



Statutory Document No. 153/03

## THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

### THE INCOME SUPPORT (GENERAL) (ISLE OF MAN) (AMENDMENT) (No. 2) REGULATIONS 2003

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

*Coming into operation on*      *1<sup>st</sup> May 2003*

In exercise of the powers conferred on the Department of Health and Social Security by sections 123 and 124 of the Social Security Contributions and Benefits Act 1992(a) (as that Act has effect in the Isle of Man(b)), and of all other enabling powers, the following Regulations are hereby made:-

#### Citation, commencement and interpretation

1. These Regulations may be cited as the Income Support (General) (Isle of Man) (Amendment) (No. 2) Regulations 2003 and shall come into operation on 1<sup>st</sup> May 2003.

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

#### Amendment of the Income Support Regulations

3. Amend the provisions of the Income Support Regulations referred to therein in accordance with the following regulations.

4. In regulation 2(1) (interpretation of the Income Support Regulations) -

(a) after the definition of "the Administration Act" insert -

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

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(a) 1992 c.4; (b) S.D. 505/94; (c) S.D. 26/00; (d) S.I. 1996/275; the definitions having been inserted into those Regulations by regulation 2(3)(b) of S.I. 2002/2823 (see Schedule 4 to the Social Security Legislation (Application) (No. 4) Order 2003).

(b) after the definition of "partner" insert -

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

5. In regulation 8(5) (persons treated as engaged in remunerative work) after "maternity leave" insert ", paternity leave or adoption leave".

6. In regulation 42(3)(b) (earnings of employed earners) after "maternity leave" insert ", paternity leave or adoption leave".

7. For regulation 50 (calculation of notional maintenance) substitute -

**"Calculation of notional maintenance**

50. (1) For the purposes of regulation 49(2) above, where in any week there is a person who is not a member of the claimant's family ("the absent parent") but who is liable to maintain any child or young person who is a member of the claimant's family under section 105 of the Administration Act, the claimant shall be treated as possessing income of an amount calculated in accordance with paragraph (2) or (3) (as the case may be) and paragraph (4) in respect of that week.

(2) Where the claimant is not married to the absent parent, the claimant shall be treated as possessing an amount of income equal to the sum of -

- (a) the amount applicable to the claimant under regulation 15(b) (personal allowance) in respect of such a child or young person; and
- (b) the amount of child benefit which would, but for this regulation, fall to be disregarded as income of the claimant under paragraph 4 of Schedule 7(a) (income other than earnings to be disregarded).

(3) Where the claimant is married to the absent parent, the claimant shall be treated as possessing an amount of income equal to the sum of -

- (a) the amounts applicable to the claimant under paragraphs (a) and (c) to (e) of regulation 15 (personal allowance in respect of the claimant and any partner of his, premiums and housing costs); and
- (b) the amount applicable to the claimant under regulation 15(b) (personal allowance) in respect of such a child or young person.

(4) Where the absent parent makes a payment of maintenance to the claimant (directly or indirectly) in respect of any week to which this regulation applies -

- (a) in respect of any child or young person who is a member of the claimant's family; and
- (b) where the claimant is married to the absent parent, in respect of the claimant,

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(a) Schedule 7 was substituted by regulation 32 of the Income Support (General) (Isle of Man) (Amendment) Regulations 2003.

which the absent parent is liable to make by virtue of section 105 of the Administration Act, the claimant shall be treated as possessing income of an amount calculated in accordance with paragraph (2) or (3) (as the case may be) less the amount of that maintenance paid or the sum of those amounts of maintenance paid (as the case may be) in respect of that week.”.

8. In Schedule 1 (prescribed categories of person) -

- (a) in sub-paragraph (b) of paragraph 12 (pregnancy) after the word “ends” add -

“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”; and

- (b) after that paragraph insert -

*“Paternity Leave*

12A.

