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## STATUTORY INSTRUMENTS

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# 1976 No. 963

## The Child Benefit (Residence and Persons Abroad) Regulations 1976

### PART I

#### GENERAL

#### **Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Child Benefit (Residence and Persons Abroad) 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 Social Security Act” means the Social Security Act 1975;

“benefit” means child benefit under the Act,

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

(3) For the purposes of section 13(2) and (3) of the Act and of these regulations, if a child or other person is present in or absent from Great Britain at the beginning of any day that state of affairs shall be treated as continuing throughout that day; and except in relation to the birth of a child, references in these regulations to any condition being satisfied or any facts existing in a week shall 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 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.

#### **Circumstances in which benefit may be payable in respect of a child for a week in which that child is absent from Great Britain**

2.—(1) Section 13(2)(a) of the Act (subject to regulations, benefit not to be payable in respect of a child for any week unless that child is in Great Britain in that week) shall have effect subject to the following provisions of this regulation and the provisions of Parts II and III of these regulations.

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(2) The said section 13(2)(a) shall not operate to make benefit not payable in respect of a child for any week in which that child is absent from Great Britain if—

- (a) a person is entitled to benefit in respect of that child for the week immediately preceding the first week of the child's absence from Great Britain; and
- (b) the child's absence was when it began intended to be temporary and has throughout continued to be so intended; and
- (c) that week—

- (i) falls within a period of [<sup>F1</sup>12] weeks beginning with the first week of the child's absence; or

- [<sup>F2</sup>(ii) is a week, not falling within the period specified in sub-paragraph (c)(i) above, in which the child's absence is by reason only of his receiving full-time education by attendance at a recognised educational establishment in another State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 or his being engaged in an educational exchange or visit made with the written approval of the recognised educational establishment which he normally attends;]

- (iii) being a week in which the child's absence is for the specific purpose of being treated for illness or disability of mind or, body which commenced before his absence began but not falling within the period specified in sub-paragraph (c)(i), falls within such extended period of time (if any) as is determined by the Secretary of State in his discretion.

(3) Where a child leaves Great Britain in the week in which it was born or is born while its mother is absent from Great Britain, the said section 13(2)(a) shall not operate to make benefit not payable in respect of that child for any week in which, by virtue of the provisions of regulation 4(3), section 13(3)(a) of the Act does not operate to disentitle a person to benefit in respect of that child.

**F1** Word in [reg. 2\(2\)\(c\)\(i\)](#) substituted (1.3.1999) by [The Child Benefit \(Residence and Persons Abroad\) Amendment Regulations 1999 \(S.I. 1999/198\)](#), regs. 1(1), **2(a)** (with [reg. 3](#))

**F2** [Reg. 2\(2\)\(c\)\(ii\)](#) substituted (1.3.1999) by [The Child Benefit \(Residence and Persons Abroad\) Amendment Regulations 1999 \(S.I. 1999/198\)](#), regs. 1(1), **2(b)** (with [reg. 3](#))

### **Circumstances in which benefit may be payable in respect of a child for a week where neither the child nor one of his parents has been in Great Britain for more than 182 days in the 52 weeks preceding that week**

**3.—(1)** Section 13(2)(b) of the Act (subject to regulations, no benefit to be payable in respect of a child for any week unless that child or at least one of his parents has been in Great Britain for more than 182 days in the 52 weeks preceding that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said section 13(2)(b) shall not operate to make benefit not payable in respect of a child for any week if in that week—

- (a) that child is in fact in Great Britain and at least one of his parents is to be regarded as satisfying the requirement in section 13(3)(b) of the Act; or
- (b) that child is in fact in Great Britain and is a child in respect of whom the conditions for entitlement to a guardian's allowance under section 38 of the Social Security Act could be satisfied by a person were that person entitled to benefit in respect of that child; or
- (c) that child is in fact in Great Britain and—

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- (i) is not residing with any parent of his; and
- (ii) is living with another person with whom he is likely to continue to live permanently, being a person who satisfies or is to be regarded as satisfying the requirement in section 13(3)(b) of the Act.

(3) The modification of the said section 13(2)(b) effected by paragraph (2)(c) shall apply only in relation to the person referred to in paragraph (2)(c)(ii); and for the purposes of paragraph (2)(c) (i) a child shall not be regarded as having ceased to reside with any parent of his by reason of any absence the one from the other which is likely to be temporary.

(4) For the purposes of the said section 13(2)(b), a week in which under the provisions of regulation 2 a child is to be regarded as satisfying the requirement in section 13(2)(a) and any week for which a person is entitled to benefit in respect of that child shall be treated as a week in which that child is in Great Britain.

#### **Circumstances in which a person may be entitled to benefit in respect of a child for a week in which that person is absent from Great Britain**

4.—(1) Section 13(3)(a) of the Act (subject to regulations, no person to be entitled to benefit in respect of a child for any week unless that person is in Great Britain in that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said section 13(3)(a) <sup>F3</sup>... shall not operate to disentitle a person to benefit in respect of a child for any week in which that person is absent from Great Britain if—

- (a) that person is entitled to benefit in respect of that child for the week immediately preceding the first week of that person's absence from Great Britain; and
- (b) that person's absence was when it began intended to be temporary and has throughout continued to be so intended; and
- (c) that week falls within a period of [F48] weeks beginning with the first week of that person's absence.

