Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART VI

MISCELLANEOUS PROVISIONS RELATING TO PARTS I TO V

Earnings

112 Certain sums to be earnings

(1) Regulations may provide—

(a) that any employment protection entitlement shall be deemed for the purposes of Parts I to V of this Act to be earnings payable by and to such persons as are prescribed and to be so payable in respect of such periods as are prescribed; and

(b) that those periods shall, so far as they are not periods of employment, be deemed for those purposes to be periods of employment.

(2) In subsection (1) above "employment protection entitlement" means—

(a) any sum, or a prescribed part of any sum, mentioned in subsection (3) below; and

(b) prescribed amounts which the regulations provide are to be treated as related to any of those sums.

(3) The sums referred to in subsection (2) above are the following—

(a) a sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the Employment Protection (Consolidation) Act 1978;

(b) a sum payable by way of pay in pursuance of an order under that Act for the continuation of a contract of employment;

(c) a sum payable by way of remuneration in pursuance of a protective award under the Employment Protection Act 1975.

Disqualification and suspension

113 General provisions as to disqualification and suspension

(1) Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit under Parts II to V of this Act, and an increase of such benefit shall not be payable in respect of any person as the beneficiary's wife or husband, for any period during which the person—

(a) is absent from Great Britain; or

(b) is undergoing imprisonment or detention in legal custody.

(2) Regulations may provide for suspending payment of such benefit to a person during any period in which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

(3) Regulations may provide for a person who would be entitled to any such benefit but for the operation of any provision of this Act or the Administration Act to be treated as if entitled to it for the purposes of any rights or obligations (whether his own or another's) which depend on his entitlement, other than the right to payment of the benefit.

Persons maintaining dependants etc.

114 Persons maintaining dependants, etc

(1) Regulations may provide for determining the circumstances in which a person is or is not to be taken, for the purposes of Parts II to V of this Act—

(a) to be wholly or mainly, or to a substantial extent, maintaining, or to be contributing at any weekly rate to the maintenance of, another person; or

(b) to be, or have been, contributing at any weekly rate to the cost of providing for a child.

(2) Regulations under this section may provide, for the purposes of the provisions relating to an increase of benefit under Parts II to V of this Act in respect of a wife or other adult dependant, that where—

(a) a person is partly maintained by each of two or more beneficiaries, each of whom would be entitled to such an increase in respect of that person if he were wholly or mainly maintaining that person, and

(b) the contributions made by those two or more beneficiaries towards the maintenance of that person amount in the aggregate to sums which would, if they had been contributed by one of those beneficiaries, have been sufficient to satisfy the requirements of regulations under this section,

that person shall be taken to be wholly or mainly maintained by such of those beneficiaries as may be prescribed.

(3) Regulations may provide for any sum or sums paid by a person by way of contribution towards either or both of the following, that is to say—

(a) the maintenance of his or her spouse, and

(b) the cost of providing for one or more children,

to be treated for the purposes of any of the provisions of this Act specified in subsection (4) below as such contributions, of such respective amounts equal in the aggregate to the said sum or sums, in respect of such persons, as may be determined

in accordance with the regulations so as to secure as large a payment as possible by way of benefit in respect of the dependants.

(4) The provisions in question are sections 56, 81 to 84, 86 and paragraphs 5 and 6 of Schedule 7 to this Act.

Special cases

115 Crown employment - Parts I to VI

(1) Subject to the provisions of this section, Parts I to V and this Part of this Act apply to persons employed by or under the Crown in like manner as if they were employed by a private person.

(2) Subsection (1) above does not apply to persons serving as members of Her Majesty's forces in their capacity as such.

(3) Employment as a member of Her Majesty's forces and any other prescribed employment under the Crown are not, and are not to be treated as, employed earner's employment for any of the purposes of Part V of this Act.

(4) The references to Parts I to V of this Act in this section and sections 116, 117, 119, 120 and 121 below do not include references to section 111 above.

116 Her Majesty's forces

(1) Subject to section 115(2) and (3) above and to this section, a person who is serving as a member of Her Majesty's forces shall, while he is so serving, be treated as an employed earner, in respect of his membership of those forces, for the purposes—
   (a) of Parts I to V and this Part of this Act; and
   (b) of any provision of the Administration Act in its application to him as an employed earner.

(2) The Secretary of State may make regulations modifying Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been members of Her Majesty's forces; and regulations under this section may in particular provide—
   (a) in the case of persons who are employed earners in respect of their membership of those forces, for reducing the rate of the contributions payable in respect of their employment and for determining—
      (i) the amounts payable on account of those contributions by the Secretary of State and the time and manner of payment, and
      (ii) the deductions (if any) to be made on account of those contributions from the pay of those persons;
   (b) for preventing a person who is discharged from Her Majesty's forces at his own request from being thereby disqualified for receiving unemployment benefit on the ground that he has voluntarily left his employment without just cause.

