



# Social Security Act 1988

## CHAPTER 7

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# Social Security Act 1988

## 1988 CHAPTER 7

An Act to amend the law relating to social security and to make fresh provision in relation to welfare foods and for the remission of charges for services provided under the National Health Service Act 1977 and the National Health Service (Scotland) Act 1978 and the payment of travelling and overnight expenses for the purpose of persons availing themselves of services provided under those Acts; and for connected purposes.

[15th March 1988]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Attendance allowance*

1.—(1) The following paragraph shall be substituted for section 35(1)(b) of the Social Security Act 1975—

Attendance allowance.  
1975 c. 14.

“(b) he is so severely disabled physically or mentally that, at night,—

(i) he requires from another person prolonged or repeated attention in connection with his bodily functions, or

(ii) in order to avoid substantial danger to himself or others he requires another person to be awake for a prolonged period or at frequent intervals for the purpose of watching over him.”

(2) Section 35 of the Social Security Act 1975 shall have effect as amended by subsection (1) above only for the purposes—

- (a) of any determination by the Attendance Allowance Board or a delegate appointed under paragraph 5 of Schedule 11 to that Act following a claim made after the passing of this Act;
- (b) of any review by the Board or by such a delegate following an application made after the passing of this Act;

1975 c. 14.

- (c) of any review by the Board or by such a delegate under section 106(1)(a) or (bb) of the Social Security Act 1975 following a decision to conduct such a review made after the passing of this Act; and
- (d) of any issue, revocation or alteration of a certificate relating to attendance allowance which takes place following a determination, review or appeal such as is mentioned in paragraph (a), (b) or (c) above.

*Industrial injuries*

Introduction of retirement allowance and other provisions relating to industrial injuries benefit.

2.—(1) The following section shall be inserted after section 59A of the Social Security Act 1975—

“Retirement allowance.

59B.—(1) Subject to the provisions of this Part of this Act, a person who—

- (a) has attained pensionable age; and
- (b) retires, or is deemed under section 27(5) above to have retired, from regular employment on or after the date on which this section comes into force; and
- (c) was entitled to reduced earnings allowance (by virtue either of one award or of a number of awards) on the day immediately before he retired or is deemed to have retired,

shall cease to be entitled to reduced earnings allowance as from the day on which he retires or is deemed to have retired and may be entitled to it again only if he makes an election in accordance with regulations under section 30(3) above.

(2) If the day before a person ceases under subsection (1) above to be entitled to reduced earnings allowance he is entitled to the allowance (by virtue either of one award or of a number of awards) at a weekly rate or aggregate weekly rate of not less than £2.00, he shall be entitled to a benefit, to be known as “retirement allowance”.

(3) Unless he makes an election in accordance with regulations under section 30(3) above, retirement allowance shall be payable to him (subject to any enactment contained in Chapter VI of this Part of this Act and to any regulations made under any such enactment) for life.

(4) If he makes such an election, his entitlement to retirement allowance shall cease on the day on which the election takes effect.

(5) Subject to subsection (6) below, the weekly rate of a beneficiary’s retirement allowance shall be—

- (a) 25 per cent. of the weekly rate of reduced earnings allowance to which he was entitled the day before he ceased to be entitled to that allowance; or

- (b) 10 per cent. of the maximum rate of a disablement pension,

whichever is the less.

(6) If the weekly rate of the beneficiary's retirement allowance—

- (a) would not be a whole number of pence; and  
(b) would exceed the whole number of pence next below it by  $\frac{1}{2}$ p or more,

the beneficiary shall be entitled to retirement allowance at a rate equal to the next higher whole number of pence."

(2) In section 63 of the Social Security Act 1986 (annual up-rating of benefit)— 1986 c. 50.

- (a) the following paragraph shall be inserted after subsection (1)(e)—

"(ee) falling to be calculated under section 59B(5) of that Act;"; and

- (b) in subsection (3)(b), for the words "or (d)" there shall be substituted the words ", (d) or (ee)".

(3) Section 59A(8) of the Social Security Act 1975 shall be modified in the case of a person who retired from regular employment before 6th April 1987 by the substitution for "140 per cent." of "100 per cent.". 1975 c. 14.

(4) A person who—

- (a) on 10th April 1988; or  
(b) on the day before subsection (1) above comes into force,

satisfies the conditions—

- (i) that he has attained pensionable age;  
(ii) that he has retired from regular employment; and  
(iii) that he is entitled to reduced earnings allowance,

shall be entitled to that allowance for life.

(5) In the case of any beneficiary who is entitled to reduced earnings allowance by virtue of subsection (4) above, the allowance shall be payable, subject to any enactment contained in Chapter VI of Part II of the Social Security Act 1975 and to any regulations made under any such enactment, at the weekly rate at which it was payable to the beneficiary on the relevant date or would have been payable to him on that date but for any such enactment or regulations.

(6) For a beneficiary who is entitled to reduced earnings allowance by virtue of subsection (4)(a) above the relevant date is 10th April 1988.

(7) For a beneficiary who is entitled to it by virtue of subsection (4)(b) above the relevant date is the day before subsection (1) above came into force.

(8) After subsection (1) above comes into force no person over pensionable age and retired from regular employment shall be entitled to reduced earnings allowance otherwise than under subsection (4) above.

(9) References in subsections (3), (4) and (8) above to a person who has retired from regular employment include references—

1975 c. 14.

(a) to a person who under subsection (3) of section 27 of the Social Security Act 1975 is treated for the purposes of that Act as having retired from regular employment; and

(b) to a person who under subsection (5) of that section is deemed for those purposes to have retired from it.

