



Statutory Document No. 106/05

THE SOCIAL SECURITY ACT 2000

**THE SOCIAL SECURITY LEGISLATION (APPLICATION) ORDER 2005**

*Approved by Tynwald*                      *20<sup>th</sup> April 2005*

*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) Order 2005 and shall, subject to section 2(1) of the Social Security Act 2000, come into force as provided for in paragraphs (2) and (3).

(2) This Article and Articles 2 and 3 shall come into force forthwith.

(3) The applied legislation (as modified) shall come into force as follows -

- (a) the Child Benefit (General) (Amendment) Regulations 2004 (S.I. 2004/1244) shall come into force on 1<sup>st</sup> May 2005; and
- (b) the Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2005 (S.I. 2005/48) shall be deemed to have come into force on the same day as they did so in Great Britain.

**Interpretation**

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

- (a) the Child Benefit (General) (Amendment) Regulations 2004; and
- (b) the Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2005.

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(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.11) (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.

## SCHEDULE 1

This Schedule sets out the text of regulations 1 to 3 of the Child Benefit (General) (Amendment) Regulations 2004 (S.I. 2004/1244) 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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2004 No. 1244

### SOCIAL SECURITY

#### The Child Benefit (General) (Amendment) Regulations 2004

##### Citation, commencement and effect

1. (1) These Regulations may be cited as the Child Benefit (General) (Amendment) Regulations 2004 and shall come into force on 1<sup>st</sup> May *2005*.

(2) These Regulations shall cease to have effect on 1<sup>st</sup> May 2006 unless revoked with effect from an earlier date.

##### Amendment of the Child Benefit (General) Regulations 2003

2. The Child Benefit (General) Regulations 2003 (*S.I. 2003/403 see Schedule 2 to S.D. 794/03*) are amended as follows.

3. *After Part 6A (Crown servants posted overseas and others outside the Isle of Man to be treated as being in the Isle of Man) insert -*

#### **"PART 6AA**

##### ***Persons to be treated as not being in the Isle of Man***

##### ***Circumstances in which a person is treated as not being in the Isle of Man***

**33A.** A person shall be treated as not being in *the Isle of Man* for the purposes of section 146(2)(a) of the Contributions and Benefits Act where he -

- (a) makes a claim for child benefit on or after 1<sup>st</sup> May *2005*; and
- (b) does not have a right to reside in the *Isle of Man*."

4. *Omitted.*

## SCHEDULE 2

This Schedule sets out the text of the Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2005 (S.I. 2005/48) 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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2005 No. 48

### SOCIAL SECURITY

#### The Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2005

##### Citation and commencement

1. These Regulations may be cited as the Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2005 and shall *be deemed to have* come into force on 9<sup>th</sup> February 2005.

##### Amendment of the Regulations

2. (1) The Social Security Pensions (Home Responsibilities) Regulations 1994 (*S.I. 1994/704 see S.D. 268/94*) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1(2) (definitions) after the definition of "foster parent", insert -

"the General Regulations" means the Child Benefit (General) Regulations 2003;"

(3) In regulation 2 (preclusion from regular employment for the purpose of paragraph 5(7)(b) of Schedule 3 to the Act) after paragraph (4A), insert -

"(4B) For the purposes of paragraph (2)(a) above, in respect of the year 2004-2005 or any subsequent year, where -

- (a) a notice is given under regulation 15(1) of the General Regulations (modification of priority between persons entitled to child benefit) by the person who is entitled to child benefit;
- (b) that notice becomes effective in relation to any week falling in the first three months of a year;
- (c) as a result of that notice, child benefit becomes payable to another person ("the new payee") in priority to anyone else;
- (d) for each week of that year prior to that notice becoming effective, child benefit would, but for the provisions of regulation 15(2)(b) of those Regulations (*which prevents a person from relinquishing their priority of entitlement to child benefit with retrospective effect*), have been payable to the new payee; and

- (e) no other notice under regulation 15(1) of those Regulations was given in respect of the same child which became effective during any week referred to in sub-paragraph (d);

the new payee shall be treated as if he were entitled to child benefit and, accordingly, as if child benefit were payable to him for each week of the year prior to the notice becoming effective."

