



Social Security Act 1988

1988 CHAPTER 7

Attendance allowance

1 Attendance allowance

(1) The following paragraph shall be substituted for section 35(1)(b) of the Social Security Act 1975—

“(b) he is so severely disabled physically or mentally that, at night,—

(i) he requires from another person prolonged or repeated attention in connection with his bodily functions, or

(ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.”

(2) Section 35 of the Social Security Act 1975 shall have effect as amended by subsection (1) above only for the purposes—

(a) of any determination by the Attendance Allowance Board or a delegate appointed under paragraph 5 of Schedule 11 to that Act following a claim made after the passing of this Act;

(b) of any review by the Board or by such a delegate following an application made after the passing of this Act;

(c) of any review by the Board or by such a delegate under section 106(1)(a) or (bb) of the Social Security Act 1975 following a decision to conduct such a review made after the passing of this Act; and

(d) of any issue, revocation or alteration of a certificate relating to attendance allowance which takes place following a determination, review or appeal such as is mentioned in paragraph (a), (b) or (c) above.

*Industrial injuries***2 Introduction of retirement allowance and other provisions relating to industrial injuries benefit**

- (1) The following section shall be inserted after section 59A of the Social Security Act 1975—

“59B Retirement allowance

- (1) Subject to the provisions of this Part of this Act, a person who—
- (a) has attained pensionable age; and
 - (b) retires, or is deemed under section 27(5) above to have retired, from regular employment on or after the date on which this section comes into force; and
 - (c) was entitled to reduced earnings allowance (by virtue either of one award or of a number of awards) on the day immediately before he retired or is deemed to have retired,
- shall cease to be entitled to reduced earnings allowance as from the day on which he retires or is deemed to have retired and may be entitled to it again only if he makes an election in accordance with regulations under section 30(3) above.
- (2) If the day before a person ceases under subsection (1) above to be entitled to reduced earnings allowance he is entitled to the allowance (by virtue either of one award or of a number of awards) at a weekly rate or aggregate weekly rate of not less than £2.00, he shall be entitled to a benefit, to be known as “retirement allowance”.
- (3) Unless he makes an election in accordance with regulations under section 30(3) above, retirement allowance shall be payable to him (subject to any enactment contained in Chapter VI of this Part of this Act and to any regulations made under any such enactment) for life.
- (4) If he makes such an election, his entitlement to retirement allowance shall cease on the day on which the election takes effect.
- (5) Subject to subsection (6) below, the weekly rate of a beneficiary’s retirement allowance shall be—
- (a) 25 per cent. of the weekly rate of reduced earnings allowance to which he was entitled the day before he ceased to be entitled to that allowance; or
 - (b) 10 per cent. of the maximum rate of a disablement pension, whichever is the less.
- (6) If the weekly rate of the beneficiary’s retirement allowance—
- (a) would not be a whole number of pence; and
 - (b) would exceed the whole number of pence next below it by $\frac{1}{2}$ p or more,
- the beneficiary shall be entitled to retirement allowance at a rate equal to the next higher whole number of pence.”

- (2) In section 63 of the Social Security Act 1986 (annual up-rating of benefit)—