(10) Schedule 1 to this Act shall have effect in relation to industrial death benefit.

#### *Family credit*

Family credit.  
1986 c. 50.

3. In section 20 of the Social Security Act 1986—

(a) the following subsection shall be inserted after subsection (5)—

“(5A) In subsection (5) above “the applicable amount” means the applicable amount at such date as may be prescribed;” and

(b) in subsection (6) the words “, beginning with the week in which a claim for it is made or is treated as made” shall cease to have effect.

#### *Young persons*

Income support  
and child benefit.

4.—(1) In paragraph (a) of subsection (3) of section 20 of the Social Security Act 1986 (by virtue of which a person in Great Britain is entitled to income support if he is of or over the age of 16) for “16” there shall be substituted “18 or, in prescribed circumstances and for a prescribed period, of or over the age of 16 or he is a person to whom subsection (4A) below applies;”.

(2) The following subsections shall be inserted after subsection (4) of that section—

“(4A) If it appears to the Secretary of State—

(a) that a person of or over the age of 16 but under the age of 18 is not entitled to income support; and

(b) that severe hardship will result to that person unless income support is paid to him,

the Secretary of State may direct that this subsection shall apply to him.

(4B) Any such direction may specify a period for which subsection (4A) above is to apply to the person to whom the direction relates.

(4C) The person to whom such a direction relates shall be treated in accordance with it, but if at any time it appears to the Secretary of State that there has been a change of circumstances as a result of which failure to receive income support need no longer result in severe hardship to him, he may revoke the direction.

- (4D) The Secretary of State may also revoke the direction if—
- (a) he is satisfied that it was given in ignorance of some material fact or was based on a mistake as to some material fact; and
  - (b) he considers that but for his ignorance or mistake he would not have determined that failure to receive income support would result in severe hardship.

(4E) Where—

- (a) a direction under subsection (4A) above is revoked; and
- (b) it is determined by an adjudication officer that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure a payment of income support has been made during the relevant period to the person to whom the direction related,

an adjudication officer may determine that the Secretary of State shall be entitled to recover the amount of the payment.

(4F) Section 53(2) and (5) to (9) below apply to income support recoverable under subsection (4E) above as they apply to income support recoverable under section 53(1) below.

(4G) The other provisions of section 53 below do not apply to income support recoverable under subsection (4E) above.

(4H) In subsection (4E) above “the relevant period” means—

- (a) if the revocation is under subsection (4C) above, the period beginning with the date of the change of circumstances and ending with the date of the revocation; and
- (b) if the revocation is under subsection (4D) above, the period during which the direction was in force.

(4J) Where a direction under subsection (4A) above is revoked, the Secretary of State may certify whether there has been misrepresentation of a material fact or failure to disclose a material fact.

(4K) If he certifies that there has been such misrepresentation or failure to disclose, he may also certify—

- (a) who made the misrepresentation or failed to make the disclosure; and
- (b) whether or not a payment of income support has been made in consequence of the misrepresentation or failure.

(4L) If he certifies that a payment has been made, he may certify the period during which income support would not have been paid but for the misrepresentation or failure to disclose.

(4M) A certificate under this section shall be conclusive for the purposes of this section as to any matter certified.

(4N) In subsections (3)(a) and (4B) above “period” includes—

- (a) a period of a determinate length;
- (b) a period defined by reference to the happening of a future event; and

(c) a period of a determinate length but subject to earlier determination upon the happening of a future event.”

1975 c. 61. (3) The following paragraph shall be inserted after subsection (1)(a) of section 2 of the Child Benefit Act 1975—

“(aa) he is under the age of eighteen and not receiving full-time education and prescribed conditions are satisfied in relation to him; or”.

(4) In section 4(1) of that Act, after the word “above” there shall be inserted the words “or by virtue of section 2(1)(aa) above and regulations made under that paragraph”.

Annual review of child benefit.

5. The Secretary of State shall review the level of child benefit in April of each year, taking account of increases in the Retail Price Index and other relevant external factors.

#### *Short-term benefits*

Contribution conditions for short-term benefits.  
1975 c. 14.

6.—(1) Schedule 3 to the Social Security Act 1975 shall be amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (2)(a), for the words “in respect of any one year have actually paid contributions of a relevant class,” there shall be substituted the words “have actually paid contributions of a relevant class—

(i) in the case of unemployment benefit, in respect of one of the last two complete years before the beginning of the relevant benefit year; and

(ii) in the case of sickness benefit, in respect of any one year.”; and

(b) in sub-paragraph (3)—

(i) in paragraph (a), for the words “relevant past year” there shall be substituted the words “last two complete years before the beginning of the relevant benefit year”; and

(ii) in paragraph (b), for the words “than that” there shall be substituted the words “in each of those years than the”.

(3) In paragraph 8(3), the words from “paragraph (b)”, in the first place where those words occur, to “of”, in the fourth place where it occurs, shall cease to have effect.

(4) Paragraph 9 shall cease to have effect.

Unemployment benefit and occupational pension.  
1980 c. 39.

7. In section 5 of the Social Security (No. 2) Act 1980 (which provides for the reduction of unemployment benefit for a person who has attained the age of 60 if payments by way of occupational pension exceeding a prescribed sum are made to him for any week)—

(a) in subsections (1) and (6), for “60” there shall be substituted “55”; and

(b) in subsection (6), for “sixtieth” there shall be substituted “fifty-fifth”.



