Social Security Contributions and Benefits Act 1992

1992 CHAPTER 4

PART I

CONTRIBUTIONS

Preliminary

1 Outline of contributory system

(1) The funds required—

(a) for paying such benefits under this Act as are payable out of the National Insurance Fund and not out of other public money; and

(b) for the making of payments under section 162 of the Administration Act towards the cost of the National Health Service,

shall be provided by means of contributions payable to the Secretary of State by earners, employers and others, together with the additions under subsection (5) below.

(2) Contributions under this Part of this Act shall be of the following five classes—

(a) Class 1, earnings-related, payable under section 6 below, being—

(i) primary Class 1 contributions from employed earners; and

(ii) secondary Class 1 contributions from employers and other persons paying earnings;

(b) Class 1A, payable under section 10 below in respect of cars made available for private use and car fuel by persons liable to pay secondary Class 1 contributions and certain other persons;

(c) Class 2, flat-rate, payable weekly under section 11 below by self-employed earners;

(d) Class 3, payable under section 13 below by earners and others voluntarily with a view to providing entitlement to benefit, or making up entitlement; and

(e) Class 4, payable under section 15 below in respect of the profits or gains of a trade, profession or vocation, or under section 18 below in respect of equivalent earnings.

(3) The amounts and rates of contributions in this Part of this Act and the other figures in it which affect the liability of contributors shall—

(a) be subject to regulations under sections 19(4) and 116 to 120 below; and

(b) to the extent provided for by Part IX of the Administration Act be subject to alteration by orders made by the Secretary of State from year to year under that Part,

and the provisions of this Part of this Act are subject to the provisions of Part III of the Pensions Act (contracting-out - reduced rates of contributions).

(4) Schedule 1 to this Act—

(a) shall have effect with respect to the computation, collection and recovery of contributions of Classes 1, 1A, 2 and 3, and otherwise with respect to contributions of those classes; and

(b) shall also, to the extent provided by regulations made under section 18 below, have effect with respect to the computation, collection and recovery of Class 4 contributions, and otherwise with respect to such contributions, where under that section provision is made for contributions of that class to be recovered by the Secretary of State and not by the Inland Revenue.

(5) For each financial year there shall, by way of addition to contributions, be paid out of money provided by Parliament, in such manner and at such times as the Treasury may determine, amounts the total of which for any such year is equal to the aggregate of all statutory sick pay and statutory maternity pay recovered by employers and others in that year, as estimated by the Government Actuary or the Deputy Government Actuary.

(6) No person shall—

(a) be liable to pay Class 1, Class 1A or Class 2 contributions unless he fulfils prescribed conditions as to residence or presence in Great Britain;

(b) be entitled to pay Class 3 contributions unless he fulfils such conditions; or

(c) be entitled to pay Class 1, Class 1A or Class 2 contributions other than those which he is liable to pay, except so far as he is permitted by regulations to pay them.

2 Categories of earners

(1) In this Part of this Act and Parts II to V below—

(a) "employed earner" means a person who is gainfully employed in Great Britain either under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and

(b) "self-employed earner" means a person who is gainfully employed in Great Britain otherwise than in employed earner's employment (whether or not he is also employed in such employment).

(2) Regulations may provide—

(a) for employment of any prescribed description to be disregarded in relation to liability for contributions otherwise arising from employment of that description;

(b) for a person in employment of any prescribed description to be treated, for the purposes of this Act, as falling within one or other of the categories of earner defined in subsection (1) above, notwithstanding that he would not fall within that category apart from the regulations.

(3) Where a person is to be treated by reference to any employment of his as an employed earner, then he is to be so treated for all purposes of this Act; and references throughout this Act to employed earner's employment shall be construed accordingly.

(4) Subsections (1) to (3) above are subject to the provision made by section 95 below as to the employments which are to be treated, for the purposes of industrial injuries benefit, as employed earner's employments.

(5) For the purposes of this Act, a person shall be treated as a self-employed earner as respects any week during any part of which he is such an earner (without prejudice to his being also treated as an employed earner as respects that week by reference to any other employment of his).

3 "Earnings" and "earner"

(1) In this Part of this Act and Parts II to V below—

(a) "earnings" includes any remuneration or profit derived from an employment; and

(b) "earner" shall be construed accordingly.

(2) For the purposes of this Part of this Act and of Parts II to V below other than those of Schedule 8—

(a) the amount of a person's earnings for any period; or

(b) the amount of his earnings to be treated as comprised in any payment made to him or for his benefit,

shall be calculated or estimated in such manner and on such basis as may be prescribed.

(3) Regulations made for the purposes of subsection (2) above may prescribe that payments of a particular class or description made or falling to be made to or by a person shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of that person's earnings.

4 Payments treated as remuneration and earnings

(1) For the purposes of section 3 above there shall be treated as remuneration derived from employed earner's employment—

(a) any sum paid to or for the benefit of a person in satisfaction (whether in whole or in part) of any entitlement of that person to—

(i) statutory sick pay; or

(ii) statutory maternity pay; and

(b) any sickness payment made—

(i) to or for the benefit of the employed earner; and

(ii) in accordance with arrangements under which the person who is the secondary contributor in relation to the employment concerned has made, or remains liable to make, payments towards the provision of that sickness payment.

(2) Where the funds for making sickness payments under arrangements of the kind mentioned in paragraph (b) of subsection (1) above are attributable in part to contributions to those funds made by the employed earner, regulations may make provision for disregarding, for the purposes of that subsection, the prescribed part of any sum paid as a result of the arrangements.

(3) For the purposes of subsections (1) and (2) above "sickness payment" means any payment made in respect of absence from work due to incapacity for work, within the meaning of section 57 below.

(4) For the purposes of section 3 above there shall be treated as remuneration derived from an employed earner's employment any sum paid to or for the benefit of an employed earner which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) otherwise than by virtue of subsection (4) of that section.

(5) For the purposes of section 3 above regulations may make provision for treating as remuneration derived from an employed earner's employment any payment made by a body corporate to or for the benefit of any of its directors where that payment would, when made, not be earnings for the purposes of this Act.

Class 1 contributions

5 Earnings limits for Class 1 contributions

(1) For the purposes of this Act there shall for every tax year be—

(a) a lower earnings limit for Class 1 contributions, being the level of weekly earnings at which employed earners become liable for such contributions in respect of the earnings from their employments; and

(b) an upper earnings limit for Class 1 contributions, being the maximum amount of weekly earnings in respect of which primary Class 1 contributions are payable;

and those limits shall be the amounts specified for that year by regulations made in accordance with subsections (2) and (3) below.

(2) The amount specified as the lower earnings limit for any tax year shall be an amount equal to or not more than 99p less than—

(a) the sum which at the beginning of that year is specified in section 44(4) below as the weekly rate of the basic pension in a Category A retirement pension; or

(b) that sum as increased by any Act or order passed or made before the beginning of that year and taking effect before 6th May in that year.

(3) The amount specified as the upper earnings limit for any tax year shall be an amount which either—

(a) is equal to 7 times the sum by reference to which the lower earnings limit for that year is specified in accordance with subsection (2) above; or

(b) exceeds or falls short of 7 times that sum by an amount not exceeding half that sum.

6 Liability for Class 1 contributions

(1) Where in any tax week earnings are paid to or for the benefit of an earner in respect of any one employment of his which is employed earner's employment and—

(a) he is over the age of 16; and

(b) the amount paid is equal to or exceeds the current lower earnings limit for Class 1 contributions (or the prescribed equivalent in the case of earners paid otherwise than weekly),

a primary and a secondary Class 1 contribution shall be payable in accordance with this section and sections 8 and 9 below.

(2) Except as may be prescribed, no primary Class 1 contribution shall be payable in respect of earnings paid to or for the benefit of an employed earner after he attains pensionable age, but without prejudice to any liability to pay secondary Class 1 contributions in respect of any such earnings.

(3) The primary and secondary Class 1 contributions referred to in subsection (1) above are payable as follows—

(a) the primary contribution shall be the liability of the earner; and

(b) the secondary contribution shall be the liability of the secondary contributor;

but nothing in this subsection shall prejudice the provisions of paragraph 3 of Schedule 1 to this Act relating to the manner in which the earner's liability falls to be discharged.

(4) Except as provided by this Act, the primary and secondary Class 1 contributions in respect of earnings paid to or for the benefit of an earner in respect of any one employment of his shall be payable without regard to any other such payment of earnings in respect of any other employment of his.

(5) Regulations may provide for reducing primary or secondary Class 1 contributions which are payable in respect of persons to whom section 81 of the Employment Protection (Consolidation) Act 1978 (redundancy payments) does not apply by virtue of section 144(2) or 149 of that Act.

(6) The power conferred by subsection (1) above to prescribe an equivalent of the lower earnings limit includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that limit.

7 "Secondary contributor"

(1) For the purposes of this Act, the "secondary contributor" in relation to any payment of earnings to or for the benefit of an employed earner, is—

(a) in the case of an earner employed under a contract of service, his employer;

(b) in the case of an earner employed in an office with emoluments, either—

(i) such person as may be prescribed in relation to that office; or

(ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;

but this subsection is subject to subsection (2) below.

(2) In relation to employed earners who—

(a) are paid earnings in a tax week by more than one person in respect of different employments; or

(b) work under the general control or management of a person other than their immediate employer,

and in relation to any other case for which it appears to the Secretary of State that such provision is needed, regulations may provide that the prescribed person is to be treated as the secondary contributor in respect of earnings paid to or for the benefit of an earner.

8 Calculation of primary Class 1 contributions

(1) Where a primary Class 1 contribution is payable, the amount of that contribution shall be the aggregate of—

(a) the initial primary percentage of so much of the earner's earnings paid in the tax week, in respect of the employment in question, as does not exceed the current lower earnings limit; and

(b) the main primary percentage of so much of those earnings as exceeds that limit but does not exceed the current upper earnings limit;

but this subsection is subject to regulations under section 6(5) above and sections 116 to 120 below and to section 27 of the Pensions Act (contracted-out rates).

(2) For the purposes of this Act the primary percentages shall be as follows—

(a) the initial primary percentage shall be 2 per cent.; and

(b) the main primary percentage shall be 9 per cent.;

but the rates of those primary percentages are subject to alteration under sections 143 and 145 of the Administration Act.

(3) In the case of earners paid otherwise than weekly, any reference in subsection (1) above to the current upper, or (as the case may be) lower, earnings limit shall be taken as a reference to the prescribed equivalent of that limit.

(4) The power conferred by subsection (3) above to prescribe an equivalent of a limit includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that limit.

9 Calculation of secondary Class 1 contributions

(1) Where a secondary Class 1 contribution is payable, the amount of that contribution shall be the appropriate secondary percentage of the earnings paid in the week in respect of the employment in question.

(2) For the purposes of subsection (1) above, the "appropriate secondary percentage", in relation to the earner's earnings, is the percentage specified in subsection (3) below as appropriate to the secondary earnings bracket (or the prescribed equivalent in the case of earners paid otherwise than weekly) into which those earnings fall.

(3) The secondary earnings brackets and the percentages appropriate to them shall be as set out below—

	Weekly earnings	*Appropriate percentage*
Bracket 1	Current lower earnings limit to £89.99	4.6 per cent.
Bracket 2	£90.00 to £134.99	6.6 per cent.

	Weekly earnings	*Appropriate percentage*
Bracket 3	£135.00 to £189.99	8.6 per cent.
Bracket 4	£190.00 or more	10.4 per cent.

(4) Subsections (1) and (3) above are subject as mentioned below, that is to say—

(a) subsection (1) is subject to section 27 of the Pensions Act and to regulations under section 6(5) above and sections 116 to 120 below;

(b) subsection (3) is subject to any order under Part IX of the Administration Act (alteration of contributions and earnings brackets).

(5) The power conferred by subsection (2) above to prescribe an equivalent of a bracket includes power to prescribe an amount which exceeds, by not more than £1.00, the amount which is the arithmetical equivalent of that bracket.

Class 1A contributions

10 Class 1A contributions

(1) Where—

(a) for any tax year an amount in respect of a car is by virtue of section 157 of the Income and Corporation Taxes Act 1988 chargeable on an earner to income tax under Schedule E; and

(b) the employment by reason of which the car is made available is employed earner's employment,

a Class 1A contribution shall be payable for that tax year, in accordance with this section, in respect of the earner and car in question.

(2) The Class 1A contribution referred to in subsection (1) above is payable by—

(a) the person who is liable to pay the secondary Class 1 contribution relating to the last (or only) relevant payment of earnings in the tax year in relation to which there is a liability to pay such a contribution; or

(b) if no such contribution is payable in relation to a relevant payment of earnings in the tax year, the person who would be liable but for section 6(1)(b) above to pay a secondary Class 1 contribution relating to the last (or only) relevant payment of earnings in the tax year.

(3) A payment of earnings is a "relevant payment of earnings" for the purposes of subsection (2) above if it is made to or for the benefit of the earner in respect of the employment by reason of which the car is made available.