- (a) the following paragraph shall be inserted after subsection (1)(e)—
 - “(ee) falling to be calculated under section 59B(5) of that Act;”;
 - and
 - (b) in subsection (3)(b), for the words “or (d)” there shall be substituted the words “, (d) or (ee)”.
- (3) Section 59A(8) of the Social Security Act 1975 shall be modified in the case of a person who retired from regular employment before 6th April 1987 by the substitution for “140 per cent.” of “100 per cent.”.
- (4) A person who—
- (a) on 10th April 1988; or
 - (b) on the day before subsection (1) above comes into force,
- satisfies the conditions—
- (i) that he has attained pensionable age;
 - (ii) that he has retired from regular employment; and
 - (iii) that he is entitled to reduced earnings allowance,
- shall be entitled to that allowance for life.
- (5) In the case of any beneficiary who is entitled to reduced earnings allowance by virtue of subsection (4) above, the allowance shall be payable, subject to any enactment contained in Chapter VI of Part II of the Social Security Act 1975 and to any regulations made under any such enactment, at the weekly rate at which it was payable to the beneficiary on the relevant date or would have been payable to him on that date but for any such enactment or regulations.
- (6) For a beneficiary who is entitled to reduced earnings allowance by virtue of subsection (4)(a) above the relevant date is 10th April 1988.
- (7) For a beneficiary who is entitled to it by virtue of subsection (4)(b) above the relevant date is the day before subsection (1) above came into force.
- (8) After subsection (1) above comes into force no person over pensionable age and retired from regular employment shall be entitled to reduced earnings allowance otherwise than under subsection (4) above.
- (9) References in subsections (3), (4) and (8) above to a person who has retired from regular employment include references—
- (a) to a person who under subsection (3) of section 27 of the Social Security Act 1975 is treated for the purposes of that Act as having retired from regular employment; and
 - (b) to a person who under subsection (5) of that section is deemed for those purposes to have retired from it.
- (10) Schedule 1 to this Act shall have effect in relation to industrial death benefit.

Family credit

3 Family credit

In section 20 of the Social Security Act 1986—

- (a) the following subsection shall be inserted after subsection (5)—

Status: This is the original version (as it was originally enacted).

- “(5A) In subsection (5) above “the applicable amount” means the applicable amount at such date as may be prescribed;” and
- (b) in subsection (6) the words “, beginning with the week in which a claim for it is made or is treated as made” shall cease to have effect.

Young persons

4 Income support and child benefit

- (1) In paragraph (a) of subsection (3) of section 20 of the Social Security Act 1986 (by virtue of which a person in Great Britain is entitled to income support if he is of or over the age of 16) for “16” there shall be substituted “18 or, in prescribed circumstances and for a prescribed period, of or over the age of 16 or he is a person to whom subsection (4A) below applies;”.
- (2) The following subsections shall be inserted after subsection (4) of that section—
- “(4A) If it appears to the Secretary of State—
- (a) that a person of or over the age of 16 but under the age of 18 is not entitled to income support; and
- (b) that severe hardship will result to that person unless income support is paid to him,
- the Secretary of State may direct that this subsection shall apply to him.
- (4B) Any such direction may specify a period for which subsection (4A) above is to apply to the person to whom the direction relates.
- (4C) The person to whom such a direction relates shall be treated in accordance with it, but if at any time it appears to the Secretary of State that there has been a change of circumstances as a result of which failure to receive income support need no longer result in severe hardship to him, he may revoke the direction.
- (4D) The Secretary of State may also revoke the direction if—
- (a) he is satisfied that it was given in ignorance of some material fact or was based on a mistake as to some material fact; and
- (b) he considers that but for his ignorance or mistake he would not have determined that failure to receive income support would result in severe hardship.
- (4E) Where—
- (a) a direction under subsection (4A) above is revoked; and
- (b) it is determined by an adjudication officer that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure a payment of income support has been made during the relevant period to the person to whom the direction related,
- an adjudication officer may determine that the Secretary of State shall be entitled to recover the amount of the payment.

- (4F) Section 53(2) and (5) to (9) below apply to income support recoverable under subsection (4E) above as they apply to income support recoverable under section 53(1) below.
- (4G) The other provisions of section 53 below do not apply to income support recoverable under subsection (4E) above.
- (4H) In subsection (4E) above “the relevant period” means—
- (a) if the revocation is under subsection (4C) above, the period beginning with the date of the change of circumstances and ending with the date of the revocation; and
 - (b) if the revocation is under subsection (4D) above, the period during which the direction was in force.
- (4J) Where a direction under subsection (4A) above is revoked, the Secretary of State may certify whether there has been misrepresentation of a material fact or failure to disclose a material fact.
- (4K) If he certifies that there has been such misrepresentation or failure to disclose, he may also certify—
- (a) who made the misrepresentation or failed to make the disclosure; and
 - (b) whether or not a payment of income support has been made in consequence of the misrepresentation or failure.
- (4L) If he certifies that a payment has been made, he may certify the period during which income support would not have been paid but for the misrepresentation or failure to disclose.
- (4M) A certificate under this section shall be conclusive for the purposes of this section as to any matter certified.
- (4N) In subsections (3)(a) and (4B) above “period” includes—
- (a) a period of a determinate length;
 - (b) a period defined by reference to the happening of a future event; and
 - (c) a period of a determinate length but subject to earlier determination upon the happening of a future event.”
- (3) The following paragraph shall be inserted after subsection (1)(a) of section 2 of the Child Benefit Act 1975—
- “(aa) he is under the age of eighteen and not receiving full-time education and prescribed conditions are satisfied in relation to him; or”.
- (4) In section 4(1) of that Act, after the word “above” there shall be inserted the words “or by virtue of section 2(1)(aa) above and regulations made under that paragraph”.

