



Statutory Document No. 152/03

THE SOCIAL SECURITY ACT 2000  
THE SOCIAL SECURITY LEGISLATION (APPLICATION) (No. 4)  
ORDER 2003

*Approved by Tynwald*      *8<sup>th</sup> April 2003*

*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 2000(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. 4) Order 2003 and each provision of the applied legislation shall come into force as provided in paragraph (2).

(2) This Article and Article 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall come into force, or shall be deemed to have come into force, as the case may be, on the same day as that provision comes, or came, as the case may be, into force in Great Britain.

**Interpretation**

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

- (a) the Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002(b);
- (b) the Social Security (Paternity and Adoption) Amendment Regulations 2002(c);
- (c) the Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002(d);

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(a) 2000 c.5; (b) S.I. 2002/491; (c) S.I. 2002/2689; (d) S.I. 2002/2690.

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- (d) the Social Security Benefit (Computation of Earnings) (Amendment) Regulations 2002(a);
- (e) the Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002(b); and
- (f) the Jobseeker's Allowance (Amendment) Regulations 2002(c).

(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 2000 or section 1 of the Pension Schemes Act 1995(d) (Acts of Tynwald) 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.

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(a) S.I. 2002/2823; (b) S.I. 2002/2866 (C.91); (c) S.I. 2002/3072; (d) 1995 c. 11.

## SCHEDULE 1

This Schedule sets out the text of regulations 1 and 3 to 5 of the Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/491) 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

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### STATUTORY INSTRUMENTS

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2002 No. 491

### SOCIAL SECURITY

#### The Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002

##### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002 and shall *be deemed to have* come into force -

- (a) for the purposes of regulation 4, on 8<sup>th</sup> April 2002; and
- (b) for all other purposes, on 7<sup>th</sup> April 2003.

(2) In these Regulations "the principal Regulations" means the Social Security (Incapacity for Work) (General) Regulations 1995(a).

##### Amendment of regulation 10A of the principal Regulations

2. *Omitted.*

##### Amendment of regulation 17 of the principal Regulations

3. *In* regulation 17 of the principal Regulations (exempt work) -

- (a) in paragraph (1) for sub-paragraph (a) there shall be substituted the following sub-paragraph: -

"(a) work in respect of which the required notice is given, and -

- (i) in respect of which the earnings in any week do not exceed £22.50, or
- (ii) which is part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution, or

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(a) S.I. 1995/311.

(iii) which is supervised by a person employed by a public authority, *an organisation which provides services to a public authority* or a voluntary organisation engaged in the provision or procurement of work for persons who have disabilities, or

(iv) to which paragraph (1A) below applies;"

(b) after paragraph (1) there shall be inserted the following paragraphs -

"(1A) This paragraph applies in the case of a person whose circumstances are specified -

(a) in sub-paragraph (a) of paragraph (1B) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph;

(b) in sub-paragraph (a) of paragraph (1C) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph;

(c) in sub-paragraph (a) of paragraph (1D) below, to work which is undertaken by that person during the period specified in sub-paragraph (b) of that paragraph.

(1B) For the purposes of paragraph (1A)(a) above -

(a) the specified circumstances are where -

(i) no work to which paragraph (1A) applies has previously been undertaken by that person, or

(ii) since the beginning of the last period during which any work to which that paragraph applies was previously undertaken by him, the person has ceased to be entitled, throughout a period exceeding eight continuous weeks, to a relevant benefit;

(b) the specified period is the period of 26 weeks beginning with the first day on which the work is undertaken.

(1C) For the purposes of paragraph (1A)(b) above -

(a) the specified circumstances are where -

(i) work to which paragraph (1A) applies has previously been undertaken by that person during a period specified in paragraph (1B)(b) above, and

(ii) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (b) below, he is likely to improve his capacity to engage in full-time work;

(b) the specified period is the period of 26 weeks beginning immediately after the end of the period specified in paragraph (1B)(b) above.

(1D) For the purposes of paragraph (1A)(c) above -

(a) the specified circumstances are where -

(i) work to which paragraph (1A) applies has previously been undertaken by that person,

(ii) not less than 52 weeks have elapsed since the end of the period specified in paragraph (1B)(b) or (1C)(b) above or in sub-paragraph (b) below during which such work was last undertaken by him,

(iii) head (ii) of paragraph (1B)(a) above does not apply in his case, and

(iv) there is appropriate evidence that, by undertaking further work, during the period specified in sub-paragraph (b) below, he is likely to improve his capacity to engage in full-time work;

(b) the specified period is the period of 52 weeks which begins with the first day on which the work is undertaken.

(1E) In this regulation -

"appropriate evidence" means, in relation to any work -

- (a) evidence from an officer of, or person providing services to, the *Department* who is authorised by the *Department* for the purpose; and
- (b) evidence (if any) from any other person (including the person undertaking the work),

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;

"relevant benefit" means -

- (a) incapacity benefit, severe disablement allowance *or* income support under the Contributions and Benefits Act; or
- (b) credits under regulations under section 22(5) of that Act,

in connection with the entitlement to which the question of the person's capacity or incapacity for work arises under that Act;

"the required notice" means, in relation to work referred to in any of heads (i) to (iv) of paragraph (1)(a), notice to the effect that the person is about to undertake the work, given in writing to the *Department* by that person or another person acting on his behalf at any time *before* the person starts to undertake the work;

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

(c) in paragraph (2) -

- (i) in sub-paragraph (a) for the words "paragraph (1)(a)" there shall be substituted the words "paragraph (1)(a)(ii) to (iv)", and
- (ii) in sub-paragraph (b) for the words "paragraph (1)(a)(i)" there shall be substituted the words "paragraph (1)(a)(iv)".

