" has the meaning prescribed in section 120 of the *Income Tax Act 1970 (an Act of Tynwald)*.

(2) In these Regulations, unless the context otherwise requires, a reference -

- (a) to a numbered regulation or Schedule is to the regulation in or Schedule to these Regulations bearing that number;
- (b) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;
- (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

Calculation of earnings

3. (1) For the purposes of Parts II to V of the Contributions and Benefits Act and of any regulations made thereunder which relate to benefit under those Parts of that Act or regulations, the earnings of a claimant shall be calculated by determining in accordance with these Regulations the weekly amount of his earnings.

(2) The amount of a claimant's earnings for any period shall be the whole of those earnings (including any earnings which he is treated as possessing under regulation 4 (notional earnings)) except in so far as regulations 10 and 13 provide that certain sums shall be disregarded or deducted as appropriate.

Notional earnings

4. (1) Where a claimant's earnings are not ascertainable at the date of the determination of the claim or of any subsequent review the adjudicating authority shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Where -

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the adjudicating authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the adjudicating authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer if the adjudicating authority is satisfied in any of those cases that it is reasonable for him to provide his services free of charge.

(3) Where a claimant is treated as possessing any earnings under paragraph (1) or (2) these Regulations shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (4) of regulation 10 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less -

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the *standard* rate of tax in the year of assessment less only the personal *allowance* to which the claimant is entitled under *section 35 of the Income Tax Act 1970 (an Act of Tynwald)* (personal *allowance*) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the rate of tax is to be applied and the amount of the personal *allowance* deductible under this paragraph shall be calculated on a pro rata basis;
- (b) where the weekly amount of those earnings *exceeds* the lower earnings limit, an amount representing primary Class 1 contributions *payable* under the Contributions and Benefits Act, calculated by applying to *the amount which exceeds the lower earnings limit* the primary *percentage* in accordance with section 8(1)(a) and (b) of that Act; and
- (c) one half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Rounding of fractions

5. Where any calculation under these Regulations results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

PART II

Employed Earners

Calculation of earnings of employed earners

6. (1) Earnings derived from employment as an employed earner shall be calculated or estimated over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 8 (calculation of weekly amount of earnings).

(2) Subject to paragraphs (3) and (5) to (8), the period over which a payment is to be taken into account -

- (a) in a case where it is payable in respect of a period, shall be a period equal to a benefit week or such number of benefit weeks as comprise the period commencing on the date on which earnings are treated as paid under regulation 7 (date on which earnings are treated as paid) and ending on the day before the date on which earnings of the same kind (excluding earnings of the kind mentioned at regulation 9(1)(a) to (j)) and from the same source would, or would if the employment was continuing, next be treated as paid under that regulation;
- (b) in any other case, shall be a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula -

$$\frac{P}{Q + R}$$

where -

P is the net earnings;

Q is the amount of the relevant earnings limit plus one penny; and

R is the total of the sums which would fall to be disregarded or deducted as appropriate under regulation 10(2) or (3) (calculation of net earnings of employed earners),

and that period shall begin on the date on which the payment is treated as paid under regulation 7 (date on which earnings are treated as paid).

(3) Where earnings not of the same kind are derived from the same source and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account overlap, wholly or partly, those earnings shall be taken into account over a period -

- (a) equal to the aggregate length of those periods, and
- (b) beginning with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 7 (date on which earnings are treated as paid).

(4) In a case to which paragraph (3) applies, earnings under regulation 9 (earnings of employed earners) shall be taken into account in the following order of priority -

- (a) earnings normally derived from the employment;
- (b) any payment to which paragraph (1)(b) or (c) of that regulation applies;
- (c) any payment to which paragraph (1)(i) of that regulation applies;
- (d) any payment to which paragraph (1)(d) of that regulation applies.

(5) Where earnings to which regulation 9(1)(b) to (d) (earnings of employed earners) applies are paid in respect of part of a day, those earnings shall be taken into account over a period equal to a week.

(6) Where earnings to which regulation 9(1)(i)(i) (earnings of employed earners) applies are paid in respect of or on the termination of any employment which is not part-time employment, the period over which they are to be taken into account shall be -

- (a) a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) obtained by dividing the net earnings by the maximum weekly amount which, on the date on which the payment of earnings is made, is *prescribed under paragraph 8 of Schedule 8 to the Employment Act 1991 (an Act of Tynwald)*; or
- (b) a period equal to the length of the specified period,

whichever is the shorter, and that period shall begin on the date on which the payment is treated as paid under regulation 7 (date on which earnings are treated as paid).

(7) Any earnings to which regulation 9(1)(i)(ii) applies which are paid in respect of or on the termination of part-time employment, shall be taken into account over a period equal to one week.

(8) In this regulation -

"part-time employment" means -

- (a) subject to the provisions of sub-paragraphs (b) to (d) of this definition, employment in which a person is engaged, or, where his hours of work fluctuate, he is engaged on average, for less than 16 hours a week being work for which payment is made or which is done in expectation of payment;
- (b) subject to sub-paragraph (c) of this definition, the number of hours for which a person is engaged in work shall be determined -
 - (i) where no recognisable cycle has been established in respect of a person's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which he is expected to work in a week;

(ii) where the number of hours for which he is engaged fluctuate, by reference to the average of hours worked over -

(aa) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);

(bb) in any other case, the period of five weeks immediately before the date of claim or the date of review, or such other length of time as may, in the particular case, enable the person's average hours of work to be determined more accurately;

(c) where for the purpose of sub-paragraph (b)(ii)(aa) of this definition, a person's recognisable cycle of work at a school, other educational establishment or other place of employment is one year and includes periods of school holidays or similar vacations during which he does not work, those periods and any other periods not forming part of such holidays or vacations during which he is not required to work shall be disregarded in establishing the average hours for which he is engaged in work;

(d) for the purposes of sub-paragraphs (a) and (b) of this definition, in determining the number of hours for which a person is engaged in work, that number shall include any time allowed to that person by his employer for a meal or for refreshment, but only where that person is, or expects to be, paid earnings in respect of that time;

"specified period" means a period equal to -

(a) a week or such number of weeks (less any fraction of a whole number) as comprise the period of notice which is applicable to a person, or would have been applicable if it had not been waived; less

(b) any part of that period during which the person has continued to work in the employment in question or in respect of which he has received a payment to which regulation 9(1)(c) applies,

and for the purposes of this definition "period of notice" means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if he is not entitled to such notice, the period of notice which is customary in the employment in question.

Date on which earnings are treated as paid

7. Earnings to which regulation 6 (calculation of earnings of employed earners) or 11(2) (calculation of earnings of self-employed earners) applies shall be treated as paid -

(a) (i) in the case of a payment in respect of an adult dependant of an increase of maternity allowance payable under section 82(2) of the Contributions and Benefits Act or an increase of invalid care allowance payable under paragraph 7 of Schedule 2 to the Social Security Benefit (Dependency) Regulations 1977(a); or

(a) S.I. 1977/343.

- (ii) in the case of a payment in respect of an adult dependant who is not residing with the claimant of an increase of Category A or Category C retirement pension payable under section 83(2)(b) or 84(1) and 84(2)(b) of the Contributions and Benefits Act or a disablement pension where the claimant is entitled to an unemployability supplement payable under paragraph 6(1)(a)(ii) of Schedule 7 to the Contributions and Benefits Act,

on the first day of the benefit week following the benefit week in which the payment is due to be paid;

- (b) in any other case, on the first day of the benefit week in which the payment is due to be paid.

Calculation of weekly amount of earnings

8. (1) For the purposes of regulation 6 (calculation of earnings of employed earners), subject to paragraphs (2) to (4), where the period in respect of which a payment is made -

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
- (b) exceeds a week, the weekly amount shall be determined -
 - (i) in a case where that period is a month, by multiplying the amount of that payment by 12 and dividing the product by 52;
 - (ii) in a case where that period is three months, by multiplying the amount of the payment by 4 and dividing the product by 52;
 - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
 - (iv) in any other case, by multiplying the amount of the payment by 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment of earnings from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of those earnings to be taken into account in any one benefit week shall not exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 7 (date on which earnings are treated as paid) is treated as paid first.

(3) Where the amount of the claimant's net earnings fluctuates and has changed more than once, or a claimant's regular pattern of work is such that he does not work every week, the application of the foregoing paragraphs may be modified so that the weekly amount of his earnings is determined by reference to his average weekly earnings -

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of five weeks or such other period as may, in the particular case, enable the claimant's average weekly earnings to be determined more accurately.

(4) Where any payment of earnings is taken into account under paragraph (7) of regulation 6 (calculation of earnings of employed earners), over the period specified in that paragraph, the amount to be taken into account shall be equal to the amount of the payment.