(4) The amount of the Class 1A contribution referred to in subsection (1) above shall be—

(a) the Class 1A percentage of the cash equivalent of the benefit of the car to the earner in the tax year; or

(b) where for the tax year an amount in respect of fuel for the car is by virtue of section 158 of the Income and Corporation Taxes Act 1988 also chargeable on the earner to income tax under Schedule E, the aggregate of—

(i) the Class 1A percentage of the cash equivalent of the benefit of the fuel to the earner in the tax year; and

(ii) the amount mentioned in paragraph (a) above,

the cash equivalents of the benefit of a car or fuel being ascertained, subject to the provisions of this section, in accordance with section 157 or, as the case may be, 158 of the Income and Corporation Taxes Act 1988 and Schedule 6 to that Act.

(5) In subsection (4) above "the Class 1A percentage" means a percentage rate equal to the percentage rate for secondary Class 1 contributions specified in section 9(3) above as appropriate for the highest secondary earnings bracket for the tax year in question.

(6) In calculating for the purposes of subsection (4) above the cash equivalent of the benefit of a car or fuel—

(a) the car shall not be treated as being unavailable on a day by virtue of paragraph 2(2)(b) of Schedule 6 to the Income and Corporation Taxes Act 1988 for the purposes of section 158(5) of that Act or paragraph 2(2), 3(2) or 5(2) of that Schedule, unless the person liable to pay the contribution has information to show that the condition specified in paragraph 2(2)(b) is satisfied as regards that day;

(b) the use of the car for the earner's business travel shall be taken—

(i) for the purposes of section 158(5) of that Act and sub-paragraph (1) of paragraph 3 of that Schedule to have amounted to less than 18,000 miles (or such lower figure as is applicable by virtue of sub-paragraph (2) of that paragraph); and

(ii) for the purposes of sub-paragraph (1) of paragraph 5 of that Schedule to have amounted to not more than 2,500 miles (or such lower figure as is applicable by virtue of sub-paragraph (2) of that paragraph),

unless in either case the person liable to pay the contribution has information to show the contrary; and

(c) for the purposes of paragraph 5(3) of that Schedule, the car shall be treated as not having been the car used to the greatest extent for the employee's business travel, unless the person liable to pay the contribution has information to show the contrary.

(7) Regulations may make such amendments of this section as appear to the Secretary of State to be necessary or expedient in consequence of any alteration to section 157 or 158 of the Income and Corporation Taxes Act 1988 or Schedule 6 to that Act.

(8) A person shall be liable to pay different Class 1A contributions in respect of different earners, different cars and different tax years.

(9) Regulations may provide—

(a) for persons to be excepted in prescribed circumstances from liability to pay Class 1A contributions;

(b) for reducing Class 1A contributions in prescribed circumstances.

Class 2 contributions

11 Liability for Class 2 contributions

(1) Every self-employed earner who is over the age of 16 shall be liable to pay Class 2 contributions at the rate of £5.35 a week, subject to the provisions of this section and sections 12 and 19(4)(b) below.

(2) No Class 2 contributions shall be payable by an earner in respect of any period after he attains pensionable age.

(3) Regulations may make provision so that an earner is liable for a weekly rate of Class 2 contributions higher than that specified in subsection (1) above where—

(a) in respect of any employment of his, he is treated by regulations under section 2(2)(b) above as being a self-employed earner; and

(b) in any period or periods he has earnings from that employment and—

(i) those earnings are such that (disregarding their amount) he would be liable for Class 1 contributions in respect of them if he were not so treated in respect of the employment, and

(ii) no Class 4 contribution is payable in respect of the earnings by virtue of regulations under section 18(1) below.

(4) Regulations may provide for an earner otherwise liable for Class 2 contributions in respect of employment as a self-employed earner to be excepted from the liability in respect of any period in which his earnings from such employment are, or are treated by regulations as being, less than £3,030 a tax year.

(5) Regulations made for the purposes of subsection (4) above shall not except a person from liability to pay contributions otherwise than on his own application, but may provide for so excepting a person with effect from any date not earlier than 13 weeks before the date on which his application was made.

12 Late paid Class 2 contributions

(1) This section applies to any Class 2 contribution paid in respect of a week falling within a tax year ("the contribution year") earlier than the tax year in which it is paid ("the payment year").

(2) Subject to subsections (3) to (5) below, the amount of a contribution to which this section applies shall be the amount which the earner would have had to pay if he had paid the contribution in the contribution year.

(3) Subject to subsections (4) to (6) below, in any case where—

(a) the earner pays an ordinary contribution to which this section applies after the end of the tax year immediately following the contribution year; and

(b) the weekly rate of ordinary contributions for the week in respect of which the contribution was payable in the contribution year differs from the weekly rate applicable at the time of payment in the payment year,

the amount of the contribution shall be computed by reference to the highest weekly rate of ordinary contributions in the period beginning with the week in respect of which the contribution is paid and ending with the day on which it is paid.

(4) The Secretary of State may by regulations direct that subsection (3) above shall have effect in relation to a higher-rate contribution to which this section applies subject to such modifications as may be prescribed.

(5) Subject to subsection (6) below, for the purposes of proceedings in any court relating to an earner's failure to pay Class 2 contributions, the amount of each contribution which he is to be treated as having failed to pay is the amount which he would have paid in accordance with subsections (1) to (3) above or regulations under subsection (6) below if he had paid that contribution on the date on which the proceedings commenced.

(6) The Secretary of State may by regulations provide that the amount of any contribution which, apart from the regulations, would fall to be computed in accordance with subsection (3) or (5) above shall instead be computed by reference to a tax year not earlier than the contribution year but earlier—

(a) in a case falling within subsection (3) above, than the payment year; and

(b) in a case falling within subsection (5) above, than the tax year in which the proceedings commenced.

(7) For the purposes of this section—

(a) proceedings in the High Court or a county court commence when an action commences; and

(b) proceedings under section 114 of the Administration Act (offences relating to contributions) commence when an information is laid.

(8) In this section—

"ordinary contribution" means a contribution under section 11(1) above; and

"higher-rate contribution" means a contribution under regulations made under section 11(3) above.

Class 3 contributions

13 Class 3 contributions

(1) Regulations shall provide for earners and others, if over the age of 16, to be entitled if they so wish, but subject to any prescribed conditions, to pay Class 3 contributions; and, subject to the following provisions of this section, the amount of a Class 3 contribution shall be £5.25.

(2) Payment of Class 3 contributions shall be allowed only with a view to enabling the contributor to satisfy contribution conditions of entitlement to benefit by acquiring the requisite earnings factor for the purposes described in section 22 below.

(3) Regulations may provide for Class 3 contributions, although paid in one tax year, to be appropriated in prescribed circumstances to the earnings factor of another tax year.

(4) The amount of a Class 3 contribution in respect of a tax year earlier than the tax year in which it is paid shall be the same as if it had been paid in the earlier year and in respect of that year, unless it falls to be calculated in accordance with subsection (6) below or regulations under subsection (7) below.

(5) In this section—

"the payment year" means the tax year in which a contribution is paid; and

"the contribution year" means the earlier year mentioned in subsection (4) above.

(6) Subject to subsection (7) below, in any case where—

(a) a Class 3 contribution is paid after the end of the next tax year but one following the contribution year; and

(b) the amount of a Class 3 contribution applicable had the contribution been paid in the contribution year differs from the amount of a Class 3 contribution applicable at the time of payment in the payment year,

the amount of the contribution shall be computed by reference to the highest of those two amounts and of any other amount of a Class 3 contribution in the intervening period.

(7) The Secretary of State may by regulations provide that the amount of a contribution which apart from the regulations would fall to be computed in accordance with subsection (6) above shall instead be computed by reference to the amount of a Class 3 contribution for a tax year earlier than the payment year but not earlier than the contribution year.

14 Restriction on right to pay Class 3 contributions

(1) No person shall be entitled to pay a Class 3 contribution in respect of any tax year if his earnings factor, or the aggregate of his earnings factors, for that year derived—

(a) in the case of 1987-88 or any subsequent year, from earnings upon which Class 1 contributions have been paid or treated as paid or from Class 2 contributions actually paid; or

(b) in the case of any earlier year, from contributions actually paid,

is equal to or exceeds the qualifying earnings factor for that year; and regulations may provide for precluding the payment of Class 3 contributions in other cases.

(2) Regulations may provide for the repayment of Class 3 contributions that have been paid in cases where their payment was precluded by, or by regulations made under, subsection (1) above.

(3) Contributions repayable by virtue of regulations under subsection (2) above shall, for the purpose of determining the contributor's entitlement to any benefit, be treated as not having been paid (but nothing in this subsection shall be taken to imply that any other repayable contributions are to be treated for the purposes of benefit as having been paid).

Class 4 contributions

15 Class 4 contributions recoverable under the Income Tax Acts

(1) Class 4 contributions shall be payable for any tax year in respect of all annual profits or gains which—

(a) are immediately derived from the carrying on or exercise of one or more trades, professions or vocations, and

(b) are profits or gains chargeable to income tax under Case I or Case II of Schedule D for the year of assessment corresponding to that tax year.

(2) Class 4 contributions in respect of profits or gains shall be payable—

(a) in the same manner as any income tax which is, or would be, chargeable in respect of those profits or gains (whether or not income tax in fact falls to be paid), and

(b) by the person on whom the income tax is (or would be) charged,

in accordance with assessments made from time to time under the Income Tax Acts.

(3) A Class 4 contribution for any tax year shall be an amount equal to 6.3 per cent. of so much of the profits or gains referred to in subsection (1) above (as computed

in accordance with Schedule 2 to this Act) as exceeds £6,120 and does not exceed £21,060.

(4) The reference in subsection (1) above to profits or gains chargeable to income tax under Case I or Case II of Schedule D shall be taken to include a reference to profits or gains consisting of a payment of enterprise allowance chargeable to income tax under Case VI of Schedule D by virtue of section 127(2) of the Income and Corporation Taxes Act 1988.

(5) For the purposes of this section the year of assessment which corresponds to a tax year is the year of assessment (within the meaning of the Tax Acts) which consists of the same period as that tax year.

16 Application of Income Tax Acts and destination of Class 4 contributions

(1) All the provisions of the Income Tax Acts, including in particular—

(a) provisions as to assessment, collection, repayment and recovery, and

(b) the provisions of Part X of the Taxes Management Act 1970 (penalties),

shall, with the necessary modifications, apply in relation to Class 4 contributions under this Act and the Northern Ireland Contributions and Benefits Act as if those contributions were income tax chargeable under Case I or Case II of Schedule D.

(2) Subsection (1) above is subject to any provision made by or under—

(a) sections 17(3) and (4) and 18 below;

(b) sections 17(3) and (4) and 18 of the Northern Ireland Contributions and Benefits Act; and

(c) Schedule 2 to this Act.

(3) Schedule 2 to this Act has effect for the application or modification, in relation to Class 4 contributions under this Act and the Northern Ireland Contributions and Benefits Act, of certain provisions of the Income Tax Acts, and the exclusion of other provisions, and generally with respect to the contributions.

(4) The Inland Revenue shall, at such times and in such manner as the Treasury may direct, account to the Secretary of State for, and pay to him—

(a) the sums estimated by the Inland Revenue (in the manner so directed) to have been collected by them as Class 4 contributions under section 15 above and section 15 of the Northern Ireland Contributions and Benefits Act; and

(b) so much of any interest recovered by the Inland Revenue by virtue of paragraph 6 of Schedule 2 to this Act as remains after the deduction by them of any administrative costs attributable to its recovery.

(5) So much of any money received by the Secretary of State under subsection (4) above as is estimated by him, in accordance with any directions of the Treasury, to represent Class 4 contributions collected, or interest in respect of such contributions recovered, from persons in Northern Ireland shall be paid over by him to the Northern Ireland Department.

17 Exceptions, deferment and incidental matters relating to Class 4 contributions

(1) The Secretary of State may by regulations made with the concurrence of the Inland Revenue provide—

(a) for excepting persons from liability to pay Class 4 contributions in accordance with sections 15 and 16(1) to (3) above; or

(b) for deferring any person's liability,

and may certify from time to time to the Inland Revenue the persons who are excepted from liability, or whose liability is to be deferred, and who accordingly are not required (except in accordance with the regulations) to be assessed for contributions.

(2) Exception from liability, or deferment, under subsection (1) above may, in particular, be by reference—

(a) to a person otherwise liable for contributions being under a prescribed age at the beginning of a tax year;

(b) to a person having attained pensionable age;

(c) to a person being in receipt of earnings in respect of which primary Class 1 contributions are, or may be, payable; or

(d) to a person not satisfying prescribed conditions as to residence or presence in the United Kingdom.

(3) Regulations may provide for any incidental matters arising out of the payment of any Class 4 contributions recovered by the Inland Revenue, including in particular the return, in whole or in part, of such contributions in cases where—

(a) payment has been made in error; or

(b) repayment ought for any other reason to be made.

