

1976 No. 965**SOCIAL SECURITY****The Child Benefit (General) Regulations 1976**

<i>Made</i> - - - -	<i>18th June 1976</i>
<i>Laid before Parliament</i>	<i>28th June 1976</i>
<i>Coming into Operation</i>	<i>8th August 1976</i>

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The Secretary of State for Social Services, in exercise of the powers conferred upon him by sections 2, 3, 9(2)(a), 17(5) and (6), 20(1) and (2)(c) and 24 of, and paragraphs 1 to 4 of Schedule 1 and paragraph 6 of Schedule 2 to, the Child Benefit Act 1975(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

PART I GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Benefit (General) Regulations 1976 and shall come into operation on 8th August 1976.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Child Benefit Act 1975;

▶“the Benefits Act” means the Social Security Contributions and Benefits Act 1992(b);

“the 1988 Act” means the Children Act 1989(c);

“the 1995 Act” means the Children (Scotland) Act 1995(d);◀

“the Social Security Act” means the Social Security Act 1975(e);

“the Taxes Act” means the Income and Corporation Taxes Act 1970(f);

▶“advanced education” means full-time education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business & Technician Education Council or the Scottish Vocational Education Council or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a national diploma of the Business & Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of sixth year studies;◀

“benefit” means child benefit under the Act;

“the Department” means the ▶Department of Social Security◀;

▶“full-time education” means—

(a) full-time education by attendance at a recognised educational

Defns. “the Benefit Act”, “the 1989 Act” and “the 1995 Act” inserted by reg. 2(a) of S.I. 2000/2891 as from 20.11.00.

Definition substituted by reg. 3 of S.I. 1987/357 as from 6.4.87.

Words in reg. 1(2) substituted by virtue of art. 3(4) of S.I. 1988/1843 as from 28.11.88.

Definition substituted by reg. 3 of S.I. 1987/357 as from 6.4.87.

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- (a) 1975 c. 61.
 (b) 1992 c. 4.
 (c) 1989 c. 41.
 (d) 1995 c. 36.
 (e) 1975 c. 14.
 (f) 1970 c. 10.

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establishment; or

- (b) full-time education, elsewhere than at a recognised educational establishment, where the education is recognised by the Secretary of State under section 2 of the Act; or
- (c) education treated as full-time under regulation 5;◀

▶▶“relevant training scheme”◀ means—

- (a) arrangements made under section 2 of the Employment and Training Act 1973(a) (functions of the Secretary of State) ▶or section 2 of the Enterprise and New Towns (Scotland) Act 1990◀(b);
- (b) arrangements made by the Secretary of State for persons enlisted in Her Majesty’s forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(c) (power of Defence Council to make regulations as to engagement of persons in regular forces);or
- (c) for the purposes of the application of Council Regulation (EEC) No. 1408/71(d), any corresponding provisions operated in another member State,

for purposes which include the training of persons who, at the beginning of their training, are under the age of 18◀

▶▶“remunerative work” means work of not less than 24 hours a week—

- (a) in respect of which payment is made; or
- (b) which is done in expectation of payment;◀

and other expressions have the same meanings as in the Act.

(3) References in these regulations to any condition being satisfied or any facts existing in a week shall, unless they relate to paragraph 1 of Schedule 1 to the Act (children in detention, care etc.) be construed as references to the condition being satisfied or the facts existing at the beginning of that week.

(4) Unless the context otherwise requires, any reference in these regulations to—

- (a) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;
- (b) any provision made by or contained in any enactment or instrument shall be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which may re-enact or replace it, with or without modification.

(5) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(e) shall apply for the purposes of the interpretation of these regulations as they apply for the purposes of the interpretation of an Act of Parliament.

(The reference to the Interpretation Act 1889 is to be construed, under the Interpretation Act 1978 (c. 30), s. 25(2), as a reference to the latter Act as it applies to Acts passed at the time of the reference.)

Special provisions as to contributions and expenditure in respect of a child

2.—(1) Where two or more persons are contributing to the cost of providing for the same child and the aggregate weekly amount of their contributions is, but the weekly amount of each of their individual contributions is not, of an amount not less than the weekly rate of child benefit which would be payable in respect of that child had the aggregate weekly amount of their contributions been contributed by one only of them, the aggregate weekly amount of their contributions shall be treated as having been ▶contributed◀ by that one of them as they shall by agreement nominate in writing or, in default of such agreement, by that one of them as the Secretary of State may, in his discretion, determine.

(a) 1973 c. 50; section 2 is substituted by the Employment Act 1988 (c. 19), section 25(1).

(b) 1990 c. 35.

(c) 1966 c. 45.

(d) O.J. No. L149, 5.7.1971; Regulations (EEC) No. 1408/71 and No. 574/72 were restated in amended form in Council Regulation (EEC) No. 2001/83 (O.J. No. L230, 22.8.1983) and further amended by Council Regulations (EEC) Nos. 1660/85 (O.J. No. L160, 20.6.1985); 1661/85 (O.J. No. L160, 20.6.1985); 3811/86 (O.J. No. L355, 16.12.1986); Commission Regulation (EEC) No. 513/86 (O.J. No. L51, 28.2.1986) and Articles 60 and 220 of, and Point 1, Part VIII of Annex 1 to the Act of Accession to the European Communities of Spain and Portugal.

(e) 1889 c. 63.

Words substituted and defn. of “relevant training scheme” inserted by reg. 2(b) of S.I. 2000/2891 as from 20.11.00.

Words inserted by art. 2 of, and Sch. to, S.I. 1991/387 as from 1.4.91.

Definition inserted in reg. 1(2) by reg. 2 of S.I. 1988/1227 as from 5.8.88.

Word substituted in reg. 2(1) by reg. 3(1) of S.I. 1976/1758 as from 22.11.76.

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(2) Where pursuant to a nomination or determination under paragraph (1) a person is awarded benefit in respect of a child, the nomination or determination shall cease to have effect in the week following that in which benefit was awarded to that person; and accordingly that person shall himself be required to satisfy the requirement in section 3(1)(b) of the Act, namely, that he is contributing to the cost of providing for the child at a weekly rate which is not less than the weekly rate of benefit payable in respect of the child.

