

SCHEDULES

SCHEDULE 8

Section 31(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Earnings to include payments for restrictive undertakings

- 1 In section 3 of the principal Act (meaning of “earnings”) after subsection (1C) there shall be inserted—

“(1D) For the purposes of this section there shall be treated as remuneration derived from an employed earner’s employment any sum paid to or for the benefit of an employed earner which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) otherwise than by virtue of subsection (4) of that section.”

Incapacity for work: work as councillor to be disregarded

- 2 (1) In determining for the purposes of—
- (a) any provisions of the principal Act which relate to sickness benefit or invalidity benefit, or
 - (b) section 15 or 16 of the Pensions Act (invalidity pensions for widows and widowers),
- whether any day is to be treated as a day of incapacity for work in relation to a person, there shall be disregarded any work which that person has undertaken, or is capable of undertaking, as a councillor.
- (2) Where the amount of councillor’s allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.
- (3) In determining whether a person satisfies the conditions of entitlement for an incapacity benefit, he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor, but
 - (b) would not have been so treated apart from this sub-paragraph.
- (4) In determining whether a person satisfies the conditions specified in subsections (2) (b) and (3)(b) of section 36 of the principal Act (severe disablement allowance) he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

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- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor, but
 - (b) would not have been so treated apart from this sub-paragraph.
- (5) In subsection (7) of that section (regulations) the following paragraph shall be inserted after paragraph (c)—
- “(cc) may provide that, where the amount of councillor’s allowance (within the meaning of paragraph 2 of Schedule 8 to the Social Security Act 1989) to which a person is entitled in respect of any week exceeds a prescribed sum, then, except in prescribed cases, an amount equal to the excess shall be deducted from the amount of any severe disablement allowance to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable; and”.
- (6) In this paragraph—
- “councillor” means—
 - (a) in relation to England and Wales, a member of a London borough council, a county council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and
 - (b) in relation to Scotland, a member of a regional, islands or district council;
 - “councillor’s allowance” means an allowance under or by virtue of—
 - (a) section 173, 177 or 177A of the Local Government Act 1972, other than any such allowance as is mentioned in section 173(4) of that Act (financial loss); or
 - (b) section 45, 49 or 49A of the Local Government (Scotland) Act 1973, other than any such allowance as is mentioned in section 45(4) of that Act (financial loss);
- and where any such allowance is paid otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the allowance;
- “incapacity benefit” means any of the following benefits—
 - (a) sickness benefit;
 - (b) invalidity benefit;
 - (c) an invalidity pension under section 15 or 16 of the Pensions Act;
 - “permitted earnings limit” means the amount specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983 (work of certain kinds to be disregarded where earnings do not exceed £27 per week);
 - “pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before the coming into force of this paragraph.
- (7) Any reference in this paragraph to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any of the bodies referred to in—
- (a) section 177(1) of the Local Government Act 1972, or
 - (b) section 49(1) or (1A) of the Local Government (Scotland) Act 1973,

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of which he is a member by virtue of his being a councillor.

Disallowance of days of unemployment by reference to termination payments

3 In section 17 of the principal Act (determination of days for which benefit is payable) after the subsection (2B) inserted by section 10(4) of this Act there shall be inserted—

“(2C) If regulations under paragraph (a) of subsection (2) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—

- (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
- (b) for calculating or estimating that person’s level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
- (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

(2D) In subsection (2C) above “post-employment period” means a period following the termination of a person’s employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.”

Certain benefits not payable for periods of entitlement before deemed date of entitlement

4 (1) In section 25 of that Act (widowed mother’s allowance) for subsection (3) there shall be substituted—

“(3) The widow shall not be entitled to the allowance for any period after she remarries, but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1)(a), (b) or (c) above.

(4) A widowed mother’s allowance shall not be payable—

- (a) for any period falling before the day on which the widow’s entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986; or
- (b) for any period during which she and a man to whom she is not married are living together as husband and wife.”

(2) In section 26 of that Act (widow’s pension) for subsection (3) there shall be substituted—

“(3) The widow shall not be entitled to the pension for any period after she remarries, but, subject to that, she shall continue to be entitled to it until she attains the age of 65.

