



Statutory Document No. 44/04

THE SOCIAL SECURITY ACT 2000

THE SOCIAL SECURITY LEGISLATION (APPLICATION) (No. 2) ORDER 2004

Approved by Tynwald

19th February 2004

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. 2) Order 2004 and shall, subject to section 2(1) of the Social Security Act 2000, 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 12th April 2004.

Interpretation

2. In this Order "the applied legislation" means the Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001(b).

(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(c), shall be construed as a reference to that legislation as it has effect in the Island.

(a) 2000 c.5; (b) S.I. 2001/892; (c) 1995 c.11.

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Application to the Island of the applied legislation

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

SCHEDULE

This Schedule sets out the text of regulations 1 to 4, 10 and 20 of the Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001 (S.I. 2001/892) 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

2001 No. 892

SOCIAL SECURITY

The Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001

Citation, commencement and effect

1. (1) These Regulations may be cited as the Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001.

(2) These Regulations shall come into force on *12th April 2004 and shall have effect in relation to claims which are made on or after 12th April 2004.*

(3) and (4) *Omitted.*

(5) *Regulation* 10 shall have effect in relation to award periods which are current on or after *12th April 2004.*

(6) *Omitted.*

Interpretation

2. In these Regulations -

"award periods" means award periods of *disability working allowance*;

"claims" means claims for *disability working allowance*;

"the Department" means the Department of Health and Social Security; and

"the Disability Working Allowance Regulations" means the Disability Working Allowance (General) Regulations 1991(a).

Amendments to the Disability Working Allowance Regulations

3. (1) Amend regulation 2 of the Disability Working Allowance Regulations (*interpretation*) as follows.

(a) S.I. 1991/2887.

(1A) After the definition of “the Act” insert the following definitions -

“adoption allowance” means an adoption allowance under section 171ZL of the Contributions and Benefits Act;

“adoption leave” has the same meaning as it has in regulation 9(4) of the Social Security Benefit (Computation of Earnings) Regulations 1996;”.

(2) Omitted.

(2A) After the definition of “concessionary payment” insert the following definition -

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;”.

(3) After the definition of “lone parent” insert the following definitions -

“maternity allowance” means a maternity allowance under section 35 of the Contributions and Benefits 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 Part III of the Employment Act 1991 (an Act of Tynwald);”.

(4) Omitted.

(5) Omitted.

4. (1) Amend regulation 6 of the Disability Working Allowance Regulations (*remunerative work*) as follows.

(2) In paragraph (4) -

(a) omitted;

(b) after sub-paragraph (c) add the following sub-paragraphs -

“(d) in the case of a woman on maternity leave at the date of the claim, the hours worked shall be calculated on the basis of a declaration made by her of the average hours worked per week prior to the commencement of her maternity leave; or

(e) in the case of a person on adoption leave at the date of the claim, the hours worked shall be calculated on the basis of a declaration made by him of the average hours worked per week prior to the commencement of his adoption leave”.

(3) In paragraph (5) after sub-paragraph (d) add the following sub-paragraphs -

“(e) cannot satisfy the requirements of sub-paragraph (a) or (b) above at the date of claim because she is on maternity leave at that date but -

(i) prior to the commencement of her maternity leave, she worked, on average, not less than 16 hours a week, and

(ii) she is entitled to a maternity allowance at the date of the claim; or

- (f) *cannot satisfy the requirements of sub-paragraph (a) or (b) above at the date of claim because he is on adoption leave at that date but -*
 - (i) *prior to the commencement of his adoption leave, he worked, on average, not less than 16 hours a week, and*
 - (ii) *he is entitled to an adoption allowance at the date of the claim".*

5. - 9. *Omitted.*

10. After regulation 54 insert the following regulation -

"Surrendering an award following *the birth of a child or the adoption of a child or young person*

54A. (1) An existing award of *disability working allowance* shall cease to have effect if the claimant or *his* partner elects, by notice to the *Department*, to surrender it following the birth of a child *or* the adoption of a child or young person.

(2) The award shall terminate with effect from -

- (a) the day on which the notice is given to the *Department*, if that day is a Monday, or
- (b) the Monday following the day on which the notice is given to the *Department*, if that day is other than a Monday."