- (1) A person who is entitled to, and is taking, paternity leave and who satisfies the condition set out in sub-paragraph (2) below.
- (2) The condition mentioned in sub-paragraph (1) is that the person is not entitled to any remuneration from his employer in respect of paternity leave for the period to which his claim for income support relates.
- (3) In this paragraph “remuneration” means payment of any kind.”.

9. In Schedule 4 (applicable amounts for persons in residential accommodation) -

- (a) for paragraph 2 substitute -

“2.

- (1) Notwithstanding the amounts specified in column (2) of the table above, an alternative applicable amount may be determined as being appropriate by the Department generally or in a particular case.
- (2) If -
- (a) paragraph (b) or (c) of column (1) of the table above applies to a person; but
- (b) the actual weekly charge for his accommodation exceeds the amount that would be applicable to him under column (2) of that table; and
- (c) he satisfies the condition in sub-paragraph (3),

then an amount of income support equal to the amount of attendance allowance or the care component of disability living allowance (as the case may be) to which an adjudication officer is satisfied that he would be entitled at the time but for his failing to satisfy the condition in section 65(1)(b) or 72(2)(a) (as the case may be) of the Contributions and Benefits Act shall be applicable to the claimant for a period ending on the earlier of -

- (d) the date that his entitlement to attendance allowance or the care component of disability living allowance (as the case may be) first arises in respect of the claim referred to; and
- (e) the date that an adjudication officer is no longer of the opinion that entitlement to attendance allowance or the care component of disability living allowance (as the case may be) will ultimately arise in respect of the claim referred to.

(3) The condition mentioned in sub-paragraph (2)(c) is that the claimant has made a claim for attendance allowance or the care component of disability living allowance under the Contributions and Benefits Act (or is treated as having done so) but is not entitled to that benefit solely because he fails to satisfy the condition in section 65(1)(b) or 72(2)(a) (as the case may be) of the Contributions and Benefits Act (qualifying periods to be completed before a person may become entitled to either of those benefits) and an adjudication officer is satisfied that entitlement to benefit in respect of that claim will arise -

- (a) in the case of a claim for attendance allowance, within a period of 6 months (inclusive) of the date the claim for that benefit was made (or is treated as having been made); and
- (b) in the case of a claim for the care component of disability living allowance, within a period of 3 months (inclusive) of the date the claim for that component of that benefit was made (or is treated as having been made).”;

(b) after paragraph 3 add -

“4. Where a claimant has entered residential accommodation and regulation 22(8) applies to him (claimant stays in residential accommodation on a trial basis to see if it suits his needs), the weekly amount applicable to him shall be the sum of -

- (a) the amount applicable to him under regulation 15(e) or 16(1)(e) (as the case may be) (applicable housing costs); and
- (b) the amounts applicable to him under paragraphs 1 and 3.”.

10. In Schedule 7(a) (sums to be disregarded in the calculation of income other than earnings) after paragraph 33 insert -

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(a) Schedule 7 was substituted by regulation 32 of the Income Support (General) (Isle of Man) (Amendment) Regulations 2003.

*“National Insurance contributions and pension contributions paid by a person who is unable to work through illness or maternity or 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.”.

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Made

11/03/2003



Minister for Health and Social Security

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### EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which shall come into effect on 1<sup>st</sup> May 2003, make miscellaneous amendments to the Income Support (General) (Isle of Man) Regulations 2000 (“the Income Support Regulations”), as described in the following paragraphs.

#### *Introduction*

2. Regulations 1 to 3 introduce the Regulations and their effect.

#### *Adoption leave and paternity leave*

3. Regulation 4 explains that the terms “adoption leave” and “paternity leave” in the Income Support Regulations shall have the same meanings as recently provided for in regulation 9(4) of the Computation of Earnings Regulations.