*Emergency payments*

- 8.—(1)** The Secretary of State may make arrangements—  
 (a) with a local authority to which this section applies; or  
 (b) with any other body,

Emergency payments by local authorities and other bodies.

for the making on his behalf by members of the staff of any such authority or body of payments on account of benefits to which section 51 of the Social Security Act 1986 applies in circumstances corresponding to those in which the Secretary of State himself has the power to make such payments under section 51(1)(t) of that Act; and a local authority to which this section applies shall have power to enter into any such arrangements.

1986 c. 50.

(2) A payment under any such arrangements shall be treated for the purposes of any Act of Parliament or instrument made under an Act of Parliament as if it had been made by the Secretary of State.

(3) The Secretary of State shall repay a local authority or other body such amount as he determines to be the reasonable administrative expenses incurred by the authority or body in making payments in accordance with arrangements under this section.

- (4) The local authorities to which this section applies are—

- (a) a local authority as defined by section 270(1) of the Local Government Act 1972, other than a parish or community council;  
 (b) the Common Council of the City of London; and  
 (c) a local authority as defined in section 235(1) of the Local Government (Scotland) Act 1973.

1972 c. 70.

1973 c. 65.

*Earnings factors etc.*

**9.** Part I of Schedule 2 to this Act shall have effect in relation to the calculation of earnings factors and of guaranteed minimum pensions partly attributable to earnings factors for the period before the tax year 1988-1989 and Part II shall have effect in relation to transfer values.

Earnings factors and transfer values.

**10.—(1)** Increases and reductions of benefit under the Social Security Act 1975 which in pursuance of any enactment to which this section applies fall to be calculated by reference to a person's earnings shall be calculated by reference to earnings from employment or to earnings from payments by way of occupational pension or to earnings of both descriptions, if the person is entitled to them.

Increase and reduction of benefit by reference to earnings.  
 1975 c. 14.

(2) This section applies to sections 41, 44 to 47, 64 and 66 of the Social Security Act 1975.

*The social fund*

**11.** Schedule 3 to this Act shall have effect to make amendments of enactments relating to the social fund.

Amendments relating to the social fund.

*Up-rating*

**12.—(1)** It is hereby declared that the orders to which this section applies were validly made and that the Secretary of State is under no duty to revoke them.

Up-rating Orders.

S.I. 1987, No.  
1978.  
S.I. 1987, No.  
1981.

- (2) The orders to which this section applies are—
- (a) the Social Security Benefits Up-rating (No. 2) Order 1987;
  - (b) the Occupational Pensions (Revaluation) Order 1987.

*Welfare foods*

Schemes for  
distribution etc. of  
welfare foods.

**13.—**(1) In this section “welfare food” means liquid cows’ milk, dried milks, vitamin tablets and vitamin drops.

(2) The Secretary of State may by order add any food to or remove any food from the foods referred to in subsection (1) above.

(3) The Secretary of State may by regulations make a scheme, or a number of schemes—

- (a) for the provision of welfare food; and
- (b) for the making of payments to such persons as may be determined by or under the scheme who are entitled to receive a welfare food but who—
  - (i) do not receive it;
  - (ii) do not receive the amount to which they are so entitled.

(4) Any such regulations—

- (a) may provide for the distribution or disposal, by or on behalf of the Secretary of State, of any welfare food, and the use or consumption of any such food;
- (b) may control any prices to be charged for any welfare food provided under the scheme;
- (c) may provide for an amount to be reimbursed by the Secretary of State to a supplier of any welfare food under the scheme;
- (d) may provide for requiring such information or evidence as may be reasonably needed in connection with the administration of the scheme to be furnished by such persons as may be specified to an officer of the Secretary of State duly authorised in that behalf, on production by the officer (if required to do so) of his authority; and
- (e) may direct that specified enactments relating to the administration of benefit under the Social Security Act 1975 (including enactments relating to offences and criminal proceedings) shall have effect for the purpose of the administration of the scheme, subject to any modifications specified in the regulations,

1975 c. 14.

and in paragraph (e) above “modifications” includes additions, omissions and amendments.

(5) The power conferred by subsection (4) above to make regulations requiring a person to produce information or evidence shall include power to make regulations providing that—

- (a) if documents specified by an officer are produced—
  - (i) he may take copies of them or extracts from them; and
  - (ii) he may require that person, or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any of them; and

- (b) if documents so specified are not produced, he may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.
- (6) A statutory instrument containing an order under subsection (2) above shall not be made unless a draft of the instrument has been laid before Parliament and has been approved by a resolution of each House of Parliament.
- (7) A statutory instrument containing regulations under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Section 166(1) to (3A) of the Social Security Act 1975 (extent of powers) shall apply to powers conferred by this section to make regulations or orders as they apply to any power to make regulations or orders conferred by that Act but as if for references to that Act there were substituted references to this section.

1975 c.14.

*Remission of Health Service charges and payment of travelling expenses*

**14.—(1)** The following section shall be inserted after section 83 of the National Health Service Act 1977—

National Health Service—  
remission of charges and payment of travelling expenses.  
1977 c. 49.

“Remission and repayment of charges and payment of travelling expenses.

**83A.—(1)** Regulations may provide in relation to prescribed descriptions of persons—

- (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 77(1) above, section 78(1) above or section 79 above; and
- (b) for the payment by the Secretary of State in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act.

