

2008 No. 2111

SOCIAL SECURITY

**The Social Security (Child Maintenance Amendments)
Regulations 2008**

Made - - - - *5th August 2008*

Laid before Parliament *8th August 2008*

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in the exercise of the powers conferred by—

– sections 123(1)(a), 136(3) and (5)(b), 137(1) and 175(1), (2) and (4) of the Social Security Contributions and Benefits Act 1992(a),

– sections 12(2) and (4)(b), 35(1) and 36(1), (2) and (4) of the Jobseekers Act 1995(b),

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it(c).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Child Maintenance Amendments) Regulations 2008 and, subject to paragraph (2) and (3), shall come into force on 27th October 2008 .

(2) In so far as they relate to a particular beneficiary, these Regulations shall come into force on the first day of the benefit week for that beneficiary that includes 27th October 2008.

(3) Regulations 2(8) and 3(8) shall come into force immediately after regulation 4 has come into force.

(a) 1992 c.4. Section 137(1) is an interpretation provision and is cited because of the meaning there given to the word “prescribed”. Section 175(1) and (4) was amended by section 2 of, and paragraph 29(1), (2) and (4) of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(b) 1995 c.18. Section 35(1) is an interpretation provision and is cited because of the meaning given to the words “prescribed” and “regulations”. Sections 35(1) and 36(4) were amended by section 2 of, and paragraphs 62 and 63 respectively of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999. Section 36(1) was amended by Section 70 of and paragraph 29(1) and (6) of Schedule 8 to the Welfare Reform and Pensions Act 1999 (c.30) and section 86(1) of and paragraph 145 of Schedule 7 to the Social Security Act 1998 (c.14).

(c) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992.

- (4) In this regulation—
“benefit week” has the same meaning as in—
- (a) regulation 2(1) of the Income Support (General) Regulations 1987(a), so far as it relates to regulation 2, and
 - (b) regulation 1(3) of the Jobseeker’s Allowance Regulations 1996(b), so far as it relates to regulation 3.

Amendment of the Income Support (General) Regulations 1987

2.—(1) The Income Support (General) Regulations 1987 are amended as follows.

(2) In the heading to each of the following regulations, before “liable relatives” insert “child maintenance or”—

- (a) 25 (liable relative payments),
- (b) 55 (treatment of liable relative payments),
- (c) 58 (calculation of the weekly amount of a liable relative payment),
- (d) 59 (date on which a liable relative payment is to be treated as paid).

(3) In regulation 25, for “liable relatives” substitute “child maintenance and liable relative payments”.

(4) Omit—

- (a) regulation 25A(c) (child support);
- (b) regulation 60 (liable relative payments to be treated as capital);
- (c) in Part 5, the whole of Chapter 7A.

(5) In Part 5, for the heading to Chapter 7 (liable relatives), substitute “child maintenance and liable relative payments”.

(6) In regulation 54(d) (interpretation)—

(a) at the appropriate places insert the following definitions—

““child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—

- (a) the Child Support Act 1991(e);
- (b) the Child Support (Northern Ireland) Order 1991(f);
- (c) a court order;
- (d) a consent order,
- (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;

“claimant’s family” shall be construed in accordance with section 137 of the Contributions and Benefits Act 1992 (interpretation of part 7 and supplementary provisions);

“housing costs” means, those costs which may be met under regulation 17(1)(e) or 18(1)(f) (housing costs);

“ordinary clothing and footwear” means clothing and footwear for normal daily use but does not include school uniforms;”;

(a) S.I. 1987/1967; relevant amending instrument is S.I. 1988/1445
(b) S.I. 1996/207.
(c) Inserted by S.I. 1993/846.
(d) Relevant amending instrument is S.I. 1988/663.
(e) 1991 c.48.
(f) S.I. 1999/2628 (N.I. 23).

- (b) in the definition of “liable relative” in paragraph (d) for “by virtue of section 26(3)(c) of the Act (liability to maintain)” substitute “in the circumstances set out in section 78(6)(c) of the Social Security Administration Act 1992 (liability to maintain another person)”;
 - (c) in the definition of “payment”—
 - (i) omit “including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by him but only from the date on which it could be expected to be acquired were an application made;”;
 - (ii) for paragraph (e) substitute—
 - “(e) made to a third party, or in respect of a third party, unless the payment is—
 - (i) in relation to the claimant or the claimant’s family; and
 - (ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent, housing costs, council tax or water charges;”;
 - (d) in the definition of “periodical payment”—
 - (i) in paragraph (a) omit “in pursuance of a court order or agreement for maintenance”
 - (ii) in paragraph (c), for “not exceeding” substitute “, after the appropriate disregard under paragraph 73 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings) has been applied to it, that does not exceed”.
- (7) In regulation 55(a) (treatment of liable relative payments) for “except where regulation 60(1) (liable relative payments to be treated as capital) applies” substitute “paragraph 73 of Schedule 9 (sums to be disregarded in the calculation of income other than earnings)”.
- (8) For regulation 57 substitute—

“Period over which payments other than periodical payments are to be taken into account

57.—(1) The period over which a payment other than a periodical payment (a “non-periodical payment”) is to be taken account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

- (a) the amount of income support that would be payable had no payment been made, and
- (b) where applicable, the maximum amount of disregard that would apply to the payment under paragraph 73 of Schedule 9.