## **Amendment of regulation 19 of the Social Security (Incapacity Benefit) Regulations 1994**

4. In regulation 19 of the Social Security (Incapacity Benefit) Regulations 1994(a) (persons formerly entitled to severe disablement allowance), for the words "immediately before 9<sup>th</sup> April 2001" (in both places where those words appear) there shall be substituted the words "on 9<sup>th</sup> April 2001".

### **Revocation**

5. Subject to regulation 6(2) below, regulation 7 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(b) (persons deemed to be incapable of work) is hereby revoked.

### **Transitional provisions**

6. *Omitted.*

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(a) S.I. 1994/2946; (b) S.I. 1995/310.

## SCHEDULE 2

This Schedule sets out the text of regulations 1 and 3 of the Social Security (Paternity and Adoption) Amendment Regulations 2002 (S.I. 2002/2689) 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

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### STATUTORY INSTRUMENTS

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2002 No. 2689

### SOCIAL SECURITY

#### The Social Security (Paternity and Adoption) Amendment Regulations 2002

##### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security (Paternity and Adoption) Amendment Regulations 2002 and shall *be deemed to have* come into force -

(a) for the purposes of *regulation 3(3)*, on 24<sup>th</sup> November 2002;

(b) for all other purposes, on *8<sup>th</sup> December 2002*.

*(1A) These Regulations (other than regulation 3(3)) shall have effect only in relation to children who are -*

(a) *born on or after 6<sup>th</sup> April 2003 or whose expected week of birth begins on or after that date; or (as the case may be)*

(b) *matched with an adopter on or after 6<sup>th</sup> April 2003.*

(2) In these Regulations "the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations 1996(a).

##### Amendment of the Income Support (*General*) Regulations 1987

2. *Omitted.*

##### Amendment of the Jobseeker's Allowance Regulations

3. (1) The Jobseeker's Allowance Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 1(3) (interpretation) -

(a) after the definition of "the Act" there shall be inserted the following definition -

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(a) S.I. 1996/207.

*""adoption leave" has the same meaning as in regulation 9(4) of the Social Security Benefit (Computation of Earnings) Regulations 1996;"*;

(b) after the definition of "part-time student" there shall be inserted the following definition -

*""paternity leave" has the same meaning as in regulation 9(4) of the Social Security Benefit (Computation of Earnings) Regulations 1996;"*.

(3) In paragraph (2)(i) of regulation 3E (entitlement of a member of a joint-claim couple to a jobseeker's allowance without a claim being made jointly by the couple) after the word "ends" there shall be inserted -

*"where the expected week of confinement begins prior to 6<sup>th</sup> April 2003 or fifteen weeks after the date on which her pregnancy ends where the expected week of confinement begins on or after 6<sup>th</sup> April 2003"*.

(4) In regulation 52 (persons treated as engaged in remunerative work), in paragraph (1) after "maternity leave" there shall be inserted ", paternity leave, adoption leave".

(5) In regulation 98 (earnings of employed earners), in sub-paragraph (2)(c) after "maternity leave" there shall be inserted ", paternity leave, adoption leave".

(6) In Schedule 7(a) (sums to be disregarded in the calculation of income other than earnings) -

(a) after paragraph 33 insert the following paragraph -

*"National Insurance contributions and pension contributions paid by a person unable to work through illness or maternity or who is taking paternity or adoption leave*

33A. In the case of any remuneration paid by or on behalf of an employer to the claimant who for the time being is unable to work due to illness or maternity or who is taking paternity leave or adoption leave -

(a) any amounts deducted by way of primary Class 1 contributions under the Benefits Act;

(b) one-half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.";

(b) *omitted*.

**Amendment of the Housing Benefit (General) Regulations 1987 and the Council Tax Benefit (General) Regulations 1992**

4. and 5. *Omitted*.

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(a) Schedule 7 was substituted by article 2(29) of the Social Security Legislation (Application) (No. 3) Order 2003.

### SCHEDULE 3

This Schedule sets out the text of regulations 1, 15 and 17 to 20 of the Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690) 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

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#### STATUTORY INSTRUMENTS

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2002 No. 2690

#### SOCIAL SECURITY

#### The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002

##### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 and shall *be deemed to have* come into force on 24<sup>th</sup> November 2002.

(2) These Regulations shall take effect only in respect of those women whose expected week of confinement commences on or after 6<sup>th</sup> April 2003.

(3) In these Regulations -

"the Social Security (Maternity Allowance) Regulations" means the Social Security (Maternity Allowance) Regulations 1987(a);

"the Social Security (Maternity Allowance) (Earnings) Regulations" means the Social Security (Maternity Allowance) (Earnings) Regulations 2000(b).

##### Amendment, substitution and revocation of certain provisions of the Statutory Maternity Pay (General) Regulations 1986

2. to 9. *Omitted.*

##### Amendment of the Social Security (Incapacity Benefit) Regulations 1994

10. *Omitted.*

##### Amendment of regulations 3 and 4 of the Statutory Maternity Pay (National Health Service Employees) Regulations 1991

11. and 12. *Omitted*

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(a) S.I. 1987/416; (b) S.I. 2000/688.

**Amendment of regulations 3 and 17(3) of the Statutory Sick Pay (General) Regulations 1982**

**13. and 14. Omitted**

**Amendment of regulation 3 of the Social Security (Maternity Allowance) Regulations**

15. (1) Regulation 3 of the Social Security (Maternity Allowance) Regulations (modification of the maternity allowance period) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) for the words "Section 22(2) of the Act" there shall be substituted the words "Section 35(2) of the Social Security Contributions and Benefits Act 1992".

(3) Paragraph (2) shall be omitted.

(4) In paragraph (2A) for the words "18 weeks" there shall be substituted the words "26 weeks".