(4) Regulations may provide for any matters arising out of the deferment of liability for Class 4 contributions under subsection (1) above, including in particular provision for the amount of a person's profits or gains (as computed in accordance with Schedule 2 to this Act) to be certified by the Inland Revenue to the Secretary of State and the person liable.

(5) No such certificate as is referred to in subsection (4) above shall relate to a person's profits or gains so far as they exceed the higher of the two money sums for the time being specified in section 15(3) above.

(6) Any regulations under subsection (3) or (4) above must be made with the concurrence of the Inland Revenue.

18 Class 4 contributions recoverable under regulations

(1) Provision may be made by regulations so that where—

(a) an earner, in respect of any one or more employments of his, is treated by regulations under section 2(2)(b) above as being self-employed; and

(b) in any tax year he has earnings from any such employment (one or more) which fall within paragraph (b)(i) of subsection (3) of section 11 above but is not liable for a higher weekly rate of Class 2 contributions by virtue of regulations under that subsection; and

(c) the total of those earnings exceeds £6,120,

he is to be liable, in respect of those earnings, to pay a Class 4 contribution of an amount equal to 6.3 per cent. of so much of the total as exceeds £6,120 and does not exceed £21,060.

(2) It shall be for the Secretary of State, and not the Inland Revenue, to recover Class 4 contributions payable by virtue of regulations under this section and generally to be

responsible for the relevant administration; and, in relation to contributions so payable, regulations may—

(a) apply any of the provisions of Schedule 1 to this Act (except a provision conferring power to make regulations); and

(b) make any such provision as may be made by regulations under that Schedule, except paragraph 6.

General

19 General power to regulate liability for contributions

(1) Regulations may provide either generally or in relation to—

(a) any prescribed category of earners; or

(b) earners in any prescribed category of employments,

that their liability in a particular tax year in respect of contributions of prescribed classes is not to exceed such maximum amount or amounts as may be prescribed.

(2) Regulations made for the purposes of subsection (1) above may provide—

(a) for an earner whose liability is subject to a maximum prescribed under that subsection to be liable in the first instance for the full amount of any contributions due from him apart from the regulations, or to be relieved from liability for such contributions in prescribed circumstances and to the prescribed extent; and

(b) for contributions paid in excess of any such maximum to be repaid at such times, and in accordance with such conditions, as may be prescribed.

(3) Regulations may provide, in relation to earners otherwise liable for contributions of any class, for excepting them from the liability for such periods, and in such circumstances, as may be prescribed.

(4) As respects any woman who was married or a widow on 6th April 1977 (the date of the coming into force of the repeal of the old provisions that primary Class 1 contributions might be paid at a reduced rate and Class 2 contributions need not be paid by a married woman or a widow) regulations shall provide—

(a) for enabling her to elect that her liability in respect of primary Class 1 contributions shall be a liability to contribute at such reduced rate as may be prescribed; and

(b) either for enabling her to elect that her liability in respect of Class 2 contributions shall be a liability to contribute at such reduced rate as may be prescribed or for enabling her to elect that she shall be under no liability to pay such contributions; and

(c) for enabling her to revoke any such election.

(5) Regulations under subsection (4) above may—

(a) provide for the making or revocation of any election under the regulations to be subject to prescribed exceptions and conditions;

(b) preclude a person who has made such an election from paying Class 3 contributions while the election has effect;

(c) provide for treating an election made or revoked for the purpose of any provision of the regulations as made or revoked also for the purpose of any other provision of the regulations;

(d) provide for treating an election made in accordance with regulations under section 130(2) of the 1975 Act as made for the purpose of regulations under subsection (4) above.

(6) Regulations may provide for earnings factors to be derived, for such purposes as may be prescribed, as follows, that is to say—

(a) in the case of earnings factors for 1987-88 or any subsequent tax year—

(i) from earnings upon which primary Class 1 contributions are paid at a reduced rate by virtue of regulations under subsection (4) above; or

(ii) from Class 2 contributions paid at a reduced rate by virtue of such regulations; and

(b) in the case of earnings factors for any earlier tax year, from contributions which are paid at a reduced rate by virtue of regulations under subsection (4) above;

and if provision is made for a person to have earnings factors so derived for the purpose of establishing entitlement to any benefit, the regulations may, in relation to that person, vary or add to the requirements for entitlement to that benefit.

PART II

CONTRIBUTORY BENEFITS

Preliminary

20 Descriptions of contributory benefits

(1) Contributory benefits under this Part of this Act are of the following descriptions, namely—

(a) unemployment benefit (with increase for adult and, where the beneficiary is over pensionable age, child dependants);

(b) sickness benefit (with increase for adult and, where the beneficiary is over pensionable age, child dependants);

(c) invalidity benefit, comprising—

(i) invalidity pension under section 33, 40 or 41 below (with increase for adult and child dependants);

(ii) invalidity allowance;

(d) maternity allowance (with increase for adult dependants);

(e) widow's benefit, comprising—

(i) widow's payment;

(ii) widowed mother's allowance (with increase for child dependants);

(iii) widow's pension;

(f) retirement pensions of the following categories—

(i) Category A, payable to a person by virtue of his own contributions (with increase for adult and child dependants); and

(ii) Category B, payable to a woman by virtue of her husband's contributions or payable to a man by virtue of his late wife's contributions (with increase for child dependants);

(g) for existing beneficiaries only, child's special allowance.

(2) In this Act—

"long-term benefit" means—

(a) an invalidity pension under section 33, 40 or 41 below;

(b) a widowed mother's allowance;

(c) a widow's pension; and

(d) a Category A or Category B retirement pension; and

"short-term benefit" means—

(a) unemployment benefit;

(b) sickness benefit; and

(c) maternity allowance.

(3) The provisions of this Part of this Act are subject to the provisions of Part III of the Pensions Act (contracting-out - reduced rates of benefit).

21 Contribution conditions

(1) Entitlement to any of the benefits specified in section 20(1) above, other than invalidity benefit, depends on contribution conditions being satisfied (either by the claimant or by some other person, according to the particular benefit).

(2) The class or classes of contribution which, for the purposes of subsection (1) above, are relevant in relation to each of those benefits are as follows—

SHORT-TERM BENEFIT

Unemployment benefit	Class 1
Sickness benefit	Class 1 or 2
Maternity allowance	Class 1 or 2

OTHER BENEFITS

Widow's payment	Class 1, 2 or 3
Widowed mother's allowance	Class 1, 2 or 3
Widow's pension	Class 1, 2 or 3
Category A retirement pension	Class 1, 2 or 3
Category B retirement pension	Class 1, 2 or 3
Child's special allowance	Class 1, 2 or 3

(3) The relevant contribution conditions in relation to the benefits specified in subsection (2) above are those specified in Part I of Schedule 3 to this Act.

(4) Part II of Schedule 3 to this Act shall have effect as to the satisfaction of contribution conditions for benefit, other than maternity allowance, in certain cases where a claim for a short-term benefit or a widow's payment is, or has on a previous occasion been, made in the first or second year after that in which the contributor concerned first became liable for primary Class 1 or Class 2 contributions.

(5) In subsection (4) above and Schedule 3 to this Act—

(a) "the contributor concerned", for the purposes of any contribution condition, means the person by whom the condition is to be satisfied;

(b) "a relevant class", in relation to any benefit, means a class of contributions specified in relation to that benefit in subsection (2) above;

(c) "the earnings factor"—

(i) where the year in question is 1987-88 or any subsequent tax year, means, in relation to a person, the aggregate of his earnings factors derived from all his earnings upon which primary Class 1 contributions have been paid or treated as paid and from his Class 2 and Class 3 contributions; and

(ii) where the year in question is any earlier tax year, means, in relation to a person's contributions of any class or classes, the aggregate of his earnings factors derived from all those contributions;

(d) except in the expression "benefit year", "year" means a tax year.

(6) In this Part of this Act "benefit year" means a period—

(a) beginning with the first Sunday in January in any calendar year, and

(b) ending with the Saturday immediately preceding the first Sunday in January in the following calendar year;

but for any prescribed purposes of this Part of this Act "benefit year" may by regulations be made to mean such other period (whether or not a period of 12 months) as may be specified in the regulations.

22 Earnings factors

(1) A person shall, for the purposes specified in subsection (2) below, be treated as having annual earnings factors derived—

(a) in the case of 1987-88 or any subsequent tax year, from those of his earnings upon which primary Class 1 contributions have been paid or treated as paid and from Class 2 and Class 3 contributions; and

(b) in the case of any earlier tax year, from his contributions of any of Classes 1, 2 and 3;

but subject to the following provisions of this section and those of section 23 below.

(2) The purposes referred to in subsection (1) above are those of—

(a) establishing, by reference to the satisfaction of contribution conditions, entitlement to any benefit specified in section 20(1) above, other than maternity allowance; and

(b) calculating the additional pension in the rate of a long-term benefit.

(3) Separate earnings factors may be derived for 1987-88 and subsequent tax years—

(a) from earnings upon which primary Class 1 contributions have been paid or treated as paid;

(b) from earnings which have been credited;

(c) from contributions of different classes paid or credited in the same tax year;

(d) by any combination of the methods mentioned in paragraphs (a) to (c) above,

and may be derived for any earlier tax year from contributions of different classes paid or credited in the same tax year, and from contributions which have actually been paid, as opposed to those not paid but credited.

(4) Subject to regulations under section 19(4) to (6) above, no earnings factor shall be derived—

(a) for 1987-88 or any subsequent tax year, from earnings upon which primary Class 1 contributions are paid at the reduced rate, or

(b) for any earlier tax year, from primary Class 1 contributions paid at the reduced rate or from secondary Class 1 contributions.

(5) Regulations may provide for crediting—

(a) for 1987-88 or any subsequent tax year, earnings or Class 2 or Class 3 contributions, or

(b) for any earlier tax year, contributions of any class,

for the purpose of bringing a person's earnings factor for that tax year to a figure which will enable him to satisfy contribution conditions of entitlement to any prescribed description of benefit (whether his own entitlement or another person's).

(6) Regulations may impose limits with respect to the earnings factors which a person may have or be treated as having in respect of any one tax year.

(7) The power to amend regulations made before 30th March 1977 (the passing of the Social Security (Miscellaneous Provisions) Act 1977) under subsection (5) above may be so exercised as to restrict the circumstances in which and the purposes for which a person is entitled to credits in respect of weeks before the coming into force of the amending regulations; but not so as to affect any benefit for a period before the coming into force of the amending regulations if it was claimed before 18th March 1977.

23 Provisions supplemental to sections 21 and 22

(1) Earnings factors derived as mentioned in section 22(1)(a) above, including earnings factors as increased by any order under section 148 of the Administration Act—

(a) shall be expressed, subject to subsection (2) below, as whole numbers of pounds; and

(b) shall be made ascertainable from tables or rules to be drawn up by the Secretary of State and embodied in regulations.

(2) Subsection (1) above does not require earnings factors in respect of the tax year 1978-79 or any subsequent tax year which have been revalued for the purpose of calculating guaranteed minimum pensions under the Pensions Act to be expressed as whole numbers of pounds.

(3) The tables and rules referred to in subsection (1) above shall be drawn up so that, in general—

(a) in respect of the tax year 1987-88 and any subsequent tax year, the amount of earnings upon which primary Class 1 contributions have been paid or treated as paid gives rise, subject to subsection (4) below, to an earnings factor for that year equal or approximating to the amount of those earnings; and

(b) any number of Class 2 or Class 3 contributions in respect of a tax year gives rise to an earnings factor for that tax year equal or approximating to that year's lower earnings limit for Class 1 contributions multiplied by the number of contributions.

(4) The Secretary of State may by regulations make such modifications of subsection (3)(a) above as appear to him to be appropriate in consequence of section 8(2) above.

24 Records of earnings and calculation of earnings factors in absence of records

(1) Regulations may provide for requiring persons to maintain, in such form and manner as may be prescribed, records of such earnings paid by them as are relevant for the purpose of calculating earnings factors, and to retain such records for so long as may be prescribed.

(2) Where the Secretary of State is satisfied that records of earnings relevant for the purpose of calculating a person's earnings factors for the tax year 1987-88 or any subsequent tax year have not been maintained or retained or are otherwise unobtainable, then, for the purpose of determining those earnings factors, he may—

(a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of that person's earnings on which primary Class 1 contributions have been paid or treated as paid; or

(b) take the amount of those earnings to be such sum as he may specify in the particular case.

Unemployment benefit

25 Unemployment benefit

(1) Subject to the provisions of this section, a person who satisfies any of the three conditions of subsection (2) below shall be entitled to unemployment benefit in respect of any day of unemployment which forms part of a period of interruption of employment.

(2) The conditions of this subsection are that—

(a) the person is under pensionable age on the day in question and satisfies the contribution conditions specified for unemployment benefit in Schedule 3, Part I, paragraph 1; or

(b) on that day the person—

(i) is over pensionable age, but not more than 5 years over that age; and

(ii) would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or

(c) on that day the person—

(i) is over pensionable age, but not more than 5 years over that age; and

(ii) would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

(3) A person shall not be entitled to unemployment benefit for the first 3 days of any period of interruption of employment.