(3) For the purposes of Parts I to V and this Part of this Act, Her Majesty's forces shall be taken to consist of such establishments and organisations as may be prescribed,

being establishments and organisations in which persons serve under the control of the Defence Council.

117 Mariners, airmen, etc

(1) The Secretary of State may make regulations modifying provisions of Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been, or are to be, employed on board any ship, vessel, hovercraft or aircraft.

(2) Regulations under subsection (1) above may in particular provide—

(a) for any such provision to apply to such persons, notwithstanding that it would not otherwise apply;

(b) for excepting such persons from the application of any such provision where they neither are domiciled nor have a place of residence in any part of Great Britain;

(c) for requiring the payment of secondary Class 1 contributions in respect of such persons, whether or not they are (within the meaning of Part I of this Act) employed earners;

(d) for the taking of evidence, for the purposes of any claim to benefit, in a country or territory outside Great Britain, by a British consular official or such other person as may be prescribed;

(e) for enabling persons who are or have been so employed to authorise the payment of the whole or any part of any benefit to which they are or may become entitled to such of their dependants as may be prescribed.

118 Married women and widows

The Secretary of State may make regulations modifying any of the following provisions of this Act, namely—

(a) Part I;

(b) Part II (except section 60); and

(c) Parts III and IV,

in such manner as he thinks proper, in their application to women who are or have been married.

119 Persons outside Great Britain

The Secretary of State may make regulations modifying Parts I to V of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been outside Great Britain at any prescribed time or in any prescribed circumstances.

120 Employment at sea (continental shelf operations)

(1) The Secretary of State may make regulations modifying Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to

persons in any prescribed employment (whether under a contract of service or not) in connection with continental shelf operations.

(2) "Continental shelf operations" means any activities which, if paragraphs (a) and (d) of subsection (6) of section 23 of the Oil and Gas (Enterprise) Act 1982 (application of civil law to certain offshore activities) were omitted, would nevertheless fall within subsection (2) of that section.

(3) In particular (but without prejudice to the generality of subsection (1) above), the regulations may provide for any prescribed provision of Parts I to V and this Part of this Act to apply to any such person notwithstanding that he does not fall within the description of an employed or self-employed earner, or does not fulfil the conditions prescribed under section 1(6) above as to residence or presence in Great Britain.

121 Treatment of certain marriages

(1) Regulations may provide—

(a) for a voidable marriage which has been annulled, whether before or after the date when the regulations come into force, to be treated for the purposes of the provisions to which this subsection applies as if it had been a valid marriage which was terminated by divorce at the date of annulment;

(b) as to the circumstances in which, for the purposes of the enactments to which this section applies—

(i) a marriage celebrated under a law which permits polygamy; or

(ii) any marriage during the subsistence of which a party to it is at any time married to more than one person,

is to be treated as having, or not having, the consequences of a marriage celebrated under a law which does not permit polygamy.

(2) Subsection (1) above applies—

(a) to any enactment contained in Parts I to V or this Part of this Act; and

(b) to regulations under any such enactment.

Interpretation

122 Interpretation of Parts I to VI and supplementary provisions

(1) In Parts I to V above and this Part of this Act, unless the context otherwise requires—

"beneficiary", in relation to any benefit, means the person entitled to that benefit;

"benefit" means—

(a) benefit under Parts II to V of this Act other than Old Cases payments;

(b) as respects any period before 1st July 1992 but not before 6th April 1975, benefit under Part II of the 1975 Act; or

(c) as respects any period before 6th April 1975, benefit under—

(d) the National Insurance Act 1946 or 1965; or

(ii) the National Insurance (Industrial Injuries) Act 1946 or 1965;

"child" means a person under the age of 19 who would be treated as a child for the purposes of Part IX of this Act or such other person under that age as may be prescribed;

"claim" is to be construed in accordance with "claimant";

"claimant", in relation to benefit other than industrial injuries benefit, means a person who has claimed benefit;

"claimant", in relation to industrial injuries benefit, means a person who has claimed industrial injuries benefit;

"contract of service" means any contract of service or apprenticeship whether written or oral and whether express or implied;

"current", in relation to the lower and upper earnings limits under section 5(1) above, means for the time being in force;

"day of incapacity for work" and "day of interruption of employment" have the meanings assigned to them by section 57 above;

"deferred" and "period of deferment" have the meanings assigned to them by section 55 above;

"earner" and "earnings" are to be construed in accordance with sections 3, 4 and 112 above;