**Amendment of regulation 2(1) of the Social Security (Maternity Allowance) (Earnings) Regulations**

**16. Omitted.**

**Amendment of regulation 3(a) of the Social Security (Maternity Allowance) (Earnings) Regulations**

17. In regulation 3(a) of the Social Security (Maternity Allowance) (Earnings) Regulations (specified payments for self-employed earners) for the words "the lower earnings limit in force" there shall be substituted the words "an amount 90 per cent. of which is equal to the weekly rate prescribed under section 166(1)(b) of the Contributions and Benefits Act that is in force".

**Amendment of regulation 4 of the Social Security (Maternity Allowance) (Earnings) Regulations**

18. (1) Regulation 4 of the Social Security (Maternity Allowance) (Earnings) Regulations (aggregation of specified payments) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) the words "other than one to which regulation 5(2) applies" shall be omitted.

(3) Paragraph (2) shall be omitted.

**Amendment of regulation 5 of the Social Security (Maternity Allowance) (Earnings) Regulations**

19. For regulation 5 of the Social Security (Maternity Allowance) (Earnings) Regulations (the specified period) there shall be substituted the following regulation -

**"The specified period**

5. For the purpose of section 35A(4) and (5) of the Contributions and Benefits Act the specified period shall be the test period."

**Amendment of regulation 6 of the Social Security (Maternity Allowance) (Earnings) Regulations**

20. (1) Regulation 6 of the Social Security (Maternity Allowance) (Earnings) Regulations (determination of average weekly amount of specified payments) shall be amended in accordance with the following provisions of this regulation.

(2) For paragraph (1) there shall be substituted the following paragraph -

"(1) For the purpose of section 35A(4) of the Contributions and Benefits Act a woman's average weekly amount of specified payments shall, subject to paragraph (2) be determined by dividing by 13 the payments made, or treated in accordance with these Regulations as made, to her or for her benefit, in the 13 weeks (whether consecutive or not) falling within the specified period in which such payments are greatest."

(3) After paragraph (2) there shall be added the following paragraph -

"(3) Where a woman is normally paid other than weekly, the payments made or treated as made to her or for her benefit for the purposes of paragraph (1) shall be calculated by dividing the payments made to her in any week by the nearest whole number of weeks in the period in respect of which she is paid."

## SCHEDULE 4

This Schedule sets out the text of the Social Security Benefit (Computation of Earnings) (Amendment) Regulations 2002 (S.I. 2002/2823) 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

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### STATUTORY INSTRUMENTS

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2002 No. 2823

### SOCIAL SECURITY

#### The Social Security Benefit (Computation of Earnings) (Amendment) Regulations 2002

##### Citation and commencement

1. *(1)* These Regulations may be cited as the Social Security Benefit (Computation of Earnings) (Amendment) Regulations 2002 and shall *be deemed to have* come into force -

- (a) for the purposes of the amendments made by paragraphs (2) and (3) of regulation 2 on 8<sup>th</sup> December 2002; and
- (b) for all other purposes on 1<sup>st</sup> April 2003.

*(1A) These Regulations (other than paragraphs (4) and (5) of regulation 2) shall have effect only in relation to children who are -*

- (a) born on or after 6<sup>th</sup> April 2003 or whose expected week of birth begins on or after that; or (as the case may be)*
- (b) matched with an adopter on or after 6<sup>th</sup> April 2003.*

2. (1) Amend the Social Security Benefit (Computation of Earnings) Regulations 1996(a) as follows.

(2) In regulation 2 omit the definition in paragraph (1) of "maternity leave".

(3) In regulation 9 -

- (a) for sub-paragraph (j) of paragraph (1) substitute -

"(j) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is -

- (i) on maternity leave;

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(a) S.I. 1996/2745.

- (ii) on paternity leave;
- (iii) on adoption leave; or
- (iv) absent from work because he is ill."

(b) at the appropriate points in the alphabetical list in paragraph (4) insert the following definitions -

*"adoption leave" means a period during which a person is absent from work in connection with his having been matched with a child placed for adoption where that person has notified the adoption agency concerned that he agrees -*

- (a) that the child should be placed with him; and*
- (b) on the date on which the child will be placed with him,*

*and at the end of which he has a right to return to work under the terms of his contract of employment.*

*In this definition "adoption agency" has the meaning given in the Adoption Act 1984 (c.14) (an Act of Tynwald);";*

*"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);" and*

*"paternity leave" means a period during which a person is absent from work on leave at the end of which he has a right to return to work under the terms of his contract of employment in either of the following sets of circumstances.*

*Circumstances A (paternity leave following birth)*

*These circumstances arise where a man -*

- (a) is either -*
  - (i) the father of a child, or*
  - (ii) is married to, or is the partner of, the child's mother (or would have been but for the death of the child's mother) but is not the child's father; and*
- (b) has or expects to have (or would have done so but for the fact that the child was stillborn or has died) -*
  - (i) if he is the child's father, responsibility for the upbringing of the child, or*
  - (ii) if he is the mother's husband or partner but not the child's father, the main responsibility (apart from any responsibility of the mother) for the upbringing of the child.*

*Circumstances B (paternity leave following adoption)*

*These circumstances arise where a person -*

- (a) is married to, or is the partner of, a person ("the adopter") who has been matched with a child placed for adoption (or would have been married to, or the partner of, the adopter but for the fact that the adopter died during the child's placement); and*
- (b) has or expects to have the main responsibility (apart from any responsibility of the adopter) for the upbringing of the child (or would have done so but for the fact that the child's placement with the adopter has ended)".*

(4) In the provisions mentioned in paragraph (5) for "invalid care allowance" substitute "carer's allowance".