(4) In the case of a person entitled under paragraph (a) of subsection (2) above unemployment benefit shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 1.

(5) In the case of any person over pensionable age who is entitled under paragraph (b) or (c) of subsection (2) above, unemployment benefit shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable; but in determining that rate for the purposes of this subsection any increase specified in subsection (6) below shall be disregarded.

(6) The increases to be disregarded for the purposes of subsection (5) above are the following—
   (a) any increase (for invalidity) under section 47(1) below;
   (b) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;
   (c) any increase (for dependants) under section 80, 83 or 85 below; and
   (d) any increase (for Category A or Category B pensioners) under section 150 of the Administration Act (annual up-rating).

(7) The amount payable by way of benefit under this section for any day of unemployment shall be one sixth of the appropriate weekly rate.

26 Duration of unemployment benefit

(1) A person who, in respect of any period of interruption of employment, has been entitled to unemployment benefit for 312 days shall not thereafter be entitled to that benefit for any day of unemployment (whether in the same or a subsequent period of interruption of employment) unless before that day he has requalified for benefit.

(2) A person who has exhausted his right to unemployment benefit requalifies for it on the next occasion when, having again been in employment as an employed earner, he makes a claim for that benefit in circumstances such that the requalification conditions are satisfied with respect to each of at least 13 weeks in the period of 26 weeks immediately preceding—
   (a) the day on which the claim is made, or
   (b) if he would not requalify by reference to that day, his first day of unemployment since he was last in employment as an employed earner.

(3) For the purposes of subsection (2) above the requalification conditions are satisfied with respect to any week if—
   (a) the person in question has been in employment as an employed earner in that week;
   (b) he has worked in such employment for at least 16 hours in that week; and
   (c) the week begins after the last day for which he was entitled to unemployment benefit.

(4) Subsection (2) above shall have effect in prescribed cases with the substitution for the reference to 26 weeks of a reference to such longer period as may be prescribed.

(5) Where a person requalifies for unemployment benefit, subsection (1) above shall again apply to him but, in a case where the period of interruption of employment in which he exhausted his right to that benefit continues after his requalification, as if the part before and the part after his requalification were distinct periods of interruption of employment.

(6) Regulations may provide for a person who would be entitled to unemployment benefit but for the operation of any provision of this Act or of regulations disentitling him to it or disqualifying him for it to be treated as if entitled to it for the purposes of this section.

27 Interruption of employment in connection with trade dispute

(1) Subject to the following provisions of this section—

(a) an employed earner who has lost employment as an employed earner by reason of a stoppage of work due to a trade dispute at his place of employment is disqualified for receiving unemployment benefit for any day during the stoppage unless he proves that he is not directly interested in the dispute; and

(b) an employed earner who has withdrawn his labour in furtherance of a trade dispute, but does not fall within paragraph (a) above, is disqualified for receiving unemployment benefit for any day on which his labour remains withdrawn.

(2) A person disqualified under subsection (1)(a) above for receiving unemployment benefit shall cease to be so disqualified if he proves that during the stoppage—

(a) he has become bona fide employed elsewhere; or

(b) his employment has been terminated by reason of redundancy within the meaning of section 81(2) of the Employment Protection (Consolidation) Act 1978; or

(c) he has bona fide resumed employment with his employer but has subsequently left for a reason other than the trade dispute.

(3) In this Act—

(a) "place of employment" in relation to any person, means the factory, workshop, farm or other premises or place at which he was employed, so however that, where separate branches of work which are commonly carried on as separate businesses in separate premises or at separate places are in any case carried on in separate departments on the same premises or at the same place, each of those departments shall for the purposes of this paragraph be deemed to be a separate factory or workshop or farm or separate premises or a separate place, as the case may be;

(b) "trade dispute" means any dispute between employers and employees, or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not.

28 Unemployment benefit - other disqualifications etc

(1) Subject to section 29 below a person shall be disqualified for receiving unemployment benefit for such period not exceeding 26 weeks as may be determined in accordance with Part II of the Administration Act if—

(a) he has lost his employment as an employed earner through his misconduct, or has voluntarily left such employment without just cause;

(b) after a situation in any employment has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that situation or refused to accept that situation when offered to him;

(c) he has without good cause neglected to avail himself of a reasonable opportunity of employment;

(d) he has without good cause refused or failed to carry out any official recommendations given to him with a view to assisting him to find employment, being recommendations which were reasonable having regard

to his circumstances and to the means of obtaining that employment usually adopted in the district in which he resides;

(e) he has lost his place on an approved training scheme through his misconduct, or has voluntarily left such a place without good cause;

(f) after a place on an approved training scheme has been properly notified to him as vacant or about to become vacant, he has without good cause refused or failed to apply for that place or refused to accept that place when offered to him; or

(g) he has without good cause neglected to avail himself of a reasonable opportunity of a place on an approved training scheme.

(2) The Secretary of State may by order substitute a shorter period for the period for the time being mentioned in subsection (1) above.

(3) Regulations may also provide for imposing, in the case of any prescribed category of persons—

(a) additional conditions with respect to the receipt of unemployment benefit; and

(b) restrictions on the rate and duration of unemployment benefit,

if, having regard to special circumstances, it appears to the Secretary of State necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.

(4) For the purposes of this section a person who has been dismissed by his employer by reason of redundancy within the meaning of section 81(2) of the Employment Protection (Consolidation) Act 1978 after volunteering or agreeing so to be dismissed shall not be deemed to have left his employment voluntarily.

(5) For the purposes of subsection (1) above regulations may—

(a) prescribe matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission; or

(b) prescribe circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission;

but, subject to any such regulations, in determining for the purposes of that subsection whether a person does or does not have good cause for any act or omission, there shall be disregarded any matter relating to the level of remuneration in the employment in question.

(6) For the purposes of this section—

(a) "properly notified", in subsection (1)(b) and (f) above, means notified by the Secretary of State, a local education authority or some other recognised agency, or by or on behalf of an employer;

(b) "official recommendations", in subsection (1)(d) above, means recommendations in writing made by an officer of a local education authority or the Secretary of State;

(c) "approved training scheme", in subsection (1)(e), (f) and (g) above, means a scheme under which persons—

(i) are trained for employment; or

(ii) acquire work-experience for the purpose of becoming or keeping fit for entry to or return to regular employment,

and which is approved by the Secretary of State for the purposes of this section;

(d) "local education authority", in relation to Scotland, means an education authority, that is to say, a regional or islands council; and

(e) "week" means any period of 7 days.

29 Exemptions from disqualification for unemployment benefit

(1) Nothing in section 28 above or in regulations under that section shall be taken to disqualify a person for receiving unemployment benefit by reason only of his refusal—

(a) to seek or accept employment in a situation which is vacant in consequence of a stoppage of work due to a trade dispute; or

(b) to seek or accept during the permitted period any employment other than employment in his usual occupation at a level of remuneration not lower than he is accustomed to receive.

(2) Regulations shall make provision for the purpose of enabling any person of a prescribed description to accept any employed earner's employment without being disqualified under—

(a) subsection (1)(a) of section 28 above, so far as it relates to a person who voluntarily leaves such employment without just cause, or

(b) subsection (1)(c) of that section,

should he leave that employment voluntarily and without just cause at any time after the end of the sixth week, but not later than the end of the twelfth week, of a trial period.

(3) In this section—

"permitted period", in relation to any person, means such period, whether expired or not, as may be determined in accordance with regulations by an adjudication officer on the submission of the question whether that person is disqualified under section 28 above for receiving unemployment benefit; and any such regulations may prescribe—

(a) the day on which any such period shall be regarded as having commenced in any case;

(b) the shortest and longest periods which may be so determined in any case; and

(c) criteria to which the adjudication officer is to have regard in determining the permitted period in any case; and

"trial period" means a period of 12 weeks beginning with the commencement of the employment in question; but regulations may—

(a) make provision for the purpose of determining the day on which a person's employment is to be regarded as commencing; and

(b) provide that, for the purpose of determining the time at which the sixth or twelfth week of a trial period ends, prescribed periods may be disregarded in prescribed circumstances.

30 Abatement of unemployment benefit on account of payments of occupational or personal pension

(1) If payments by way of occupational or personal pension which in the aggregate exceed the maximum sum are made for any week to a person who has attained the age of 55, the rate of any unemployment benefit to which apart from this section he is entitled for that week shall be reduced by 10 pence for each 10 pence of the excess; and in this subsection "the maximum sum" means such sum not less than £35 as is prescribed.

(2) Where a reduction in the rate of unemployment benefit payable to a person falls to be made under this section the reduction shall be made, so far as is necessary—

(a) initially against so much of the benefit as falls to be paid by virtue of section 25(4) or (5) above or of regulations under section 60 below;

(b) then against any increase in the benefit payable under section 82 below; and

(c) finally against any increase in the benefit payable under section 80 below.

(3) Regulations may provide—

(a) for such sums as are specified in or determined under the regulations to be disregarded for the purposes of this section;

(b) for securing that no reduction in pursuance of subsection (1) above is made in the unemployment benefit for any day before the day which in pursuance of the regulations is treated as that on which relevant payments by way of occupational or personal pension begin;

(c) for this section to apply, in cases where—

(i) a lump sum is paid to a person in connection with a former employment of his or arrangements are made for a lump sum to be so paid; or

(ii) benefits of any description are made available to a person in connection with a former employment of his or arrangements are made for them to be made so available; or

(iii) payments by way of occupational or personal pension to a person are assigned, reduced or postponed or are made otherwise than weekly,

as if there were made to the person such weekly payments by way of occupational or personal pension as are specified in or determined under the regulations;

(d) for the method of determining whether payments by way of occupational or personal pension are made to a person for any week and the amount of any such payments which are so made;

(e) for section 26(1) above and section 57(1) below to have effect, in relation to a person whose rate of unemployment benefit is reduced by virtue of this section, with such modifications as are prescribed.

(4) In this section—

"employer" means—

(a) in relation to an employment under a contract of service, the employer under the contract;

(b) in relation to an employment in an office with emoluments, the person responsible for paying the emoluments;

"employment" means an employment under a contract of service or in an office with emoluments;

"modifications" includes additions, omissions and amendments;

and the reference in subsection (1) above to unemployment benefit includes any increase of the benefit on account of dependants.

Sickness benefit

31 Sickness benefit

(1) Subject to the provisions of this section, a person who satisfies any of the three conditions of subsection (2) below shall be entitled to sickness benefit in respect of any day of incapacity for work which forms part of a period of interruption of employment.

(2) The conditions of this subsection are that—

(a) the person is under pensionable age on the day in question and satisfies the contribution conditions specified for sickness benefit in Schedule 3, Part I, paragraph 2; or

(b) on that day the person—

(i) is over pensionable age, but not more than 5 years over that age; and

(ii) would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or

(c) on that day the person—

(i) is over pensionable age, but not more than 5 years over that age; and

(ii) would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

(3) Subsection (1) above is subject to the provision made by section 102 below in relation to entitlement to sickness benefit in cases of industrial injury.

(4) A person shall not be entitled to sickness benefit for the first 3 days of any period of interruption of employment.

(5) In the case of a person entitled under paragraph (a) of subsection (2) above (including a person entitled by virtue of that paragraph and section 102 below) sickness benefit shall be payable at the weekly rate specified in Schedule 4, Part I, paragraph 2.

(6) In the case of any person over pensionable age who is entitled under paragraph (b) or (c) of subsection (2) above, sickness benefit shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable; but in determining that rate for the purposes of this subsection any increase specified in subsection (7) below shall be disregarded.

(7) The increases to be disregarded for the purposes of subsection (6) above are the following—

(a) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;

(b) any increase (for dependants) under section 80, 83 or 85 below; and

(c) any increase (for Category A or Category B pensioners) under section 150 of the Administration Act (annual up-rating).

(8) The amount payable by way of benefit under this section for any day of incapacity for work shall be one-sixth of the appropriate weekly rate.

32 Sickness benefit - disqualifications etc

(1) Regulations may provide for disqualifying a person for receiving sickness benefit for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act if—

(a) he has become incapable of work through his own misconduct; or

(b) he fails without good cause to attend for, or to submit himself to, such medical or other examination or treatment as may be required in accordance with the regulations, or to observe any prescribed rules of behaviour.

(2) Regulations may also provide for imposing, in the case of any prescribed category of persons—

(a) additional conditions with respect to the receipt of sickness benefit; and

(b) restrictions on the rate and duration of sickness benefit,

if, having regard to special circumstances, it appears to the Secretary of State necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.

(3) For the purposes of this section "week" means any period of 7 days.