"employed earner" has the meaning assigned to it by section 2 above;

"employment" includes any trade, business, profession, office or vocation and "employed" has a corresponding meaning;

"entitled", in relation to any benefit, is to be construed in accordance with—

(a) the provisions specifically relating to that benefit;

(b) in the case of a benefit specified in section 20(1) above, section 21 above; and

(c) sections 1 to 3 and 68 of the Administration Act;

"industrial injuries benefit" means benefit under Part V of this Act, other than under Schedule 8;

"initial primary percentage" is to be construed in accordance with section 8(1) and (2) above and as referring to the percentage rate from time to time specified in section 8(2)(a) above as the initial primary percentage;

"the Inland Revenue" means the Commissioners of Inland Revenue;

"late husband", in relation to a woman who has been more than once married, means her last husband;

"long-term benefit" has the meaning assigned to it by section 20(2) above;

"loss of physical faculty" includes disfigurement whether or not accompanied by any loss of physical faculty;

"lower earnings limit" and "upper earnings limit" are to be construed in accordance with section 5(1) above and references to the lower or upper earnings limit of a tax year are to whatever is (or was) for that year the limit in force under that subsection;

"main primary percentage" is to be construed in accordance with section 8(1) and (2) above and as referring to the percentage rate from time to time specified in section 8(2)(b) above as the main primary percentage;

"medical examination" includes bacteriological and radiographical tests and similar investigations, and "medically examined" has a corresponding meaning;

"medical treatment" means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting himself to medical treatment are to be construed accordingly;

"the Northern Ireland Department" means the Department of Health and Social Services for Northern Ireland;

"Old Cases payments" means payments under Part I or II of Schedule 8 to this Act;

"payments by way of occupational or personal pension" means, in relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him-

(a) out of money provided wholly or partly by the employer or under arrangements made by the employer; or

(b) out of money provided under an enactment or instrument having the force of law in any part of the United Kingdom or elsewhere; or

(c) under a personal pension scheme as defined in section 84(1) of the 1986 Act; or

(d) under a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988; or

(e) under a personal pension scheme approved under Chapter IV of that Part of that Act,

and such other payments as are prescribed;

"pensionable age" means—

(a) the age of 65, in the case of a man; and

(b) the age of 60, in the case of a woman;

"pneumoconiosis" means fibrosis of the lungs due to silica dust, asbestos dust, or other dust, and includes the condition of the lungs known as dust-reticulation;

"prescribe" means prescribe by regulations;

"primary percentage" is to be construed in accordance with section 8(1) and (2) above;

"qualifying earnings factor" means an earnings factor equal to the lower earnings limit for the tax year in question multiplied by 52;

"relative" includes a person who is a relative by marriage;

"relevant accident" means the accident in respect of which industrial injuries benefit is claimed or payable;

"relevant injury" means the injury in respect of which industrial injuries benefit is claimed or payable;

"relevant loss of faculty" means—

(a) in relation to severe disablement allowance, the loss of faculty which results in the disablement; or

(b) in relation to industrial injuries benefit, the loss of faculty resulting from the relevant injury;

"self-employed earner" has the meaning assigned to it by section 2 above;

"short-term benefit" has the meaning assigned to it by section 20(2) above;

"tax week" means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in the case of a tax year ending in a leap year, the last two days) to be treated accordingly as a separate tax week;

"tax year" means the 12 months beginning with 6th April in any year, the expression "1978-79" meaning the tax year beginning with 6th April 1978, and any correspondingly framed reference to a pair of successive years being

construed as a reference to the tax year beginning with 6th April in the earlier of them;

"trade or business" includes, in relation to a public or local authority, the exercise and performance of the powers and duties of that authority;

"trade union" means an association of employed earners;

"week", except in relation to disability working allowance, means a period of 7 days beginning with Sunday.

(2) Regulations may make provision modifying the meaning of "employment" for the purposes of any provision of Parts I to V and this Part of this Act.

(3) Provision may be made by regulations as to the circumstances in which a person is to be treated as residing or not residing with another person for any of the purposes of Parts I to V and this Part of this Act and as to the circumstances in which persons are to be treated for any of those purposes as residing or not residing together.

(4) A person who is residing with his spouse shall be treated for the purposes of Parts I to V and this Part of this Act as entitled to any child benefit to which his spouse is entitled.

(5) Regulations may, for the purposes of any provision of those Parts under which the right to any benefit or increase of benefit depends on a person being or having been entitled to child benefit, make provision whereby a person is to be treated as if he were or had been so entitled or as if he were not or had not been so entitled.

(6) For the purposes of Parts I to V and this Part of this Act a person is "permanently incapable of self-support" if (but only if) he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for the remainder of his life.