(5) The provisions are -

- (a) regulation 7(a)(i) (date on which earnings are treated as paid);
- (b) regulation 10(3) (calculation of net earnings of employed earners);
- (c) regulation 13(3) (calculation of net earnings of self-employed earners); and
- (d) the heading to, and paragraph 1(a) of, Schedule 3 (care charges to be deducted in the calculation of earnings for entitlement to invalid care allowance).

## SCHEDULE 5

This Schedule sets out the text of articles 1 and 3 of, and paragraphs 4 and 6 of Schedule 3 to, the Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002 (S.I. 2002/2866) (C.91) 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

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### STATUTORY INSTRUMENTS

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2002 No. 2866 (C.91)

### SOCIAL SECURITY

#### The Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002

##### Citation and interpretation

1. (1) This Order may be cited as the Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002.

(2) In this Order -

"the Act" means the Employment Act 2002;

"the 1992 Act" means the Social Security Contributions and Benefits Act 1992.

##### Commencement

2. *This Order shall be deemed to have come into force on 18<sup>th</sup> November 2002.*

##### Transitional and saving provisions

3. The transitional and saving provisions in Schedule 3 to this Order shall have effect.

##### SCHEDULE 1

*Omitted.*

##### SCHEDULE 2

*Omitted.*

## TRANSITIONAL AND SAVING PROVISIONS

1. - 3. *Omitted.*

4. The amendments to the 1992 Act made by sections 18 (*extension of maternity allowance pay period to 26 weeks*) and 48(1)(b) (*women engaged in self-employment who pay a Class 2 contribution in any week to be treated as having earnings of an amount =  $100/90 \times$  the "standard rate" of maternity allowance in that week for the purposes of maternity allowance*) shall take effect only in relation to those women whose expected week of confinement commences on or after 6<sup>th</sup> April 2003.

5. *Omitted.*

6. The amendment made to section 35A of the 1992 Act made by section 48(1)(a) of the Act (*new rate of maternity allowance*) shall not have effect in relation to a woman -

- (a) whose maternity allowance period commences before 6<sup>th</sup> April 2003;
- (b) who is entitled to maternity allowance at the rate of £75 a week immediately before that date; and
- (c) who would be entitled to maternity allowance at a rate lower than £75 a week if the amendment had effect in relation to her.

7. *Omitted.*

## SCHEDULE 6

This Schedule sets out the text of the Jobseeker's Allowance (Amendment) Regulations 2002 (S.I. 2002/3072) 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

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### STATUTORY INSTRUMENTS

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2002 No. 3072

### SOCIAL SECURITY

#### The Jobseeker's Allowance (Amendment) Regulations 2002

##### Citation and commencement

1. These Regulations may be cited as the Jobseeker's Allowance (Amendment) Regulations 2002 and shall *be deemed to have* come into force -

- (a) for the purposes of regulation 5, on *13<sup>th</sup> December 2002*;
- (b) for all other purposes, on 1<sup>st</sup> January 2003.

*(1A) Regulation 5 of these Regulations shall have effect only in relation to children who are -*

- (a) born on or after 6<sup>th</sup> April 2003 or whose expected week of birth begins on or after that; or (as the case may be)*
- (b) matched with an adopter on or after 6<sup>th</sup> April 2003.*

##### Amendment of the Jobseeker's Allowance Regulations

2. The Jobseeker's Allowance Regulations 1996 shall be amended in accordance with the following regulations.

##### **Amendment of regulation 5: exceptions to requirement to be available *for employment immediately***

3. In regulation 5 -

- (a) for paragraph (1) there shall be substituted the following paragraph -

"(1) In order to be regarded as available for employment -

- (a) a person who has caring responsibilities is not required to be able to take up employment immediately, providing he is willing and able to take up employment on being given 48 hours' notice; and

- (b) a person who is engaged in voluntary work is not required to be able to take up employment immediately, providing he is willing and able -
  - (i) to take up employment on being given one week's notice; and
  - (ii) to attend for interview in connection with the opportunity of any such employment on being given 48 hours' notice.";
- (b) in paragraph (5) after the words "take up employment immediately, the" there shall be inserted the words "one week,";
- (c) after paragraph (5) there shall be *added* the following paragraph -
  - "(6) In this regulation "week" means any period of seven consecutive days."

**Amendment of regulation 12: volunteers**

4. For regulation 12 there shall be substituted the following regulation -

"12. (1) Paragraph (2) applies if in any week a person is engaged in voluntary work and -

- (a) he has restricted the total number of hours for which he is available in accordance with regulation 7(2), 13(3) or (4) or 17(2); and
  - (b) the hours in which he is engaged in voluntary work fall in whole or in part within his pattern of availability.
- (2) In determining whether a person to whom this paragraph applies is available for employment no matter relating to his voluntary work shall be relevant providing -
- (a) on being given one week's notice, he is willing and able to re-arrange the hours in which he is engaged in voluntary work in order to take up employment at times falling within his pattern of availability; and
  - (b) on being given 48 hours' notice, he is willing and able to re-arrange the hours in which he is engaged in voluntary work in order to attend for interview at times falling within his pattern of availability in connection with the opportunity of any such employment; and
  - (c) he complies with the requirements of regulation 6.

(3) In paragraph (2) "week" means any period of seven consecutive days."

**Amendment of regulation 15: circumstances in which a person is not to be regarded as available**

5. In regulation 15 before paragraph (c) there shall be inserted the following paragraph -

"(bc) if he is on paternity leave or adoption leave (*within the meaning of regulation 9(4) of the Social Security Benefit (Computation of Earnings) Regulation 1996*);".