(3) Where spouses are residing together a contribution made or expenditure incurred by one of them in respect of a child shall if they so agree, or in default of such agreement if the Secretary of State in his discretion so determines, be treated as made or incurred by the other.

Sub-para. 2A inserted
by reg. 6 of S.I. 2002/
1789 as from 28.10.02.

►Electronic elections etc.

2A. A person may give any nomination, election or notice which is required or may be given under regulations 2(a), 13 or 14 by means of an electronic communication in accordance with the provisions set out in Schedule 9C to the Social Security (Claims and Payments) Regulations 1987 (electronic communication).◀

Reg. 3 substituted by
reg. 3 of S.I. 2000/2891
as from 20.11.00.

►Child in residential accommodation in prescribed circumstances

3.—(1) The prescribed circumstances for the purposes of section 143(3)(c) of the Benefits Act (absence of child disregarded if in residential accommodation pursuant to certain provisions) are any circumstances in which a child is in residential accommodation pursuant to arrangements made under—

- (a) where the child has attained the age of 18, section 21 of the National Assistance Act 1948(b) or under section 12 of the Social Work (Scotland) Act 1968(c); or
- (b) the provisions specified in paragraph (2),

and such accommodation has been provided solely on account of that child's disability or because his health would be likely to be significantly impaired, or further impaired, unless such accommodation was provided

(2) The provisions specified for the purposes of paragraph (1)(b) are—

- (a) the National Health Service (Scotland) Act 1978 (d);
- (b) the Education (Scotland) Act 1980(e);
- (c) the Mental Health (Scotland) Act 1984(f);
- (d) the 1989 Act;
- (e) the 1995 Act.◀

Days of absence to be disregarded in determining whether a child is living with a person

4.—(1) The prescribed number of days under section 3(4) of the Act (number of days that may be disregarded by virtue of section 3(3)(b) or (c) of the Act in the case of any child not to exceed such number as may be prescribed unless the person claiming to be responsible for the child regularly incurs expenditure in respect of him) is 84 consecutive days calculated in accordance with paragraph (2).

(2) Two or more distinct relevant periods separated by one or more intervals

(a) Relevant amending instruments is S.I. 1976/1758.

(b) 1948 c. 29. Section 21 was amended by the Social Work (Scotland) Act 1968 (c. 49), section 95(2) and Schedule 9; the Local Government Act 1972 (c. 70), sections 195 and 272, Schedule 23, paragraph 2 and Schedule 30; the National Health Service Reorganisation Act 1973 (c. 32), section 58 and Schedule 5, paragraph 44; the Housing (Homeless Persons) Act 1977 (c. 48), section 20(4) and the Schedule; the Children Act 1989 (c. 41), section 108(5) and Schedule 13, paragraph 11(1); the National Health Service and Community Care Act 1990 (c. 19), sections 42(1) and 66(1) and (2) and Schedule 9, paragraph 5(1) to (3) and Schedule 10 and the Community Care (Residential Accommodation) Act 1998 (c. 19), section 1.

(c) 1968 c. 49. Section 12 was amended by the Community Care (Residential Accommodation) Act 1998 (c. 19), section 2.

(d) 1978 c. 29.

(e) 1980 c. 44.

(f) 1984 c. 36.

each not exceeding 28 days, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

(3) In paragraph (2) "relevant periods" means periods to which section 3(3)(b) of the Act (day of absence of a child from a person due solely to the child's undergoing medical or other treatment as an in-patient in a hospital or similar institution to be disregarded in determining whether that child is living with that person) applies; also periods to which section 3(3)(c) of the Act (day of absence of a child from a person due solely to the child's being in residential accommodation pursuant to arrangements made under certain enactments to be disregarded in determining whether that child is living with that person) applies.

►Circumstances in which education is to be treated as full-time education

5.—(1) For the purposes of the Act the education which is specified in paragraph (2) shall be treated as full-time education.

(2) The education referred to in paragraph (1) is education received by a person attending a course of education at a recognised educational establishment and in the pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds 12 hours per week, so however that in calculating the time spent in pursuit of the course, no account shall be taken of time occupied by meal breaks or spent on unsupervised study, whether undertaken on or off the premises of the educational establishment.◀

Reg. substituted by reg. 4 of S.I. 1987/357 as from 6.4.87.

Interruption of full-time education

6.►—(1) ◀◀Subject to paragraph (2)◀ in determining for the purposes of section 2(1)(b) of the Act (persons aged 16 but under 19 who are to be treated as children) whether a person is receiving full-time education ►not being advanced education◀, no account shall be taken of a period (whether beginning before or after the person concerned attains age 16) of up to 6 months of any interruption to the extent to which it is accepted that the interruption is attributable to a cause which is reasonable in the particular circumstances of the case; and where the interruption or its continuance is attributable to the illness or disability of mind or body of the person concerned, the period of 6 months may be extended for such further period as is accepted as being reasonable in the particular circumstances of the case.

(a)Reg. renumbered and words inserted by reg. 2(2) of S.I. 1977/534 as from 3.10.77.
(b)Words and reg. 6(2) substituted by reg. 2 of S.I. 1980/1045 as from 24.11.80.

See note (a) above.

►(2) The provisions of paragraph (1) shall not apply to any period of interruption of a person's full-time education which is likely to be followed immediately or which is followed immediately by a period during which:—

See note (b) above.

- (a) provision is made for the training of that person, and for an allowance to be payable to that person, under ►a relevant training scheme◀; or◀
- (b) he is receiving education by virtue of his employment or of any office held by him.◀

Reg. 6(2)(a) substituted by reg. 3 of S.I. 1988/1227 as from 5.8.88.

Words substituted in reg. 6(2)(a) by reg. 4 of S.I. 2000/2891 as from 20.11.00.

Reg. 7 substituted by reg. 3 of S.I. 1980/1045 as from 24.11.80.