Invalidity benefits

33 Invalidity pension

(1) Where in respect of any period of interruption of employment a person has been entitled to sickness benefit for 168 days (including, in the case of a woman, any day for which she was entitled to a maternity allowance) then—

(a) he shall cease to be entitled to that benefit for any subsequent day of incapacity for work falling within that period; and

(b) he shall be entitled to an invalidity pension under this section for any day of incapacity for work in that period for which, by virtue only of paragraph (a) above, he is not entitled to sickness benefit if on that day either—

(i) he is under pensionable age, or

(ii) being over that age but not more than 5 years over it he satisfies either of the conditions of subsection (2) below;

and any day in the first 3 days of a period of interruption of employment which was a day of incapacity for work shall be treated for the purposes of this subsection as a day on which he was so entitled.

(2) The conditions of this subsection are that on that day—

(a) the person would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or

(b) the person would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

(3) Except as provided by subsection (4) below, the weekly rate of an invalidity pension under this section shall for any period of interruption of employment be determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but—

(a) with the modification provided by section 46(1) below, and

(b) with the substitution for section 44(7) below of the following—

"(7) In the application of this section for the purpose of determining the weekly rate of a person's invalidity pension for any period of interruption of employment—

(a) "relevant year" means any tax year, being neither earlier than the tax year 1978-79 nor later than the tax year 1990-91, in the period which—

(i) begins with the tax year in which the invalidity pensioner attained the age of 16; and

(ii) ends with the tax year immediately preceding the tax year which includes or included the first day of entitlement to the pension in respect of that period of interruption of employment; and

(b) "final relevant year" means the last tax year which is a relevant year in relation to the invalidity pensioner.".

(4) In the case of a person (over pensionable age) who is entitled to an invalidity pension under this section under paragraph (a) or (b) of subsection (2) above, the pension shall be payable at the weekly rate at which the retirement pension referred to in the applicable paragraph of that subsection would have been payable, apart from any increase to be disregarded by virtue of subsection (5) below.

(5) The increases to be disregarded for the purposes of subsection (4) above are the following—

(a) if he is also entitled to an invalidity allowance, any increase under section 47(1) or 50(2) below;

(b) any increase (for married women) under section 53(2) below or (for deferred entitlement) under Schedule 5 to this Act;

(c) any increase (for dependants) under section 80, 83 or 85 below; and

(d) any increase (for Category A or Category B pensioners) under section 150 of the Administration Act.

(6) The amount payable by way of an invalidity pension under this section shall for any day of incapacity for work be one sixth of the appropriate weekly rate.

(7) Where—

(a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and

(b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and

(c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under this section having been payable to him; and

(d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of 2 years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(8) Any day other than a Sunday or a day prescribed under section 57(1)(e) below is a relevant day for the purposes of subsection (7) above.

(9) Regulations may make provision in relation to entitlement to invalidity pension under this section—

(a) corresponding to that made by or under section 102 below in relation to sickness benefit for persons who have attained pensionable age;

(b) restricting entitlement to invalidity pension under this section in cases where in respect of one or more of the 168 days mentioned in subsection (1) above the person claiming invalidity pension (whether or not he has attained pensionable age) would not have been entitled to sickness benefit but for the provision so made.

(10) The Secretary of State may by regulations provide that, for the purpose of entitlement to invalidity pension under this section, such days as may be prescribed, in respect of which a person is or has been entitled to statutory sick pay, shall be days in respect of which he is deemed to be or to have been entitled to sickness benefit.

(11) A person under pensionable age who is deemed in accordance with regulations under subsection (10) above to have been entitled to sickness benefit for the whole or any part of a period of 168 days such as is mentioned in subsection (1) above shall not be entitled to invalidity pension under this section unless he would have satisfied the contribution conditions for sickness benefit had he claimed that benefit on the first of those days.

34 Invalidity allowance

(1) If a person is more than 5 years below pensionable age on the qualifying date in any period of interruption of employment then, subject to the following provisions of this section, in respect of every day of that period in respect of which he is entitled to an invalidity pension, he shall also be entitled to an invalidity allowance at the appropriate weekly rate specified in Schedule 4, Part I, paragraph 3.

(2) In this section "the qualifying date" means the first day in the period of interruption of employment in question (whether that day falls before the coming into force of this section or later) which is a day of incapacity for work or such earlier day as may be prescribed.

(3) An invalidity allowance shall be payable—

(a) at the higher rate specified in Schedule 4, Part I, paragraph 3, if—

(i) the qualifying date fell before 5th July 1948; or

(ii) on the qualifying date the beneficiary was under the age of 35; or

(iii) on the qualifying date the beneficiary was under the age of 40 and had not attained pensionable age before 6th April 1979;

(b) at the middle rate so specified if paragraph (a) above does not apply and either—

(i) on the qualifying date the beneficiary was under the age of 45; or

(ii) on the qualifying date the beneficiary was under the age of 50 and had not attained pensionable age before 6th April 1979;

(c) at the lower rate so specified if paragraphs (a) and (b) above do not apply, and on the qualifying date the beneficiary was a man under the age of 60 or a woman under the age of 55.

(4) Where for any period the weekly rate of the invalidity pension to which the beneficiary is entitled includes an additional pension such as is mentioned in section 44(3)(b) below, for that period the relevant amount shall be deducted from the appropriate weekly rate of invalidity allowance and he shall be entitled to invalidity allowance only if there is a balance after the deduction and, if there is such a balance, at a weekly rate equal to it.

(5) In this section "the relevant amount" means an amount equal to the additional pension reduced by the amount of any reduction in the weekly rate of the invalidity pension made by virtue of section 29 of the Pensions Act.

(6) In this section references to an additional pension are references to that pension after any increase under section 52(3) below but without any increase under paragraphs 1 and 2 of Schedule 5 to this Act.

(7) The amount payable by way of invalidity allowance shall for any day of incapacity for work be one sixth of the appropriate weekly rate or, where subsection (4) above applies, of the weekly rate payable under that subsection.

Maternity

35 State maternity allowance

(1) A woman shall be entitled to a maternity allowance at the weekly rate specified in Schedule 4, Part I, paragraph 4, if—
   (a) she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement; and
   (b) she has been engaged in employment as an employed or self-employed earner for at least 26 weeks in the 52 weeks immediately preceding the 14th week before the expected week of confinement; and
   (c) she satisfies the contribution condition for a maternity allowance specified in Schedule 3, Part I, paragraph 3; and
   (d) she is not entitled to statutory maternity pay for the same week in respect of the same pregnancy.

(2) Subject to the following provisions of this section, a maternity allowance shall be payable for the period ("the maternity allowance period") which, if she were entitled to statutory maternity pay, would be the maternity pay period under section 165 below.

(3) Regulations may provide—
   (a) for disqualifying a woman for receiving a maternity allowance if—
      (i) during the maternity allowance period she does any work in employment as an employed or self-employed earner, or fails without good cause to observe any prescribed rules of behaviour; or
      (ii) at any time before she is confined she fails without good cause to attend for, or submit herself to, any medical examination required in accordance with the regulations;
   (b) that this section and Schedule 3, Part I, paragraph 3 shall have effect subject to prescribed modifications in relation to cases in which a woman has been confined and—

(i) has not made a claim for a maternity allowance in expectation of that confinement (other than a claim which has been disallowed); or

(ii) has made a claim for a maternity allowance in expectation of that confinement (other than a claim which has been disallowed), but she was confined more than 11 weeks before the expected week of confinement.

(4) 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.

(5) Where for any purpose of this Part of this Act or of regulations it is necessary to calculate the daily rate of a maternity allowance—

(a) Sunday or such other day in each week as may be prescribed shall be disregarded; and

(b) the amount payable by way of that allowance for any other day shall be taken as one sixth of the weekly rate of the allowance.

(6) In this section "confinement" means—

(a) labour resulting in the issue of a living child, or

(b) labour after 28 weeks of pregnancy resulting in the issue of a child whether alive or dead,

and "confined" shall be construed accordingly; and where a woman's labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them.

(7) The fact that the mother of a child is being paid maternity allowance shall not be taken into consideration by any court in deciding whether to order payment of expenses incidental to the birth of the child.

Benefits for widows and widowers

36 Widow's payment

(1) A woman who has been widowed shall be entitled to a widow's payment of the amount specified in Schedule 4, Part II if—

(a) she was under pensionable age at the time when her late husband died, or he was then not entitled to a Category A retirement pension under section 44 below; and

(b) her late husband satisfied the contribution condition for a widow's payment specified in Schedule 3, Part I, paragraph 4.

(2) The payment shall not be payable to a widow if she and a man to whom she is not married are living together as husband and wife at the time of her husband's death.

(3) A widow's payment is payable only in cases where the husband dies on or after 11th April 1988 (the coming into force of section 36(1) of the 1986 Act, which introduced the widow's payment by making provision corresponding to this section).

37 Widowed mother's allowance

(1) A woman who has been widowed shall be entitled to a widowed mother's allowance at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widowed mother's allowance specified in Schedule 3, Part I, paragraph 5 and either—

(a) the woman is entitled to child benefit in respect of a child falling within subsection (2) below; or

(b) the woman is pregnant by her late husband; or

(c) if the woman and her late husband were residing together immediately before the time of his death, the woman is pregnant as the result of being artificially inseminated before that time with the semen of some person other than her husband, or as the result of the placing in her before that time of an embryo, of an egg in the process of fertilisation, or of sperm and eggs.

(2) A child falls within this subsection if one of the conditions specified in section 81(2) below is for the time being satisfied with respect to the child and the child is either—

(a) a son or daughter of the woman and her late husband; or

(b) a child in respect of whom her late husband was immediately before his death entitled to child benefit; or

(c) if the woman and her late husband were residing together immediately before his death, a child in respect of whom she was then entitled to child benefit.

(3) The widow shall not be entitled to the allowance for any period after she remarries, but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1)(a), (b) or (c) above.

(4) A widowed mother's allowance shall not be payable—

(a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act; or

(b) for any period during which she and a man to whom she is not married are living together as husband and wife.

38 Widow's pension

(1) A woman who has been widowed shall be entitled to a widow's pension at the rate determined in accordance with section 39 below if her late husband satisfied the contribution conditions for a widow's pension specified in Schedule 3, Part I, paragraph 5 and either—

(a) she was, at the husband's death, over the age of 45 but under the age of 65; or

(b) she ceased to be entitled to a widowed mother's allowance at a time when she was over the age of 45 but under the age of 65.

(2) The widow shall not be entitled to the pension for any period after she remarries, but, subject to that, she shall continue to be entitled to it until she attains the age of 65.

(3) A widow's pension shall not be payable—

(a) for any period falling before the day on which the widow's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act;

(b) for any period for which she is entitled to a widowed mother's allowance; or

(c) for any period during which she and a man to whom she is not married are living together as husband and wife.

(4) In the case of a widow whose late husband died before 11th April 1988 and who either—

(a) was over the age of 40 but under the age of 55 at the time of her husband's death; or

(b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,

subsection (1) above shall have effect as if for "45" there were substituted "40".

39 Rate of widowed mother's allowance and widow's pension

(1) The weekly rate of—

(a) a widowed mother's allowance,

(b) a widow's pension,

shall be determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but subject, in particular, to the following provisions of this section and section 46(2) below.

(2) In the application of sections 44 and 45 below by virtue of subsection (1) above—

(a) where the woman's husband was over pensionable age when he died, references in those sections to the pensioner shall be taken as references to the husband, and

(b) where the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.

(3) In the case of a woman whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 below by virtue of subsection (1) above shall (before making any reduction required by subsection (4) below) be one half of the amount which it would be apart from this subsection.

(4) Where a widow's pension is payable to a woman who was under the age of 55 at the time when the applicable qualifying condition was fulfilled, the weekly rate of the pension shall be reduced by 7 per cent. of what it would be apart from this subsection multiplied by the number of years by which her age at that time was less than 55 (any fraction of a year being counted as a year).

(5) For the purposes of subsection (4) above, the time when the applicable qualifying condition was fulfilled is the time when the woman's late husband died or, as the case may be, the time when she ceased to be entitled to a widowed mother's allowance.

(6) In the case of a widow whose late husband died before 11th April 1988 and who either—

(a) was over the age of 40 but under the age of 55 at the time of her husband's death; or

(b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,

subsection (4) above shall have effect as if for "55" there were substituted "50", in both places where it occurs.

40 Invalidity pension for widows

(1) Subject to subsection (2) below, this section applies to a woman who—

(a) on her late husband's death is not entitled to a widowed mother's allowance or subsequently ceases to be entitled to such an allowance; and

(b) is incapable of work at the time when he dies or when she subsequently ceases to be so entitled; and

(c) either—

(i) would have been entitled to a widow's pension if she had been over the age of 45 when her husband died or when she ceased to be entitled to a widowed mother's allowance; or

(ii) is entitled to such a pension with a reduction under section 39(4) above.

(2) This section does not apply to a woman unless—

(a) her husband died after 5th April 1979; or

(b) she ceased to be entitled to a widowed mother's allowance after that date (whenever her husband died).