(2) Descriptions of persons may be prescribed for the purposes of paragraph (a) or (b) of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—

- (a) their age;
- (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
- (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
- (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;

- (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
- (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—

- (a) by a method set out in the regulations;
- (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
- (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
- (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

(4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—

- (a) as it has effect at the time when the regulations are made; or
- (b) both as it has effect at that time and as amended subsequently."

1978 c. 29. (2) The following section shall be inserted after section 75 of the National Health Service (Scotland) Act 1978—

"Remission and repayment of charges and payment of travelling expenses.

75A.—(1) Regulations may provide in relation to prescribed descriptions of persons—

- (a) for the remission or repayment of the whole or any part of any charges which would otherwise be payable by them in pursuance of section 69(1) above, section 70(1) above or section 71 above;
- (b) for the payment by the Secretary of State in such cases as may be prescribed of travelling expenses (including the travelling expenses of a companion) incurred or to be incurred for the purpose of their availing themselves of any services provided under this Act; and

- (c) where they are persons whose travelling expenses are payable by virtue of paragraph (b) above, for the payment by the Secretary of State in such cases as may be prescribed of expenses necessarily incurred by them (and by any companion whose travelling expenses are so payable) in obtaining overnight accommodation for the purpose mentioned in that paragraph.

(2) Descriptions of persons may be prescribed for the purposes of paragraph (a), (b) or (c) of subsection (1) above by reference to any criterion and, without prejudice to the generality of this subsection, by reference to any of the following criteria—

- (a) their age;
- (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition;
- (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances;
- (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit;
- (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits; and
- (f) the relationship, as calculated in accordance with the regulations by a prescribed person, between their resources and their requirements.

(3) Regulations under this section may direct how a person's resources and requirements are to be calculated and, without prejudice to the generality of this subsection, may direct that they shall be calculated—

- (a) by a method set out in the regulations;
- (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications;
- (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament; or
- (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.

(4) Regulations under this section which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—

- (a) as it has effect at the time when the regulations are made; or
- (b) both as it has effect at that time and as amended subsequently.”

*General and supplementary*

Financial provision.

**15.**—(1) There shall be paid out of money provided by Parliament—

- (a) any expenses incurred under this Act by a Minister of the Crown; and
- (b) any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

(2) There shall be paid out of the National Insurance Fund into the Consolidated Fund, at such times and in such manner as the Treasury may direct, such sums as the Secretary of State may estimate (in accordance with any directions given by the Treasury) to be the amount of the administrative expenses incurred by him under sections 2, 6, 7, 9 and 10 above, excluding any category of expenses which the Treasury may direct, or any enactment may require, to be excluded from the Secretary of State’s estimates under this subsection.

(3) There shall be paid into the Consolidated Fund any increase by virtue of this Act in sums so payable by virtue of any other Acts.

Minor and consequential amendments and repeals.

**16.**—(1) The enactments mentioned in Schedule 4 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on the foregoing provisions of this Act).

(2) The enactments mentioned in Schedule 5 to this Act (which include enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule.

Northern Ireland. 1974 c. 28.

**17.** An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

Commencement.

**18.**—(1) The provisions of this Act to which this subsection applies shall come into force on the day this Act is passed.

(2) Subsection (1) above applies to the following provisions of this Act—

- section 1;
- section 2 (3);
- section 8;

section 10;

section 12;

section 15;

section 16(1), so far as it relates to sections 17, 44 to 47, 59A and 66 of the Social Security Act 1975, and sections 29 and 33 of the Social Security Act 1986 and to the insertion of subsection (7A) in section 53 of that Act; 1975 c. 14.  
1986 c. 50.

section 16(2), so far as it relates—

(a) to sections 45, 45A, 46, 47B and 66 of the Social Security Act 1975;

(b) to Schedule 1 to the Social Security Act 1980; and 1980 c. 30.

(c) to section 13(4)(a) of the Social Security Act 1985; 1985 c. 53.

section 17;

this section;

sections 19 and 20.

(3) Subject to subsections (1) and (2) above, this Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed in pursuance of this section for different provisions or different purposes of the same provision.

(4) The Secretary of State may by regulations made by statutory instrument make—

(a) such transitional provision;

(b) such consequential provision; or

(c) such savings,

as he considers necessary or expedient in preparation for or in connection with the coming into force of any provision of this Act or the operation of any enactment which is repealed or amended by a provision of this Act during any period when the repeal or amendment is not wholly in force.

(5) Regulations under subsection (4) above may make modifications of any enactment contained in this or in any other Act.

(6) In subsection (5) above “modifications” includes additions, omissions and amendments.

(7) Section 166(1) to (3A) of the Social Security Act 1975 shall apply to the power to make regulations conferred by subsection (4) above as they apply to any power to make regulations conferred by that Act but as if for references to that Act there were substituted references to subsection (4) above.

(8) A statutory instrument containing regulations under subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

19.—(1) Subsection (1) of section 14 above extends only to England and Wales and subsection (2) of that section extends only to Scotland. Extent.

(2) Sections 17 and 20(1) of this Act and this section extend to Northern Ireland, and section 18(1) and (2) extend there so far as they relate to those provisions.

(3) The extent of any amendment or repeal of an enactment in Schedule 4 or 5 to this Act is the same as that of the enactment amended or repealed.

(4) Subject to the foregoing provisions of this section, this Act does not extend to Northern Ireland.

Citation.

**20.—**(1) This Act may be cited as the Social Security Act 1988.

(2) Sections 1 to 12 above (including Schedules 1 to 3 to this Act) and sections 15 to 19 above (including Schedules 4 and 5) and this section, so far as they have effect for the purposes of sections 1 to 12 above, may be cited together with the Social Security Acts 1975 to 1986 and the Social Fund (Maternity and Funeral Expenses) Act 1987 as the Social Security Acts 1975 to 1988.