**Amendment of regulation 30: circumstances in which a claimant is to be regarded as having good cause for failing to comply with a notification under regulation 23 or 23A**

6. In regulation 30(a) after "regulation 5(1)" there shall be inserted "(a) or (b)".

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Made

11/03/2003

*Mr. Clinton*

Minister for Health and Social Security

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### EXPLANATORY NOTE

*(This note is not part of the Order)*

1. Section 1 of the Social Security Act 2000 enables the Department by Order to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Social Security Acts 1975 to 1998, the Social Security Administration Act 1992, the Social Security Contributions and Benefits Act 1992, the Jobseekers Act 1995, the Welfare Reform and Pensions Act 1999, the Child Support, Pensions and Social Security Act 2000, the Tax Credits Act 2002 and certain provisions of the Employment Act 2002 (all Acts of Parliament) and to any statutory instrument made (or having effect as if made) under any of those Acts.
3. This Order applies to the Island the appropriate provisions of the legislation referred to in Article 2(1) of the Order, which make miscellaneous amendments to existing legislation relating to social security benefits and which are summarised in the following paragraphs. Because of the reciprocal nature of the benefits concerned, most of the provisions applied by the Order are to come into force at the same time as they came into force in Great Britain.
4. The Social Security (Incapacity) (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/491) (regulations 1 and 3 to 5 only)
  - 4.1 These Regulations further amend the Social Security (Incapacity for Work) (General) Regulations 1995 ("the Incapacity for Work Regulations"), in particular by amending the definition of "exempt work".

*Amendments to the exempt work provisions*

- 4.2.1 For the purposes of the Social Security Contributions and Benefits Act 1992, once a person has begun a period of incapacity for work then, ordinarily, they will be treated as being capable of work for any week if they are engaged in work on any day in that week. So they will not receive any benefit - in particular, any incapacity benefit - which depends on their being incapable of work for that week.
- 4.2.2 However, a person may nevertheless do "exempt work" and still be regarded as incapable of work during that week.

*The former provisions for exempt work ("therapeutic work")*

- 4.3 Previously exempt work was work which -
- (a) a doctor believed would help to improve the illness or disability which caused the person to be incapable of work, or prevent or delay its deterioration, provided that such work lasted for less than 16 hours (on average) per week; or
  - (b) was part of a medically supervised treatment programme while the person was an in-patient or a regular out-patient of a hospital, etc.; or
  - (c) was done while that person was attending an institution which provided sheltered work for people with disabilities; or
  - (d) was done for a voluntary organisation; or
  - (e) involved sitting as a member with a disability qualification on an appeal tribunal dealing with social security matters,
- and was known as "therapeutic work".

A person was only treated as doing exempt work under sub-paragraphs (a), (b) or (c) if they earned no more than £67.50 per week from that work. And they could continue doing any type of exempt work for as long as they remained on incapacity benefit.

*The new provisions for permitted work*

- 4.4.1 Under the new rules provided for under regulation 3, a person will no longer be treated as carrying out exempt work (to be known administratively as "permitted work") if it is of a type referred to in sub-paragraph (a) of paragraph 4.3 but will instead be able to do so if it falls under any of the following 4 headings.

*Permitted work lower earnings limit (new regulation 17(1)(a)(i) of the Social Security (Incapacity for Work) Regulations 1995)*

- 4.4.2 A person can earn up to £22.50 per week from any type of work they do, for an indefinite period. There is also no restriction on the number of hours they can work.

*Permitted work higher earnings limit (new regulation 17(1B))*

- 4.4.3 A person can earn up to £67.50 per week, but must work for less than 16 hours per week. However, they can only carry on doing such work for up to 26 weeks.

*Permitted work higher earnings limit extension (new regulation 17(1C))*

- 4.4.4 If it is clear that the work they are doing under the permitted work higher earnings limit provision is likely to improve their ability to engage in full-time work in the future, then they may continue to do that type of work for a further 26 weeks.

*Permitted work higher earnings limit subsequent (new regulation 17(1D))*

- 4.4.5 A person may re-qualify for permitted work subject to the higher earnings limit for a further 52 weeks provided that the permitted work rules did not apply to them for the previous 52 weeks.

*Supported permitted work (new regulation 17(1)(a)(ii) and (iii))*

- 4.4.6 A person may also carry out permitted work where it is supervised by a person employed by (or on behalf of) a Government Department whose job it is to find work for people with disabilities (which will include work done by a person at a sheltered workshop for people with disabilities). On the introduction of these new exempt work rules, that supervisory function will be carried out by one of the Disability Employment Advisers employed by the Social Services Division of the Department of Health and Social Security. A person doing such work may continue to receive incapacity benefit indefinitely whilst earning up to £67.50 per week, with no restriction on the number of hours they spend in work, which was the case under the therapeutic work system of exempt work.

*Required notice of permitted work*

- 4.4.7 Whilst a doctor's prior approval is not required before a person is allowed to carry out permitted work, a person will nevertheless be required to notify the Department that they intend to carry out such work before they do so.

*The Minimum Wage*

- 4.4.8 The provisions of the Minimum Wage legislation shall apply to persons carrying out permitted work as they apply to any other worker, although some types of permitted work may be exempt by virtue of their being under a scheme arranged by a Government Department.

*Disadvantages of the previous system of exempt work*

- 4.4.9.1 The previous exempt work rules allowed persons to continue being treated as incapable of work (and in particular to continue receiving incapacity benefit) if they were carrying out work which was (*inter alia*) designed to assist them to return to full-time work. However, it is widely acknowledged that that system was frequently exploited as a way for people to supplement their benefit income with earnings (albeit of up to only £67.50 per week or whatever the corresponding amount was at the time) for an indefinite period.

The fact that a person could continue to do exempt work indefinitely - though subject to a cap on both their earnings and the number of hours they could work in certain cases - acted as a disincentive for them to leave benefit and take up full-time work.

- 4.4.9.2 Problems also arose in obtaining verification from doctors that the work about to be undertaken was for the purpose of rehabilitation. Also, some people failed to obtain such approval from their doctor before they started work.