(3) Subject to subsection (7) below, a woman to whom this section applies shall be entitled to an invalidity pension under this section for any day of incapacity for work which—

(a) falls in a period of interruption of employment that began before the time when her late husband died or she subsequently ceased to be entitled to a widowed mother's allowance; and

(b) is after that time and after the first 168 days of incapacity for work in that period.

(4) An invalidity pension under this section shall be payable at the higher of—

(a) the weekly rate which would apply if the pension were payable under section 33 above; or

(b) the weekly rate specified in subsection (5) below.

(5) The weekly rate referred to in subsection (4)(b) above is—

(a) if the woman is not entitled to a widow's pension, a weekly rate equal to that of the widow's pension to which she would have been entitled if she had been over the age of 55 when her husband died; and

(b) if she is entitled to a widow's pension with a reduction under section 39(4) above, a weekly rate equal to the difference between the weekly rate of that pension and what it would have been without the reduction,

but, in calculating the weekly rate of a widow's pension for the purposes of paragraph (a) above, or the weekly rate of a widow's pension without reduction, for the purposes of paragraph (b) above, any additional pension by virtue of section 44(3) below as it applies for the purposes of section 39 above shall be determined without reference to any surpluses in her late husband's earnings factors for tax years after 1990-91.

(6) For the purpose of calculating the rate of an invalidity pension for a woman to whom this section applies by virtue of subsection (1)(c)(ii) above, subsections (4) and (5) above shall have effect with such modifications as are prescribed.

(7) A woman shall not be entitled to an invalidity pension under this section if she is over pensionable age and is entitled to a Category A or Category B retirement pension; but if she has attained pensionable age, and the period of interruption of employment

mentioned in subsection (3)(a) above did not terminate earlier than the day before she attained that age—

(a) she shall, if not otherwise entitled to a Category A retirement pension, be entitled to such a pension; and

(b) the weekly rate of the Category A retirement pension to which she is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.

(8) No invalidity pension shall be payable under section 33 above for any day of incapacity for which an invalidity pension is payable under this section.

(9) In subsection (6) above "modifications" includes additions, omissions and amendments.

41 Invalidity pension for widowers

(1) This section applies to a man whose wife has died on or after 6th April 1979 and who either—

(a) was incapable of work at the time when she died; or

(b) becomes incapable of work within the prescribed period after that time.

(2) Subject to subsection (7) below, a man to whom this section applies shall be entitled to an invalidity pension under this section for any day of incapacity for work which—

(a) falls in a period of interruption of employment that began before the time when his wife died or within the prescribed period after that time; and

(b) is after that time and after the first 168 days of incapacity for work in that period.

(3) An invalidity pension under this section shall be payable at the higher of—

(a) the weekly rate which would apply if the pension were payable under section 33 above; or

(b) the weekly rate specified in subsection (4) below.

(4) The weekly rate mentioned in subsection (3)(b) above is a rate determined in accordance with the provisions of sections 44 and 45 below as they apply in the case of a Category A retirement pension, but subject, in particular, to subsections (5) and (6) and section 46(2) below.

(5) In the application of sections 44 and 45 below by virtue of subsection (4) above—

(a) where the man's wife was over pensionable age when she died, references in those sections to the pensioner shall be taken as references to the wife; and

(b) where the man's wife was under pensionable age when she died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the wife and the tax year in which she died; and

(c) any additional pension shall be determined without reference to any surpluses in her earnings factors for tax years after 1990-91.

(6) In the case of a widower whose wife dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 below by virtue of subsection (4) above shall be one half of the amount which it would be apart from this subsection.

(7) A man shall not be entitled to an invalidity pension under this section if he is over pensionable age and is entitled to a Category A or Category B retirement pension; but if he has attained pensionable age, and the period of interruption of employment mentioned in subsection (2)(a) above did not terminate earlier than the day before he attained that age—

(a) he shall, if not otherwise entitled to a Category A retirement pension and also not entitled to a Category B retirement pension by virtue of section 51 below, be entitled to a Category A retirement pension; and

(b) the weekly rate of the Category A retirement pension to which he is entitled (whether by virtue of paragraph (a) above or otherwise) shall be determined in the prescribed manner.

(8) No invalidity pension shall be payable under section 33 above for any day of incapacity for which an invalidity pension is payable under this section.

42 Entitlement to invalidity pension on termination of employment after period of entitlement to disability working allowance

(1) Where—

(a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and

(b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and

(c) he qualified for a disability working allowance for that week by virtue of an invalidity pension under section 40 or 41 above having been payable to him; and

(d) the first relevant day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of the period of 2 years beginning with the last day for which he was entitled to such a pension,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such a pension for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was incapable of work.

(2) Any day other than a Sunday or a day prescribed under section 57(1)(e) below is a relevant day for the purposes of this section.

Retirement pensions (Categories A and B)

43 Persons entitled to more than one retirement pension

(1) A person shall not be entitled for the same period to more than one retirement pension under this Part of this Act except as provided by subsection (2) below.

(2) A person who, apart from subsection (1) above, would be entitled for the same period to both—

(a) a Category A or a Category B retirement pension under this Part; and

(b) a Category C or a Category D retirement pension under Part III below,

shall be entitled to both of those pensions for that period, subject to any adjustment of them in pursuance of regulations under section 73 of the Administration Act.

(3) A person who, apart from subsection (1) above, would be entitled—

(a) to both a Category A and a Category B retirement pension under this Part for the same period, or

(b) to both a Category C and a Category D retirement pension under Part III below for the same period,

may from time to time give notice in writing to the Secretary of State specifying which of the pensions referred to in paragraph (a) or, as the case may be, paragraph (b) above he wishes to receive.

(4) If a person gives such a notice, the pension so specified shall be the one to which he is entitled in respect of any week commencing after the date of the notice.

(5) If no such notice is given, the person shall be entitled to whichever of the pensions is from time to time the most favourable to him (whether it is the pension which he claimed or not).

44 Category A retirement pension

(1) A person shall be entitled to a Category A retirement pension if—

(a) he is over pensionable age; and

(b) he satisfies the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5;

and, subject to the provisions of this Act, he shall become so entitled on the day on which he attains pensionable age and his entitlement shall continue throughout his life.

(2) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

(3) A Category A retirement pension shall consist of—

(a) a basic pension payable at a weekly rate; and

(b) an additional pension payable where there are one or more surpluses in the pensioner's earnings factors for the relevant years.

(4) The weekly rate of the basic pension shall be £54.15 except that, so far as the sum is relevant for the purpose of calculating the rate of sickness benefit under section 31(6) above, it shall be £51.95.

(5) For the purposes of this section and section 45 below—

(a) there is a surplus in the pensioner's earnings factor for a relevant year if that factor exceeds the qualifying earnings factor for the final relevant year; and

(b) the amount of the surplus is the amount of that excess;

and for the purposes of paragraph (a) above the pensioner's earnings factor for any relevant year shall be taken to be that factor as increased by the last order under section 148 of the Administration Act to come into force before the end of the final relevant year.

(6) Any reference in this section or section 45 below to the pensioner's earnings factor for any relevant year is a reference—

(a) where the relevant year is 1987-88 or any subsequent tax year, to the aggregate of—

(i) his earnings factors derived from earnings upon which primary Class 1 contributions were paid or treated as paid in respect of that year, and

(ii) his earnings factors derived from Class 2 and Class 3 contributions actually paid in respect of it; and

(b) where the relevant year is an earlier tax year, to the aggregate of his earnings factors derived from contributions actually paid by him in respect of that year.

(7) In this section—

(a) "relevant year" means 1978-79 or any subsequent tax year in the period between—

(i) (inclusive) the tax year in which the pensioner attained the age of 16, and

(ii) (exclusive) the tax year in which he attained pensionable age;

(b) "final relevant year" means the last tax year which is a relevant year in relation to the pensioner.

(8) For the purposes of this section any order under section 21 of the Pensions Act (which made provision corresponding to section 148 of the Administration Act) shall be treated as an order under section 148 (but without prejudice to sections 16 and 17 of the Interpretation Act 1978).

45 The additional pension in a Category A retirement pension

(1) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year before 6th April 1999 shall be the weekly equivalent of 1 1/4 per cent. of the amount of the surpluses mentioned in section 44(3)(b) above.

(2) The weekly rate of the additional pension in a Category A retirement pension in any case where the pensioner attained pensionable age in a tax year after 5th April 1999 shall be—

(a) in relation to any surpluses in the pensioner's earnings factors for the tax years in the period beginning with 1978-79 and ending with 1987-88, the weekly equivalent of 25/N per cent. of the amount of those surpluses; and

(b) in relation to any surpluses in the pensioner's earnings factors in a tax year after 1987-88, the weekly equivalent of the relevant percentage of the amount of those surpluses.

(3) In subsection (2)(b) above, "relevant percentage" means—

(a) 20/N per cent., where the pensioner attained pensionable age in 2009-10 or any subsequent tax year;

(b) (20+X)/N per cent., where the pensioner attained pensionable age in a tax year falling within the period commencing with 1999-2000 and ending with 2008-9.

(4) In this section—

(a) X = 0.5 for each tax year by which the tax year in which the pensioner attained pensionable age precedes 2009-10; and

(b) N = the number of tax years in the pensioner's working life which fall after 5th April 1978;

but paragraph (b) above is subject, in particular, to subsection (5) and, where applicable, section 46 below.

(5) Regulations may direct that in prescribed cases or classes of cases any tax year shall be disregarded for the purpose of calculating N under subsection (4)(b) above, if it is a tax year after 5th April 1978 in which the pensioner—

(a) was credited with contributions or earnings under this Act by virtue of regulations under section 22(5) above, or

(b) was precluded from regular employment by responsibilities at home, or

(c) in prescribed circumstances, would have been treated as falling within paragraph (a) or (b) above,

but not so as to reduce the number of years below 20.

(6) For the purposes of subsections (1) and (2) above, the weekly equivalent of the amount of any surpluses shall be calculated by dividing that amount by 52 and rounding the result to the nearest whole penny, taking any 1/2p as nearest to the next whole penny.

(7) Where the amount falling to be rounded under subsection (6) above is a sum less than 1/2p, the amount calculated under that subsection shall be taken to be zero, notwithstanding any other provision of this Act or the Administration Act.

(8) The sums which are the weekly rate of the additional pension in a Category A retirement pension are subject to alteration by orders made by the Secretary of State under section 150 of the Administration Act.

46 Modifications of section 45 for calculating the additional pension in certain benefits

(1) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 33(3) above, the following definition shall be substituted for the definition of "N" in section 45(4)(b) above—

> "N = the number of tax years which begin after 5th April 1978 and end before the first day of entitlement to the additional pension in the period of interruption of employment in which that day falls, except that if—
>
> (i) in a case where the person entitled to the pension is a man, that number would be greater than 49; or
>
> (ii) in a case where the person so entitled is a woman, that number would be greater than 44,
>
> N = 49 or 44, as the case may be".

(2) For the purpose of determining the additional pension falling to be calculated under section 45 above by virtue of section 39(1) or 41(4) above or section 50(3) below in a case where the deceased spouse died under pensionable age, the following definition shall be substituted for the definition of "N" in section 45(4)(b) above—

> "N = the number of tax years which begin after 5th April 1978 and end before the date when the entitlement to the additional pension commences, except that if—
>
> (i) in a case where the deceased spouse was a man, that number would be greater than 49, or
>
> (ii) in a case where the deceased spouse was a woman, that number would be greater than 44,

N = 49 or 44, as the case may be".

47 Increase of Category A retirement pension for invalidity

(1) Subject to section 61 below, the weekly rate of a Category A retirement pension shall be increased if the pensioner was entitled to an invalidity allowance in respect of—

(a) any day falling within the period of 8 weeks ending immediately before the day on which he attains pensionable age; or

(b) the last day before the beginning of that period;

and the increase shall, subject to subsection (2) below, be of an amount equal to the appropriate weekly rate of the invalidity allowance on that day.

(2) Where for any period the weekly rate of a Category A retirement pension includes an additional pension, for that period the relevant amount shall be deducted from the amount that would otherwise be the increase under subsection (1) above and the pensioner shall be entitled to an increase under that subsection only if there is a balance remaining after that deduction and, if there is such a balance, of an amount equal to it.

(3) In subsection (2) above the "relevant amount" means an amount equal to the additional pension, reduced by the amount of any reduction in the weekly rate of the Category A retirement pension made by virtue of section 29 of the Pensions Act.

(4) In this section any reference to an additional pension is a reference to that pension after any increase under section 52(3) below but without any increase under paragraphs 1 and 2 of Schedule 5 to this Act.

(5) In ascertaining for the purposes of subsection (1) above the rate of a pensioner's invalidity allowance, regard shall be had to the rates in force from time to time.

(6) Regulations may provide that subsection (1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations.

48 Use of former spouse's contributions

(1) Where a person—

(a) has been married, and

(b) in respect of the tax year in which the marriage terminated or any previous tax year, does not with his own contributions satisfy the contribution conditions for a Category A retirement pension,

then, for the purpose of enabling him to satisfy those conditions (but only in respect of any claim for a Category A retirement pension), the contributions of his former spouse may to the prescribed extent be treated as if they were his own contributions.