Words inserted by reg. 2(1) of S.I. 1982/470 as from 31.5.82.

Words substituted and omitted and para. (1A) inserted by reg. 5 of S.I. 1987/357 as from 6.4.87.

►Circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child

7.—(1) ►Subject to ►paragraphs (1A) and (3)◀◀ a person who has ceased to receive full-time education not being advanced education shall, if:—

- (a) he is under the age of 16 when he so ceases ►◀, from the date on which he attains that age; or
- (b) he is 16 or over when he so ceases, from the date on which he so ceases,

continue to be treated as a child within section 2(1) of the Act up to and including the week including the terminal date or if he attains the age of 19 on or before that date up to and including the week including the last Monday before he attains that age.

►(1A) In the case of a person specified in either sub-paragraph (a) or (b) of paragraph (1) who had not attained compulsory school age when he ceased to receive full-time education, the terminal date in his case shall be that specified in sub-paragraph (a), or (b) or (c) of paragraph (2) whichever next follows the date on which he would have attained that age.◀

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- (2) In this regulation the “terminal date” means—
- (a) the first Monday in January; or
 - (b) the Monday following Easter Monday; or
 - (c) the first Monday in September,

whichever first occurs after the date on which the person’s said education ceased.◀

Para. inserted by reg. 5(3) of S.I. 1987/357 as from 6.4.87.

▶(2A) In this regulation “compulsory school age” means—

- (a) in England and Wales, the upper limit of compulsory school age as determined in accordance with section 9 of the Education Act 1962(a);
- (b) in Scotland, the upper limit of school age as determined in accordance with sections 31 and 33 of the Education (Scotland) Act 1980(b).◀

Para. added by reg. 2(2) of S.I. 1982/470 as from 31.5.82.

Words in reg. 7(3) substituted by reg. 4 of S.I. 1988/1227 as from 12.9.88.

Paras. added by reg. 5(4) of S.I. 1987/357 as from 6.4.87.

▶(3) Benefit shall not be payable to any person entitled to benefit in respect of a child by virtue of this regulation for any week in which that child is engaged ▶in remunerative work◀.◀

▶(4) Subject to paragraphs (3) and (6), a person whose name was entered as a candidate for any external examination in connection with full-time education not being advanced education, which he was receiving at that time, shall so long as his name continued to be so entered before ceasing to receive such education continue to be treated as a child for any week in the period specified in paragraph (5).

(5) Subject to paragraph (6), the period specified for the purposes of paragraph (4) is the period beginning with the date when that person ceased to receive such education ending with—

- (a) whichever of the dates in sub-paragraphs (a), (b) and (c) of paragraph (2) first occurs after the conclusion of the examination (or the last of them, if there are more than one), or
- (b) the expiry of the week which includes the last Monday before his 19th birthday,

whichever is the earlier.

(6) The period specified in paragraph (5) shall in the case of a person who has not attained the age of 16 when he so ceased, begin with the date on which he attained that age.◀

Reg. added by reg. 2(3) of S.I. 1977/534 as from 3.10.77.

▶**Exclusion from benefit of children aged 16 but under the age of 19 who are receiving advanced education**

7A. Benefit shall not be payable in respect of a child by virtue of section 2(1)(b) of the Act (person to be treated as a child for any week in which he is aged 16 but under the age of 19 and receiving full-time education) if that child is receiving advanced education.◀

Reg. 7B substituted by reg. 5 of S.I. 2000/2891 as from 20.11.00.

▶**Child receiving training under a relevant training scheme**

7B. Child benefit shall not be payable by virtue of section 142(1)(b) of the Benefits Act in respect of a child aged 16 or over for any week—

- (a) in which training for that child is being provided under a relevant training scheme; and
- (b) in respect of which an allowance may be paid under that scheme to that child.◀

Reg. 7C substituted by reg. (2)2 of S.I. 1996/1345 as from 7.10.96.

▶**Child receiving income support or income-based jobseeker’s allowance**

7C. Child benefit shall not be payable in respect of a child by virtue of section 142(1)(c) of the Social Security Contributions and Benefits Act 1992 for any week in respect of which that child receives income support or income-based jobseeker’s allowance within the meaning of section 1(4) of the Jobseekers Act 1995.◀

(a) 1962 c. 12 as amended by the Education (School-leaving Dates) Act 1976 (c. 5).
 (b) 1980 c. 44.

►Circumstances in which a person who has ceased to receive full-time education is to be treated as a child

7D.—(1) For the purposes of section 2(1)(aa) of the Act, in relation to a person under the age of 18 who is not receiving full-time education, the prescribed conditions are—

- (a) that person is registered for work or for training under ►a relevant training scheme◄ with—
 - (i) the ►Department for Education and Employment◄;
 - (ii) the Ministry of Defence;
 - (iii) in England and Wales, a person with whom the Secretary of State or, as the case may be, the National Assembly for Wales, has made arrangements under section 10(1) of the Employment and Training Act 1973 (a), or a local education authority to whom a direction has been given by the Secretary of State or the National Assembly for Wales under section 10(2) of that Act;
 - (iv) in Scotland, a person with whom the Scottish Ministers have made arrangements under section 10(1) of the Employment and Training Act 1973, or an education authority to whom a direction has been given by the Scottish Ministers under section 10(2) of that Act;◄
 - (v) for the purposes of applying Council Regulation (EEC) No. 1408/71, any corresponding body in another member State;
- (b) that person is not engaged in remunerative work;
- (c) the extension period which applies in the case of that person has not expired;
- (d) immediately before the extension period begins, the person who is responsible for him is entitled to benefit in respect of him without regard to this regulation; and
- (e) the person who is responsible for him has made a written request to the Department for the payment of benefit during the extension period.

(a) Words substituted in reg. 7D(1)(a), and para. (1)(a)(iii) and (iv) substituted, by reg. 7(a) and (b) of S.I. 2000/2891 as from 20.11.00. Words in reg. 7D (1)(a)(i) substituted by virtue of art. 6(5) of S.I. 1995/2986 as from 1.1.96.