Earnings of employed earners

9. (1) Subject to paragraphs (2) and (3), "earnings", in the case of employment as an employed earner, means any remuneration or profit derived from that employment and includes -

- (a) any bonus or commission;
- (b) any payment in lieu of remuneration except any periodic sum paid to a claimant on account of the termination of his employment by reason of redundancy;
- (c) any payment in lieu of notice;
- (d) any holiday pay except any payable more than four weeks after the termination or interruption of employment;
- (e) any payment by way of a retainer;
- (f) any payment made by the claimant's employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant's employer in respect of -
 - (i) travelling expenses incurred by the claimant between his home and place of employment;
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant's absence from home;
- (g) any award of compensation made under *section 45 of the Employment Act 1991 (an Act of Tynwald)*;
- (h) *omitted*;
- (i) where -
 - (i) a payment of compensation is made in respect of employment which is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable;
 - (ii) a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation;
- (j) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave or is absent from work because he is ill.

(2) For the purposes of paragraph (1)(i)(i) the "deductible remainder" -

- (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction; and
- (b) is equal to the difference between -
 - (i) the amount of the compensation; and
 - (ii) the product of the maximum weekly amount multiplied by the whole number.

(3) "Earnings" shall not include any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment.

(4) In this regulation -

"compensation" means any payment made in respect of or on the termination of employment in a case where a person has not received or received only part of a payment in lieu of notice due or which would have been due to him had he not waived his right to receive it, other than -

- (a) any payment specified in paragraph (1)(a) to (g);
- (b) any payment specified in paragraph (3);
- (c) any redundancy payment within the meaning of *the Redundancy Payments Act 1990 (an Act of Tynwald)*;
- (d) any refund of contributions to which that person was entitled under an occupational pension scheme;
- (e) any compensation payable by virtue of section 173 or section 178(3) or (4) of the Education Reform Act 1988;

"maximum weekly amount" means the maximum weekly amount which, on the date on which the payment of compensation is made, is *prescribed under paragraph 8 of Schedule 8 to the Employment Act 1991 (an Act of Tynwald)*;

"part-time employment" has the same meaning as in regulation 6(8) (calculation of earnings of employed earners).

Calculation of net earnings of employed earners

10. (1) For the purposes of regulations 3 (calculation of earnings) and 6 (calculation of earnings of employed earners) the earnings of a claimant derived from employment as an employed earner to be taken into account shall, subject to paragraphs (2) and (3), be his net earnings.

(2) Except in a case to which paragraph (3) applies, there shall be disregarded or deducted as appropriate from a claimant's net earnings -

- (a) any sum, where applicable, specified in Schedule 1; and
- (b) any relevant child care charges to which *regulation 15 of the Family Income Supplement (General) Regulations 1998(a) (treatment of child care charges)* applies, up to a maximum deduction of *whichever of the sums specified in regulation 14(2) of those Regulations (maximum deduction of child care charges) applies*.

(3) In the case of entitlement to invalid care allowance under section 70 of the Contributions and Benefits Act there shall be disregarded or deducted as appropriate from a claimant's net earnings -

- (a) any sum, where applicable, specified in Schedule 1; and
- (b) any care charges to which Schedule 3 applies up to a maximum deduction, in respect of such care charges incurred by any claimant, of 50% of his net earnings less those sums, if any, specified in Schedule 1 which are disregarded.

(4) For the purposes of paragraph (1) net earnings shall be calculated by taking into account the gross earnings of the claimant from that employment less -

- (a) any amount deducted from those earnings by way of -
 - (i) income tax;
 - (ii) primary Class 1 contributions under the Contributions and Benefits Act; and
- (b) one half of any sum paid by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

PART III

Self-Employed Earners

Calculation of earnings of self-employed earners

11. (1) Except where paragraph (2) applies, where a claimant's earnings consist of earnings from employment as a self-employed earner the weekly amount of his earnings shall be determined by reference to his average weekly earnings from that employment -

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of his earnings to be determined more accurately.

(2) Where the claimant's earnings consist of royalties or sums paid periodically for or in respect of any copyright those earnings shall be taken into account over a period equal to such number of weeks as is equal to the number (less any fraction of a whole number) calculated in accordance with the formula -

$$\frac{S}{T + U}$$

where -

S is the earnings;

T is the relevant earnings limit plus one penny; and

U is the total of the sums which would fall to be disregarded or deducted as appropriate under regulation 13(2) or (3) (calculation of net profit of self-employed earners).

(3) The period mentioned in paragraph (2) shall begin on the date on which the payment is treated as paid under regulation 7 (date on which earnings are treated as paid).

Earnings of self-employed earners

12. (1) Subject to paragraph (2), "earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment.

(2) "Earnings" shall not include -

- (a) the payments to be disregarded in the calculation of earnings as referred to at paragraphs 1, 2 and 3 of Schedule 1;
- (b) any payment to which paragraph 6 or 7 of Schedule 1 refers (payments in respect of a person accommodated with the claimant under an arrangement made by *the Department* or voluntary organisation and payments made to the claimant by *the Department* or voluntary organisation in respect of persons temporarily in the claimant's care).

Calculation of net profit of self-employed earners

13. (1) For the purposes of regulations 3 (calculation of earnings) and 11 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account shall be -

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman his share of the net profit derived from that employment less -
 - (i) an amount in respect of income tax and of social security contributions payable under the Contributions and Benefits Act calculated in accordance with regulation 14 (deduction of tax and contributions for self-employed earners); and
 - (ii) one half of any premium paid in the period that is relevant under regulation 11 in respect of a retirement annuity contract or a personal pension scheme;
- (c) in paragraph (b) "share fisherman" means any person who -
 - (i) is ordinarily employed in the fishing industry otherwise than under a contract of service, as a master or member of the crew of any fishing boat manned by more than one person, and is remunerated in respect of that employment in whole or in part by a share of profits or gross earnings of the fishing boat; or
 - (ii) has ordinarily been so employed, but who by reason of age or infirmity permanently ceases to be so employed and becomes ordinarily engaged in employment ashore in *the Isle of Man*, otherwise than under a contract of service, making or mending any gear appurtenant to a fishing boat or performing other services ancillary to or in connection with that boat and is remunerated in respect of that employment in whole or in part by a share of the profits or gross earnings of that boat and has not ceased to be ordinarily engaged in such employment.

(2) Except in a case to which paragraph (3) applies, there shall be disregarded or deducted as appropriate from a claimant's net profit -

- (a) any sum, where applicable, specified in Schedule 1; and
- (b) any relevant child care charges to which *regulation 15 of the Family Income Supplement (General) Regulations 1998 (treatment of child care charges)* applies, up to a maximum deduction of whichever of the sums specified in regulation 14(2) of those Regulations (maximum deduction of child care charges) applies.

(3) In the case of entitlement to invalid care allowance under section 70 of the Contributions and Benefits Act there shall be disregarded or deducted as appropriate from a claimant's net profit -

- (a) any sum where applicable, specified in Schedule 1; and

- (b) any care charges to which Schedule 3 applies up to a maximum deduction, in respect of such care charges incurred by any claimant, of 50% of his net profit less those sums, if any, specified in Schedule 1 which are disregarded.

(4) For the purposes of paragraph (1)(a), the net profit of the employment shall, except where paragraph (10) applies, be calculated by taking into account the earnings of the employment over the period determined under regulation 11 (calculation of earnings of self-employed earners) less -

- (a) subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment;
- (b) an amount in respect of -
 - (i) income tax; and
 - (ii) social security contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 14 (deduction of tax and contributions for self-employed earners); and
- (c) one half of any premium paid in the period that is relevant under regulation 11 in respect of a retirement annuity contract or a personal pension scheme.

(5) For the purposes of paragraph (1)(b), the net profit of the employment shall be calculated by taking into account the earnings of the employment over the period determined under regulation 11 less, subject to paragraphs (6) to (8), any expenses wholly and exclusively defrayed in that period for the purposes of that employment.

(6) Subject to paragraph (7), no deduction shall be made under paragraph (4)(a) or (5) in respect of -

- (a) any capital expenditure;
- (b) the depreciation of any capital asset;
- (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
- (d) any loss incurred before the beginning of the period determined under regulation 11 (calculation of earnings of self-employed earners);
- (e) the repayment of capital on any loan taken out for the purposes of the employment;
- (f) any expenses incurred in providing business entertainment.

(7) A deduction shall be made under paragraph (4)(a) or (5) in respect of the repayment of capital on any loan used for -

- (a) the replacement in the course of business of equipment or machinery; and
- (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.

(8) The adjudicating authority shall refuse to make a deduction in respect of any expenses under paragraph (4)(a) or (5) where the adjudicating authority is not satisfied that the expense has been defrayed or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.

(9) For the avoidance of doubt -

- (a) a deduction shall not be made under paragraph (4)(a) or (5) in respect of any sum unless it has been expended for the purposes of the business;
- (b) a deduction shall be made thereunder in respect of -
 - (i) the excess of any VAT paid over VAT received in the period determined under regulation 11 (calculation of earnings of self-employed earners);
 - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
 - (iii) any payment of interest on a loan taken out for the purposes of the employment.

(10) Where a claimant is engaged in employment as a child minder the net profit of the employment shall be one-third of the earnings of that employment, less -

- (a) an amount in respect of -
 - (i) income tax; and
 - (ii) social security contributions payable under the Contributions and Benefits Act, calculated in accordance with regulation 14 (deduction of tax and contributions for self-employed earners); and
- (b) one half of any premium paid in respect of a retirement annuity contract or a personal pension scheme.