(2) Subsection (1) above shall not apply in relation to any person who attained pensionable age before 6th April 1979 if the termination of his marriage also occurred before that date.

(3) Where a person has been married more than once this section applies only to the last marriage and the references to his marriage and his former spouse shall be construed accordingly.

49 Category B retirement pension for women

(1) A woman who is or has been married, and has attained pensionable age, shall be entitled to a Category B retirement pension by virtue of the contributions of her husband; and the cases in which a woman is so entitled are those specified in subsections (2) to (5) below.

(2) The first case of entitlement is where the woman is married to that husband at the time when she attains pensionable age and—
- (a) he also has attained pensionable age and has become entitled to a Category A retirement pension; and
- (b) he satisfies the relevant contribution conditions.

(3) The second case of entitlement is where the woman marries after attaining pensionable age and—
- (a) her husband has also attained pensionable age and has become entitled to a Category A retirement pension; and
- (b) he satisfies the relevant contribution conditions.

(4) The third case of entitlement is where the woman's husband is dead and his death was after she attained pensionable age, and—
- (a) she was married to him when he died; and
- (b) before his death he satisfied the relevant contribution conditions.

(5) The fourth case of entitlement is where the woman's husband is dead and his death was before she attained pensionable age, and—
- (a) she was a widow immediately before attaining pensionable age and is entitled (or is treated by regulations as entitled) to a widow's pension; and
- (b) she became entitled to the pension in consequence of the husband's death.

(6) The relevant contribution conditions for the purposes of the first, second and third cases of entitlement are those specified in Schedule 3, Part I, paragraph 5.

(7) Subject to the provisions of this Act, a woman's entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.

(8) A woman's Category B retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

50 Rate of Category B retirement pension for women

(1) A woman's Category B retirement pension—
- (a) in the first and second cases of entitlement under section 49 above, shall—
  - (i) during any period in which the husband is alive, be payable at the weekly rate specified in Schedule 4, Part I, paragraph 5, and
  - (ii) during any period after he is dead, be payable at a weekly rate ascertained in accordance with subsection (3) below;
- (b) in the third case of entitlement under that section, shall be payable at a weekly rate ascertained in accordance with subsection (3) below; and
- (c) in the fourth case of entitlement under that section, shall be payable at the same weekly rate as her widow's pension.

(2) In any case where—

(a) a woman would, apart from section 43(1) above, be entitled both to a Category A and to a Category B retirement pension, and

(b) subsection (1) of section 47 above would apply for the increase of the Category A retirement pension,

that subsection shall be taken as applying also for the increase of the Category B retirement pension, subject to reduction or extinguishment of the increase by the application of section 47(2) above or section 29B(2) of the Pensions Act.

(3) The weekly rate referred to in paragraphs (a)(ii) and (b) of subsection (1) above for a woman's Category B retirement pension shall be determined in accordance with the provisions of sections 44 and 45 above as they apply in the case of a Category A retirement pension, but subject, in particular—

(a) to section 46(2) above; and

(b) to subsections (4) and (5) below.

(4) In the application of sections 44 and 45 above by virtue of subsection (3) above—

(a) references in those sections to the pensioner shall be taken as references to the husband, and

(b) where, in the third case of entitlement under section 49 above, the husband was under pensionable age when he died, references in those sections to the pensioner and the tax year in which he attained pensionable age shall be taken as references to the husband and the tax year in which he died.

(5) In the case of a widow whose husband dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (3) above shall be one half of the amount which it would be apart from this subsection.

51 Category B retirement pension for widowers

(1) A man shall be entitled to a Category B retirement pension if—

(a) he has had a wife and she has died on or after 6th April 1979, and he was married to her when she died; and

(b) they were both over pensionable age when she died; and

(c) before her death she satisfied the contribution conditions for a Category A retirement pension in Schedule 3, Part I, paragraph 5.

(2) The weekly rate of a man's Category B retirement pension under this section shall, subject to subsection (3) below, be determined in accordance with the provisions of sections 44 and 45 above as they apply in the case of a Category A retirement pension, taking references in those sections to the pensioner as references to the wife.

(3) In the case of a widower whose wife dies after 5th April 2000, the additional pension falling to be calculated under sections 44 and 45 above by virtue of subsection (2) above shall be one half of the amount which it would be apart from this subsection.

(4) Subject to the provisions of this Act, a man shall become entitled to a Category B retirement pension on the day on which the conditions of entitlement become satisfied in his case and his entitlement shall continue throughout his life.

52 Special provision for surviving spouses

(1) This section has effect where, apart from section 43(1) above, a person would be entitled both—

(a) to a Category A retirement pension; and

(b) to a Category B retirement pension—

(i) under section 49 above by virtue of the contributions of a husband who has died; or

(ii) under section 51 above.

(2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the full amount, that basic pension shall be increased by the lesser of—

(a) the amount of the shortfall, or

(b) the amount of the basic pension in the rate of the Category B retirement pension,

"full amount" meaning for this purpose the sum specified in section 44(4) above as the weekly rate of the basic pension in a Category A retirement pension.

(3) If the additional pension in the Category A retirement pension falls short of the prescribed maximum, that additional pension shall be increased by the lesser of—

(a) the amount of the shortfall, or

(b) the amount of the additional pension in the Category B retirement pension.

(4) This section does not apply in any case where the death of the wife or husband, as the case may be, occurred before 6th April 1979 and the surviving spouse had attained pensionable age before that date.

53 Special provision for married women

(1) This section has effect where, apart from section 43(1) above, a married woman would be entitled both—

(a) to a Category A retirement pension; and

(b) to a Category B retirement pension by virtue of the contributions of her husband.

(2) If by reason of a deficiency of contributions the basic pension in the Category A retirement pension falls short of the weekly rate specified in Schedule 4, Part I, paragraph 5, that basic pension shall be increased by the lesser of—

(a) the amount of the shortfall, or

(b) the amount of the weekly rate of the Category B retirement pension.

(3) This section does not apply in any case where both the husband and wife attained pensionable age before 6th April 1979.

54 Category A and Category B retirement pensions: supplemental provisions

(1) Regulations may provide that in the case of a person of any prescribed description who—

(a) has become entitled to a Category A or Category B retirement pension but is, in the case of a woman, under the age of 65 or, in the case of a man, under the age of 70; and

(b) elects in such manner and in accordance with such conditions as may be prescribed that the regulations shall apply in his case,

this Part of this Act shall have effect as if that person had not become entitled to such a retirement pension.

(2) Regulations under subsection (1) above may make such modifications of the provisions of this Part of this Act, or of those of Part II of the Administration Act as those provisions apply in a case where a person makes an election under the regulations, as may appear to the Secretary of State necessary or expedient.

(3) Where a husband and wife have both become entitled to retirement pensions and—

(a) the husband's pension is Category A; and

(b) the wife's pension is—

(i) Category B by virtue of that husband's contributions, or

(ii) Category A with an increase under section 53(2) above by virtue of that husband's contributions,

the husband shall not be entitled to make an election in accordance with regulations made under subsection (1) above without the consent of the wife, unless that consent is unreasonably withheld.

(4) In any case where—

(a) a person claims a Category A or Category B retirement pension; and

(b) the date specified in the claim as the date on which entitlement to the pension is to commence falls after the date when the claim was made,

such a pension may be awarded as from the date so specified but, if so awarded, shall be conditional on the person's not ceasing to be entitled to the pension in consequence of any election under subsection (1) above.

55 Increase of retirement pension where entitlement is deferred

(1) Where a person's entitlement to a Category A or Category B retirement pension is deferred, Schedule 5 to this Act shall have effect for increasing the rate of his pension.

(2) For the purposes of this Act a person's entitlement to a Category A or Category B retirement pension is "deferred" if and so long as he does not become entitled to that pension by reason only—

(a) that he has not satisfied the conditions of section 1 of the Administration Act (entitlement to benefit dependent on claim); or

(b) that, in the case of a woman's Category B retirement pension by virtue of her husband's contributions, her husband has not satisfied those conditions with respect to his Category A retirement pension;

and, in relation to any such pension, "period of deferment" shall be construed accordingly.

Child's special allowance

56 Child's special allowance - existing beneficiaries

(1) Subject to the provisions of this Act (and in particular to those of section 81 below), a woman whose marriage has been terminated by divorce shall be entitled to a child's special allowance at the weekly rate specified in Schedule 4, Part I, paragraph 6, if—

(a) the husband of that marriage is dead and satisfied the contribution condition for a child's special allowance specified in Schedule 3, Part I, paragraph 6; and

(b) she is entitled to child benefit in respect of a child and either—

(i) she was so entitled immediately before that husband's death; or

(ii) in such circumstances as may be prescribed, he was then so entitled; and

(c) either—

(i) that husband had before his death been contributing at not less than the prescribed weekly rate to the cost of providing for that child; or

(ii) at the date of that husband's death she was entitled, under an order of a court, trust or agreement which she has taken reasonable steps to enforce, to receive (whether from that husband or from another person) payments in respect of that child at not less than that rate provided or procured by that husband.

(2) A child's special allowance shall not be payable to a woman—

(a) for any period after her remarriage; or

(b) for any period during which she and a man to whom she is not married are living together as husband and wife.

(3) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, payment of an amount by way of a child's special allowance, that amount shall not be payable unless one of the conditions specified in subsection (4) below is satisfied.

(4) Those conditions are—

(a) that the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or

(b) that the requisite contributions are being made to the cost of providing for the child.

(5) The condition specified in subsection (4)(b) above is to be treated as satisfied if, but only if—

(a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (3) above—

(i) by the beneficiary; or

(ii) where the beneficiary is one of two spouses residing together, by them together; and

(b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 143(1)(b) below.

(6) A child's special allowance shall not be payable for any period after 5th April 1987 except to a woman who immediately before 6th April 1987—

(a) satisfied the conditions set out in paragraphs (a) to (c) of subsection (1) above; and

(b) was not barred from payment of the allowance for either of the reasons mentioned in subsection (2) above,

and who has so continued since 6th April 1987.

Provisions relating to unemployment benefit, sickness benefit and invalidity benefit

57 Determination of days for which benefit is payable

(1) For the purposes of any provisions of this Act relating to unemployment benefit, sickness benefit or invalidity benefit—

(a) subject to the provisions of this Act, a day shall not be treated in relation to any person—

(i) as a day of unemployment unless on that day he is capable of work and he is, or is deemed in accordance with regulations to be, available to be employed in employed earner's employment and that day falls in a week in which he is, or is deemed in accordance with regulations to be, actively seeking such employment; or

(ii) as a day of incapacity for work unless on that day he is, or is deemed in accordance with regulations to be, incapable of work by reason of some specific disease or bodily or mental disablement,

("work", in this paragraph, meaning work which the person can reasonably be expected to do);

(b) where a person is an employed earner and his employment as such has not been terminated, then in any week a day on which in the normal course that person would not work in that employment or in any other employed earner's employment shall not be treated as a day of unemployment unless each other day in that week (other than the day referred to in paragraph (e) below) on which in the normal course he would so work is a day of interruption of employment;

(c) "day of interruption of employment" means a day which is a day of unemployment or of incapacity for work;

(d) the following periods, namely—

(i) any 2 days of unemployment, whether consecutive or not, within a period of 6 consecutive days,

(ii) any 4 or more consecutive days of incapacity for work,

shall be treated as a period of interruption of employment, and any 2 such periods not separated by a period of more than 8 weeks ("week" for this purpose meaning any period of 7 days) shall be treated as one period of interruption of employment;

(e) Sunday or such other day in each week as may be prescribed shall not be treated as a day of unemployment or of incapacity for work and shall be disregarded in computing any period of consecutive days.

(2) Any day which falls within the maternity allowance period (as defined in section 35(2) above) shall be treated for the purposes of any provision of this Act relating to unemployment benefit, sickness benefit or invalidity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance in respect of that day by virtue of regulations under section 35(3)(a) above.

(3) Regulations may—

(a) make provision (subject to subsections (1) and (2) above) as to the days which are or are not to be treated for the purposes of unemployment benefit, sickness benefit and invalidity benefit as days of unemployment or of incapacity for work;

(b) make provision with respect to—

(i) steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner's employment in that week;

(ii) the meaning of "week" in subsection (1)(a)(i) above or in any other provision relating to a person's actively seeking employed earner's employment;

(c) prescribe respective circumstances in which, for the purposes of subsection (1)(b) above—

(i) employment which has not been terminated may be treated as if it had been terminated; or

(ii) a day which falls in a period when an employed earner's employment is suspended but does not fall to be so treated and which, apart from the regulations, would not fall to be treated as a day of interruption of employment may be treated as such a day.

(4) 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) Where it has been determined that a person is to be deemed in accordance with regulations to be actively seeking employed earner's employment in any week, the question of his actually doing so in that week may be subsequently determined on a review of the determination as to his deemed doing so.