See note (a) above.

(2) For the purposes of paragraph (1)(c), (d) and (e), the extension period—

- (a) begins on the first day of the week in which benefit would cease to be payable in respect of a person but for this regulation; and
- (b) where a person ceases to be treated as a child by virtue of section 2(1)(a) of the Act (meaning of child) or regulation 7 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child)—
 - (i) on or after the first Monday in September, but before the first Monday in January of the following year, ends on the last day of the week which falls immediately before the week which includes the first Monday in January in that year;
 - (ii) on or after the first Monday in January but before the Monday following Easter Monday in that year, ends on the last day of the week which falls 12 weeks after the week which includes the first Monday in January in that year;
 - (iii) at any other time of the year, ends on the last day of the week which falls 12 weeks after the week which includes the Monday following Easter Monday in that year.

(a) 1973 c. 50; section 10 was substituted by section 45 of the Trade Union Reform and Employment Rights Act 1993 (c. 19). The Secretary of State's functions under that Act in relation to Wales were transferred to the National Assembly for Wales by S.I. 1999/672.

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Words substituted in reg. 7D(3)(a) by reg. 7(a) of S.I. 2000/2891 as from 20.11.00.

Words inserted in reg. 7D(3)(b) by reg. 2(3) of S.I. 1996/1345 as from 7.10.96.

Words substituted by reg. 6 of S.I. 1980/1045 as from 24.11.80.
Words revoked by reg. 4 of S.I. 1982/470 as from 31.5.82.

Para. (1A) inserted and words substituted in para. (2) by reg. 2(2) of S.I. 1978/1275 as from 31.8.78.

Words inserted in reg. 9(1) by reg. 3(1)(a) of S.I. 1996/1803 as from 7.4.97.

(3) Child benefit shall not be payable by virtue of section 2(1)(aa) of the Act in respect of a child aged 16 or over for any week in which—

- (a) he is engaged in training under ►a relevant training scheme◄; or
- (b) he is entitled to income support ►or income-based jobseeker's allowance within the meaning of section 1(4) of the Jobseekers Act 1995◄◄.

Employed trainees

8.—(1) Where but for the provisions of paragraph 2(1) of Schedule 1 to the Act (a person not to be entitled to benefit by virtue of section 2(1)(b) of the Act in respect of a child if the education in question is received by that child by virtue of his employment or of any office held by him) a person would be entitled to benefit in respect of a child, that child shall not for any week be treated as receiving education by virtue of his employment or of any office held by him if that week

- (a) begins in what has been or is likely to be a continuous period of not less than 6 months in respect of which that child receives no financial support by virtue of his employment or any office held by him;►◄◄.

►(1A)Subject to the provisions of paragraph (1), a child who is receiving education in any week shall be treated as receiving such education by virtue of his employment or of any office held by him if, in consideration of that education, that child receives financial support in respect of that week by virtue of his employment or any office held by him.◄

(2) ►For the purposes of this regulation◄, any reimbursement of the cost of books, equipment, tuition, examination fees, travelling expenses and contributions under the Social Security Act is not to be treated as the receipt by the child of financial support.

Persons exempt from tax

9.—(1) For the purposes of paragraph 4 of Schedule 1 to the Act (except where regulations otherwise provide no person to be entitled to benefit in respect of a child if either that person or such other person as may be prescribed is exempt from tax under such provisions as may be prescribed) a person and, if that person is residing with his spouse ►or partner◄, his spouse ►or partner◄, shall not be entitled to benefit in respect of a child for any week in respect of which he or, where they are residing together, his spouse ►or partner◄ receives earnings or other emoluments which are exempted from United Kingdom income tax under—

- (a) section 367 or sections 372 to 374 of the Taxes Act (exemption from income tax etc. of visiting forces, staffs of allied headquarters and of Commonwealth and foreign representatives);
- (b) section 2 of, and Article 34 or 37 of Schedule 1 to, the Diplomatic Privileges Act 1964(a), or section 1 of, and Article 49 or 66 of Schedule 1 to, the Consular Relations Act 1968(b) (exemption from income tax etc. of members of diplomatic missions and their staffs etc. and of certain consular officers etc.);
- (c) section 4 of the Arbitration (International Investment Disputes) Act 1966(c) (status, immunities and privileges conferred by the Convention on the settlement of investment disputes between States and nationals of other States);
- (d) an Order in Council, statutory notice, or regulations, made or given under, or continuing to have effect by virtue of, any of the following enactments—

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- (a) 1964 c. 81.
 - (b) 1968 c. 18.
 - (c) 1966 c. 41.

- (i) the Bretton Woods Agreements Act 1945(a), section 3 (status, immunities and privileges of the International Monetary Fund, the International Bank for Reconstruction and Development and governors, executive directors, alternates, officers and employees of the Fund and Bank);
- (ii) the Taxes Act, section 497 (relief from double taxation);
- (iii) the Consular Relations Act 1968, section 3(1) (additional privileges and immunities accorded as a result of agreement) and section 12 (privileges and immunities in connection with Commonwealth and Irish establishments);
- (iv) the International Finance Corporation Act 1955(b), section 3 (status, immunities and privileges of the International Finance Corporation, its governors, directors, alternates, officers and employees);
- (v) the International Development Association Act 1960(c), section 3 (status, immunities and privileges of the Association, its governors, directors, alternates, officers and employees);
- (vi) the Diplomatic Privileges Act 1964, section 2(6) (certain privileges and immunities admitted by, or certain additional privileges and immunities granted by, the receiving State);
- (vii) the International Organisations Act 1968(d), sections 1, 2, 5 and 6 and paragraphs 9, 15, 21 and 23 of Schedule 1 (privileges and immunities of certain international organisations and their officers etc.);
- (viii) the European Communities Act 1972(e), section 2(2) (giving effect to *inter alia* the Protocol on the Privileges and Immunities of the European Communities—Articles 12 to 15, 20 and 21).