(4) A widow’s pension shall not be payable—

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- (a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986;
 - (b) for any period for which she is entitled to a widowed mother's allowance; or
 - (c) for any period during which she and a man to whom she is not married are living together as husband and wife.”
- (3) In section 28 of that Act (Category A retirement pension) in subsection (1), for the words following paragraph (b) there shall be substituted the words—
- “and, subject to the provisions of this Act, he shall become so entitled on the day on which he attains pensionable age and his entitlement shall continue throughout his life.”
- (4) After that subsection there shall be inserted—
- “(1A) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986.”
- (5) In section 29 of that Act (Category B retirement pension) for subsection (9) there shall be substituted—
- “(9) Subject to the provisions of this Act, a woman's entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.
- (9A) A woman's Category B retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986.”
- (6) In section 39 of that Act (Category C and D retirement pensions etc.) for subsection (3) there shall be substituted—
- “(3) Entitlement to a Category C or Category D retirement pension shall continue throughout the pensioner's life.
- (3A) A Category C or Category D retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 51(1)(m) of the Social Security Act 1986.”

Entitlement to, and right to payment of, attendance allowance

- 5 (1) Section 35 of that Act (attendance allowance) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2), for the words “an attendance allowance is payable to any person” there shall be substituted the words “a person is entitled to an attendance allowance”.
- (3) In subsection (4)—

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- (a) for the words “An attendance allowance shall not be payable to a person” there shall be substituted the words “A person shall not be entitled to an attendance allowance”; and
 - (b) in paragraph (a)—
 - (i) for the words “the allowance is payable” there shall be substituted the words “the person to whom the claim relates is entitled to the allowance”; and
 - (ii) for the words “the person to whom the claim relates” there shall be substituted the words “that person”.
- (4) In subsection (4A), for the words “an attendance allowance to be paid to a person” there shall be substituted the words “a person to be entitled to an attendance allowance”.

Severe disablement allowance: daily rates, and deduction of statutory maternity pay

- 6 In section 36 of that Act (severe disablement allowance) after subsection (6) (weekly rate of benefit) there shall be inserted—

“(6A) The amount of severe disablement allowance payable for any relevant day shall be 1/6th of the weekly rate referred to in subsection (6) above.

(6B) In any case where—

- (a) a severe disablement allowance is payable to a woman in respect of one or more relevant days in a week, and
- (b) an amount of statutory maternity pay becomes payable to her on any day in that week,

the amount of the severe disablement allowance (including any increase for a child or adult dependant under section 49(a) below) so payable shall be reduced by the amount of the statutory maternity pay, and only the balance (if any) shall be payable.”

Dependency increases: fluctuating earnings

- 7 (1) In section 47 of that Act (invalidity pension: dependent relative) for paragraph (a) of subsection (1) there shall be substituted—

“(a) for any period during which either—

- (i) the pensioner and her husband are residing together and he does not have earnings at a weekly rate in excess of the amount specified in paragraph 1(a) of Part I of Schedule 4; or
- (ii) they are not residing together, he does not have earnings at a weekly rate in excess of the amount specified in Schedule 4, Part IV, column (3) and she is contributing to his maintenance at a weekly rate not less than the amount so specified.”

- (2) After section 84 of that Act (persons maintaining dependants etc.) there shall be inserted the following section—

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“84A Dependency increases: continuation of awards in cases of fluctuating earnings

(1) Where a beneficiary—

- (a) has been awarded a dependency increase, but
- (b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person (“the relevant earner”) exceed the amount of the increase or, as the case may be, some specified amount,

then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.

(2) In this section—

- (a) “dependency increase” means any of the increases in benefit provided for under Chapter III of Part II of this Act or section 64 or 66 above; and
- (b) the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this section, would be taken into account in determining whether the beneficiary is entitled to the increase in question for that week.”

Employment protection allocation

- 8 (1) In section 122 of that Act (power to alter contribution rates for purposes relating to the Redundancy Fund) subsection (5) (which requires corresponding amendment of the definition of “employment protection allocation” in section 134(4)) shall cease to have effect.
- (2) In section 167(2)(a) of that Act (negative, instead of affirmative, procedure for regulations relating to mariners, airmen etc made under section 129 in consequence of certain specified provisions) for the words “or 123A” there shall be substituted the words “123A or 134”.

Community charge benefit: miscellaneous amendments

- 9 (1) In section 165A(1) of the principal Act (claim necessary for entitlement to benefit) for paragraphs (a) and (b) there shall be substituted the following—
- “(a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under section 51, 51A or 51B of the Social Security Act 1986; or
 - (b) he is treated, by virtue of regulations under any of those sections, as making a claim for it.”
- (2) In section 20 of the 1986 Act, after subsection (8A) (entitlement to community charge benefit) there shall be inserted—
- “(8AA) A community charge benefit—
- (a) shall not be allowed to a person in respect of any day falling before the day on which his entitlement is to be regarded as commencing

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for that purpose by virtue of paragraph (kk) of section 51A(1) below;
but