1987 c. 7.



## SCHEDULES

### SCHEDULE 1

Section 2.

#### INDUSTRIAL DEATH BENEFIT

1. In Schedule 4 to the Social Security Act 1975, in Part V, paragraphs 13(b) and 14, “£41·15” shall be substituted for “£41·70”. 1975 c. 14.

2. The repeals by the Social Security Act 1986 of the enactments mentioned in paragraph 8 of Schedule 3 to that Act other than the repeals of sections 67(2)(b) and 71 to 74 of the Social Security Act 1975, shall only take effect in relation to deaths occurring on or after 11th April 1988. 1986 c. 50.

3. Section 69 of the Social Security Act 1975 (widower’s death benefit) shall cease to have effect except in relation to deaths before 11th April 1988.

4. Paragraph 9 of Schedule 3 to the Social Security Act 1986 shall cease to have effect.

5. In paragraph 10 of that Schedule—

(a) after the word “dies” there shall be inserted the words “on or after 11th April 1988”; and

(b) the following sub-paragraph shall be substituted for sub-paragraph (iv)—

“(iv) a Category B retirement pension which is at the same rate as her widow’s pension or which falls within section 29(4) of the Social Security Act 1975.”

6.—(1) Any repeal by the Social Security Act 1986—

(a) of a provision to which this paragraph applies; or

(b) of any part of such a provision,

shall not take effect—

(i) in relation to deaths occurring before 11th April 1988; or

(ii) for the purposes of paragraph 10 of Schedule 3 to that Act.

(2) The provisions to which this paragraph applies are—

(a) in the Social Security Act 1975, sections 75(1), 90(2)(a), 107(4) and 117(4) and section 117(5)(a) and the word “and” immediately following it; and

(b) section 9 of the Social Security (Miscellaneous Provisions) Act 1977. 1977 c. 5.

### SCHEDULE 2

Section 9.

#### EARNINGS FACTORS AND TRANSFER VALUES

##### PART I

#### EARNINGS FACTORS

1.—(1) In section 13 of the Social Security Act 1975—

(a) in subsection (5) (earnings factors to be expressed as whole numbers of pounds), after the word “shall”, in the first place where it occurs, there shall be inserted the words “, subject to subsection (5ZA) below,”; and

(b) the following subsection shall be inserted after that subsection—

SCH. 2

“(5ZA) Subsection (5) above does not require earnings factors which have been revalued for the purpose of calculating guaranteed minimum pensions to be expressed as whole numbers of pounds.”

1975 c. 60.

(2) In subsection (5) of section 35 of the Social Security Pensions Act 1975 (earner's guaranteed minimum), after the word “by” there shall be inserted the words “the same percentage as that prescribed for the increase of earnings factors by”.

(3) This paragraph shall be deemed to have come into force on 6th April 1979.

2. The following section shall be inserted after section 60A of the Social Security Pensions Act 1975—

“Guaranteed minimum pensions attributable in part to period before 1988–1989.

60B. Where a guaranteed minimum pension is attributable in part to earnings factors for the period before the tax year 1988–1989 and in part to earnings factors for that tax year or for that tax year and subsequent tax years, the pension shall be calculated by applying section 60A above separately to the amount attributable to the period before the tax year 1988–1989 and to the amount attributable to that and subsequent tax years and then aggregating the two amounts so calculated.”

## PART II

### TRANSFER VALUES

3. In paragraph 12 of Schedule 1A to the Social Security Pensions Act 1975—

- (a) in sub-paragraph (2), in the definition of “relevant date”, after the word “means” there shall be inserted the words “, subject to regulations under sub-paragraph (2C) below,”; and
- (b) the following sub-paragraph shall be inserted after sub-paragraph (2B)—

“(2C) Regulations —

- (a) may provide that a right at the relevant date to the cash equivalent of any part of the benefits specified in sub-paragraph (1) above which but for regulations under the foregoing provisions of this paragraph a member would have on the termination of his pensionable service in an employment to which a scheme applies shall, if his employment terminates at least one year before normal pension age, accrue to him on the date when it terminates and be valued accordingly; and
- (b) may substitute, in relation to any case to which the regulations apply—
  - (i) a new definition of the “relevant date” for the definition in sub-paragraph (2) above, and
  - (ii) a new definition of “the last option date” for the definition in paragraph 15(2) below.”

## SCHEDULE 3

Section 11.