5 Annual review of child benefit

The Secretary of State shall review the level of child benefit in April of each year, taking account of increases in the Retail Price Index and other relevant external factors.

*Short-term benefits***6 Contribution conditions for short-term benefits**

- (1) Schedule 3 to the Social Security Act 1975 shall be amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (2)(a), for the words “in respect of any one year have actually paid contributions of a relevant class,” there shall be substituted the words “have actually paid contributions of a relevant class—
 - (i) in the case of unemployment benefit, in respect of one of the last two complete years before the beginning of the relevant benefit year; and
 - (ii) in the case of sickness benefit, in respect of any one year,”; and
 - (b) in sub-paragraph (3)—
 - (i) in paragraph (a), for the words “relevant past year” there shall be substituted the words “last two complete years before the beginning of the relevant benefit year”; and
 - (ii) in paragraph (b), for the words “than that” there shall be substituted the words “in each of those years than the”.
- (3) In paragraph 8(3), the words from “paragraph (b)”, in the first place where those words occur, to “of”, in the fourth place where it occurs, shall cease to have effect.
- (4) Paragraph 9 shall cease to have effect.

7 Unemployment benefit and occupational pension

In section 5 of the Social Security (No. 2) Act 1980 (which provides for the reduction of unemployment benefit for a person who has attained the age of 60 if payments by way of occupational pension exceeding a prescribed sum are made to him for any week)—

- (a) in subsections (1) and (6), for “60” there shall be substituted “55”; and
- (b) in subsection (6), for “sixtieth” there shall be substituted “fifty-fifth”.

*Emergency payments***8 Emergency payments by local authorities and other bodies**

- (1) The Secretary of State may make arrangements—
- (a) with a local authority to which this section applies; or
 - (b) with any other body,
- for the making on his behalf by members of the staff of any such authority or body of payments on account of benefits to which section 51 of the Social Security Act 1986 applies in circumstances corresponding to those in which the Secretary of State himself has the power to make such payments under section 51(1)(t) of that Act; and a local authority to which this section applies shall have power to enter into any such arrangements.

- (2) A payment under any such arrangements shall be treated for the purposes of any Act of Parliament or instrument made under an Act of Parliament as if it had been made by the Secretary of State.
- (3) The Secretary of State shall repay a local authority or other body such amount as he determines to be the reasonable administrative expenses incurred by the authority or body in making payments in accordance with arrangements under this section.
- (4) The local authorities to which this section applies are—
 - (a) a local authority as defined by section 270(1) of the Local Government Act 1972, other than a parish or community council;
 - (b) the Common Council of the City of London; and
 - (c) a local authority as defined in section 235(1) of the Local Government (Scotland) Act 1973.

Earnings factors etc.

9 Earnings factors and transfer values

Part I of Schedule 2 to this Act shall have effect in relation to the calculation of earnings factors and of guaranteed minimum pensions partly attributable to earnings factors for the period before the tax year 1988-1989 and Part II shall have effect in relation to transfer values.

10 Increase and reduction of benefit by reference to earnings

- (1) Increases and reductions of benefit under the Social Security Act 1975 which in pursuance of any enactment to which this section applies fall to be calculated by reference to a person's earnings shall be calculated by reference to earnings from employment or to earnings from payments by way of occupational pension or to earnings of both descriptions, if the person is entitled to them.
- (2) This section applies to sections 41, 44 to 47, 64 and 66 of the Social Security Act 1975.