(11) Notwithstanding regulation 11 (calculation of earnings of self-employed earners) and the foregoing paragraphs, an adjudicating authority may assess any item of a claimant's earnings or expenditure over a period other than that determined under regulation 11 as may, in the particular case, enable the weekly amount of that item of earnings or expenditure to be determined more accurately.

(12) For the avoidance of doubt where a claimant is engaged in employment as a self-employed earner and he is engaged in one or more other employments as a self-employed or employed earner any loss incurred in any one of his employments shall not be offset against his earnings in any other of his employments.

Deduction of tax and contributions for self-employed earners

14. (1) The amount to be deducted in respect of income tax under regulation 13(1)(b)(i), (4)(b)(i) or (10)(a)(i) (calculation of net profit of self-employed earners) shall be calculated on the basis of the amount of chargeable income and as if that income were assessable to income tax at the *standard* rate of tax less only the personal *allowance* to which the claimant is entitled under *section 35 of the Income Tax Act 1970 (an Act of Tynwald)* (personal *allowance*) as is appropriate to his circumstances; but, if the period determined under regulation 39 (calculation of earnings of self-employed earners) is less than a year, earnings to which the rate of tax is to be applied and the amount of the personal *allowance* deductible under this paragraph shall be calculated on a pro rata basis

(2) The amount to be deducted in respect of social security contributions under regulation 13(1)(b)(i), (4)(b)(ii) or (10)(a)(ii) shall be the total of -

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Contributions and Benefits Act at the rate applicable at the date of the determination of the claim or of any subsequent review except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which that date falls; but if the assessment period is less than a year, the amount specified for that year shall be reduced pro rata; and

- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts) at the percentage rate applicable at the date of the determination of the claim or of any subsequent review on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which that date falls; but if the assessment period is less than a year, those limits shall be reduced pro rata.

(3) In this regulation "chargeable income" means -

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under paragraph (4)(a) or, as the case may be, (5) of regulation 13;
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

PART IV

Transitional Provisions, Consequential Amendments And Revocations

Transitional provision for the treatment of earnings

15. In the Social Security Benefit (Dependency and Computation of Earnings) Amendment Regulations 1989(a) for paragraph (4) of regulation 4 there shall be substituted the following paragraph -

"(4) The definition of "earnings" in regulation 2(1) of the Social Security Benefit (Computation of Earnings) Regulations 1996 shall apply as though the words "or personal" were omitted."

Transitional provision to suspend benefit and make interim payments

16. (1) Where the *Department* has prior to 25th November 1996 directed under regulation 6(1) of the Social Security Benefit (Computation of Earnings) Regulations 1978(b) (interim payments) that payment of any benefit shall be suspended and it appears to him that a question arises whether the award ought to be revised, that direction shall, unless the *Department* directs otherwise, continue to have effect and the benefit in question shall continue to be suspended for a further period until the amount of the claimant's earnings in respect of that further period has been determined in accordance with these Regulations.

(2) Where the *Department* has prior to 25th November 1996 made interim payments under regulation 6(2) of the Social Security Benefit (Computation of Earnings) Regulations 1978 and it is impracticable for a review relating to the claim to be immediately determined, *the Department* may make such further interim payments (not exceeding the amount of benefit in question which would be payable if there were no earnings less any interim payments already made) as *it* may think appropriate in the circumstances.

(3) After such further interim payments have been made to a claimant for any period after 25th November 1996 and the amount of the earnings in question has been determined -

- (a) if the adjudicating authority determines that for that period benefit is payable to him, the adjudicating authority shall direct that those further interim payments shall, so far as they do not exceed that benefit, be treated as having been made on account of it;

(a) S.I. 1989/1690; (b) S.I. 1978/1698.

- (b) if the adjudicating authority determines that, for that period, there is payable to him -
 - (i) no benefit, or
 - (ii) benefit which is less than the amount of those further interim payments,

the *Department* shall require repayment of those further interim payments or (as the case may be) of so much of those further interim payments to the extent that they exceed entitlement to that benefit.

(4) The provisions of the Contributions and Benefits Act 1992(a) and the Social Security Administration Act 1992(b) and of the regulations made under those Acts shall apply to any further interim payment required to be repaid by virtue of paragraph (3) as if it had been a payment of benefit required to be repaid.

(5) The provisions of the Contributions and Benefits Act and the Social Security Administration Act 1992 and of the regulations made under those Acts relating to -

- (a) the time and manner of payment of benefit,
- (b) the extinguishment of the right to sums payable by way of benefit which are not obtained within the prescribed time, and
- (c) the information to be given when obtaining payment of benefit,

shall apply to and in respect of any further interim payment by virtue of this regulation as if it were a payment of the appropriate benefit.

Consequential amendments

17. In the Social Security Benefit (Dependency) Regulations 1977(c) -

- (a) in regulation 8(7)(a)(ii), for the words "the period of 7 days beginning with midnight between Sunday and Monday" there shall be substituted the words "any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid or ending on the day before the first day of the first such week following the date of claim";
- (b) in paragraph 2C of Schedule 2, for the definition of "week" there shall be substituted the following definition -

""week" means any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid or ending on the day before the first day of the first such week following the date of claim."

Revocations and saving

18. (1) The regulations specified in column (1) of Schedule 4 are hereby revoked to the extent mentioned in column (3) of that Schedule.

(2) In the case of a claimant who was entitled to benefit for a benefit week which started on a date prior to 25th November 1996, then in respect of each day of that benefit week the Social Security Benefit (Computation of Earnings) Regulations 1978 shall have effect in his case as if paragraph (1) had not been made.

(a) 1992 c.4; (b) 1992 c.5; (c) S.I.1977/343.

Sums To Be Disregarded In The Calculation Of Earnings

1. Any payment made to the claimant by a person who normally resides with the claimant, which is a contribution towards that person's living and accommodation costs, except where that person is residing with the claimant in circumstances to which paragraph 2 or 3 refers.
2. Where the claimant occupies a dwelling as his home and the dwelling is also occupied by another person and there is a contractual liability to make payments to the claimant in respect of the occupation of the dwelling by that person or a member of his family -
 - (a) £4 of the aggregate of any payments made in respect of any one week in respect of the occupation of the dwelling by that person or a member of his family, or by that person and a member of his family; and
 - (b) a further £9.25, where the aggregate of any such payments is inclusive of an amount for heating.
3. Where the claimant occupies a dwelling as his home and he provides in that dwelling board and lodging accommodation, an amount, in respect of each person for whom such accommodation is provided for the whole or any part of a week, equal to -
 - (a) where the aggregate of any payments made in respect of any one week in respect of such accommodation provided to such person does not exceed £20.00, 100% of such payments; or
 - (b) where the aggregate of any such payments exceeds £20.00, £20.00 and 50% of the excess over £20.00.
4. Except in the case of a claimant who is absent from Great Britain and not disqualified for receiving any benefit, pension, allowance or supplement, by virtue of the Social Security Benefit (Persons Abroad) Regulations 1975(a) -
 - (a) any earnings derived from employment which are payable in a country outside *the Isle of Man or the United Kingdom* for such period during which there is a prohibition against the transfer to *the Isle of Man or the United Kingdom* of those earnings;
 - (b) where a payment of earnings is made in a currency other than sterling, any banking charge or commission payable in converting that payment into sterling.
5. Any earnings which are due to be paid before the date of claim and which would otherwise fall to be taken into account in the same benefit week as a payment of the same kind and from the same source.
6. Any payment made by *the Department* to the claimant with whom a person is accommodated by virtue of arrangements made under *section 93 or 95 of the Children and Young Persons Act 1966 (an Act of Tynwald)*.
7. Any payment made by *the Department* or voluntary organisation to the claimant in respect of a person who is not normally a member of the claimant's household but is temporarily in his care.
8. In respect of regulation 16 of the Social Security (General Benefit) Regulations 1982(b) any earnings not earned during the period of the award.
9. Any bounty paid at intervals of at least one year and derived from employments as -
 - (a) a part-time member of a fire brigade maintained in pursuance of the Fire Services *Act 1984 (an Act of Tynwald)*;
 - (b) an auxiliary coastguard in respect of coast rescue activities;
 - (c) a person engaged part-time in the manning or launching of a lifeboat;

(a) S.I. 1975/563; (b) S.I. 1982/1408.

- (d) a member of any territorial or reserve force prescribed in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(a).
- 10. Any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax *as being the income of a self-employed earner or of an employed earner.*
- 11. In the case of employment as an employed earner, any advance of earnings or any loan made by the claimant's employer.

SCHEDULE 2

Regulations 10(2) and 13(2)

Child Care Charges To Be Deducted In The Calculation Of Earnings

Omitted.