*Remedies of the disadvantages of the previous system*

- 4.10 The new permitted work provisions address these problems by -

- restricting the amount that people can earn for an indefinite period (where that work is not supported/supervised) to £22.50 per week; and
- removing the requirement to obtain a doctor's prior approval as to the suitability of the proposed work (although people will be required to notify the Department before commencing permitted work).

- 4.11 Regulation 4 corrects a reference in the Social Security (Incapacity Benefit) Regulations 1994 as they relate to persons aged less than 20 on 9<sup>th</sup> April 2001 who have been in receipt of severe disablement allowance.

- 4.12 Regulation 5 revokes regulation 7 of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995, which provided for a person to be deemed to be incapable of work notwithstanding that he was undertaking specified work for more than 16 hours in any week.

5. The Social Security (Paternity and Adoption) Amendment Regulations 2002 (S.I. 2002/2689) (regulations 1 and 3 only)

- 5.1 These Regulations amend the Jobseeker's Allowance Regulations 1996 ("the Jobseeker's Allowance Regulations").

- 5.2 Regulation 3(1) introduces the changes to be made to the Jobseeker's Allowance Regulations by these Regulations.

- 5.3 Regulation 3(2) explains that the terms "adoption leave" and "paternity leave" in the Jobseeker's Allowance Regulations shall have the same meanings as those provided for in regulation 9(4) of the Social Security Benefit (Computation of Earnings) Regulations 1996 (see regulation 2(3)(b) of the Social Security Benefit (Computation of Earnings) (Amendment) Regulations 2002, applied to the Island

by Schedule 4 to this Order).

5.4 Regulation 3(3) extends entitlement to jobseeker's allowance for joint-claim couples where the female member of the couple is (or has been) pregnant and her baby was expected to be born in a week which begins on or after 6<sup>th</sup> April 2003 to a period -

- beginning 11 weeks before her baby is (or was) due; and
- ending fifteen weeks after the date on which her pregnancy ends.

This is in line with the extension of the maximum period for which maternity allowance is payable with effect from 6<sup>th</sup> April 2003: from 18 weeks to 26 weeks.

5.5 Regulation 3(4) provides that a person on contractual paternity leave or adoption leave shall not be treated as engaged in remunerative work for the purposes of the Jobseeker's Allowance Regulations.

Since a person is not to be treated as available for employment for the purposes of jobseeker's allowance - and so may not qualify for benefit - if they are taking contractual paternity or adoption leave, this provision has effect only -

- where the claimant's partner is taking either type of leave; and
- the claimant is entitled to income-based jobseeker's allowance (contribution-based jobseeker's allowance not being affected by any work the claimant's partner might do).

5.6 Regulation 3(5) provides that remuneration received while on contractual paternity or adoption leave is not counted as earnings for the purposes of calculating entitlement to jobseeker's allowance.

Again, since a person cannot qualify for jobseeker's allowance while taking contractual paternity or adoption leave, regulation 3(5) only has effect where -

- the claimant's partner is taking such leave; and
- the claimant is entitled to income-based jobseeker's allowance (contribution-based jobseeker's allowance not being affected by any earnings the claimant's partner might have).

As a consequence, any remuneration received by the claimant's partner does not benefit from the weekly earnings disregard of £22.50, but instead is taken into account in full as income of the claimant in determining his entitlement to jobseeker's allowance.

5.7 Regulation 3(6) provides that any National Insurance contributions and half of any private pension contributions deducted from any remuneration which the partner of a person claiming income-based jobseeker's allowance receives while they are unable to work due to illness or maternity, or while they are taking paternity or adoption leave, is not taken into account in determining the entitlement of the claimant to income-based jobseeker's allowance.

6. The Social Security, Statutory Maternity Pay and Statutory Sick Pay (Miscellaneous Amendments) Regulations 2002 (S.I. 2002/2690) (regulations 1, 15 and 17 to 20 only)

6.1 These Regulations amend -

- the Social Security (Maternity Allowance) Regulations 1987 (“the Maternity Allowance Regulations”); and
- the Social Security (Maternity Allowance) (Earnings) Regulations 2000 (“the Maternity Allowance (Earnings) Regulations”),

in consequence of those provisions of Parts 1 and 4 of the Employment Act 2002 (of Parliament) relating to maternity allowance which were applied to the Isle of Man.

*Amendment of the Maternity Allowance Regulations*

6.2.1 Regulation 15 amends regulation 3 of the Maternity Allowance Regulations.

Section 35(2) of the Social Security Contributions and Benefits Act 1992 provides that, *other than in exceptional circumstances specified in Regulations*, maternity allowance shall be payable to a woman from the 11<sup>th</sup> week before the week in which her baby is due.

6.2.2 Regulation 3 of the Maternity Allowance Regulations set out what those exceptional circumstances were before the coming into force of the Employment Act 2002.

6.2.3.1 The first set of circumstances was where the child was born more than 11 weeks before being due. In such a case maternity allowance was payable from the week after the one in which the baby was born.

6.2.3.2 The second set of circumstances was where -

- the woman was not entitled to maternity allowance 11 weeks before her child was due - because she did not then fulfil the employment or earnings/contribution conditions for that benefit - but she subsequently became entitled to benefit before her child was due; and
- she had stopped work.

In those circumstances maternity allowance was payable from the week after she stopped work.

6.3 Regulation 15(3) now provides that a woman’s maternity allowance period shall begin from the 11<sup>th</sup> week before her baby is due - even if the first set of circumstances referred to in paragraph 6.2.3.1 arises.

6.4 Regulation 15(4) replaces the reference in regulation 3(2A) of the Maternity Allowance Regulations to the length of the maternity allowance period as being 18 weeks to one of 26 weeks, as provided for under the Employment Act 2002.