The social fund

11 Amendments relating to the social fund

Schedule 3 to this Act shall have effect to make amendments of enactments relating to the social fund.

Up-rating

12 Up-rating Orders

- (1) It is hereby declared that the orders to which this section applies were validly made and that the Secretary of State is under no duty to revoke them.
- (2) The orders to which this section applies are—
 - (a) the Social Security Benefits Up-rating (No. 2) Order 1987;

Status: This is the original version (as it was originally enacted).

- (b) the Occupational Pensions (Revaluation) Order 1987.

Welfare foods

13 Schemes for distribution etc. of welfare foods

- (1) In this section “welfare food” means liquid cows' milk, dried milks, vitamin tablets and vitamin drops.
- (2) The Secretary of State may by order add any food to or remove any food from the foods referred to in subsection (1) above.
- (3) The Secretary of State may by regulations make a scheme, or a number of schemes—
- (a) for the provision of welfare food; and
 - (b) for the making of payments to such persons as may be determined by or under the scheme who are entitled to receive a welfare food but who—
 - (i) do not receive it;
 - (ii) do not receive the amount to which they are so entitled.
- (4) Any such regulations—
- (a) may provide for the distribution or disposal, by or on behalf of the Secretary of State, of any welfare food, and the use or consumption of any such food;
 - (b) may control any prices to be charged for any welfare food provided under the scheme;
 - (c) may provide for an amount to be reimbursed by the Secretary of State to a supplier of any welfare food under the scheme;
 - (d) may provide for requiring such information or evidence as may be reasonably needed in connection with the administration of the scheme to be furnished by such persons as may be specified to an officer of the Secretary of State duly authorised in that behalf, on production by the officer (if required to do so) of his authority; and
 - (e) may direct that specified enactments relating to the administration of benefit under the Social Security Act 1975 (including enactments relating to offences and criminal proceedings) shall have effect for the purpose of the administration of the scheme, subject to any modifications specified in the regulations,
- and in paragraph (e) above “modifications” includes additions, omissions and amendments.
- (5) The power conferred by subsection (4) above to make regulations requiring a person to produce information or evidence shall include power to make regulations providing that—
- (a) if documents specified by an officer are produced—
 - (i) he may take copies of them or extracts from them; and
 - (ii) he may require that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them; and
 - (b) if documents so specified are not produced, he may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

- (6) A statutory instrument containing an order under subsection (2) above shall not be made unless a draft of the instrument has been laid before Parliament and has been approved by a resolution of each House of Parliament.
- (7) A statutory instrument containing regulations under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Section 166(1) to (3A) of the Social Security Act 1975 (extent of powers) shall apply to powers conferred by this section to make regulations or orders as they apply to any power to make regulations or orders conferred by that Act but as if for references to that Act there were substituted references to this section.

Remission of Health Service charges and payment of travelling expenses

14 National Health Service—remission of charges and payment of travelling expenses

- (1) The following section shall be inserted after section 83 of the National Health Service Act 1977—

“83A Remission and repayment of charges and payment of travelling expenses

- (1) Regulations may provide in relation to prescribed descriptions of persons—
 - (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 77(1) above, section 78(1) above or section 79 above; and
 - (b) for the payment by the Secretary of State in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act.
- (2) Descriptions of persons may be prescribed for the purposes of paragraph (a) or (b) of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
 - (a) their age;
 - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
 - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
 - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
 - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
 - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

Status: This is the original version (as it was originally enacted).

- (3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
 - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
 - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
 - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
 - (b) both as it has effect at that time and as amended subsequently.”
- (2) The following section shall be inserted after section 75 of the National Health Service (Scotland) Act 1978—

“75A Remission and repayment of charges and payment of travelling expenses

- (1) Regulations may provide in relation to prescribed descriptions of persons—
- (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 69(1) above, section 70(1) above or section 71 above;
 - (b) for the payment by the Secretary of State in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act; and
 - (c) where they are persons whose travelling expenses are payable by virtue of paragraph (b) above, for the payment by the Secretary of State in such cases as may be prescribed of expenses necessarily incurred by them (and by any companion whose travelling expenses are so payable) in obtaining overnight accommodation for the purpose mentioned in that paragraph.
- (2) Descriptions of persons may be prescribed for the purposes of paragraph (a), (b) or (c) of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—
- (a) their age;
 - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;

- (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
 - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
 - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
 - (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.
- (3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—
- (a) by a method set out in the regulations;
 - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
 - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
 - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made; or
 - (b) both as it has effect at that time and as amended subsequently.”