SCHEDULE 3

Regulations 10(3) and 13(3)

Care Charges to be Deducted in the Calculation of Earnings for Entitlement to Invalid Care Allowance

- 1. This Schedule applies where a claimant is -
 - (a) entitled to invalid care allowance under section 70 of the Contributions and Benefits Act; and
 - (b) incurring relevant care charges.
- 2. In this Schedule -
 - "close relative" means a parent, son, daughter, brother, sister or partner;
 - "relevant care charges" means the charges paid by the claimant for care which is provided by a person, who is not a close relative of either the severely disabled person or the claimant, for -
 - (a) the severely disabled person; or
 - (b) any child aged under 16 on the date on which the benefit week begins in respect of whom the claimant or his partner is entitled to child benefit under section 141 of the Contributions and Benefits Act because the claimant is unable to care for any of those persons because he is carrying out duties in connection with his employment;
 - "severely disabled person" means the severely disabled person in respect of whom entitlement to invalid care allowance arises.

(a) S.I. 1979/591.

SCHEDULE 4

Regulation 18

Revocations

<i>(1)</i> <i>Regulations revoked</i>	<i>(2)</i> <i>Reference</i>	<i>(3)</i> <i>Extent of revocation</i>
The Social Security Benefit (Dependency) Regulations 1977	S.I. 1977/343	Regulation 6
The Social Security Benefit (Computations of Earnings) Regulations 1978	S.I. 1978/1698	The whole of the Regulations
The Social Security (Overlapping Benefits and Miscellaneous Amendments) Regulations 1979	S.I. 1979/359	Regulation 8
The Social Security (Severe Disablement Allowance) Regulations 1984	S.I. 1984/1303	In Schedule 2, the entry relating to the Social Security Benefit (Computation of Earnings) Regulations 1978
The Social Security Benefit (Computation of Earnings) Amendment Regulations 1984	S.I. 1984/1697	The whole of the Regulations
The Social Security Benefit (Computation of Earnings) Amendment Regulations 1987	S.I. 1987/606	The whole of the Regulations
The Social Security (Abolition of Earnings Rule) (Consequential) Regulations 1989	S.I. 1989/1642	Regulation 3
The Social Security Benefit (Dependency and Computation of Earnings) Amendment Regulations 1989	S.I. 1989/1690	Regulation 3
The Social Security Benefit (Computation of Earnings) Amendment Regulations 1989	S.I. 1989/2123	The whole of the Regulations
The Social Security (Miscellaneous Provisions) Amendment Regulations 1990	S.I. 1990/2208	Regulations 5 and 6
The Social Security Benefit (Computation of Earnings) Amendment Regulation 1992	S.I. 1992/300	The whole of the Regulations
The Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994	S.I. 1994/2945	Regulation 5
The Social Security (Incapacity Benefit) (Consequential and Transitional Amendments and Savings) Regulations 1995	S.I. 1995/829	Regulation 12
The Social Security and Child Support (Jobseeker's Allowance) (Consequential Amendments) Regulations 1996	S.I. 1996/1345	Regulation 11

SCHEDULE 2

This Schedule sets out the text of the Social Security (Miscellaneous Amendments) (No. 2) Regulations 1997 (S.I. 1997/793) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type.

STATUTORY INSTRUMENTS

1997 No. 793

SOCIAL SECURITY

The Social Security (Miscellaneous Amendments)
(No. 2) Regulations 1997

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) (No. 2) Regulations 1997 and shall come into force on *1st May 2000*.

(2) In these Regulations -

- (a) "the Adjudication Regulations" means the Social Security (Adjudication) Regulations 1995(a);
- (b) "the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations 1987(b);
- (c) "the Income Support Regulations" means the Income Support (General) (Isle of Man) Regulations 2000(c).

Amendment of regulation 4 of the Claims and Payments Regulations

2. (1) Regulation 4 of the Claims and Payments Regulations (making a claim for benefit) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) there shall be inserted after the words "Every claim for benefit" the words "other than a claim for income support or jobseeker's allowance".

(3) After paragraph (1) there shall be inserted the following paragraphs -

"(1A) In the case of a claim for income support or jobseeker's allowance, the claim shall -

- (a) be made in writing on a form approved by the *Department* for the purpose of the benefit for which the claim is made;

(a) S.I. 1995/1801; (b) S.I. 1987/1968; (c) S.D. 26/00.

- (b) unless any of the reasons specified in paragraph (1B) applies, be made in accordance with the instructions on the form; and
- (c) unless any of the reasons specified in paragraph (1B) applies, include such information and evidence as the form may require in connection with the claim.

(1B) The reasons referred to in paragraph (1A) are -

- (a) (i) the person making the claim is unable to complete the form in accordance with the instructions or to obtain the information or evidence it requires because he has a physical, learning, mental or communication difficulty; and
 - (ii) it is not reasonably practicable for the claimant to obtain assistance from another person to complete the form or obtain the information or evidence;
- or
- (b) the information or evidence required by the form does not exist;
- or
- (c) the information or evidence required by the form can only be obtained at serious risk of physical or mental harm to the claimant, and it is not reasonably practicable for the claimant to obtain the information or evidence by other means;
- or
- (d) the information or evidence required by the form can only be obtained from a third party, and it is not reasonably practicable for the claimant to obtain such information or evidence from such third party;
- or
- (e) the *Department* is of the opinion that the person making the claim has provided sufficient information or evidence to show that he is not entitled to the benefit for which the claim is made, and that it would be inappropriate to require the form to be completed or further information or evidence to be supplied.

(1C) If a person making a claim is unable to complete the claim form or supply the evidence or information it requires because one of the reasons specified in sub-paragraphs (a) to (d) of paragraph (1B) applies, he may so notify an appropriate office by whatever means."

(4) For paragraph (5) there shall be substituted the following paragraph -

"(5) Where a person who wishes to make a claim for benefit and who has not been supplied with an approved form of claim notifies an appropriate office (by whatever means) of his intention to make a claim, he shall be supplied, without charge, with such form of claim by such person as the *Department* may appoint or authorise for that purpose."

(5) In paragraph (7) there shall be inserted after the words "If a claim" the words ", other than a claim for income support or jobseeker's allowance,".

(6) After paragraph (7) there shall be added the following paragraph -

"(7A) In the case of a claim for income support or jobseeker's allowance, if a defective claim is received, the *Department* shall advise the person making the claim of the defect and of the relevant provisions of regulation 6(1A) or 6(4A) relating to the date of claim."

(7) For paragraph (8) there shall be substituted the following paragraphs -

"(8) A claim, other than a claim for income support or jobseeker's allowance, which is made on the form approved for the time being is, for the purposes of these Regulations, properly completed if completed in accordance with the instructions on the form and defective if not so completed.

(9) In the case of a claim for income support or jobseeker's allowance, a properly completed claim is a claim which meets the requirements of paragraph (1A) and a defective claim is a claim which does not meet those requirements."

Amendment of regulation 6 of the Claims and Payments Regulations

3. (1) Regulation 6 of the Claims and Payments Regulations (date of claim) shall be amended in accordance with the following provisions of this regulation.

(2) After sub-paragraph (a) of paragraph (1) there shall be inserted the following sub-paragraph -

"(aa) in the case of a claim for -

family income supplement;

disability working allowance;

jobseeker's allowance; or

income support;

which meets the requirements of regulation 4(1) and which is received in an appropriate office within one month of first notification in accordance with regulation 4(5), whichever is the later of -

(i) the date on which that notification is received; and

(ii) the first date on which that claim could have been made in accordance with these Regulations;"

(3) After paragraph (1) there shall be added the following paragraph -

"(1A) In the case of a claim for income support -

(a) subject to the following sub-paragraphs, the date on which a claim is made shall be the date on which a properly completed claim is received in an appropriate office or the first day in respect of which the claim is made if later;

(b) where a properly completed claim is received in an appropriate office within one month of first notification of intention to make that claim, the date of claim shall be the date on which that notification is deemed to be made or the first day in respect of which the claim is made if later;

(c) a notification of intention to make a claim will be deemed to be made on the date when an appropriate office receives -

- (i) a notification in accordance with regulation 4(5); or
- (ii) a defective claim."

(4) In paragraph (3) for the words ", jobseeker's allowance, a social fund payment for maternity or funeral expenses" there shall be substituted the words "or jobseeker's allowance".

(5) For paragraph (4A) there shall be substituted the following paragraphs -

"(4A) Where a person notifies the *Department* (by whatever means) that he wishes to claim a jobseeker's allowance -

- (a) if he is required to attend under regulation 4(6)(a) -
 - (i) if he subsequently attends for the purpose of making a claim for that benefit at the time and place specified by the *Department* and complies with the requirements of paragraph (4AA), the claim shall be treated as made on whichever is the later of first notification of intention to make that claim and the first day in respect of which the claim is made;
 - (ii) if, without good cause, he fails to attend for the purpose of making a claim for that benefit at either the time or place so specified, or does not comply with the requirements of paragraph (4AA), the claim shall be treated as made on the first day on which he does attend at that place and does provide a properly completed claim;
- (b) if under regulation 4(6)(a) the *Department* directs that he is not required to attend -
 - (i) subject to the following sub-paragraph, the date on which the claim is made shall be the date on which a properly completed claim is received in an appropriate office or the first day in respect of which the claim is made if later;
 - (ii) where a properly completed claim is received in an appropriate office within one month of first notification of intention to make that claim, the date of claim shall be the date of that notification.