## THE SOCIAL FUND

*Amendments of section 32 of 1986 Act*

1. Section 32 of the Social Security Act 1986 shall be amended as follows. 1986 c. 50.
2. The following subsection shall be inserted after subsection (2)—
- “(2.) Payments may also be made out of that fund, in accordance with this Part of this Act, of a prescribed amount or a number of prescribed amounts to prescribed descriptions of persons, in prescribed circumstances to meet expenses for heating which appear to the Secretary of State to have been or to be likely to be incurred in cold weather.”
3. Subsection (3) shall cease to have effect.
4. The following subsections shall be inserted after subsection (7)—
- “(7A) The Secretary of State shall prepare an annual report on the social fund.
- (7B) A copy of every report prepared under subsection (7A) above shall be laid before each House of Parliament.”
5. In subsection (8) the words from “and” to the end shall cease to have effect.
6. The following subsections shall be inserted after that subsection—
- “(8A) The Secretary of State shall allocate amounts for payments from the social fund such as are mentioned in subsection (2)(b) above in a financial year.
- (8B) The Secretary of State may specify the amounts either as sums of money or by reference to money falling into the social fund on repayment or partial repayment of loans, or partly in the former and partly in the latter manner
- (8C) Allocations —
- (a) may be for payments by a particular social fund officer or group of social fund officers;
  - (b) may be of different amounts for different purposes;
  - (c) may be made at such time or times as the Secretary of State considers appropriate; and
  - (d) may be in addition to any other allocation to the same officer or group of officers or for the same purpose.
- (8D) The Secretary of State may at any time re-allocate amounts previously allocated, and subsections (8B) and (8C) above shall have effect in relation to a re-allocation as they have effect in relation to an allocation.”
7. The following subsections shall be inserted after subsection (9)—
- “(10) The Secretary of State may nominate for an area a social fund officer to issue general guidance to the other social fund officers in the area about such matters relating to the social fund as the Secretary of State may specify.
- (11) In determining a question under section 33 below or reviewing a question under section 34 below a social fund officer shall take account (subject to any directions or guidance issued by the Secretary of State under either of those sections) of any guidance issued by the social fund officer nominated for his area under subsection (10) above.
- (12) A social fund inspector reviewing a determination shall be under the same duties in relation to such guidance as the social fund officer or inspector who made the determination.”

## SCH. 3

*Amendments of section 33*

1986 c. 50.

8. Section 33 of the Social Security Act 1986 shall be amended as follows.

9. At the end of subsection (1) there shall be added the words, "in such form and manner as may be prescribed".

10. The following subsection shall be inserted after subsection (1)—

"(1A) The power to make a payment out of the social fund under section 32(2)(b) above may be exercised by making a payment to a third party with a view to the third party providing, or arranging for the provision of, goods or services for the applicant."

11. The following subsection shall be inserted after subsection (4)—

"(4A) An award that is to be repayable shall be repayable upon such terms and conditions as before the award is paid the Secretary of State notifies to the person by or on behalf of whom the application for it was made."

12. In subsection (9)(e) for "(8)" there shall be substituted "(8A) to (8D)".

13. The following subsection shall be inserted after subsection (10)—

"(10A) Without prejudice to the generality of subsection (10) above, the power to issue general directions conferred on the Secretary of State by that subsection includes power to direct—

- (a) that in circumstances specified in the direction a social fund officer shall not determine an application and, without prejudice to the generality of this paragraph, that a social fund officer shall not determine an application which is made before the end of a specified period after the making of an application by the same person for a payment such as is mentioned in section 32(2)(b) above to meet the same need and without there having been any relevant change of circumstances since the previous application;
- (b) that for a category of need specified in the direction a social fund officer shall not award less than an amount specified in the direction;
- (c) that for a category of need specified in the direction a social fund officer shall not award more than an amount so specified;
- (d) that payments to meet a category of need specified in the direction shall in all cases or in no case be made by instalments; and
- (e) that payments to meet a category of need specified in the direction shall in all cases or in no case be repayable,

and the power to issue general guidance conferred on him by that subsection includes power to give social fund officers guidance as to any matter to which directions under that subsection may relate."

*Miscellaneous*

14. The Social Security Act 1986 shall also be amended as follows.

15. The words "to him" shall be omitted from section 34(1) (a).

16. In sections 51(2), 52(6) and 53(10) (claims and payments, adjudication and overpayments) after "32(2)(a)" there shall be inserted "or (2A)".

## SCHEDULE 4

Section 16.

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Exemption from Income Tax*

1. The following paragraph shall be inserted after paragraph (a) of section 617(2) of the Income and Corporation Taxes Act 1988 (which specifies certain social security benefits which are not to be treated as income for the purposes of the Income Tax Acts)— 1988 c. 1.

“(aa) payments by way of an allowance under section 70 of the Social Security Act 1975 and section 70 of the Social Security (Northern Ireland) Act 1975;”.

*Employment and Training*

2. The following subsection shall be substituted for section 12(2) of the Employment and Training Act 1973— 1973 c. 50.

“(2) It shall be the duty of each local education authority and the Commission to furnish the Secretary of State with such information in its possession as the Secretary of State may require as being information required in connection with the determination of questions relating to contributions or benefit under—

(a) the benefit Acts as defined in section 84(1) of the Social Security Act 1986; 1986 c. 50.

(b) the Social Security Act 1988;

and any information falling to be furnished in pursuance of this subsection shall be furnished in such a form and at such times as the Secretary of State may direct.”

*Social Security Act 1975*

3. The Social Security Act 1975 shall be amended as follows. 1975 c. 14.

4. The following subsection shall be inserted after subsection (2) of section 17 (determination of days for which benefit is payable)—

“(2A) Where it has been determined that a person is to be deemed in accordance with regulations to be available for employment in employed earner’s employment in respect of any day, the question of his actual availability for such employment in respect of that day may be subsequently determined on a review of the determination as to his deemed availability.”

5. In section 22 (maternity allowance)—

(a) at the end of subsection (4) there shall be added the words “unless the woman is disqualified for receiving a maternity allowance in respect of that day by virtue of regulations under subsection (3)(a) above”; and

(b) the following subsection shall be inserted after that subsection—

“(4A) A woman who has become entitled to a maternity allowance shall cease to be entitled to it if she dies before the beginning of the maternity allowance period; and if she dies after the beginning, but before the end, of that period, the allowance shall not be payable for any week subsequent to that in which she dies.”