[F5(2A) If a person dies while paragraph (2) applies to him, the said section 13(3)(a) shall not operate to disentitle another person to benefit in respect of a child, being a child in respect of whom the deceased was entitled to benefit immediately before his death, for any week which falls within a period of [F68] weeks beginning with the first week of the deceased's absence from Great Britain.]

(3) If in the week in which a woman gives birth to a child in Great Britain she subsequently leaves Great Britain or if she gives birth to a child while she is absent from Great Britain, then if—

- (a) her absence from Great Britain was when it began intended to be temporary and has throughout continued to be so intended; and
- (b) that child (if born outside Great Britain) was born within the period of [F78] weeks beginning with the first week of its mother's absence; and
- (c) had that child been born at the beginning of the week immediately preceding that in which its mother's absence began, she could have satisfied the requirements for entitlement to benefit in respect of it,

the said section 13(3)(a) shall not operate to disentitle a person to benefit in respect of that child for the period of [F88] weeks beginning with the first week of its mother's absence.

**F3** Words in reg. 4(2) omitted (22.11.1976) by virtue of [The Child Benefit \(Miscellaneous Minor Amendments\) Regulations 1976 \(S.I. 1976/1758\)](#), regs. 1, 4(1)

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- F4** Number in reg. 4(2)(c) substituted (27.8.1984) by [The Child Benefit \(Residence and Persons Abroad\) Amendment Regulations 1984 \(S.I. 1984/875\)](#), regs. 1, 2 (with reg. 3)
- F5** Reg. 4(2A) inserted (22.11.1976) by [The Child Benefit \(Miscellaneous Minor Amendments\) Regulations 1976 \(S.I. 1976/1758\)](#), regs. 1, 4(1)
- F6** Number in reg. 4(2A) substituted (27.8.1984) by [The Child Benefit \(Residence and Persons Abroad\) Amendment Regulations 1984 \(S.I. 1984/875\)](#), regs. 1, 2 (with reg. 3)
- F7** Number in reg. 4(3)(b) substituted (27.8.1984) by [The Child Benefit \(Residence and Persons Abroad\) Amendment Regulations 1984 \(S.I. 1984/875\)](#), regs. 1, 2 (with reg. 3)
- F8** Number in reg. 4(3) substituted (27.8.1984) by [The Child Benefit \(Residence and Persons Abroad\) Amendment Regulations 1984 \(S.I. 1984/875\)](#), regs. 1, 2 (with reg. 3)

**Circumstances in which a person may be entitled to benefit in respect of a child for a week where that person has not been in Great Britain for more than 182 days in the 52 weeks preceding that week**

5.—(1) Section 13(3)(b) of the Act (subject to regulations, no person to be entitled to benefit in respect of a child for a week if that person has not been in Great Britain for more than 182 days in the 52 weeks preceding that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said section 13(3)(b) shall not operate to disentitle a person to benefit in respect of a child for any week if—

- [<sup>F9</sup>(a) in that week that child satisfies or, otherwise than by virtue of regulation 3(2)(a), is to be regarded as satisfying the requirements in section 13(2)(a) and (b) of the Act and that person is in fact in Great Britain and responsible for that child within the meaning of section 3(1) of the Act; or]
- (b) that week begins in a period of 183 consecutive days throughout which (disregarding up to 28 days of temporary absence from Great Britain, whether consecutive or not) that person is likely to be in Great Britain; and before that week but within that period that person, while in Great Britain, has been an employed earner (not being an employed earner in relation to whom primary Class 1 contributions are not payable by reason of regulation 113(2) or (3) of the Social Security (Contributions) Regulations 1975(1) (primary and secondary Class 1 contributions not payable in relation to certain persons who are ordinarily neither resident nor employed in the United Kingdom)) or a self-employed earner (not being a self-employed earner who is not liable to pay Class 2 contributions by reason of regulation 113(1)(d) of those regulations (liability of a person to pay contributions as a self-employed earner related to that person's being ordinarily resident, or resident for a certain time, in Great Britain)); or
- (c) in that week that person is in fact in Great Britain and residing with his spouse who satisfies or is to be regarded as satisfying the requirements in the said section 13(3)(b); or
- (d) in that week that person is in fact in Great Britain; and that week begins in a period of 183 consecutive days throughout which (disregarding up to 28 days of temporary absence from Great Britain whether consecutive or not) that person is likely to be in Great Britain; and for a week not more than 156 weeks before that week—
  - (i) that person was entitled to benefit in respect of a child; or
  - (ii) that person's spouse (if any) was so entitled and when so entitled, or in that week, was residing with that person.

(3) The expressions “employed earner”, “self-employed earner”, “primary Class 1 contributions” and “Class 2 contributions” used in paragraph (2)(b) shall have the same meanings as the

(1) (1975 I, p. 1516).

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corresponding expressions in the Social Security Act; and if a question arises as to whether a person has been such an employed earner or such a self-employed earner as is referred to in that paragraph that question shall be determined by the Secretary of State as if it were a question arising under that Act.

(4) For the purposes of the said section 13(3)(b) a week in which under the provisions of regulation 4 a person is to be regarded as satisfying the requirement in section 13(3)(a) and any week for which a person is entitled to benefit in respect of a child shall be treated as a week in which that person is in Great Britain.

**F9** [Reg. 5\(2\)\(a\)](#) substituted (22.11.1976) by [The Child Benefit \(Miscellaneous Minor Amendments\) Regulations 1976 \(S.I. 1976/1758\)](#), regs. 1, **4(2)**

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