(4AA) Unless the *Department* otherwise directs, a properly completed claim shall be provided at or before the time when the person making the claim for a jobseeker's allowance is required to attend for the purpose of making a claim.

(4AB) The *Department* may direct that the time for providing a properly completed claim may be extended to a date no later than the date one month after the date of first notification of intention to make that claim."

(6) After paragraph (11) there shall be added the following paragraphs -

"(12) Subject to paragraph (14), where a person has claimed disability working allowance and that claim ("the original claim") has been refused, and a further claim is made in the circumstances specified in paragraph (13), that further claim shall be treated as made -

- (a) on the date of the original claim; or
- (b) on the first date in respect of which the qualifying benefit was payable, whichever is the later.

(13) The circumstances referred to in paragraph (12) are that -

- (a) the original claim was refused on the ground that the claimant did not qualify under section 129(2) of the Contributions and Benefits Act;
- (b) at the date of the original claim the claimant had made a claim for a qualifying benefit and that claim had not been determined;
- (c) after the original claim had been determined, the claim for the qualifying benefit was determined in the claimant's favour; and
- (d) the further claim for disability working allowance was made within three months of the date that the claim for the qualifying benefit was determined.

(14) Paragraph (12) shall not apply in a case where the further claim for disability working allowance is made within the period prescribed under section 30(1) of the Social Security Administration Act 1992, and is accordingly treated as an application for a review under section 30(13) of that Act.

(15) In paragraphs (12) and (13) "qualifying benefit" means any of the benefits referred to in section 129(2) of the Contributions and Benefits Act.

(16) Where a person has claimed severe disablement allowance and that claim ("the original claim") has been refused, and a further claim is made in the circumstances specified in paragraph (17), that further claim shall be treated as made -

- (a) on the date of the original claim; or
- (b) on the first date in respect of which the highest rate of the care component of disability living allowance was payable,

whichever is the later.

(17) The circumstances referred to in paragraph (16) are that -

- (a) the original claim was refused on the ground that the claimant's disablement was less than 80 per cent.;
- (b) at the date of the original claim the claimant had made a claim for disability living allowance, and that claim had not been determined;
- (c) after the original claim had been determined, the claimant was awarded the highest rate of the care component of disability living allowance; and
- (d) the further claim for severe disablement allowance was made within three months of the date that the claim for disability living allowance was determined.

(18) Where a person has ceased to be entitled to incapacity benefit, and a further claim for incapacity benefit is made in the circumstances specified in paragraph (19), that further claim shall be treated as made -

- (a) on the date that entitlement to incapacity benefit ceased; or
- (b) on the first date in respect of which the qualifying benefit was payable;

whichever is the later.

(19) The circumstances referred to in paragraph (18) are that -

- (a) entitlement to incapacity benefit ceased on the ground that the claimant was not incapable of work;
- (b) at the date that entitlement to incapacity benefit ceased the claimant had made a claim for a qualifying benefit and that claim had not been determined;
- (c) after entitlement to incapacity benefit had ceased, the claim for the qualifying benefit was determined in the claimant's favour; and
- (d) the further claim for incapacity benefit was made within three months of the date that the claim for the qualifying benefit was determined.

(20) In paragraphs (18) and (19) "qualifying benefit" means any of the payments referred to in regulation 10(2)(a) of the Social Security (Incapacity for Work) (General) Regulations 1995(a).

(21) Where a person has claimed invalid care allowance and that claim ("the original claim") has been refused, and a further claim is made in the circumstances specified in paragraph (22), that further claim shall be treated as made -

- (a) on the date of the original claim; or
- (b) on the first date in respect of which the qualifying benefit was payable in respect of the disabled person,

whichever is the later.

(22) The circumstances referred to in paragraph (21) are that -

- (a) the original claim was refused on the ground that the disabled person was not a severely disabled person within the meaning of section 70(2) of the Contributions and Benefits Act;
- (b) at the date of the original claim the disabled person had made a claim for a qualifying benefit, and that claim had not been determined;
- (c) after the original claim had been determined, the claim for the qualifying benefit was determined in the disabled person's favour; and
- (d) the further claim for invalid care allowance was made within three months of the date that the claim for the qualifying benefit was determined.

(23) In paragraphs (21) and (22) -

- (a) "the disabled person" means the person for whom the invalid care allowance claimant is caring in accordance with section 70(1)(a) of the Contributions and Benefits Act; and
- (b) "qualifying benefit" means any benefit or payment referred to in section 70(2) of the Contributions and Benefits Act.

(a) S.I. 1995/311.

(24) Where a person has claimed a social fund payment in respect of maternity or funeral expenses and that claim ("the original claim") has been refused, and a further claim is made in the circumstances specified in paragraph (25), that further claim shall be treated as made -

- (a) on the date of the original claim; or
- (b) on the first date in respect of which the qualifying benefit was awarded,

whichever is the later.

(25) The circumstances referred to in paragraph (24) are that -

- (a) the original claim was refused on the ground that the claimant had not been awarded a qualifying benefit;
- (b) at the date of the original claim the claimant had made a claim for a qualifying benefit and that claim had not been determined;
- (c) after the original claim had been determined, the claim for the qualifying benefit was determined in the claimant's favour; and
- (d) the further claim for a social fund payment was made within three months of the date that the claim for the qualifying benefit was determined.

(26) In paragraphs (24) and (25) "qualifying benefit" means -

- (a) in the case of a claim for a social fund payment in respect of maternity expenses, any benefit referred to in regulation 4(1)(a) of the Social Fund Maternity and Funeral Expenses (General) (*Isle of Man*) Regulations 1987;
- (b) in the case of a claim for a social fund payment in respect of funeral expenses, any benefit referred to in regulation 6(5)(a) of those Regulations.

(27) Where a claim is made for *family income supplement* or disability working allowance, and -

- (a) the claimant had previously made a claim for income support or jobseeker's allowance ("the original claim");
- (b) the original claim was refused on the ground that the claimant or his partner was in remunerative work; and
- (c) the claim for *family income supplement* or disability working allowance was made within 14 days of the date that the original claim was determined,

that claim shall be treated as made on the date of the original claim, or, if the claimant so requests, on a later date specified by the claimant.

(28) Where a claim is made for income support or jobseeker's allowance, and -

- (a) the claimant had previously made a claim for *family income supplement* or disability working allowance ("the original claim");
- (b) the original claim was refused on the ground that the claimant or his partner was not in remunerative work; and

- (c) the claim for income support or jobseeker's allowance was made within 14 days of the date that the original claim was determined,

that claim shall be treated as made on the date of the original claim, or, if the claimant so requests, on a later date specified by the claimant."

Amendment of regulation 10 of the Claims and Payments Regulations

4. Omitted.

Amendment of regulation 11 of the Claims and Payments Regulations

5. In regulation 11(2) of the Claims and Payments Regulations (special provisions where a woman is confined) for the words "one month" there shall be substituted the words "three months".

Substitution of regulation 19 of the Claims and Payments Regulations

6. For regulation 19 of the Claims and Payments Regulations (time for claiming benefit) there shall be substituted the following regulation -

"Time for claiming benefit

19. (1) Subject to the following provisions of this regulation, the prescribed time for claiming any benefit specified in column (1) of Schedule 4 is the appropriate time specified opposite that benefit in column (2) of that Schedule.

(2) The prescribed time for claiming the benefits specified in paragraph (3) is three months beginning with any day on which, apart from satisfying the condition of making a claim, the claimant is entitled to the benefit concerned.

(3) The benefits to which paragraph (2) applies are -

- (a) child benefit;
- (b) guardian's allowance;
- (c) graduated retirement benefit(a);
- (d) invalid care allowance;
- (e) maternity allowance;
- (f) retirement pension of any category;
- (g) widow's benefit;
- (h) except in a case to which section 3(3) of the Social Security Administration Act 1992 applies (late claims for widowhood benefits where death is difficult to establish), any increase in any benefit (other than income support or jobseeker's allowance) in respect of a child or adult dependant.

(a) Graduated retirement benefit is payable under section 36 of the National Insurance Act 1965 (c.51). Section 36 was repealed by the Social Security Act 1973 (c.38) but is continued in force, subject to modifications, by regulation 3 of the Social Security (Graduated Retirement Benefit) (No 2) Regulations 1978 (S.I. 1978/393).