►(1A) For the purpose of paragraph (1), “partner” means any person who is living with another person as his spouse. ◀

Reg. 9(1A) inserted by reg. 3(1)(b) of S.I. 1996/1803 as from 7.4.97.

[Amendments to reg. 9(1) and reg. 9(1A) inserted by S.I. 1996/1803, shall not apply to a person entitled to child benefit on 6.4.97 and to whom reg. 9(1) of these regs. apply on 7.4.97 for so long as entitlement to child benefit continues.]

[Paragraphs (2) and (3) revoked by regulation 2(3) of S.I. 1984/337 as from 6.4.84.]

►(4) Paragraph (1) shall not affect the entitlement to benefit of any person who was so entitled under paragraphs (2) and (3) before their revocation. ◀

Para. inserted by reg. 2(2) of S.I. 1984/337 as from 6.4.84.

► Child living with another person as his spouse

Reg. 9A inserted by reg. 4(1) of S.I. 1996/1803 as from 7.4.97.

9A.—(1) Except in the circumstances specified in paragraph (2), benefit shall not be payable to any person in respect of a child for any week in which that child is living with another person as his spouse (referred to in this regulation as “the partner”) and that child—

- (a) is under the age of 18 and not receiving full-time education; or
- (b) is under the age of 19 and receiving full-time education.

(2) The specified circumstances are that—

- (a) the person to whom benefit is payable is not the partner of that child; and
- (b) the partner of that child is receiving full-time education. ◀

[Para. (1) of reg. 9A shall not apply to a person who was entitled to child benefit on 6.4.97 for so long as that entitlement continues.]

Married child

10. A person shall not be disentitled to benefit in respect of a married child by virtue of paragraph 3 of Schedule 1 to the Act (unless regulations otherwise provide no person to be entitled to benefit in respect of a married child) if—

- (a) that person is not the spouse of that child; and
- (b) that child is not residing with his spouse or, if he is, the spouse is receiving full-time education.

(a) 9 & 10 Geo. 6 c.19.

(b) 4 & 5 Eliz. 2 c.5.

(c) 1960 c.35.

(d) 1968 c.48.

(e) 1972 c.68.

Regs. 11–14

Reg. substituted by reg. 4(1) of S.I. 1978/540 as from 5.5.78.

► Circumstances in which persons absent from one another are or are not to be treated as residing together

11.—(1) Where a person is married, he and his spouse shall be treated for the purposes of the Act as residing together during any period of absence the one from the other falling before the date in that period of absence on which—

- (a) they are separated under an order of a court of competent jurisdiction or deed of separation; or
- (b) they have been absent the one from the other for at least 91 consecutive days,

and, for any part of that period of absence from one another from the date on which they are separated as specified in sub-paragraph (a) or have already been absent from one another as specified in sub-paragraph (b), the spouses shall be treated for the purposes of the Act as not residing together where such absence is likely to be permanent but as residing together where such absence is not likely to be permanent.

(2) Spouses shall be treated as residing together for the purposes of the Act during any period in which any absence the one from the other is by reason only of the fact that either of them is, or they both are, undergoing medical or other treatment as an in-patient in a hospital or similar institution whether such absence is temporary or not.

(3) Where two persons are parents of a child but not husband and wife they shall be treated as residing together for the purposes of the Act during any period of temporary absence the one from the other where they would be so treated but for such temporary absence. ◀

Polygamous marriages

12.—(1) A polygamous marriage shall, for the purposes of Part I of the Act and any regulations thereunder, be treated as having the same consequences as a monogamous marriage for any day, but only for any day, throughout which the polygamous marriage is in fact monogamous.

(2) In paragraph (1)—

- (a) “polygamous marriage” means a marriage celebrated under a law which, as it applies to the particular ceremony and to the parties thereto, permits polygamy;
- (b) “monogamous marriage” means a marriage celebrated under a law which does not permit polygamy;
- (c) a polygamous marriage is referred to as being in fact monogamous when neither party to it has any spouse additional to the other; and
- (d) the day on which a polygamous marriage is contracted, or on which it terminates for any reason, shall be treated as a day throughout which that marriage was in fact monogamous if at all times on that day after it was contracted, or as the case may be, before it terminated, it was in fact monogamous.

Prescribed manner of making an election under Schedule 2 to the Act

13.—(1) An election under Schedule 2 to the Act (any election under that Schedule to be made in the prescribed manner) shall be made by giving notice in writing to the Secretary of State at an office of the Department on a form approved by the Secretary of State or in such other manner being in writing as he may accept as sufficient in the circumstances of any particular case or class of cases.

(2) An election shall not be effective to confer entitlement to benefit in respect of a child for any week earlier than the week following that in which it is made if the earlier week is one in respect of which benefit has been paid in respect of that child and has not been required to be repaid or voluntarily repaid or recovered.

(3) Any election as above may be superseded by another subsequent election made in accordance with the foregoing provisions of this regulation.

Modification of priority provisions in Schedule 2 to the Act

14.—(1) Where a person has claimed benefit in respect of a child in respect of whom he would be entitled to benefit but for the fact that under the provisions of

Schedule 2 to the Act (priority between persons entitled) some other person is entitled to benefit in respect of that child in priority to him, if that other person gives the Secretary of State notice in writing at an office of the Department that he does not wish to have priority of title to benefit in respect of that child the provisions of the said Schedule 2 shall, subject to paragraph (2), have effect with the modification that that other person does not have such priority.

(2) A notice under paragraph (1) shall—

- (a) subject to sub-paragraph (b) below, have effect unless and until the said other person, subsequent to the giving of the notice, makes a further claim to benefit in respect of the said child; but
- (b) not be effective as respects any week in respect of which benefit in respect of the said child is paid to the said other person or to a person on his behalf.