- 6.5 Regulation 15(2) replaces the outdated reference in regulation 3(1) of the Maternity Allowance Regulations to the Social Security Act 1986 with one to the current Social Security Contributions and Benefits Act 1992.

*Amendment of the Maternity Allowance (Earnings) Regulations*

- 6.6 Regulations 17 to 20 amend the Maternity Allowance (Earnings) Regulations.

6.7.1 Section 35(1)(c) of the Social Security Contributions and Benefits Act 1992 specifies that in order to qualify for maternity allowance (*inter alia*) a woman must have (or be treated as having) earnings on average of not less than the maternity allowance threshold for the year in which the beginning of her 66-week "test period" falls. It also provides that those average earnings are to be calculated in accordance with rules set out in section 35A of that Act.

6.7.2 That average earnings figure also determines at what rate a woman who qualifies for maternity allowance will be paid benefit: either at the standard rate or at a lesser (variable) rate.

6.7.3 Before the coming into force of the Employment Act 2002 a woman's average earnings were calculated on different bases, both for those women who were employed earners and those who were self-employed earners, as follows.

*Basis 1 for employed earners: maternity allowance to be payable at the standard rate*

6.8.1 Those women who had earnings of at least the lower earnings limit in each of any 13 weeks or more in their maternity allowance test period would qualify for maternity allowance at the *standard rate* (then £75 per week).

*Basis 2 for employed earners: maternity allowance to be payable at the variable rate (or at the standard rate exceptionally)*

6.8.2 Those women who did not qualify for maternity allowance under basis 1 could still qualify for maternity allowance if, in each of any consecutive 13 weeks in their maternity allowance test period, they had earnings of not less than the maternity allowance threshold (£30 per week).

6.8.3 Women who qualified for maternity allowance on this basis would receive maternity allowance at -

- 90% of their average earnings in those 13 consecutive weeks (i.e., at *the variable rate*); or
- at the standard rate of £75 per week if (exceptionally) 90% of their average earnings in those 13 consecutive weeks happened to be equal to or greater than £75.

(The test period referred to under both bases is the period of 66 weeks immediately preceding the week in which the child is due to be born.)

6.8.4 The Employment Act 2002 made the following changes -

- the standard rate of maternity allowance payable was increased from £75 per week to £100 per week;
- the new earnings test for all employed earners is whether or not they have average earnings of at least £30 per week in each of any 13 weeks in their maternity allowance test period;
- maternity allowance is now payable at the variable rate of 90% of average earnings or at the standard rate of maternity allowance of £100 (whichever is the lesser) based on the 13 weeks in their maternity allowance test period in which the woman's earnings were the highest; and
- there is now no link between maternity allowance and the lower earnings limit for National Insurance (NI) contributions.

6.8.5 The net earnings of people in self-employment are normally calculated on an annual basis and are found after deducting from trading turnover any revenue expenses and capital depreciation. This would be impractical for the purposes of maternity allowance. Instead, legislation provides that earnings from self-employment are to be determined in a different way for the purpose of establishing whether or not a woman qualifies for maternity allowance (and if so, at what rate).

*Basis 1 for self-employed earners: maternity allowance to be payable at the standard rate*

6.8.6.1 Prior to the Employment Act 2002, if a woman had paid Class 2 (self-employed) National Insurance contributions for any week of self-employment in her maternity allowance test period she would be treated as having earnings equal to the lower earnings limit in that week. So if she had paid at least 13 class 2 contributions in her test period, she would have qualified for maternity allowance at the standard rate (then £75 per week).

*Basis 2 for self-employed earners: maternity allowance to be payable at the variable rate*

6.8.6.2 Where a woman was not liable to pay a Class 2 contribution in respect of any week (and had not done so) - because she had been granted exception from liability because it was expected that her self-employed earnings would be less than the small earnings limit for that year - then she was instead treated as having earnings equal to the maternity allowance threshold in that week (£30). If she was so treated for at least 13 consecutive weeks in her maternity allowance test period, she would have qualified for maternity allowance, which would have been payable at a rate equal to 90% of the maternity allowance threshold, i.e. £27.

6.8.7 Under the Employment Act 2002, however, the first basis set out above is amended as a consequence of the fact that there is no longer any link between maternity allowance entitlement and the lower earnings limit. Instead women in self-employment who pay a Class 2 contribution for any week in their test period will be treated as having earnings in that week of £111.12 ( $100/90 \times £100$ ). This means that they would be entitled to maternity allowance at the standard rate (since 90% of their deemed average earnings of £111.12 = £100). Basis 2 remains the same for women in self-employment with low earnings.

6.9 Regulation 17 amends regulation 3(a) of the Maternity Allowance (Earnings) Regulations in respect of women in self-employment in line with the change referred to in paragraph 6.8.7.

6.10 Regulations 18, 19 and 20 amend regulations 4, 5 and 6 of those Regulations as a consequence of women's average earnings for the purposes of maternity allowance being calculated in all cases using the 13 weeks falling in their test period in which their earnings are highest.

## 7. The Social Security Benefit (Computation of Earnings) (Amendment) Regulations 2002 (S.I. 2002/2823)

7.1 These Regulations amend the Social Security Benefit (Computation of Earnings) Regulations 1996 ("the Computation of Earnings Regulations"). Those Regulations prescribe what type of payment constitutes earnings for the purposes of determining entitlement to benefits under Parts II to V of the Social Security Contributions and Benefits Act 1992 and what part of such a payment is to be treated as earnings for those purposes (e.g. earnings from employment less National Insurance contributions and income tax, etc.).

7.2 Regulation 1 provides for the citation and commencement of the Regulations.

7.3.1 Regulation 2 amends the Computation of Earnings Regulations.

7.3.2 Paragraph (1) introduces the amendments.

7.3.3 Paragraph (2) omits the definition of maternity leave from regulation 2(1) of the Computation of Earnings Regulations. That phrase only appears in regulation 9 of those Regulations.