(4) Subject to paragraph (8), in the case of a claim for income support, jobseeker's allowance, *family income supplement* or disability working allowance, where the claim is not made within the time specified for that benefit in Schedule 4, the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of three months, to the date on which the claim is made, where -

- (a) any of the circumstances specified in paragraph (5) applies or has applied to the claimant; and
 - (b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier.
- (5) The circumstances referred to in paragraph (4) are -

- (a) the claimant has difficulty communicating because -
 - (i) he has learning, language or literacy difficulties; or
 - (ii) he is deaf or blind,and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (b) except in the case of a claim for jobseeker's allowance, the claimant was ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (c) the claimant was caring for a person who is ill or disabled, and it was not reasonably practicable for the claimant to obtain assistance from another person to make his claim;
- (d) the claimant was given information by an officer of the Department of *Health and Social Security* which led the claimant to believe that a claim for benefit would not succeed;
- (e) the claimant was given written advice by *an advocate* or other professional adviser, a medical practitioner, a local authority, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed;
- (f) the claimant or his partner was given written information about his income or capital by his employer or former employer, or by a bank or building society, which led the claimant to believe that a claim for benefit would not succeed;
- (g) the claimant was required to deal with a domestic emergency affecting him and it was not reasonably practicable for him to obtain assistance from another person to make his claim; or
- (h) the claimant was prevented by adverse weather conditions from attending the appropriate office.

(6) In the case of a claim for income support, jobseeker's allowance, *family income supplement* or disability working allowance, where -

- (a) the claim is not made within the time specified for that benefit in Schedule 4, but is made within one month of the expiry of that time; and

- (b) the *adjudication officer* considers that to do so would be consistent with the proper administration of benefit,

the *adjudication officer* may direct that the prescribed time for claiming shall be extended by such period as he considers appropriate, subject to a maximum of one month, where any of the circumstances specified in paragraph (7) applies.

(7) The circumstances referred to in paragraph (6) are -

- (a) the appropriate office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
- (b) the claimant was unable to attend the appropriate office due to difficulties with his normal mode of transport and there was no reasonable alternative available;
- (c) there were adverse postal conditions;
- (d) the claimant was previously in receipt of another benefit, and notification of expiry of entitlement to that benefit was not sent to the claimant before the date that his entitlement expired;
- (e) in the case of a claim for *family income supplement*, the claimant had previously been entitled to income support or jobseeker's allowance ("the previous benefit"), and the claim for *family income supplement* was made within one month of expiry of entitlement to the previous benefit;
- (f) except in the case of a claim for *family income supplement* or disability working allowance, the claimant had ceased to be a member of a married or unmarried couple within the period of one month before the claim was made; or
- (g) during the period of one month before the claim was made a close relative of the claimant had died, and for this purpose "close relative" means partner, parent, son, daughter, brother or sister.

(8) *Omitted.*

Amendment of Schedule 4 to the Claims and Payments Regulations

7. In paragraph 2 of Schedule 4 to the Claims and Payments Regulations (prescribed times for claiming benefit) in column (2) for the words "1 month" there shall be substituted the words "3 months".

Amendment of regulation 52 of the Adjudication Regulations

8. In regulation 52(b) of the Adjudication Regulations (review on ground of unforeseen aggravation) for all the words following "relevant loss of faculty" there shall be substituted the words "for the period of one month before the date of the application for review, and for any time after that date."

Amendment of regulation 57 of the Adjudication Regulations

9. In regulation 57 of the Adjudication Regulations (date from which revised decision has effect on a review) -

- (a) in paragraph (2) for the words "30(2)(a) and (4) and 35(1)(a)" there shall be substituted the words "30(2)(a), (4) and (5)(a), and 35(1)(a) and (3)(a)";
- (b) in paragraph (3) after the words "30(2)(d)" there shall be inserted the words "and (5)(c)".

Amendment of regulation 59 of the Adjudication Regulations

10. (1) Regulation 59 of the Adjudication Regulations (review of decisions involving payment or increase of certain benefits) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1), for all the words following "a date not earlier than" there shall be substituted the words "one month before the date of the application for the review."

(3) After paragraph (1) there shall be inserted the following paragraphs -

"(1A) A determination on a claim or question relating to incapacity benefit may be revised on a review so as to increase the amount of incapacity benefit payable in respect of a period which falls more than one month before the date of the application for the review where the reason for the revised determination is that section 30B(4) of the Contributions and Benefits Act applies to the claimant because he has become entitled to the highest rate of the care component of disability living allowance.

(1B) A determination on a claim or question relating to incapacity benefit or severe disablement allowance may be revised on a review so as to make incapacity benefit or severe disablement allowance payable in respect of a period which falls more than one month before the date of the application for the review where on a review under section 25(1)(a) of the Administration Act (review for error of fact), it is determined that the claimant is to be treated as incapable of work under regulation 10 of the Social Security (Incapacity for Work) (General) Regulations 1995(a) (certain persons with a severe condition to be treated as incapable of work)."

(4) Paragraph (2) shall be omitted.

(5) For paragraph (3) there shall be substituted the following paragraph -

"(3) A review may have effect from a date earlier than one month before the date of the application where -

- (a) regulation 57 or 58 applies; or
- (b) it is certified in the decision on review that the original decision was revised by reason only of -
 - (i) a matter specified in section 17(1)(b) of the Administration Act (contributions and earnings factors); or
 - (ii) a matter relating to the number of days in respect of which the claimant has been entitled or deemed to be entitled to short-term incapacity benefit."

(6) In paragraph (5)(c) for the words "3 months" there shall be substituted the words "one month".

Amendment of regulation 60 of the Adjudication Regulations

11. In regulation 60(1) of the Adjudication Regulations (review of decisions involving payment or increase of industrial injuries benefit), for all the words following "have effect" there shall be substituted the words "from such date as may be specified in that decision, being a date not earlier than one month before the date of the application for the review."

(a) S.I. 1995/311.

Amendment of regulation 62 of the Adjudication Regulations

12. In regulation 62 of the Adjudication Regulations (period to be taken into account by assessments revised on ground of unforeseen aggravation) for the words "3 months" there shall be substituted the words "one month".

Amendment of regulation 63 of the Adjudication Regulations

13. (1) Regulation 63 of the Adjudication Regulations (review in income support cases) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) -

- (a) after the words "regulation 58 applies," there shall be inserted the words "and subject to paragraph (1A),"; and
- (b) for the words "12 months" in each place where they occur there shall be substituted the words "one month".

(3) After paragraph (1) there shall be inserted the following paragraph -

"(1A) A determination on a claim or question relating to income support may be revised on a review so as to make income support payable, or to increase the claimant's applicable amount under Part IV of the Income Support Regulations or to increase the amount of income support payable, in respect of a period which falls more than one month before the date the review was requested, or, where no request is made, the date of the review, ("the one-month period") where -

- (a) the reason for the revised determination is that the claimant has become entitled to another benefit; and
- (b) arrears of that other benefit are payable in respect of a period before the one-month period."

(4) *In paragraph (5) -*

- (a) *omit sub-paragraph (a);*
- (b) *for sub-paragraph (c) substitute -*

"(c) a change of circumstances to which Part VIII of the Income Support Regulations (transitional provisions) applies."

Amendment of regulation 63A of the Adjudication Regulations

14. (1) Regulation 63A of the Adjudication Regulations (review in jobseeker's allowance cases) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) -

- (a) for the words "paragraph (2)" there shall be substituted the words "paragraph (1A)";
- (b) sub-paragraph (a) shall be omitted;
- (c) in sub-paragraph (b) -
 - (i) the words "in a case not falling within sub-paragraph (a) above," shall be omitted; and

- (ii) for the words "12 months" there shall be substituted the words "one month"; and
- (d) in sub-paragraph (c) -
 - (i) the words "in any case," shall be omitted; and
 - (ii) for the words "12 months" there shall be substituted the words "one month".

(3) After paragraph (1) there shall be inserted the following paragraph -

"(1A) A determination on a claim or question relating to jobseeker's allowance may be revised on a review so as to make jobseeker's allowance payable, or to increase the claimant's applicable amount under Part VII of the Jobseeker's Allowance Regulations, or to increase the amount of jobseeker's allowance payable, in respect of a period which falls more than one month before the date the review was requested, or, where no request is made, the date of the review, ("the one-month period") where -

- (a) the reason for the revised determination is that the claimant has become entitled to another benefit; and
- (b) arrears of that other benefit are payable in respect of a period before the one-month period."

(4) Paragraph (2) shall be omitted.

Amendment of regulation 65 of the Adjudication Regulations

15. In regulation 65 of the Adjudication Regulations (review in *family income supplement* cases) for the words "12 months" there shall be substituted the words "one month".

Amendment of regulation 66 of the Adjudication Regulations

16. In regulation 66(2) of the Adjudication Regulations (review in disability working allowance cases) for the words "12 months" there shall be substituted the words "one month".

Amendment of regulation 67 of the Adjudication Regulations

17. In regulation 67 of the Adjudication Regulations (review in social fund cases) -

- (a) *omitted*;
- (b) the words "and section 66 of the Administration Act" shall be omitted; and
- (c) for all the words following the words "a claim for such expenses" there shall be substituted the words "where the application for review was made more than one month after the expiry of the time for claiming the payment in respect of the expenses under Schedule 4 to the Social Security (Claims and Payments) Regulations 1987."

Amendment of the Social Security (Maternity Allowance) Regulations 1987

18. In regulation 3 of the Social Security (Maternity Allowance) Regulations 1987(a) (modification of the maternity allowance period), paragraphs (3) to (6) shall be omitted.

(a) S.I. 1987/416.

