
STATUTORY INSTRUMENTS

1996 No. 2745

**The Social Security Benefit (Computation
of Earnings) Regulations 1996**

**PART I
GENERAL**

Citation and commencement

1. These Regulations may be cited as the Social Security Benefit (Computation of Earnings) Regulations 1996 and shall come into force on 25th November 1996.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“adjudicating authority” means any person or body with responsibility under the Social Security Administration Act 1992, and regulations made thereunder, for the determination of claims for benefit and questions arising in connection with a claim for, or award of, or disqualification for receiving benefits;

“benefit week” means —

- (a) any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid, and, where appropriate in respect of payments due to be paid before that week,
- (b) the period of 7 days ending on the day before the first day of the first such week following the date of claim or any one of the consecutive periods of seven days prior to that period;

“board and lodging accommodation” means—

- (a) accommodation provided to a person or, if he is a member of a family, to him or any other member of his family, for a charge which is inclusive of the provision of that accommodation and at least some cooked or prepared meals which both are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of his family) and are consumed in that accommodation or associated premises; or
- (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of his or of any other member of his family, or other than on a commercial basis;

“claim” means a claim for a benefit, pension or allowance under Parts II to V of the Contributions and Benefits Act;

“claimant” means a person claiming a benefit, pension or allowance under Parts II to V of the Contributions and Benefits Act and includes a claimant’s spouse or partner and any adult in respect of whom a claim for an increase in benefit is made under Part IV of that Act;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“couple” means a married or an unmarried couple;

“Crown property” means property held by Her Majesty in right of the Crown or by a government department or which is held in trust for Her Majesty for the purposes of a government department, except (in the case of an interest held by Her Majesty in right of the Crown) where the interest is under the management of the Crown Estate Commissioners;

“date of claim” means the date on which the claimant makes, or is treated as making, a claim for a benefit, pension or allowance for the purposes of regulation 6 of the Social Security (Claims and Payments) Regulations 1987⁽¹⁾;

“dwelling occupied as the home” means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which it is impracticable or unreasonable to sell separately, in particular, in Scotland, any croft land on which the dwelling is situated;

“earnings” has the meaning prescribed in regulation 9 or, as the case may be, 12, and for the purposes only of sections 80, 82 to 86A and 89 of, and paragraphs 4, 6 and 7 of Schedule 7 to, the Contributions and Benefits Act⁽²⁾ includes payments by way of occupational or personal pension within the meaning of section 122 of the Contributions and Benefits Act (interpretation);

“employed earner” means a person who is in gainful employment in Great Britain under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E and includes—

- (a) a person in any employment which would be such employment if it were in Great Britain, and
- (b) a person in any such employment which, in accordance with the provisions of the Contributions and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

“employment” includes any trade, business, profession, office or vocation;

“invalid carriage or other vehicle” means a vehicle propelled by petrol engine or by electric power supplied for use on the road and to be controlled by the occupant;

“lone parent” means a person who has no partner and who is responsible for, and a member of the same household as, a child within the meaning of section 142 of the Contributions and Benefits Act (meaning of “child”);

“lower rate” where it relates to rates of tax has the same meaning as in the Income and Corporation Taxes Act 1988⁽³⁾ by virtue of section 832(1) of that Act;

“maternity leave” means a period during which a woman is absent from work because she is pregnant or has given birth to a child, and at the end of which she has a right to return to work

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- (1) S.I.1987/1968; relevant amending instruments are S.I. 1988/522, 1989/1686, 1990/725, 1990/2208, 1991/2284, 1991/2741, 1993/2113, 1994/2319 and 1996/1460.
 - (2) Section 80 was amended by section 2(4) of the Social Security (Incapacity for Work) Act 1994 (c. 18), the Jobseekers Act 1995 (c. 18) Schedule 3 and article 8 of S.I.1996/599. Section 82 was amended by the Social Security (Incapacity for Work) Act 1994 (c. 18), Schedule 1, paragraph 19 and the Jobseekers Act 1995 (c. 18), Schedule 2, paragraph 24 and Schedule 3. Section 86A was inserted by section 2(5) of the Social Security (Incapacity for Work) Act 1994 (c. 18). Section 89 was amended by the Social Security (Incapacity for Work) Act 1994 (c. 18), Schedule 1, paragraph 26.
 - (3) 1988 c. 1; the definition of “lower rate” was added by the Finance Act 1992 (c. 20), section 9(9).