► **Exception to section 6(3) of the Act**

14A.—(1) A person shall not be disentitled to benefit in respect of a child for any week by virtue of the provisions of section 6(3) of the Act (persons not entitled to benefit for any week if benefit already paid for that week to another person, whether or not that other person was entitled to it) if in respect of that week—

- (a) the determining authority has decided that the Secretary of State shall be entitled to recover benefit which has already been paid in respect of that child from a person in consequence of his misrepresentation of, or his failure to disclose, any material fact and, where that determining authority is one from whose decision an appeal lies, the time for appealing has expired and no appeal has been made; or
- (b) the benefit already paid to the other person has been voluntarily repaid to, or recovered by, the Department in a case where the determining authority either—
 - (i) has decided ► under section 9 or 10 of the Social Security Act 1998◄ that while there was no entitlement to benefit it is not recoverable, or
 - (ii) has decided ► under section 9 or 10 of the Social Security Act 1998◄ that there was no entitlement to benefit but has made no decision as to its recoverability.

► (2) In this regulation “determining authority” means, as the case may require, the Secretary of State, an appeal tribunal constituted under section 7 of the Social Security Act 1998, the Chief or any other Social Security Commissioner, or a tribunal consisting of any three or more such Commissioners constituted in accordance with section 16(7) of that Act.◄

►◄

Reg. 14A inserted by reg. 7 of S.I. 1988/1227 as from 5.8.88.

Words in reg. 14A(1)(b) substituted by Sch. 3, para. 1 to S.I. 1999/1958 as from 5.7.99.

Para. (2) substituted by Sch. 3, para. 2 to S.I. 1999/1958 as from 5.7.99.

Reg. 14B omitted by reg. 13(3) of S.I. 2000/636 as from 3.4.2000.

[Regulation 15 (set-off of benefit against arrears of non-contributory invalidity pension and of non-contributory invalidity pension against arrears of benefit) revoked by regulation 19(1) of, and Part I of the Schedule to, S.I. 1987/491 as from 6.4.87.]

Children in detention, care etc.

Words substituted by
reg. 4(2) of S.I. 1978/
540 as from 5.5.78.

16.—(1) ▶In its application to any case to which there also applies◀ paragraph 1 of Schedule 1 to the Act (exclusion from entitlement to benefit in respect of children in detention, care etc.) section 24(2) of the Act (subject to any provision made by regulations, references in the Act to any condition being satisfied or any facts existing in a week to be construed as references to the condition being satisfied or the facts existing at the beginning of that week) shall have effect as if for the words “at the beginning of that week” there were substituted the words “throughout any day in that week”.

(2) For the purposes of paragraph 1(a) of the said Schedule (child undergoing imprisonment or detention in legal custody) a child shall not be regarded as undergoing imprisonment or detention in legal custody in any week unless in connection with a charge brought or intended to be brought against him in criminal proceedings at the conclusion of those proceedings or, in the case of default of payment of a sum adjudged to be paid on conviction, in respect of such default, a court imposes a penalty upon him; and for those purposes—

- (a) “court” means any court in the United Kingdom, the Channel Islands or the Isle of Man; and
- (b) “penalty” means, in the case of any court in Great Britain—
 - (i) a sentence of imprisonment or borstal training;
 - (ii) a sentence of detention under section 53 of the Children and Young Persons Act 1933(**a**) or section 206 of the Criminal Procedure (Scotland) Act 1975(**b**); or
 - (iii) an order for detention in a remand centre, a detention centre or a young offenders institution, or made under or by virtue of section 198, 406 or 413 of the said Act of 1975,

and in the case of any court not in Great Britain, any comparable sentence or order.

(a) 1933 c.12.

(b) 1975 c.21.

(3) The said paragraph (1)(a) shall not apply to a child in respect of any week in which that child is liable to be detained in a hospital or similar institution in Great Britain as a person suffering from mental disorder unless, subsequent to the imposition of a penalty—

- (a) he has undergone detention in a prison, a detention centre, a borstal institution, a young offenders institution or, if not in Great Britain, any comparable place;
- (b) he was removed to the hospital or similar institution while still liable to be detained as a result of the said penalty and, in the case of a person who is liable to be detained in the hospital or similar institution by virtue of any provisions of the Mental health Act 1959(a) or the Mental Health (Scotland) Act 1960(b), a direction restricting his discharge has been given under either of those Acts and is still in force,

and in this paragraph—

- (i) “hospital or similar institution” means a place (not being a prison, a detention centre, a borstal institution, a young offenders institution, a remand centre or, if not in Great Britain, any comparable place and not being at or in any such place) in which persons suffering from mental disorders are or may be received for care or treatment;
- (ii) “mental disorder” shall be construed as including references to any mental disorder within the meaning of the said Act of 1959 or the said Act of 1960; and
- (iii) a person who is liable to be detained by virtue of any provision of the said Act of 1959 or the said Act of 1960 shall be treated as if a direction restricting his discharge had been given under those Acts if he is to be so treated for the purposes of either of them.

(4) Where, as respects a child in relation to whom each of the conditions specified in paragraph (3)(a) and (b) is satisfied, a certificate given by or on behalf of the Secretary of State for the Home Department or the Secretary of State for Scotland and furnished to the Secretary of State for Social Security shows the earliest date on which that child would have been expected to be discharged from

Word substituted by virtue of art. 3(4) of S.I. 1988/1843 as from 28.11.88.

(a) 1959 c.72.

(b) 1960 c.61.

detention pursuant to the said penalty if he had not been transferred to a hospital or similar institution, the said conditions shall be deemed not to be satisfied in relation to that child as from the day next following that date.

►(5) Subject to paragraph (5A), for the purposes of paragraph 1(c) of Schedule 9 to the Benefits Act (child in care of a local authority in such circumstances as may be prescribed), the prescribed circumstances are that the child is provided with, or placed in, accommodation under Part III of the 1989 Act or under Part II of the 1995 Act and the cost of that child's accommodation or maintenance is borne wholly or partly out of local authority funds or any other public funds.