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 58) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{A}{B - C}$$

(6) If the liable relative ceases to make periodical payments, the balance (if any) of the non-periodical payment shall be taken into account over the number of weeks equal to the number obtained by dividing that balance by the amount referred to in paragraph (3).

(a) Relevant amending instrument is S.I. 1996/940.

(7) If the amount of any subsequent periodical payment varies, the balance (if any) of the non-periodical payment shall be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{D}{B - E}$$

(8) The period under paragraph (2) or (4) shall begin on the date on which the payment is treated as paid under regulation 59 (date on which a liable relative payment is treated as paid) and the period under paragraph (6) and (7) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

(9) Any fraction which arises by applying a calculation or formula referred to in this regulation shall be treated as a corresponding fraction of a week.

(10) In paragraphs (4) to (7)—

A = the amount of the non-periodical payment;

B = the aggregate of £2 and the amount of income support that would be payable had the periodical payment not been made and, where applicable, the maximum disregard under paragraph 73 of Schedule 9;

C = the weekly amount of the periodical payment;

D = the balance (if any) of the non-periodical payment;

E = the weekly amount of any subsequent periodical payment.”.

(9) In paragraph 73 of Schedule 9(a) (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (3) and (4) substitute—

“(3) No more than £20 shall be disregarded in respect of each week to which any payment of child maintenance is attributed in accordance with regulations 55 to 59 (child maintenance and liable relatives).

(4) In this paragraph, “child maintenance” shall have the same meaning as in regulation 54.”.

Amendment of the Jobseeker’s Allowance Regulations 1996

3.—(1) The Jobseeker’s Allowance Regulations 1996 are amended as follows.

(2) In the heading to each of the following regulations, before “liable relative” insert “child maintenance or”—

(a) 89 (liable relative payments);

(b) 118 (treatment of liable relative payments);

(c) 122 (calculation of the weekly amount of a liable relative payment);

(d) 123 (date on which a liable relative payment is to be treated as paid).

(3) In regulation 89, for “liable relatives” substitute “child maintenance and liable relative payments”.

(4) Omit—

(a) regulations 90 (child support);

(b) regulation 124 (liable relative payments to be treated as capital);

(c) in Part 8, the whole of Chapter 8 (child support).

(5) In Part 8, for the heading to Chapter 7 (liable relatives), substitute “child maintenance and liable relative payments”.

(6) In regulation 117(b) (interpretation)—

(a) Paragraph 73 was inserted by S.I. 2000/3176 and substituted by S.I. 2004/98.

(b) Amended by S.I. 2005/2877.

- (a) at the appropriate places insert the following definitions—
- “child maintenance” means any payment towards the maintenance of a child or young person, including any payment made voluntarily and payments made under—
- (a) the Child Support Act 1991;
 - (b) the Child Support (Northern Ireland) Order 1991;
 - (c) a court order;
 - (d) a consent order;
 - (e) a maintenance agreement registered for execution in the Books of Council and Session or the sheriff court books;
- “claimant’s family” shall be construed in accordance with section 35(1) of the Jobseekers Act 1995 (interpretation);
- “housing costs” means those costs which may be met under regulation 83(f) or 84(1)(g) (housing costs);
- “ordinary clothing and footwear” means clothing and footwear for normal daily use but does not include school uniforms;”;
- (b) in definition “payment”—
- (i) omit “including, except in the case of a discretionary trust, any payment which would be so made or derived upon application being made by the claimant but which has not been acquired by him, but only from the date on which it could be expected to be acquired were an application made;”;
 - (ii) for paragraph (e) substitute—

“(e) made to a third party, or in respect of a third party, unless the payment is—

 - (i) in relation to the claimant or the claimant’s family; and
 - (ii) the payment is in respect of food, ordinary clothing or footwear, fuel, rent, housing costs, council tax or water charges;”;
- (c) in the definition of “periodical payment”—
- (i) in paragraph (a) omit “in pursuance of a court order or agreement for maintenance”;
 - (ii) in paragraph (c), for “not exceeding” substitute “, after the appropriate disregard under paragraph 70 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings) has been applied to it, that does not exceed”.
- (7) In regulation 118 (treatment of liable relative payments) for “except where regulation 124(1) (liable relative payments to be treated as capital) applies” substitute “paragraph 70 of Schedule 7 (sums to be disregarded in the calculation of income other than earnings)”.
- (8) For regulation 121 substitute—

“Period over which payments other than periodical payments are to be taken into account

121.—(1) The period over which a payment other than a periodical payment (a “non-periodical payment”) is to be taken account shall be determined as follows.