either under the terms of her contract of employment or under Part VIII of the Employment Rights Act 1996(4);

“net earnings” means such earnings as are calculated in accordance with regulation 10(4);

“net profit” means such profit as is calculated in accordance with regulation 13(4);

“occupational pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993(5);

“partner” means where a claimant—

- (a) is a member of a married or an unmarried couple, the other member of that couple;
- (b) is married polygamously to two or more members of his household, any such member;

“payment” includes a part of a payment;

“pay period” means the period in respect of which a claimant is, or expects to be, normally paid by his employer, being a week, a fortnight, four weeks, a month or other shorter or longer period as the case may be;

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes Act 1993 and, in the case of a self-employed earner, includes a scheme approved by the Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988;

“polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;

“relevant earnings limit” means the amount of a claimant’s earnings in excess of which the benefit, supplement, allowance, pension or increase in question is not payable;

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;

“self-employed earner” means a person who is in gainful employment in Great Britain otherwise than as an employed earner and includes—

- (a) a person in any employment which would be such employment if it were in Great Britain, and
- (b) a person in any such employment which, in accordance with the provisions of the Contributions and Benefits Act and of any regulations made thereunder, is to be disregarded in relation to liability for contributions;

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit;

“week” means a period of 7 days and for the purposes of section 80 of, and paragraph 4(6) of Schedule 7 to, the Contributions and Benefits Act, a period of 7 days being the relevant benefit week;

“year of assessment” has the meaning prescribed in section 832(1) of the Income and Corporation Taxes Act 1988.

(2) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered regulation or Schedule is to the regulation in or Schedule to these Regulations bearing that number;
- (b) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number;

(4) 1996 c. 18.

(5) 1993 c. 48.

- (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

Calculation of earnings

3.—(1) For the purposes of Parts II to V (other than those of Schedule 8) of the Contributions and Benefits Act⁽⁶⁾ and of any regulations made thereunder which relate to benefit under those Parts of that Act or regulations, the earnings of a claimant shall be calculated by determining in accordance with these Regulations the weekly amount of his earnings.

(2) The amount of a claimant's earnings for any period shall be the whole of those earnings (including any earnings which he is treated as possessing under regulation 4 (notional earnings)) except in so far as regulations 10 and 13 provide that certain sums shall be disregarded or deducted as appropriate.

Notional earnings

4.—(1) Where a claimant's earnings are not ascertainable at the date of the determination of the claim or of any subsequent review the adjudicating authority shall treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(2) Where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area, the adjudicating authority shall treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the adjudicating authority that the means of that person are insufficient for him to pay or to pay more for the service; but this paragraph shall not apply to a claimant who is engaged by a charitable or voluntary organisation or is a volunteer if the adjudicating authority is satisfied in any of those cases that it is reasonable for him to provide his services free of charge.

(3) Where a claimant is treated as possessing any earnings under paragraph (1) or (2) these Regulations shall apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which he does possess except that paragraph (4) of regulation 10 (calculation of net earnings of employed earners) shall not apply and his net earnings shall be calculated by taking into account the earnings which he is treated as possessing, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the lower rate or, as the case may be, the lower rate and the basic rate of tax in the year of assessment less only the personal relief to which the claimant is entitled under sections 257(1), 257A(1) and 259 of the Income and Corporation Taxes Act 1988⁽⁷⁾ (personal reliefs) as is appropriate to his circumstances; but, if the period over which those earnings are to be taken into account is less than a year, the earnings to which the lower rate of tax is to be applied and the amount of the personal relief deductible under this paragraph shall be calculated on a pro rata basis;
- (b) where the weekly amount of those earnings equals or exceeds the lower earnings limit, an amount representing primary Class 1 contributions under the Contributions and Benefits

⁽⁶⁾ Part XIIA was inserted by sections 5 and 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

⁽⁷⁾ 1988 c. 1; sections 257 to 257F were substituted for section 257 by section 33 of the Finance Act 1988 (c. 39); section 259 was amended by sections 30 and 35 of the Finance Act 1988, section 20 of the Finance (No. 2) Act 1992 (c. 48) and section 77 and Schedule 8, paragraph 6 of the Finance Act 1994 (c. 9).

Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act⁽⁸⁾; and

- (c) one half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

Rounding of fractions

5. Where any calculation under these Regulations results in a fraction of a penny that fraction shall, if it would be to the claimant's advantage, be treated as a penny, otherwise it shall be disregarded.

(8) Section 8(1) was amended by the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 33.