4. Provision is being made in the Income Support Regulations because, notwithstanding the fact that Isle of Man employment law is presently the subject of review by the Department of Trade and Industry, employers of some Isle of Man-resident employees may apply United Kingdom adoption leave and paternity leave provisions and Isle of Man Social Security law needs to cover that eventuality.
5. Regulation 5 provides that a person on paternity leave or adoption leave shall not be treated as engaged in remunerative work for the purposes of income support entitlement.
6. Regulation 6 provides that remuneration received while on paternity or adoption leave shall not be counted as earnings for the purposes of calculating entitlement to income support.

Because -

- a person may only qualify for income support by virtue of taking paternity leave if they are not entitled to any remuneration from their employer during that period; and
- a person may not qualify for income support by virtue of taking adoption leave,

then regulations 5 and 6 shall only have effect where the claimant's partner and not the claimant is taking paternity or adoption leave unless the claimant receives income support by virtue of some other circumstances but happens to be on paternity or adoption leave at the time.

- 7.1 Regulation 8(a) extends entitlement to income support where a woman is or has been pregnant and has an expected week of confinement beginning on or after 6<sup>th</sup> April 2003, to a period commencing 11 weeks before her expected week of confinement 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.
- 7.2 Regulation 8(b) extends entitlement to income support to a person who is taking paternity leave to which they are entitled under their contract of employment and who is not entitled to any remuneration from their employer during that period.
8. Regulation 10 inserts provision into the Income Support Regulations so that any National Insurance contributions and half of any private pension contributions deducted from the remuneration they (or more probably their partner) receive from their employer while they are unable to work due to illness or maternity, or while they are taking paternity leave or adoption leave, is not taken into account in determining their entitlement to income support.

#### *Notional maintenance*

- 9.1 Regulation 7 substitutes for the existing regulation 50 of the Income Support Regulations.

9.2 That regulation provides that -

- where a person ("the absent parent") is liable to maintain a child or young person who is a member of the claimant's family but fails to make any payment to the claimant; and
- the claimant fails to take steps to enforce that liability,

then the claimant shall be treated as receiving income from the absent parent of an amount equal to -

- where the person is not married to the absent parent, the income support personal allowance applicable in respect of, and the child benefit payable for, that child or young person;
- where the person is married to the absent parent, the personal allowance in respect of the claimant (and any partner of his), the premiums and the housing costs applicable to the claimant, and any personal allowance in respect of the child or young person.

9.3 The new version of regulation 50 makes it clear that where the absent parent makes a payment of maintenance to the claimant (directly or indirectly) in respect of a child or young person in the claimant's family whom they are liable to maintain and in respect of the claimant where the absent parent is still married to the claimant - but of less than the amount which they are liable to make - then the amount of income which the claimant is treated as receiving under regulation 50 shall be reduced by the amount of maintenance paid. This is in line with the current practice.

*Applicable amounts of income support for those in residential accommodation where the weekly charge for accommodation exceeds the maximum amount of income support which would otherwise be applicable*

10.1 Regulation 9 provides a substituted version of paragraph 2 of Schedule 4 to the Income Support Regulations and adds paragraph 4 to that Schedule, so that -

- the applicable amount of income support may be other than that which would normally be allowed; and
- where -
  - the charge for the residential accommodation in which a person is staying (other than in a DHSS home) exceeds the amount of income support which would otherwise normally be allowed; and
  - they have claimed attendance allowance or the care component of disability living allowance but have not yet satisfied the qualifying period for that benefit (of 6 months and 3 months respectively),

then during that qualifying period the applicable amount of their income support shall be increased by the amount of attendance allowance or the care component of disability living allowance to which they would be entitled if there were no such qualifying period; and

- where a person has entered residential accommodation on a trial basis, then their applicable amount of income support shall be made up of -
  - the weekly charge for the residential accommodation (subject to the relevant maximum);
  - an amount for their personal expenses; and
  - the housing costs applicable to them in respect of their other accommodation.

10.2 This clarificatory amendment effectively puts the legislation back to the same state it was prior to the recent Social Security Benefits Up-rating Order 2003. Persons entitlement to benefit will not be affected.