Revocations

19. The following regulations shall be revoked -

- (a) regulation 2 of the Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996(a);
- (b) regulation 4 of the Social Security (Attendance Allowance) Regulations 1991(b) (attendance allowance payable before the date of claim in renewal cases); and
- (c) regulation 5 of the Social Security (Disability Living Allowance) Regulations 1991(c) (late claim by a person previously entitled).

Savings

20. (1) In the case of a claim for retirement pension or graduated retirement benefit made on or before 3rd August 1997, regulation 19 of the Claims and Payments Regulations shall have effect as if regulation 6 of these Regulations had not been made.

(2) In the case of an application for a review of a decision relating to retirement pension where the application is made on or before 3rd August 1997, regulation 59 of the Adjudication Regulations shall have effect as if regulation 10 of these Regulations had not been made.

(a) S.I. 1996/1803; (b) S.I. 1991/2740; (c) S.I. 1991/2890.

SCHEDULE 3

This Schedule sets out the text of the Social Security (Claims and Payments and Adjudication) Amendment No. 2 Regulations 1997 (S.I. 1997/2290) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type.

STATUTORY INSTRUMENTS

1997 No. 2290

SOCIAL SECURITY

The Social Security (Claims and Payments and Adjudication)
Amendment No. 2 Regulations 1997

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Claims and Payments and Adjudication) Amendment No. 2 Regulations 1997 and shall come into force on *1st May 2000*.

(2) In these Regulations -

"the Adjudication Regulations" means the Social Security (Adjudication) Regulations 1995(a);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations 1987(b);

"the Income Support Regulations" means the Income Support (General) (Isle of Man) Regulations 2000(c).

Amendment of regulation 59 of the Adjudication Regulations

2. In regulation 59 of the Adjudication Regulations (review of decisions involving payment or increase of certain benefits), after paragraph (1B) there shall be inserted the following paragraph -

"(1C) Subject to regulation 58, where, in the case of attendance allowance or disability living allowance, the decision is reviewed under section 30(1) of the Administration Act (application within the prescribed period), or under that subsection as applied by section 31(2) or 35(8) of that Act, the decision given on review shall have effect from such date as may be specified in the decision, being a date not earlier than -

- (a) where the decision being reviewed is also a review decision or a refusal to review ("the first review"), one month before the date of application for the first review;
- (b) in any other case, the date of claim."

(a) S.I. 1995/1801; (b) S.I. 1987/1968; (c) S.D. 26/00.

Amendment of regulation 63 of the Adjudication Regulations

3. (1) Regulation 63 of the Adjudication Regulations (review in income support cases) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)(b) at the end the word "or" shall be added, and after sub-paragraph (b) there shall be added the following sub-paragraph -

"(c) in a case to which paragraph (1B) applies, any period which falls more than 8 weeks before the date on which the review was requested or, where no request is made, the date of the review."

(3) In paragraph (1A) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs -

"(a) the reason for the revised determination is that the claimant or a member of his family has become entitled to another benefit, or to an increase in the rate of another benefit, and

(b) that other benefit or increase is awarded in respect of a period before the one-month period."

(4) After paragraph (1A) there shall be inserted the following paragraph -

"(1B) This paragraph applies where -

(a) on a review it is determined that there is to be included in the claimant's applicable amount an amount in respect of a loan which qualifies under *regulation 24 or 26 of the Income Support Regulations*; and

(b) the determination could not have been made earlier because information necessary to make the determination had not been supplied to the *Department* by the lender."

Amendment of regulation 63A of the Adjudication Regulations

4. (1) Regulation 63A of the Adjudication Regulations (review in jobseeker's allowance cases) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)(c) at the end the word "or" shall be added, and after sub-paragraph (c) there shall be added the following sub-paragraph -

"(d) in a case to which paragraph (1B) applies, any period which falls more than 8 weeks before the date on which the review was requested or, where no request is made, the date of the review."

(3) In paragraph (1A) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs -

"(a) the reason for the revised determination is that the claimant or a member of his family has become entitled to another benefit, or to an increase in the rate of another benefit, and

(b) that other benefit or increase is awarded in respect of a period before the one-month period."

(4) After paragraph (1A) there shall be inserted the following paragraph -

"(1B) This paragraph applies where -

- (a) on a review it is determined that there is to be included in the claimant's applicable amount an amount in respect of a loan which qualifies under paragraph 3 or 5 of Schedule 2 to the Jobseeker's Allowance Regulations; and
- (b) the determination could not have been made earlier because information necessary to make the determination had not been supplied to the *Department* by the lender."

Amendment of regulation 6 of the Claims and Payments Regulations

5. In regulation 6 of the Claims and Payments Regulations (date of claim) at the end there shall be added the following paragraph -

"(29) In the case of a claim for an increase of severe disablement allowance or of invalid care allowance in respect of a child or adult dependant, paragraphs (16) and (21) shall apply to the claim as if it were a claim for severe disablement allowance or, as the case may be, invalid care allowance."

Amendment of regulation 19 of the Claims and Payments Regulations

6. (1) Regulation 19(7) of the Claims and Payments Regulations (time for claiming benefit) shall be amended in accordance with the following provisions of this regulation.

(2) At the end of sub-paragraph (f) the word "or" shall be omitted.

(3) In sub-paragraph (g) for the word "sister." there shall be substituted the words "sister; or".

(4) After sub-paragraph (g) there shall be added the following sub-paragraph -

"(h) in the case of a claim for disability working allowance, the claimant had previously been entitled to income support, jobseeker's allowance, incapacity benefit or severe disablement allowance ("the previous benefit"), and the claim for disability working allowance was made within one month of expiry of entitlement to the previous benefit."

Transitional provision

7. In a case to which regulation 59(1C)(a) of the Adjudication Regulations applies, where the application for the first review referred to in that provision was made on or before *1st May 2000* regulation 59 of the Adjudication Regulations shall apply with the following modifications -

- (a) as if in paragraph (1C)(a), for the words "one month" there were substituted the words "subject to paragraph (1D), three months";
- (b) as if after paragraph (1C) there were inserted the following paragraph -

"(1D) Subject to the following provisions of this regulation, in a case to which paragraph (1C)(a) applies where the claimant proves that -

- (a) on a date earlier than three months before the date of the application for the first review, he was (apart from the condition of making a claim) entitled to benefit or to a higher rate of benefit; and
- (b) throughout the period between that earlier date and the date on which the application for the first review was made, there was good cause for delay in making the application,

the decision given on review shall have effect either on that earlier date or twelve months before the date on which the application for the first review was made, whichever is the later."; and

- (c) as if in paragraph (5)(c) for the words "one month" there were substituted the words "three months".

Revocation

8. Omitted.

Made 7th March

2000



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Social Security Act 1982 enables the Department by Order to apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the Order, any legislation to which the Act applies.
2. The Act applies, inter alia, to the Social Security Acts 1975 - 1998 (of Parliament) and any statutory instruments made or having effect under those Acts.
3. This Order applies to the Island the statutory instruments referred to in Article 2(1) of the Order the provisions of which, as applied, are summarised in the following paragraphs. The applied legislation comes into force on 1st May 2000.
4. The Social Security Benefit (Computation of Earnings) Regulations 1996 (S.I. 1996/2745)

These new regulations replace the 1978 Computation of Earnings Regulations (S.I. 1978/1698). They contain a more detailed manner for determining earnings and include provision for determining notional earnings. Some of the broad areas of discretion previously available under the former Regulations are replaced by regulation-based rules for determining earnings.

These Regulations provide for the way in which the earnings of a person to whom benefit is or may be payable or the earnings of such a person's dependant are to be calculated or estimated for the purposes of those provisions of the Social Security Contributions and Benefits Act 1992, and the regulations made under that Act, by which the right to or the amount of benefit depends on the amount of those earnings.

Regulations 3 to 14 make provision for earnings not expressly disregarded to be taken into account on a weekly basis; define earnings and prescribe the manner in which earnings are to be calculated; they also prescribe the circumstances in which a person is to be treated as possessing earnings which he in fact does not possess.

Regulations 15 and 16 make transitional provision including for the suspension of benefit until the amount of the earnings is established and for the making of interim payments.

5. The Social Security (Miscellaneous Amendments) (No. 2) Regulations 1997 (S.I. 1997/793)

The amendments contained in these Regulations introduce a number of changes to the benefit rules in order to encourage personal responsibility on the part of the claimants and to align the rules on the backdating of benefits as far as possible in order to reduce administrative complexity, making the system easier for both customers and staff to understand. The main changes are that:

- from 1st May 2000 Income Support and Jobseeker's Allowance (JSA) claims will be accepted only if made on a properly completed claim form and supporting documents are provided as required on the form
- the date of claim for benefit will be the date the claimant first contacts the relevant section for the purposes of claiming provided a properly completed claim is received within one month of that first date or, at or before an interview where this is required for JSA
- the time limits for claiming benefit are amended so that the maximum time for which entitlement to benefit may be backdated on a new claim is three months. This will apply to Retirement Pension, Widow's Benefit, Maternity Allowance, Invalid Care Allowance, Incapacity Benefit, Severe Disablement Allowance, Child Benefit, Guardian's Allowance, Dependency Increases, Industrial Injuries Disablement Benefit and Reduced Earnings Allowance
- in respect of claims to Income Support, Family Income Supplement, Disability Working Allowance and income-based and contributory JSA, backdating of claims is only possible where the claimant was unable to claim earlier because of one of a number of reasons specified in the regulations; also, where other specified circumstances apply, up to one month's backdating may be allowed

- where entitlement to benefit is revised because of a change in the claimant's circumstances, the revision cannot be backdated for more than one month. This change affects Income Support, Family Income Supplement, Disability Working Allowance, JSA, Retirement Pension, Widow's Benefit, Maternity Allowance, Invalid Care Allowance, Incapacity Benefit, Severe Disablement Allowance, Disability Living Allowance/Attendance Allowance, Child Benefit, Guardian's Allowance, Dependency Increases, Industrial Injuries Disablement Benefit and Reduced Earnings Allowance.