6. In section 44 (short-term benefit increase for adult dependants)—

(a) in subsection (1)(b), for the words “is not engaged in any one or more employments from which her weekly earnings” there shall be substituted the words “does not have weekly earnings which”; and

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- (b) in subsection (3)(a), for the words “is not engaged in any one or more employments from which his weekly earnings exceed the amount so specified” there shall be substituted the words “does not have weekly earnings which exceed the amount so specified”.
7. In section 45 (pension increase (wife))—
- (a) in subsection (2)(b), for the words “is not engaged in any one or more employments from which her weekly earnings” there shall be substituted the words “does not have weekly earnings which”; and
- (b) in subsection (2A), the words “is engaged in any one or more employments from which she” shall cease to have effect.
8. In section 45A (pension increase (husband))—
- (a) in subsection (2)(b), for the words “is not engaged in any one or more employments from which his weekly earnings” there shall be substituted the words “does not have weekly earnings which”; and
- (b) in subsection (3), the words “is engaged in any one or more employments from which he” shall cease to have effect.
9. In subsection (4) of section 46 (pension increase (female with care of children)) the words “from employment by the pensioner” shall cease to have effect.
10. In subsection (1)(a) of section 47 (invalidity pension (dependant relative)) for the words “is not engaged in any one or more employments from which he has earnings” there shall be substituted the words “does not have earnings”.
11. The following subsection shall be inserted after subsection (1) of section 50 (descriptions of industrial injuries benefits)—
- “(1A) The benefits are—
- (a) disablement benefit (including disablement pensions) payable in accordance with sections 57 to 63 below;
- (b) reduced earnings allowance payable in accordance with section 59A below and section 2 of the Social Security Act 1988;
- (c) retirement allowance payable in accordance with section 59B below;
- (d) industrial death benefit, payable in accordance with sections 67 to 75 below.”
12. In section 59A (reduced earnings allowance)—
- (a) in subsection (8), after the words “disablement pension”, in the second place where they occur, there shall be inserted the words “(not including increases in disablement pension under any provision of this Act)”; and
- (b) the following subsection shall be inserted after subsection (10) of section 59A (reduced earnings allowance)—
- “(10A) In this section and section 59B below “maximum rate of a disablement pension” means the rate specified in the first entry in column (2) of Schedule 4, Part V, paragraph 3 and does not include increases in disablement pension under any provision of this Act.”
13. In section 66 (adult dependants) there shall cease to have effect—
- (a) in subsection (3), the words “from any one or more employments”; and
- (b) in subsection (4) the words “is engaged in any one or more employments from which he or she”.
14. At the end of subsection (1)(c) of section 104 (review of decisions) there shall be added “or
- (d) the decision falls to be reviewed under section 17(2A) above.”.

*Social Security Act 1986—statutory maternity pay*

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15. The provisions of the Social Security Act 1986 specified in paragraphs 16 to 19 below (all of which relate to statutory maternity pay) shall be amended as provided in those paragraphs.

16.—(1) In paragraph (e) of section 46(8), for the words “subsection (2)(a) or (b) above or both” there shall be substituted the words “any of the provisions specified in subsection (9) below”.

(2) The following subsection shall be inserted after that subsection—

“(9) The provisions mentioned in subsection (8)(e) above are—

- (a) subsection (2)(a) and (b) above; and
- (b) section 48(2), (4) and (5) below.”

17. At the end of section 48(2) there shall be added the words “or the weekly rate prescribed under subsection (3) below, whichever is the higher”.

18. In section 50(1), in the definition of “employer”, the words “and a contract of service of hers” and the words “under the contract” shall cease to have effect.

19.—(1) In paragraph 11 of Schedule 4, for the word “Any” there shall be substituted the words “Except as may be prescribed, a”.

(2) The following paragraph shall be inserted after that paragraph—

“11A.—(1) Regulations may provide that in prescribed circumstances a day which falls within the maternity pay period shall be treated as a day of incapacity for work for the purpose of determining entitlement to an invalidity pension.

(2) Regulations may provide that an amount equal to a woman’s statutory maternity pay for a period shall be deducted from invalidity benefit in respect of the same period and a woman shall be entitled to invalidity benefit only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.”

*Social Security Act 1986—housing benefit*

20. The following subsection shall be added at the end of section 30 (housing benefit finance)—

“(11) The Secretary of State may by order make provision for the modification or termination of rights to subsidy under Part II of the Social Security and Housing Benefits Act 1982 in respect of benefit paid in excess of entitlement.”

*Other amendments of Social Security Act 1986*

21. The Social Security Act 1986 shall also be amended as follows.

22. In subsection (3) of section 17 (statutory provisions which may be modified as respects pension schemes)—

(a) the following paragraph shall be inserted after paragraph (d)—

“(dd) the Water Act 1973;” and

(b) the following paragraph shall be added at the end—

“(h) any Act which relates to the employment of persons by a harbour authority (“harbour authority” having the meaning assigned to it by section 57 (1) of the Harbours Act 1964).”

23.—(1) In subsection (1) of section 21 (amount etc. of income-related benefit) for the word “Where” there shall be substituted the words “Subject to subsection (1A) below, where”.

SCH. 4 (2) The following subsections shall be inserted after that subsection—

“(1A) Where a person is entitled to income support for a period to which this subsection applies, the amount payable for that period shall be calculated in such manner as may be prescribed.

(1B) Subsection (1A) above applies—

(a) to a period of less than a week which is the whole period for which income support is payable; and

(b) to any other period of less than a week for which it is payable.”