Amendments to the Family Credit Regulations

11. - 18. *Omitted.*

Amendment to the Tax Credits (Payment by Employers) Regulations 1999

19. *Omitted.*

Amendment to the Social Security (Claims and Payments) Regulations 1987

20. (1) Amend the Social Security (Claims and Payments) Regulations 1987(a) as follows.

(2) In regulation 6(1C) add the following words after sub-paragraph (b) of that paragraph -

"unless the previous award of *family income supplement* or *disability working allowance* was terminated by virtue of regulation 65A of the *Family Income Supplement (General) Regulations 1998* or regulation 54A of the *Disability Working Allowance (General) Regulations 1991 (surrendering an award of benefit following the birth of a child or the adoption of a child or young person)*".

(a) S.I. 1987/1968.

Made

19/01/2004



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Social Security Act 2000 (an Act of Tynwald) 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 Social Security Act 2000 applies to the Social Security Contributions and Benefits Act 1992 and certain provisions of the Employment Act 2002 (both Acts of the United Kingdom Parliament) and to any statutory instrument made or having effect as if made under any of those provisions.
3. This Order applies to the Island the legislation referred to in article 2(1) of the Order, the provisions of which are summarised in the following paragraphs. The applied legislation extends the categories of person who can qualify for disability working allowance. The legislation comes into force on 12th April 2004.
4. **The Tax Credits (Miscellaneous Amendments No. 3) Regulations 2001 (S.I. 2001/892) (regulations 1 to 4, 10 and 20 only)**
 - 4.1 These Regulations amend the Disability Working Allowance (General) Regulations 1991 ("the Disability Working Allowance Regulations"). The amendments enable a person to claim, with effect from 12th April 2004, disability working allowance while they are on maternity leave or adoption leave in respect of a newly-born child or an adopted child or young person, provided that they also qualify for a maternity allowance or an adoption allowance at the time and they were working on average at least 16 hours per week before taking leave.
 - 4.2 Regulation 1 provides for the citation, commencement and effect of the regulations and regulation 2 provides for their interpretation.
 - 4.3 Regulation 3 inserts necessary definitions into regulation 2 of the Disability Working Allowance Regulations.

- 4.4.1 To qualify for a disability working allowance, a person must be engaged and normally engaged in remunerative work despite the fact that they have a physical or mental disability which puts them at a disadvantage in getting a job.
- 4.4.2 A person is treated by regulations as being engaged and normally engaged in remunerative work where -
- they work for at least 16 hours per week;
 - their work is done for (or in the expectation of) payment; and
 - they are employed when they claim benefit.

4.4.3 The person must also -

- have worked at least 16 hours in the week they claim disability working allowance or in either of the previous two weeks; or
- be expected to work by their employer for at least 16 hours in the week in which they claim benefit.

The work in question must also be work they normally do and be likely to last for at least 4 weeks after the week in which they make their claim.

4.4.4 Prior to these regulations, a person on maternity leave or adoption leave from work when they claimed disability working allowance would not qualify for benefit, because they would not satisfy the conditions in 4.4.3. However, regulation 4(3) amends regulation 6 of the Disability Working Allowance Regulations to ensure that such a person is treated as engaged in remunerative work for the purposes of disability working allowance, and so can qualify for benefit, if -

- before their period of leave began, they worked on average at least 16 hours per week; and
- they are entitled to maternity allowance or adoption allowance (as the case may be) at the time they claim benefit.

This second condition will restrict the period a person can remain entitled to disability working allowance while on such leave, because maternity allowance and adoption allowance are payable for a maximum of 26 weeks.

4.4.5 Regulation 4(2) provides that the question of whether a person works for at least 16 hours per week shall be determined on the basis of their declaration as to how many hours per week they were working on average before their leave began.

4.5 Regulation 10 inserts a new regulation into the Disability Working Allowance Regulations to provide that an existing award of disability working allowance shall come to an end if the claimant or their partner elects to surrender it after the birth of a child or the adoption of a child or young person. The person will then be able to make a new claim for disability working allowance, which will take into account their new circumstances by including an amount in respect of the newly-born child, or the child or young person being adopted.

- 4.6 Regulation 20 amends regulation 6 of the Social Security (Claims and Payments) Regulations 1987 to ensure that a claim which supersedes a claim that ends in the circumstances referred to above may still be made within one month of notification of intention to make a claim, notwithstanding that it is a renewal claim.