- (b) may be allowed to him in respect of not more than six days immediately following the day on which his period of entitlement would otherwise come to an end, if his entitlement is to be regarded by virtue of that paragraph as not having ended for that purpose.”
- (3) In section 22B of that Act (polygamous marriages) in subsection (1) (which provides that the section applies whether or not either party has an additional spouse) after the word “where” there shall be inserted “(a)” and for the words “this section applies whether or not” there shall be substituted “(b)”.
- (4) In section 31D of that Act, for paragraph (c) of subsection (3) and for paragraph (b) of subsection (5) (which provide for the recovery of excess benefits by deduction from certain other income-related benefits) there shall be substituted the following paragraph—
“() deduction from prescribed benefits.”
- (5) In section 31F(3) of that Act (calculation of community charge benefit subsidy) in paragraph (a), for the words “for the year” there shall be substituted the words “during the year”.
- (6) In section 51A(1) of that Act (regulations relating to the administration of community charge benefit)—
(a) after paragraph (k) there shall be inserted—
“(kk) for the day on which entitlement to a benefit is to begin or end”; and
(b) after paragraph (o) there shall be inserted—
“(oo) in the case of any benefit (or part) which takes the form of a payment, for the circumstances and manner in which payment may be made to one person on behalf of another for any purpose, which may be to discharge, in whole or in part, an obligation of the person entitled to the benefit or any other person;”.

Transitional and consequential provision in regulations

- 10 (1) Section 166(3) of the principal Act and section 4(2) of the Old Cases Act (both of which contain general provisions about orders and regulations) shall have effect, and be taken always to have had effect, with the substitution for the words “or supplementary” of the words “, supplementary, consequential or transitional”.
- (2) In section 89 of the 1986 Act (transitional regulations in connection with coming into force of provisions of that Act) after subsection (1) there shall be inserted—
“(1A) Without prejudice to any other powers conferred on him, the Secretary of State—
(a) may, for the purpose of making provision with respect to persons falling within subsection (1B) below, modify or revoke any regulations made under this section if he considers it necessary or expedient to do so in consequence of, or otherwise in connection with, provisions of Acts, schemes, arrangements or other instruments coming into force after the passing of this Act; and

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- (b) may, for the purpose of consolidation, revoke and re-enact, with any modifications which he considers necessary or desirable, any regulations under this section.

(1B) The persons referred to in subsection (1A)(a) above are any persons—

- (a) to whom regulations under subsection (1) above apply; or
- (b) to whom regulations made under Part II of this Act relating to income support applied at any time before the passing of the Social Security Act 1989.”

Restriction on first up-rating of additional pension

11 In section 23 of the Pensions Act (annual increase of additional pensions in long-term benefits) after subsection (2) there shall be inserted—

“(2A) Where a person is entitled to a Category A retirement pension with an increase under section 9(3) above in the additional pension and the circumstances are such that—

- (a) the deceased spouse to whose contributions that increase is referable died during that part of the tax year which precedes the date on which the order under section 63 of the Social Security Act 1986 comes into force (“the initial up-rating order”), and
- (b) the deceased spouse’s final relevant year for the purposes of section 6 above is the tax year immediately preceding that in which the death occurred,

then, in determining the amount of the additional pension which falls to be increased by the initial up-rating order, so much of that pension as is attributable to the increase under section 9(3) above shall be disregarded.”

Consultations about subordinate legislation

12 (1) In section 61(2) of the Pensions Act—

- (a) after the words “purposes of” there shall be inserted “(a)”;
- (b) for the words “or of Part I” there shall be substituted the words “(b) Part I”; and
- (c) for the word “(other)” there shall be substituted the words “or
(c) Schedule 5 to the Social Security Act 1989,

(other”.

(2) In section 9 of the Social Security Act 1980 (the Social Security Advisory Committee) in subsection (7) (meaning of “relevant enactments” etc) in the words following the definition of “the relevant Northern Ireland enactments”—

- (a) after the words “shall be construed” there shall be inserted “(a)”;
- (b) for the words “and as excluding” there shall be substituted the words “(b) as excluding”; and
- (c) at the end there shall be added the words “and
(c) as excluding Part I of the Social Security Act 1986 and
Schedule 5 to the Social Security Act 1989.”

(3) In section 61 of the 1986 Act (consultations about subordinate legislation) for subsections (5) and (6) there shall be substituted—

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“(5) Except to the extent that this subsection is excluded by any enactment passed after this Act, nothing in any enactment shall require the reference to the Committee, the Council or the Board of any regulations contained in either—

- (a) a statutory instrument made before the end of the period of 6 months beginning with the coming into force of the enactment under which those regulations are made, or
- (b) a statutory instrument—
 - (i) which states that it contains only regulations made by virtue of, or consequential upon, a specified enactment, and
 - (ii) which is made before the end of the period of 6 months beginning with the coming into force of that specified enactment.”