A table setting out the existing and new time limits for backdating of benefits can be found at Annex A and B (respectively) of this Explanatory Note.

These Regulations amend the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) in the following respects:

- the requirements for making a claim in the case of a claim for income support or JSA are amended, so that except in specified circumstances, such a claim must be made in writing on a form approved by the Department and in accordance with the instructions on the form, and must include any information or evidence which the form may require (regulation 2). Currently, the Department accepts claims for those benefits providing simply that they are made in writing on a form which it has approved for that purpose, or if they are made in writing in any other manner which the Department accepts as being sufficient in the circumstances;
- the provisions on the date of claim are amended so that for specified claims, where a properly completed claim is received within one month of first notification of intention to make a claim, the date of claim shall be the date of that notification. (regulation 3). Currently, the date of claim for benefit is the date the claim was actually received by the Department;
- in specified circumstances, where a claim for benefit has been refused, and a second claim is later made for the same benefit, the second claim will be treated as made on the date of the first claim (regulation 3). Currently, the second claim for benefit is treated as being made on the date that it was actually made.
- the time limits for claiming benefit are amended so that the maximum time for which entitlement to benefit may be backdated is three months for all benefits (regulations 5 to 7). Currently, various time limits for backdating benefit entitlement exist;
- in respect of certain benefits, backdating of claims is only possible where the claimant was unable to claim earlier because of one of a number of specified reasons; also the time for claiming benefit may be extended for up to one month where other specified circumstances apply (regulation 6). Currently, backdating of claims is allowed if the claimant can show simply that there was good cause for his not claiming benefit within the time prescribed.

These Regulations also amend the Social Security Adjudication Regulations 1995 (S.I. 1995/1801) to provide that, subject to certain exceptions, where entitlement to benefit is revised, the revision cannot be backdated for more than one month (regulations 8 to 17). Currently, there are different periods for which revisions for different benefits can be backdated.

All these changes simplify the procedures to make them easier for staff to administer and for customers to understand.

The Regulations also amend the Social Security (Maternity Allowance) Regulations 1987 (S.I. 1987/416) in respect of the circumstances in which the Maternity Allowance period may be modified (regulation 18) so that entitlement to the full period of 18 weeks will now be more widely available.

These Regulations revoke regulation 4 of the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740) and regulation 5 of the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890), which permitted entitlement to those benefits to be backdated in certain circumstances; they also revoke regulation 2 of the Child Benefit, Child Support and Social Security (Miscellaneous Amendments) Regulations 1996 (S.I. 1996/1803), which is rendered obsolete by these Regulations (regulation 19).

The effect of the first two of these revocations means that claimants who submit renewal claims for either Attendance Allowance or Disability Living Allowance outside the time limits for doing so can no longer have their claims for the renewal of benefit backdated to the end of the previous award. However, the Department already recognises the difficulties that disabled people might face in complying with the time limits by sending to all those entitled to a limited award of either benefit a renewal form 2 months before their award expires, and another reminder if the first is not replied to. The Department also allows 6 weeks for the claim form to be returned. Both these facilities will be retained.

The third revocation reflects the change in the period for which the payment of Child Benefit can be backdated following the revision of a decision to entitlement, in line with the changes introduced for other benefits.

6. The Social Security (Claims and Payments and Adjudication) Amendment No. 2 Regulations 1997 (S.I. 1997/2290)

These Regulations further amend the Social Security (Adjudication) Regulations 1995 (S.I. 1995/1801) and the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968) in the following respects:

- they alter the period over which revisions of decisions involving the payment of benefit are backdated in certain cases in respect of claims for Attendance Allowance and Disability Living Allowance so that in normal circumstances such a revision will from now on only be backdated for 1 month instead of the previous 3 months (regulation 2) and for claims in respect of Income Support and Jobseeker's Allowance (JSA) from now on a backdating period of 1 month will also apply. Currently, the period for backdating claims following revision for Income Support is 12 months; no such backdating period exists for JSA (regulations 3 and 4);
- they specify the circumstances in which a claim for a dependant's increase of severe disablement allowance or invalid care allowance is treated as made on an earlier date so that they are the same as for an actual claim to either benefit (regulation 5);

- they specify further circumstances in which the time for claiming Disability Working Allowance may be extended so that if a claim to that benefit is made within one month after the expiry of a previous entitlement to income support, JSA, incapacity benefit or severe disablement allowance the Department may extend the time for claiming benefit up to a maximum of one month (regulation 6);
- they make special transitional provision for backdating revisions of Attendance Allowance and Disability Living Allowance in certain cases (regulation 7).

<i>Existing time limits for backdating</i>							
<i>Benefit</i>		<i>Maximum backdating</i>					
		<i>Claims</i>				<i>Revisions</i>	
		<i>Admin</i>	<i>Normal</i>	<i>Good cause</i>	<i>Official error</i>	<i>Normal</i>	<i>Good cause</i>
Income Support Family Income Supplement	No previous award	1 month	-	12 months	Indefinite	12 months	-
	Previous award	1 month#	14 days	12 months	Indefinite	12 months	52 weeks
Disability Working Allowance	No previous award	1 month	-	12 months	Indefinite	12 months	52 weeks
	Previous award	1 month#	14 days	12 months	Indefinite	3 months	12 months
Retirement Pension		-	12 months	-	Indefinite	3 months	12 months
Widow's Benefit		-	12 months	-	Indefinite	3 months	12 months
Maternity Allowance		-	12 months	-	Indefinite	-	12 months
Invalid Care Allowance		-	12 months	-	Indefinite	3 months	12 months
Jobseeker's Allowance		1 month	-	12 months	Indefinite	-	12 months
Incapacity Benefit		-	1 month	12 months	Indefinite	2 weeks	12 months
Severe Disablement Allowance		-	1 month	12 months	Indefinite	2 weeks	12 months
Disability Living Allowance/AA	No previous award	-*	-	-	Indefinite	3 months	12 months
	Previous award within 6 months	To end of previous award	-	-			
Child Benefit		-	6 months	-	Indefinite	12 months	-
Guardian's Allowance		-	6 months	-	Indefinite	3 months	12 months
Dependency Increases		-	6 months	-	Rules same as personal benefit		
Industrial Injuries Disablement Benefit		-	3 months	Indefinite	Indefinite	-	Indefinite
Reduced Earnings Allowance		-	3 months	12 months	Indefinite	-	12 months

1 month admin in addition to 14 days normal

* But with 6 weeks allowed for return of the claim form

<i>New time limits for backdating</i>							
<i>Benefit</i>		<i>Maximum backdating</i>					
		<i>Claims</i>				<i>Revisions</i>	
		<i>Admin</i>	<i>Normal</i>	<i>Good cause</i>	<i>Official error</i>	<i>Normal</i>	<i>Good cause</i>
Income Support Family Income Supplement	No previous award	1 month	-	3 months	Indefinite	1 month	-
	Previous award	1 month	14 days	3 months	Indefinite	1 month	-
Disability Working Allowance	No previous award	1 month	-	3 months	Indefinite	1 month	-
	Previous award	1 month	14 days	3 months	Indefinite	1 month	-
Retirement Pension		-	3 months	-	Indefinite	1 month	-
Widow's Benefit		-	3 months	-	Indefinite	1 month	-
Maternity Allowance		-	3 months	-	Indefinite	1 month	-
Invalid Care Allowance		-	3 months	-	Indefinite	1 month	-
Jobseeker's Allowance		1 month	-	3 months	Indefinite	1 month	-
Incapacity Benefit		-	3 months	-	Indefinite	1 month	-
Severe Disablement Allowance		-	3 months	-	Indefinite	1 month	-
Disability Living Allowance/AA	No previous award	-*	-	-	Indefinite	1 month	-
	Previous award within 6 months	-	-	-	Indefinite	1 month	-
Child Benefit		-	3 months	-	Indefinite	1 month	-
Guardian's Allowance		-	3 months	-	Indefinite	1 month	-
Dependency Increases		-	3 months	-	Rules same as personal benefit		
Industrial Injuries Disablement Benefit		-	3 months	-	Indefinite	1 month	-
Reduced Earnings Allowance		-	3 months	-	Indefinite	1 month	-

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