(2) Except in a case where paragraph (4) applies, the number of weeks over which a non-periodical payment is to be taken into account shall be equal to the number obtained by dividing that payment by the amount referred to in paragraph (3).

(3) The amount is the aggregate of £2 and—

- (a) the amount of jobseeker’s allowance that would be payable had no payment been made, and
- (b) where applicable, the maximum amount of disregard that would apply to the payment under paragraph 70 of Schedule 7.

(4) This paragraph applies in a case where a liable relative makes a periodical payment and a non-periodical payment concurrently and the weekly amount of the periodical payment (as calculated in accordance with regulation 122) is less than B.

(5) In a case where paragraph (4) applies, the non-periodical payment shall, subject to paragraphs (6) and (7), be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{A}{B - C}$$

(6) If the liable relative ceases to make periodical payments, the balance (if any) of the non-periodical payment shall be taken into account over the number of weeks equal to the number obtained by dividing that balance by the amount referred to in paragraph (3).

(7) If the amount of any subsequent periodical payment varies, the balance (if any) of the non-periodical payment shall be taken into account over a period of the number of weeks equal to the number obtained by applying the formula—

$$\frac{D}{B - E}$$

(8) The period under paragraph (2) or (4) shall begin on the date on which the payment is treated as paid under regulation 123 (date on which a liable relative payment is treated as paid) and the period under paragraph (6) and (7) shall begin on the first day of the benefit week in which the cessation or variation of the periodical payment occurred.

(9) Any fraction which arises by applying a calculation or formula referred to in this regulation shall be treated as a corresponding fraction of a week.

(10) In paragraphs (4) to (7)—

A = the amount of the non-periodical payment;

B = the aggregate of £2 and the amount of jobseeker's allowance that would be payable had the periodical payment not been made and, where applicable, the maximum disregard under paragraph 70 of Schedule 7;

C = the weekly amount of the periodical payment;

D = the balance (if any) of the non-periodical payment;

E = the weekly amount of any subsequent periodical payment.”.

(9) In paragraph 70 of Schedule 7(a) (sums to be disregarded in the calculation of income other than earnings) for sub-paragraphs (3) and (4) substitute—

“(3) No more than £20 shall be disregarded in respect of each week to which any payment of child maintenance is attributed in accordance with regulations 118 to 123 (child maintenance and liable relatives).

(4) In this paragraph, “child maintenance” shall have the same meaning as in regulation 117 (interpretation).”.

Amendment of the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003

4.—(1) The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003(b) are amended as follows.

(2) In Schedule 1 (amendments to the income support regulations) omit paragraph 15.

(3) In Schedule 2 (amendments to jobseeker's allowance regulations) omit paragraph 15.

(a) Paragraph 70 was inserted by S.I. 2000/3176 and substituted by S.I. 2004/98.

(b) S.I. 2003/455.

Signed by authority of the Secretary of State for Work and Pensions.

5th August 2008

James Plaskitt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Support (General) Regulations 1987 (S.I. 1987/1967) (“the Income Support Regulations”), the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207) (“the Jobseeker’s Allowance Regulations”) and the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations 2003 (S.I. 2003/455).

Regulations 2 and 3 amend provisions in the Income Support Regulations and the Jobseeker’s Allowance Regulations about liable relatives so as to:

- revoke provisions no longer required as a consequence of the Child Maintenance and Other Payments Act 2008 (c.6);
- provide a definition of “child maintenance”, “claimant’s family”, “housing costs” and “ordinary clothing and footwear”;
- clarify that child maintenance is included in the definition of “payment” for the purposes of the liable relative provisions;
- provide that payments of any child maintenance are subject to a disregard of £20 a week for which provision is made in a single set of rules for each benefit.

Regulation 2 also amends the Income Support Regulations so as to substitute a reference to a revoked provision in the Social Security Act 1986 with the relevant provision in the Social Security Administration Act 1992.

Regulation 4 makes consequential amendments to the Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendments) Regulations to remove provisions amending the Income Support Regulations and the Jobseeker’s Allowance Regulations that are no longer required because the new child maintenance rules in these benefits apply to all relevant claimants.

A full impact assessment has not been published for this instrument as it has no impact on private and voluntary sectors.

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