(4) In subsection (10) of that section (definitions) after the definition of “the Council” there shall be added—

““regulations” means regulations under this Act or under any other enactment, whenever passed.”

(5) Section 10(2)(b) of the Social Security Act 1980 (which, in consequence of sub-paragraph (4) above, is superseded by section 61(1)(b) of the 1986 Act) shall cease to have effect.

(6) In Schedule 3 to that Act, in Part II (regulations not requiring prior submission to the committee) after paragraph 15A (statutory sick pay) there shall be inserted—

“Statutory maternity pay

15AA Regulations under paragraphs 1 to 5 of Schedule 4 to the Social Security Act 1986 and corresponding regulations applying to Northern Ireland.”

Regulations relating to home responsibilities

13 (1) Paragraph (a) of section 62(1) of the Pensions Act (affirmative, instead of negative, procedure for regulations under paragraph 5(6) of Schedule 3 to the principal Act relating to contributors who were precluded from regular employment by responsibilities at home) shall cease to have effect.

(2) The following regulations, namely—

- (a) the Social Security Pensions (Home Responsibilities and Graduated Retirement Benefit) Amendment Regulations 1981, and
- (b) the Social Security Pensions (Home Responsibilities and Miscellaneous Amendments) Amendment Regulations 1988,

shall have effect, and be taken always to have had effect, as if sub-paragraph (1) above had come into force immediately after the passing of the Pensions Act.

Statutory sick pay: trade disputes

14 In paragraph 7 of Schedule 1 to the 1982 Act (no disqualification for statutory sick pay by virtue of stoppage of work where employee shows he did not participate in, or have a direct interest in, the trade dispute) the words “participate in, or” shall cease to have effect.

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Family credit: up-rating

- 15 (1) In section 20 of the 1986 Act (income-related benefits) in subsection (6) (awards of family credit not to be affected by changes of circumstances) there shall be added at the end the words “or by any order under section 63 below.”
- (2) In section 63(13)(b) of that Act (transitional provision in connection with up-rating orders) for the word “shall” there shall be substituted the word “may”.

Income support: return to work after trade dispute

- 16 In section 23A of the 1986 Act (effect of person’s return to work after a trade dispute) in paragraph (c) (certain sums paid by way of income support to be recoverable in the prescribed manner) for the words “in the prescribed manner” there shall be substituted the words “in accordance with the regulations”.

Personal representatives to give information about estate

- 17 The following section shall be inserted after section 27 of the 1986 Act—

“27A Personal representatives to give information about the estate of a deceased beneficiary

- (1) The personal representatives of a person who was in receipt of income support or supplementary benefit at any time before his death shall provide the Secretary of State with such information as he may require relating to the assets and liabilities of that person’s estate.
- (2) If the personal representatives fail to supply any information within 28 days of being required to do so under subsection (1) above, then—
- (a) the appropriate court may, on the application of the Secretary of State, make an order directing them to supply that information within such time as may be specified in the order; and
 - (b) any such order may provide that all costs (or, in Scotland, expenses) of and incidental to the application shall be borne personally by any of the personal representatives.
- (3) In this section “the appropriate court” means—
- (a) in England and Wales, a county court;
 - (b) in Scotland, the sheriff;
- and any application to the sheriff under this section shall be made by summary application.”

Statutory maternity pay: employers to provide information relating to claims for certain other benefits

- 18 In Schedule 4 to the 1986 Act (supplementary provisions relating to statutory maternity pay) after paragraph 8 there shall be inserted—
- “8A (1) Regulations may make provision requiring an employer in prescribed circumstances to furnish information in connection with the making of a claim by a woman who is or has been his employee for—
- (a) a maternity allowance;
 - (b) sickness benefit;

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- (c) an invalidity pension; or
- (d) severe disablement allowance.

(2) Regulations under this paragraph shall prescribe—

- (a) the kind of information to be furnished in accordance with the regulations;
- (b) the person to whom information of the prescribed kind is to be furnished; and
- (c) the manner in which, and period within which, it is to be furnished.”

Joint citations

19 In the following enactments, for the words “the Social Security Acts 1975 to 1986” in each place where they occur there shall be substituted the words “the Social Security Acts 1975 to 1989”—

- (a) section 6(1) of the National Insurance Act 1974;
- (b) sections 9(7) and 18(1) of the Social Security Act 1980;
- (c) section 4(5) of the Forfeiture Act 1982;
- (d) section 5(1)(a) of the Social Security Act 1985;
- (e) paragraph (b) of the definition of “the benefit Acts” in section 84(1) of the 1986 Act.