(5A) Paragraph (5) shall only apply to the extent that the child is not in residential accommodation in the circumstances prescribed in regulation 3.◀

(6) A person, shall not be disentitled to benefit in respect of a child for any week by virtue of the fact that sub-paragraph (a), (b) or (c) of paragraph 1 of Schedule 1 to the Act (except where regulations otherwise provide no person to be entitled to benefit in respect of a child for any week if in that week the child is in detention, care etc.) applies to that child—

- (a) unless that week is the 9th or a subsequent week in a series of consecutive weeks in which any of those sub-paragraphs have applied to that child; or
- (b) notwithstanding that that week is the 9th or a subsequent week in a series of consecutive weeks in which any of those sub-paragraphs have applied to that child, if—
 - (i) that week is one in which falls the first day in a period of 7 consecutive days in which the child lives with that person for at least a part of the first day and throughout the following 6 days; or
 - (ii) that week is one in which falls the first day in a period of 7 consecutive days throughout which the child lives with that person, being a period of 7 consecutive days which immediately follows either a similar period of 7 consecutive days or the period of 7 consecutive days referred to in head (i) above, or
 - (iii) that week is one in which falls the day, or the first day in a period of less than 7 consecutive days, throughout which the child lives with that person, being a day or days which immediately follow the period of 7 consecutive days referred to in head (i) above or a period of 7 consecutive days referred to in head (ii).◀
 - (iv)◀ as at that week that person establishes that he is a person with whom the child, while the said sub-paragraph (a), (b) or (c) applies to him, ordinarily lives throughout at least one day in each week.

(7) For the purposes of paragraph (6), a person shall not be regarded as having a child living with him throughout any day or week unless he actually has that child living with him throughout that day or week.

►(8) For any day in any week in which a child is placed by a local authority in the home of any person in accordance with the provisions of—

- (a) the Arrangements for Placements of Children (General) Regulations 1991(a);
- (b) the Arrangements to Look After Children (Scotland) Regulations 1996 (b);
- (c) the Foster Placement (Children) Regulations 1991(c);
- (d) the Fostering of Children (Scotland) Regulations 1996(d);

and that local authority is making a payment in respect of either the child's accommodation or maintenance or both under section 23 of the 1989 Act or under section 26 of the 1995 Act, paragraph (6) shall not apply to that person in relation to that child.

Paras. (5) and (5A) substituted for para. (5) by reg. 8(2) of S.I. 2000/2891 as from 20.11.00.

Heads substituted in reg. 16(6)(b) and head (iv) (previously (iii)) renumbered by reg. 3(3) of S.I. 1983/3 as from 7.2.83.

Paras. (8) and (9) substituted by reg. 8(3) of S.I. 2000/2891 as from 20.11.00.

(a) S.I. 1991/890.
 (b) S.I. 1996/3262 (s. 252).
 (c) S.I. 1991/910.
 (d) S.I. 1996/3263 (s. 253).

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- (9) Paragraph (6) shall not apply in respect of any child who—
- (a) is being looked after by a local authority; and
 - (b) has been placed for adoption by that authority in the home of a person proposing to adopt him,

provided that a local authority is making a payment in respect of either the child's accommodation or maintenance or both under section 23 of the 1989 Act or under section 26 of the 1995 Act.◀

Para. (10) added to reg. 16 by reg. 6 of S.I. 1987/357 as from 6.4.87, except where there was title in the week before 6.4.87 and the other conditions remain satisfied (reg. 8 *ibid.*).

▶(10) For the purposes of paragraph (9), placing for adoption means placing for adoption in accordance with the Adoption Agencies Regulations 1983(a) or the Adoption Agencies (Scotland) Regulations 1984(b).◀

Right to benefit of voluntary organisations

17.—(1) Subject to the following provisions of this regulation, a voluntary organisation shall for the purposes of benefit be regarded as a person with whom a child is living, and the only person with whom that child is living, for any week in which that child is—

- (a) living in premises which are provided or managed by the voluntary organisation, being premises which are required to be registered with a Government Department or local authority or which are otherwise regulated under or by virtue of any enactment relating to England and Wales or Scotland; or
- ▶(b) placed by voluntary organisation in the home of any person in accordance with the provisions of the Foster Placement (Children) Regulations 1991 or the Fostering of Children (Scotland) Regulations 1996◀.

Para. (1)(b) substituted by reg. 9(a) of S.I. 2000/2891 as from 20.11.00.

(2) A voluntary organisation shall not be regarded as a person with whom a child is living in any week unless in that week the child is actually living with the voluntary organisation in accordance with the provisions of paragraph (1); so however that a voluntary organisation shall not be regarded as having ceased to have a child living with it by reason only of any temporary absence of that child

Words omitted and substituted by reg. 4(3) of S.I. 1978/540 as from 5.5.78.

▶◀—

- (a) if the child is undergoing medical or other treatment as an in-patient in a hospital, ▶until such absence has lasted◀ for more than 84 days; or
- (b) if the child is temporarily absent for any other reason, ▶until such absence has lasted◀ for more than 56 days.

(3) In calculating for the purposes of paragraph (2)(a) whether a child has been temporarily absent for not more than 84 days, two or more distinct periods of temporary absence separated by one or more intervals each not exceeding 28 days shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

(4) A voluntary organisation shall not be regarded as a person with whom a child is living in any week if in that week—

Para. (4)(a) substituted by reg. 9(b) of S.I. 2000/2891 as from 20.11.00.

- ▶(a) that child is in residential accommodation in the circumstances prescribed in regulation 3; or◀
- (b) paragraph 1 of Schedule 1 to the Act (exclusion from entitlement to benefit in respect of children in detention, care etc.) applies to that child.

(5) Where immediately before the week in which paragraph (1) applies to a child that child was living with a person who was then entitled to benefit in respect of it, the said paragraph (1) shall, while under section 3(2) of the Act that child would be treated as continuing to live with that person, have effect in

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- (a) S.I. 1983/1964.
 - (b) S.I. 1984/988.
 - (c) 1968 c. 46.
 - (d) 1947 c. 27.

relation to that person as if the words “and the only person with whom that child is living” were omitted.

(6) Section 3(1)(b) of the Act (person to be treated as responsible for a child in any week if he is contributing to the cost of providing for the child at a weekly rate not less than the weekly rate of benefit payable in respect of the child for that week) and regulation 16(6) shall not apply to a voluntary organisation.