24.—(1) The following subsection shall be inserted after subsection (5) of section 23 (trade disputes)—

“(5A) In respect of any period less than a week, subsection (5) above shall have effect subject to such modifications as may be prescribed.”.

(2) In subsection (6) of that section, for the words “subsection (5) above” there shall be substituted the words “this section”.

25. The following section shall be inserted after section 23—

“Effect of return to work. 23A. If a person returns to work with the same employer after a period during which section 23 above applies to him, and whether or not his return is before the end of any stoppage of work in relation to which he is or would be disqualified for receiving unemployment benefit—

(a) that section shall cease to apply to him at the commencement of the day on which he returns to work; and

(b) until the end of the period of 15 days beginning with that day, section 20(3) above shall have effect in relation to him as if the following paragraph were substituted for paragraph (c)—

“(c) in the case of a member of a married or unmarried couple, the other member is not engaged in remunerative work; and”; and

(c) any sum paid by way of income support for that period of 15 days to him or, where he is a member of a married or unmarried couple, to the other member of that couple, shall be recoverable in the prescribed manner from the person to whom it was paid or from any prescribed person or, where the person to whom it was paid is a member of a married or unmarried couple, from the other member of the couple.”

26. The following subsection shall be inserted after section 29(7)—

“(8) Without prejudice to any other method of recovery, amounts recoverable under any enactment having effect in Northern Ireland and corresponding to this section shall be recoverable by deduction from benefits prescribed under subsection (7) above.”

27. The following subsection shall be inserted after section 33(8)—

“(8A) Without prejudice to any other method of recovery, awards recoverable under Part IV of the Social Security (Northern Ireland) Order 1986 shall be recoverable by deduction from benefits prescribed under subsection (6) above, and subsections (7) and (8) above shall have effect in relation to such awards as they have effect in relation to awards under this Part of this Act.”



28. The following subsection shall be inserted after section 53(7)—

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“(7A) Without prejudice to any other method of recovery, amounts recoverable under any enactment or instrument having effect in Northern Ireland and corresponding to an enactment or instrument mentioned in subsection (7) above shall be recoverable by deduction from benefits prescribed under subsection (7) above.”

29. Paragraphs 26 to 28 above shall be deemed to have come into force on 6th April 1987.

30.—(1) In paragraph (c) of subsection (10) of section 53 before “income” there shall be inserted “subject to subsection (10A) below,”.

(2) The following subsection shall be inserted after that subsection—

“(10A) This section only applies to income support recoverable under section 20(4E) above to the extent specified in section 20(4F) and (4G) above.”

#### SCHEDULE 5

Section 16.

##### REPEALS

Chapter	Short title	Extent of repeal
1964 c. 60.	Emergency Laws (Re-enactments and Repeals) Act 1964.	Section 4.
1968 c. 46.	Health Services and Public Health Act 1968.	Section 61.
1975 c. 14.	Social Security Act 1975.	In section 45(2A), the words “is engaged in any one or more employments from which she”. In section 45A(3), the words “is engaged in any one or more employments from which he”. In section 46(4), the words “from employment by the pensioner”. Section 47B(1)(b) and the word “and” immediately preceding it. Section 59A(11). In section 66, in subsection (3), the words “from any one or more employments” and in subsection (4), the words “is engaged in any one or more employments from which he or she”. Section 69. In Schedule 3, paragraph 1(4)(b), in paragraph 8(3), the words from “paragraph (b)” in the first place where those

SCH. 5	Chapter	Short title	Extent of repeal
			words occur, to "of", in the fourth place where it occurs and paragraph 9.
	1976 c. 36.	Adoption Act 1976.	Section 47(4) and (5).
	1977 c. 49.	National Health Service Act 1977.	Section 5(3). In Schedule 12, in paragraph 1, in sub-paragraph (1), the words from "and regulations" to the end, and sub-paragraph (2) and paragraph 5.
	1978 c. 28.	Adoption (Scotland) Act 1978.	Section 41(3) to (5).
	1978 c. 29.	National Health Service (Scotland) Act 1978.	Section 85(5). In Schedule 11, in paragraph 1, in sub-paragraph (1), the words from "and regulations" to the end, and sub-paragraph (2).
	1980 c. 30.	Social Security Act 1980.	In Schedule 1, paragraph 2.
	1985 c. 53.	Social Security Act 1985.	Section 13(4)(a). Section 14.
	1986 c. 50.	Social Security Act 1986.	In section 20(6), the words "beginning with the week in which a claim for it is made or is treated as made". Section 23(8). In section 32, subsection (3), in subsection (4), the words "Social fund" and in subsection (8), the words "social fund", in the second place where they occur and the words from "and" to the end. In section 33(1), the words "social fund". In section 34(1)(a), the words "to him" and the words "social fund", in the second place where they occur. In section 50(1), in the definition of "employer", the words "and a contract of service of hers" and the words "under the contract". In section 51(2), the words "social fund". In section 52(6), the words "social fund". In section 53(10), the words "social fund".

Chapter	Short title	Extent of repeal
		<p>In section 63(7), the word "specified", in the second place where it occurs.</p> <p>In section 84(1), the definition of "social fund payment".</p> <p>In Schedule 3, paragraph 5(3) to (8) and paragraphs 9 and 11.</p> <p>In Schedule 10, paragraph 45.</p>

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The repeal of section 69 of the Social Security Act 1975 is subject to paragraph 3 of Schedule 1 to this Act. 1975 c. 14.

