

1978 No. 540

SOCIAL SECURITY

**The Child Benefit (Miscellaneous Amendments)
Regulations 1978**

Made - - - 7th April 1978

Laid before Parliament 14th April 1978

Coming into Operation 5th May 1978

The Secretary of State for Social Services, after consultation with the Council on Tribunals in so far as required by section 10 of the Tribunals and Inquiries Act 1971(a), in exercise of powers conferred upon him by sections 6(1), 7(1) and 24(2), (4) and (5) of, and paragraph 1 of Schedule 1 to, the Child Benefit Act 1975(b) and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Benefit (Miscellaneous Amendments) Regulations 1978 and shall come into operation on 5th May 1978.

(2) In these regulations—

“the Determination Regulations” means the Child Benefit (Determination of Claims and Questions) Regulations 1976(c) as amended(d); and

“the General Regulations” means the Child Benefit (General) Regulations 1976(e) as amended(d).

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(f) 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.

Amendment of the Determination Regulations

2.—(1) In regulation 1(2) of the Determination Regulations (interpretation) there shall be inserted in the definition of the expression “special question” immediately after the words “section 7(2) of the Act” a comma followed by the words “any question whether an establishment is a recognised educational establishment as defined in section 24(1) of the Act”.

(2) In regulation 5 of the Determination Regulations (appeal to local tribunal) there shall be substituted in paragraph (9) for the words “after the date of the decision” the words “after the date on which the claimant is given notice in writing of the decision”.

(a) 1971 c. 62.

(b) 1975 c. 61.

(c) S.I. 1976/962.

(d) There is no amendment which relates expressly to the subject matter of these regulations.

(e) S.I. 1976/965.

(f) 1889 c. 63.

(3) In regulation 19 of the Determination Regulation (review of decisions involving payment of benefit) paragraph (2) shall be amended by making all that paragraph after the words "For the purposes of this regulation" into a sub-paragraph (a) and adding at the end of that paragraph the following sub-paragraph:—

"(b) the date of an application for review under regulation 9(3) shall be the date (hereafter in this sub-paragraph referred to as 'the relevant date') on which it is received in an office of the Department of Health and Social Security so, however, that if the Secretary of State accepts that an application which has been sent by post has not been delivered in the ordinary course of post and gives a direction accordingly, the date of the application shall be a date earlier than the relevant date, being, whichever is the later, the date of the application had it been delivered in the ordinary course of post or a date 13 weeks before the relevant date."

Amendment of the Claims and Payments Regulations

3. In the Child Benefit (Claims and Payments) Regulations 1976(a) as amended(b) for regulation 1(3) (separate claim required for an increase) there shall be substituted the following:—

"(3) a separate claim shall be required for an increase, except that where a person claims benefit other than an increase in respect of a child having previously claimed for an increase in respect of that child his claim for an increase shall be regarded as a claim to benefit including an increase."

Amendment of the General Regulations

4.—(1) For regulation 11 of the General Regulations there shall be substituted the following regulation:—

"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.

(a) S.I. 1976/964.

(b) There is no amendment which relates expressly to the subject matter of these regulations.

(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.”

(2) In regulation 16 of the General Regulations (children in detention, care etc.) for the words “For the purposes of” at the beginning of paragraph (1) there shall be substituted the words “In its application to any case to which there also applies”.

(3) In regulation 17 of the General Regulations (right of benefit of voluntary organisations) paragraph (2) shall be amended by the omission of the word “which” and by the substitution for the words “does not last”, in both places where those words occur, of the words “until such absence has lasted”.

David Ennals,

Secretary of State for Social Services.

7th April 1978.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Child Benefit (Determination of Claims and Questions) Regulations 1976 so as to correct an omission from the definition of “special questions”, so as to relate the time for appeal from the decision of an insurance officer to the date when that decision is notified and so as to provide for identifying the date of an application for review of a decision. The Regulations also amend the Child Benefit (Claims and Payments) Regulations 1976 so as to allow a claim to an increase of benefit to be treated, in certain circumstances, as a claim for the whole child benefit and they amend provision made by the Child Benefit (General) Regulations 1976 as to circumstances in which persons are or are not to be treated for the purposes of the Child Benefit Act 1975 as residing together and so as to secure that child benefit may be payable in certain cases where a child in care is home for part of a week or a child living with a voluntary organisation is temporarily absent.

SI 1978/540
ISBN 0-11-083540-9



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