General and supplementary

15 Financial provision

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenses incurred under this Act by a Minister of the Crown; and
 - (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.
- (2) There shall be paid out of the National Insurance Fund into the Consolidated Fund, at such times and in such manner as the Treasury may direct, such sums as the Secretary of State may estimate (in accordance with any directions given by the Treasury) to be the amount of the administrative expenses incurred by him under sections 2, 6, 7, 9 and 10 above, excluding any category of expenses which the Treasury may direct, or any enactment may require, to be excluded from the Secretary of State's estimates under this subsection.
- (3) There shall be paid into the Consolidated Fund any increase by virtue of this Act in sums so payable by virtue of any other Acts.

16 Minor and consequential amendments and repeals

- (1) The enactments mentioned in Schedule 4 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on the foregoing provisions of this Act).
- (2) The enactments mentioned in Schedule 5 to this Act (which include enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule.

17 Northern Ireland

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

18 Commencement

- (1) The provisions of this Act to which this subsection applies shall come into force on the day this Act is passed.
- (2) Subsection (1) above applies to the following provisions of this Act—
 - section 1;
 - section 2 (3);
 - section 8;
 - section 10;
 - section 12;
 - section 15;
 - section 16(1), so far as it relates to sections 17, 44 to 47, 59A and 66 of the Social Security Act 1975, and sections 29 and 33 of the Social Security Act 1986 and to the insertion of subsection (7A) in section 53 of that Act;
 - section 16(2), so far as it relates—
 - (a) to sections 45, 45A, 46, 47B and 66 of the Social Security Act 1975;
 - (b) to Schedule 1 to the Social Security Act 1980; and
 - (c) to section 13(4)(a) of the Social Security Act 1985;
 - section 17;
 - this section;
 - sections 19 and 20.
- (3) Subject to subsections (1) and (2) above, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed in pursuance of this section for different provisions or different purposes of the same provision.
- (4) The Secretary of State may by regulations made by statutory instrument make—
 - (a) such transitional provision;
 - (b) such consequential provision; or
 - (c) such savings,

as he considers necessary or expedient in preparation for or in connection with the coming into force of any provision of this Act or the operation of any enactment which is repealed or amended by a provision of this Act during any period when the repeal or amendment is not wholly in force.

- (5) Regulations under subsection (4) above may make modifications of any enactment contained in this or in any other Act.
- (6) In subsection (5) above “modifications” includes additions, omissions and amendments.
- (7) Section 166(1) to (3A) of the Social Security Act 1975 shall apply to the power to make regulations conferred by subsection (4) above as they apply to any power to make regulations conferred by that Act but as if for references to that Act there were substituted references to subsection (4) above.
- (8) A statutory instrument containing regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

19 Extent

- (1) Subsection (1) of section 14 above extends only to England and Wales and subsection (2) of that section extends only to Scotland.
- (2) Sections 17 and 20(1) of this Act and this section extend to Northern Ireland, and section 18(1) and (2) extend there so far as they relate to those provisions.
- (3) The extent of any amendment or repeal of an enactment in Schedule 4 or 5 to this Act is the same as that of the enactment amended or repealed.
- (4) Subject to the foregoing provisions of this section, this Act does not extend to Northern Ireland.

20 Citation

- (1) This Act may be cited as the Social Security Act 1988.
- (2) Sections 1 to 12 above (including Schedules 1 to 3 to this Act) and sections 15 to 19 above (including Schedules 4 and 5) and this section, so far as they have effect for the purposes of sections 1 to 12 above, may be cited together with the Social Security Acts 1975 to 1986 and the Social Fund (Maternity and Funeral Expenses) Act 1987 as the Social Security Acts 1975 to 1988.