►(7) Where a person makes a claim for child benefit in respect of a child on or after 24th November 1980, that person shall not be treated for the purposes of section 3(1)(b) of the Act as contributing to the cost of providing for that child for any week in which that child is boarded-out by a voluntary organisation in the home of that person in accordance with the provisions of the Boarding-Out of Children Regulations 1955 or ►the Boarding-out and Fostering of Children (Scotland) Regulations 1985(a)◄.◄

Para. added by reg. 7 of S.I. 1980/1045 as from 24.11.80.

Words substituted by reg. 7 of S.I. 1987/357 as from 6.4.87.

►Disapplication of section 13(1A) of the Administration Act

17A. Section 13(1A) of the Administration Act (requirement to state national insurance number) shall not apply to a claim for child benefit in respect of a child who is living with a voluntary organisation within the meaning of regulation 17 of these Regulations.◄

Reg. 17A inserted by reg. 2 of S.I. 2000/1082 as from 15.5.00.

PART II

TRANSITIONAL PROVISIONS

Definitions for the purposes of Part II of these Regulations

18. In this Part of these Regulations, “the Act of 1965” means the Family Allowances Act 1965(b) and “family allowance” means an allowance under the Act of 1965.

Transitional modification of section 11 of the Family Allowances Act 1965 and of regulations 12 and 13 of the Family Allowances (Qualifications) Regulations 1969

19. Section 11 of the Act of 1965 (child not to be treated as included in any family in certain circumstances) except subsections (6) and (8) of that section shall not apply to a child for any period which does not begin before 1st February 1977; and in a case where the absence of a child from a person does not begin before that date and is by reason of the fact that the child, whether residing in a residential establishment or boarded out under the Children Act 1948(c) or the Social Work (Scotland) Act 1968(d) or otherwise, has been kept in the care of a local authority under the said Act of 1948 or the said Act of 1968, regulations 12 and 13 of the Family Allowances (Qualifications) Regulations 1969(e) (rules for determining, *inter alia*, whether the absence of a child from a parent or a person other than a parent is temporary) shall have effect in relation to such an absence as if references in them to 4 weeks were references to 8 weeks.

Transitional provisions relating to apprentices under the Act of 1965

20.—(1) Where immediately before the appointed day a family allowance is payable in respect of a person aged 16 but under the age of 19 as being an apprentice within the meaning of the Act of 1965, then notwithstanding that that

(a) S.I. 1985/1799; these regulations revoked and replaced the Boarding-out of Children (Scotland) Regulations 1959 (S.I. 1959/835).

(b) 1965 c. 53.

(c) 1948 c. 43.

(d) 1968 c. 49.

(e) S.I. 1969/212 (1969 I, p. 543).

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person does not satisfy the requirement in section 2(1)(b) of the Act that he is receiving full-time education, he shall be treated as satisfying that requirement while he continues without a break to be an apprentice within the meaning of the Act of 1965; so however that the weekly rate of benefit payable in respect of him shall be the weekly rate at which family allowance was payable in respect of him immediately before the appointed day.

(2) Where in respect of a period ending immediately before the appointed day a person is entitled to a family allowance and the elder or eldest child included in the family of that person for the purposes of the Act of 1965 is an apprentice within the meaning of that Act, then for any period beginning with that day throughout which—

- (a) that child continues to be an apprentice within the meaning of the Act of 1965; and
- (b) that person would be entitled to benefit in respect of that child if that child satisfied the requirement in section 2(1)(b) of the Act that he is receiving full-time education,

benefit to which that person may be entitled in respect of a younger child in respect of whom he was entitled to a family allowance immediately before that day shall be payable at the weekly rate appropriate to a child who is not the only, elder or eldest child in respect of whom a person is entitled to benefit.

Transitional provisions relating to circumstances in which spouses are to be treated as residing otherwise than together

21.—(1) Where immediately before the appointed day a married person is entitled to a family allowance and for the purposes of the Act of 1965 he then fell to be regarded as living otherwise than together with his spouse, while he and that spouse would continue without a break to be regarded as living otherwise than together for the purposes of the Act of 1965 they shall be treated as residing otherwise than together for the purposes of benefit.

(2) Where for the purposes of section 16 of the Act (interim benefit for unmarried or separated parents with children) a person who was married—

- (a) fell to be regarded as not residing with his spouse immediately before the appointed day; and
- (b) was entitled to benefit under that section for a period ending immediately before that day,

then while without any break that person would continue to be regarded as not residing with his spouse for the purposes of that section he shall be treated as not residing with his spouse for the purposes of benefit.

Transitional provision relating to calculation of contributions and expenditure in respect of a child

22. Where in connection with benefit a question arises whether in relation to the week beginning with the appointed day a person is—

- (a) contributing to the cost of providing for a child at a weekly rate which is not less than the weekly rate of benefit payable in respect of the child for that week; or
- (b) regularly incurring expenditure in respect of a child,

and in determining that question account falls to be taken of contributions made or expenditure incurred by that person before the appointed day, that person shall be treated as having been so contributing or as so regularly incurring expenditure before the appointed day if immediately before that day—

- (i) he could be treated as satisfying in respect of the child the maintenance requirements in paragraph 1 of the Schedule to the Act of 1965; or
- (ii) that child was, or could have been, treated as included in his family for the purposes of the Act of 1965.

18th June 1976

David Ennals
Secretary of State for Social Services

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations contain miscellaneous provisions relating to the right to child benefit under the Child Benefit Act 1975 (Part I of the Regulations) and to the transition from family allowances under the Family Allowances Act 1965 and the interim benefit under section 16 of the 1975 Act to child benefit (Part II of the Regulations). The subject matter of each regulation is shown in the table of arrangement at the beginning of the Regulations.

The appointed day, the day on which child benefit first becomes payable, is 4th April 1977 (see the Child Benefit Act 1975 (Commencement No. 2) Order 1976 (S.I. 1976 No. 961)).