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Made 28<sup>th</sup> February 2005

*Stephen C Rodan*  
Minister for Health and Social Security

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### **EXPLANATORY NOTE**

(This 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 Act applies to the Social Security Contributions and Benefits Act 1992 (an Act of the United Kingdom Parliament having effect in the Isle of Man) and to any statutory instrument made (or having effect as if made) under that Act.
3. This Order applies to the Island the legislation referred to in Article 2(1) of the Order, which makes miscellaneous amendments to legislation relating to child benefit and home responsibilities protection for State pension entitlement. The legislation comes into force on various dates and its provisions are summarised in the following paragraphs.
4. **The Child Benefit (General) (Amendment) Regulations 2004 (S.I. 2004/1244)**
- 4.1 These Regulations amend the Child Benefit (General) Regulations 2003 ("the Child Benefit Regulations").

- 4.2 *Entitlement to child benefit includes the condition that a person is in the Isle of Man at the time*
- 4.2.1 Section 146(2)(a) of the Social Security Contributions and Benefits Act 1992 (as that Act of the United Kingdom Parliament has effect in the Isle of Man) provides that no person shall be entitled to child benefit unless they are in the Isle of Man in that week. Under subsection (3)(a) of section 146, regulations may prescribe circumstances in which a person is to be treated as being, or as not being, in the Isle of Man for those purposes.
- 4.3 *Amendments made by the Regulations*
- 4.3.1 Regulation 1 provides for the citation and commencement of the Regulations and that they shall cease to have effect on 1<sup>st</sup> May 2006 unless they are revoked from an earlier date.
- 4.3.2 Regulation 2 introduces the amendments the Regulations make to the Child Benefit Regulations.
- 4.3.3 Regulation 3 inserts new regulation 33A (as Part 6AA) into the Child Benefit Regulations. That regulation provides that where a person who does not have the legal right to reside in the Isle of Man claims child benefit in the Isle of Man on or after 1<sup>st</sup> May 2005, then they shall be treated as not being in the Isle of Man and so shall not qualify for benefit.
5. **The Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2005 (S.I. 2005/48)**
- 5.1 These Regulations amend the Social Security Pensions (Home Responsibilities) Regulations 1994 (“the Home Responsibilities Regulations”).
- 5.2 *Home responsibilities protection and child benefit entitlement*
- 5.2.1 People who have certain caring responsibilities which prevent them from working and paying National Insurance contributions can be helped to acquire entitlement to the basic element of a contributory retirement pension and certain bereavement benefits by taking advantage of “home responsibilities protection”. Each year a person qualifies for home responsibilities protection reduces the number of tax years in their working life for which they must satisfy the relevant contribution conditions for those benefits by one. In more limited circumstances home responsibilities protection may also help someone to qualify for the additional State pension (“S2P”).
- 5.2.2 In particular, people who are entitled to child benefit for a child under the age of 16 throughout a whole tax year will qualify for home responsibilities protection.
- 5.3 *Rules as to priority of entitlement to child benefit*
- 5.3.1 Rules exist determining who shall be entitled to child benefit in respect of particular child where more than one person would otherwise be entitled. For example, where the unmarried parents of a child live together, it shall be the mother of the child rather than the father who shall be entitled.
- 5.3.2 However, someone may relinquish their priority of entitlement to child benefit over someone else. This may be advantageous where (say) the mother of a child is in work and paying contributions whereas the father is out of work, looking after the child.
- 5.4 *Amendments made by the Regulations*
- 5.4.1 Regulation 2(2) amends regulation 1 of the Home Responsibilities Regulations by inserting into them a new definition of “the General Regulations”.

5.4.2 Regulation 2(3) amends regulation 2 of the Home Responsibilities Regulations by inserting new paragraph (4B) into them, which applies to tax years from 2004-2005 onwards.

5.4.3 Under new paragraph (4B) where –

- a person (“A”) tells the Department within the first 3 months of a tax year that they wish to relinquish their priority of entitlement to child benefit; and
- as a result of which, child benefit becomes payable to someone else (“B”),

then, despite the rule normally preventing A from giving up their priority retrospectively, B shall be treated as if child benefit had been paid to them rather than to A from the beginning of that tax year until A relinquished their priority and, provided the child in question is under the age of 16 at the time, B shall also qualify for home responsibilities protection during that period.