7.3.4.1 Paragraph (3)(a) amends regulation 9 of the Computation of Earnings Regulations by substituting a new sub-paragraph (j) in paragraph (1) of that regulation.

7.3.4.2 The effect of that change is to extend the definition of earnings for the purpose of determining whether or not a person is entitled to a non income-related benefit to include not only remuneration paid to a person during a period of maternity leave or sickness absence but also any payment of remuneration during a period of "adoption leave" or "paternity leave", where the person has the right to return to work after taking such leave under the terms of their contract and the child in question was born (or was expected to be born) on or after 6<sup>th</sup> April 2003 or was matched with their adopter on or after that date.

7.3.4.3 Whilst in the Isle of Man people do not have any right to adoption leave or paternity leave under employment rights legislation (nor any right to receive payment from their employer in respect of such a period), some employers in the Island already provide for their employees to have a contractual employment right to take such leave. Extending the definition of earnings to include remuneration paid during periods of leave for either of those purposes ensures that persons taking such leave will not be adversely affected in respect of that period for future benefit entitlement.

7.4 Paragraph (3)(b) inserts definitions of “adoption leave” and “paternity leave” into regulation 9(4) of the Computation of Earnings Regulations and inserts there the definition of “maternity leave” transplanted from regulation 2(1) of those Regulations.

7.5 Paragraphs (4) and (5) amend regulations 7, 10 and 13 of and Schedule 3 to the Computation of Earnings Regulations as a consequence of the renaming of invalid care allowance as “carer's allowance”.

8. **The Employment Act 2002 (Commencement No. 3 and Transitional and Saving Provisions) Order 2002 (S.I. 2002/2866 (C.91)) (articles 1 and 3 and paragraphs 4 and 6 of Schedule 3 only)**

8.1 This Order makes transitional provision on the introduction of the changes to maternity allowance made by the Employment Act 2002 (in the form it was applied to in the Isle of Man).

8.2 Article 1 provides for the citation and interpretation of the Order and article 2 for its commencement.

8.3 Article 3 introduces the transitional and savings provisions provided for in Schedule 3 to the Order.

8.4 Paragraph 3 of Schedule 3 provides that -

- the extension of the maximum period for which maternity allowance is to be paid under the Employment Act 2002 - from 18 weeks to 26 weeks (found in section 18 of the Employment Act 2002); and
- the fact that women who pay a Class 2 contribution in respect of any week of self-employment in their maternity allowance test period will now be treated as having earnings equal to £111.12 for that week rather than equal to the lower earnings limit,

will only apply to those women who expect to give birth on or after 6th April 2003.

8.5.1 Paragraph 6 of Schedule 3 then provides that the new rate of maternity allowance - payable at the standard rate of £100 or 90% of the woman's average earnings (if lower) - will not apply -

- where the woman starts to receive maternity allowance before 6<sup>th</sup> April 2003; and

- at that time she was entitled to maternity allowance at the standard rate (then) of £75 a week; and
- she would be entitled to maternity allowance at a rate lower than £75 a week if her maternity allowance was recalculated under the rules introduced by the Employment Act 2002. (This would only arise where the woman had weekly earnings of between £75 and £83.33.)

8.5.2 Therefore, those women whose maternity allowance period straddles 6<sup>th</sup> April 2003 and who qualified for maternity allowance at the variable rate before 6<sup>th</sup> April 2003 will receive the same amount of maternity allowance after 5<sup>th</sup> April 2003.

8.5.3 However, where they received maternity allowance at the standard rate then in force of £75.00 per week, then they will receive maternity allowance -

- at the standard rate of £100 (if their earnings were on average at least £111.12 per week); or
- at the lower variable rate (if their earnings were between £75 and £111.12). By virtue of paragraph 6 of Schedule 3 however, they will not receive less than what they were receiving before 6<sup>th</sup> April 2003.

## 9. The Jobseeker's Allowance (Amendment) Regulations 2002 (S.I. 2002/3072)

9.1 These Regulations further amend the Jobseeker's Allowance Regulations 1996 ("the Jobseeker's Allowance Regulations").

9.2.1 Ordinarily, in order to qualify for jobseeker's allowance, it is a condition that a person is available for employment, which means that they are immediately willing and able to take up employed earner's employment (normally of at least 40 hours per week). However, legislation relating to jobseeker's allowance provides that in certain well-founded cases a person may restrict the terms and conditions on which they are available for employment but still be regarded as being available for employment for the purposes of entitlement to jobseeker's allowance.

9.2.2 Regulation 5 of the Jobseeker's Allowance Regulations specifies that one of those exceptional cases is where a person is engaged in voluntary work for which they receive either no payment or payment only for expenses incurred. Prior to these Regulations, a volunteer was regarded as being available for employment if they were willing and able to take up employment on being given 48 hours' notice.

9.3 Regulations 3 and 4 amend regulation 5 and regulation 12 of the Jobseeker's Allowance Regulations so that a person who is engaged in voluntary work shall now be treated as available for employment if -

- they are willing and able to commence employment on receipt of one week's notice (rather than 48 hours' notice); and
- they are available for interview in connection with an employment opportunity on receipt of 48 hours' notice (a new condition).

- 9.4 Regulation 5 amends regulation 15 of the Jobseeker's Allowance Regulations so that a person on paternity leave or adoption leave from their employment shall not be regarded as being available for employment for the purposes of jobseeker's allowance entitlement. (Those terms have the same meanings given to them as in regulation 9(4) of the Computation of Earnings Regulations.)
- 9.5 Regulation 6 makes a minor technical amendment to the Jobseeker's Allowance Regulations consequential on the amendments made by regulation 3(a).