(6) If regulations under paragraph (a) of subsection (3) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—

(a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;

(b) for calculating or estimating that person's level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and

(c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

(7) In subsection (6) above "post-employment period" means a period following the termination of a person's employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.

(8) Subsections (1) and (3) above shall, on and after such day as the Secretary of State may by order appoint, have effect—

(a) with the substitution for paragraph (b) of subsection (1) of the following paragraph—

"(b) where a person is an employed earner and his employment as such has not been terminated but has been suspended by the employer, a day shall not be treated in relation to that person as a day of unemployment unless it is the 7th or a later day in a

continuous period of days on which that suspension has lasted, there being disregarded for the purposes of determining the first 6 days of the period (but for no other purpose)—

(i) Sunday or such other day in each week as may have been prescribed under paragraph (e) of this subsection,

(ii) any day of recognised or customary holiday in connection with the suspended employment,

(iii) such other day or days as may be prescribed;"; and

(b) with the substitution for paragraph (c) of subsection (3) of the following paragraph—

"(c) prescribe respective circumstances in which for the purposes of subsection (1)(b) above an employed earner's employment may be treated—

(i) as having been or, as the case may be, as not having been terminated, or

(ii) as having been or, as the case may be, as not having been suspended.".

(9) The Secretary of State may by regulations provide—

(a) that paragraph (d) of subsection (1) above shall have effect as if for the reference to 8 weeks there were substituted a reference to a larger number of weeks specified in the regulations; and

(b) that sub-paragraph (ii) of that paragraph shall have effect in such cases as may be specified in the regulations, as if—

(i) the period of 4 days mentioned there were such lesser period as may be specified; and

(ii) the word "consecutive" were omitted.

(10) Regulations under subsection (9)(b) above may be made to have effect from such date, not earlier than 14th September 1980, as may be specified in the regulations.

58 Incapacity for work: work as councillor to be disregarded

(1) In determining for the purposes of any of the provisions of this Part of this Act which relate to sickness benefit or invalidity benefit whether any day is to be treated as a day of incapacity for work in relation to a person, there shall be disregarded any work which that person has undertaken, or is capable of undertaking, as a councillor.

(2) Where the net amount of councillor's allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any sickness benefit or invalidity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(3) In determining whether a person satisfies the conditions of entitlement for any such benefit, he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

(a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but

(b) would not have been so treated apart from this subsection.

(4) In this section—

"councillor" means—

(a) in relation to England and Wales, a member of a London borough council, a county council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and

(b) in relation to Scotland, a member of a regional, islands or district council;

"councillor's allowance" means an allowance under or by virtue of—

(a) section 173 or 177 of the Local Government Act 1972, or a scheme made by virtue of section 18 of the Local Government and Housing Act 1989, other than such an allowance as is mentioned in section 173(4) of that Act of 1972; or

(b) section 49 of the Local Government (Scotland) Act 1973 or a scheme made by virtue of section 18 of the Local Government and Housing Act 1989;

and where any such allowance is paid otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the allowance;

"net amount", in relation to any councillor's allowance to which a person is entitled, means the aggregate amount of the councillor's allowance or allowances to which he is entitled for the week in question, reduced by the amount of any expenses incurred by him in that week in connection with his membership of the council or councils in question;

"permitted earnings limit" means the amount specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations 1983;

"pre-commencement period" means the period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into force of paragraph 2 of Schedule 8 to the Social Security Act 1989 which made provision corresponding to the provision made by this section).

(5) Any reference in this section to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any of the bodies referred to in—

(a) section 177(1) of the Local Government Act 1972; or

(b) section 49(1) or (1A) of the Local Government (Scotland) Act 1973,

of which he is a member by virtue of his being a councillor.

Invalidity benefit—disqualifications etc.

59 Invalidity benefit— disqualifications etc

(1) Regulations may provide for disqualifying a person for receiving invalidity benefit for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act if—

(a) he has become incapable of work through his own misconduct; or

(b) he fails without good cause to attend for, or to submit himself to, such medical or other examination or treatment as may be required in accordance with the regulations, or to observe any prescribed rules of behaviour.

(2) Regulations may also provide for imposing, in the case of any prescribed category of persons—

(a) additional conditions with respect to the receipt of invalidity benefit; and

(b) restrictions on the rate and duration of invalidity benefit,

if, having regard to special circumstances, it appears to the Secretary of State necessary to do so for the purpose of preventing inequalities, or injustice to the general body of employed earners, or of earners generally, as the case may be.

(3) For the purposes of this section "week" means any period of 7 days.

Complete or partial failure to satisfy contribution conditions

60 Complete or partial failure to satisfy contribution conditions

(1) Subject to the provisions of this section, regulations may provide for persons to be entitled to any of the following benefits, namely—

(a) a widowed mother's allowance,

(b) a widow's pension,

(c) a Category A retirement pension,

(d) a Category B retirement pension,

in cases where the first contribution condition specified in relation to that benefit in paragraph 5 of Schedule 3 to this Act is satisfied and the second contribution condition so specified is not.

(2) Subject to subsection (8) below, in any case where—

(a) an employed earner who is married dies as a result of—

(i) a personal injury of a kind mentioned in section 94(1) below, or

(ii) a disease or injury such as is mentioned in section 108(1) below, and

(b) the contribution conditions are not wholly satisfied in respect of him,

those conditions shall be taken to be satisfied for the purposes of his widow's entitlement to any of the benefits specified in subsection (3) below.

(3) The benefits referred to in subsection (2) above are the following—

(a) a widow's payment;

(b) a widowed mother's allowance;

(c) a widow's pension;

(d) a Category B retirement pension payable to a woman which is payable to her at the same rate as her widow's pension or which falls within section 49(4) above.

(4) Subject to subsections (6) and (7) below, regulations under subsection (1) above shall provide for benefit payable by virtue of any such regulations to be payable at a rate, or to be of an amount, less than that which would be applicable under this Part of this Act had both of the relevant contribution conditions been fully satisfied.

(5) Subject to subsections (6) and (7) below, the rate or amount prescribed by regulations under subsection (1) above may vary with the extent to which the relevant contribution conditions are satisfied (and may be nil).

(6) The amount prescribed by regulations under subsection (1) above for any increase of benefit in respect of a child shall, subject to subsection (7) below, be the same as if both of the relevant contribution conditions had been fully satisfied.

(7) Regulations may provide that where—

(a) a person is entitled by virtue of subsection (1) above to a Category A or Category B retirement pension consisting only of the additional pension with no basic pension, and

(b) that retirement pension, and any graduated retirement benefit to which he may be entitled, together amount to less than the prescribed rate,

that person's entitlement as respects that retirement pension shall be satisfied either altogether or for a prescribed period by the making of a single payment of the prescribed amount.

(8) Subsection (2) above only has effect where the employed earner's death occurred on or after 11th April 1988.

61 Exclusion of increase of benefit for failure to satisfy contribution condition

(1) A Category A or Category B retirement pension which is payable by virtue of section 60(1) above and a widowed mother's allowance which is so payable shall not be increased under section 47(1) above or under Part IV below on account of a child or an adult if the pension or allowance contains no basic pension in consequence of a failure to satisfy a contribution condition.

(2) Where a person is entitled—

(a) to unemployment benefit at a rate determined under section 25(5) above; or

(b) to sickness benefit at a rate determined under section 31(6) above; or

(c) to an invalidity pension under section 33 above at a rate determined under section 33(4) above,

and the retirement pension by reference to which the rate of the benefit or invalidity pension is determined—

(i) would have been payable only by virtue of section 60 above; and

(ii) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension,

the benefit or invalidity pension shall not be increased under section 47(1) above or under Part IV below on account of a child or an adult.

Graduated retirement benefit

62 Graduated retirement benefit

(1) So long as sections 36 and 37 of the National Insurance Act 1965 (graduated retirement benefit) continue in force by virtue of regulations made under Schedule 3 to the Social Security (Consequential Provisions) Act 1975 or under Schedule 3 to the Consequential Provisions Act, regulations may make provision—

(a) for replacing section 36(4) of the National Insurance Act 1965 (increase of graduated retirement benefit in cases of deferred retirement) with provisions corresponding to those of paragraphs 1 to 3 of Schedule 5 to this Act;

(b) for extending section 37 of that Act (increase of woman's retirement pension by reference to her late husband's graduated retirement benefit) to men and their late wives.

(2) This section is without prejudice to any power to modify the said sections 36 and 37 conferred by Schedule 3 to the Consequential Provisions Act.

PART III

NON-CONTRIBUTORY BENEFITS

63 Descriptions of non-contributory benefits

Non-contributory benefits under this Part of this Act are of the following descriptions, namely—

(a) attendance allowance;

(b) severe disablement allowance (with age related addition and increase for adult and child dependants);

(c) invalid care allowance (with increase for adult and child dependants);

(d) disability living allowance;

(e) guardian's allowance;

(f) retirement pensions of the following categories—

(i) Category C, payable to certain persons who were over pensionable age on 5th July 1948 and their wives and widows (with increase for adult and child dependants), and

(ii) Category D, payable to persons over the age of 80;

(g) age addition payable, in the case of persons over the age of 80, by way of increase of a retirement pension of any category or of some other pension or allowance from the Secretary of State.

Attendance allowance

64 Entitlement

(1) A person shall be entitled to an attendance allowance if he is aged 65 or over, he is not entitled to the care component of a disability living allowance and he satisfies either—

(a) the condition specified in subsection (2) below ("the day attendance condition"), or

(b) the condition specified in subsection (3) below ("the night attendance condition"),

and prescribed conditions as to residence and presence in Great Britain.

(2) A person satisfies the day attendance condition if he is so severely disabled physically or mentally that, by day, he requires from another person either—

(a) frequent attention throughout the day in connection with his bodily functions, or

(b) continual supervision throughout the day in order to avoid substantial danger to himself or others.

(3) A person satisfies the night attendance condition if he is so severely disabled physically or mentally that, at night,—

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

(b) 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.

65 Period and rate of allowance

(1) Subject to the following provisions of this Act, the period for which a person is entitled to an attendance allowance shall be—

(a) a period throughout which he has satisfied or is likely to satisfy the day or the night attendance condition or both; and

(b) a period preceded immediately, or within such period as may be prescribed, by one of not less than 6 months throughout which he satisfied, or is likely to satisfy, one or both of those conditions.

(2) For the purposes of subsection (1) above a person who suffers from renal failure and is undergoing such form of treatment as may be prescribed shall, in such circumstances as may be prescribed, be deemed to satisfy or to be likely to satisfy the day or the night attendance condition or both.

(3) The weekly rate of the attendance allowance payable to a person for any period shall be the higher rate specified in Schedule 4, Part III, paragraph 1, if both as regards that period and as regards the period of 6 months mentioned in subsection (1)(b) above he has satisfied or is likely to satisfy both the day and the night attendance conditions, and shall be the lower rate in any other case.

(4) A person shall not be entitled to an attendance allowance for any period preceding the date on which he makes or is treated as making a claim for it.

(5) Notwithstanding anything in subsection (4) above, provision may be made by regulations for a person to be entitled to an attendance allowance for a period preceding the date on which he makes or is treated as making a claim for it if such an allowance has previously been paid to or in respect of him.

(6) Except in so far as regulations otherwise provide and subject to section 66(1) below—

(a) a claim for an attendance allowance may be made during the period of 6 months immediately preceding the period for which the person to whom the claim relates is entitled to the allowance; and

(b) an award may be made in pursuance of a claim so made, subject to the condition that, throughout that period of 6 months, that person satisfies—

(i) both the day and the night attendance conditions, or

(ii) if the award is at the lower rate, one of those conditions.

66 Attendance allowance for the terminally ill

(1) If a terminally ill person makes a claim expressly on the ground that he is such a person, then—

(a) he shall be taken—

(i) to satisfy, or to be likely to satisfy, both the day attendance condition and the night attendance condition for the remainder of his life, beginning with the date of the claim or, if later, the first date on which he is terminally ill; and

(ii) to have satisfied those conditions for the period of 6 months immediately preceding that date (so however that no allowance shall be payable by virtue of this sub-paragraph for any period preceding that date); and

(b) the period for which he is entitled to attendance allowance shall be the remainder of the person's life, beginning with that date.

(2) For the purposes of subsection (1) above—

(a) a person is "terminally ill" at any time if at that time he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months; and

(b) where a person purports to make a claim for an attendance allowance by virtue of that subsection on behalf of another, that other shall be regarded as making the claim, notwithstanding that it is made without his knowledge or authority.

67 Exclusions by regulation

(1) Regulations may provide that, in such circumstances, and for such purposes as may be prescribed, a person who is, or is treated under the regulations as, undergoing treatment for renal failure in a hospital or other similar institution otherwise than as an in-patient shall be deemed not to satisfy or to be unlikely to satisfy the day attendance condition or the night attendance condition, or both of them.

(2) Regulations may provide that an attendance allowance shall not be payable in respect of a person for any period when he is a person for whom accommodation is provided—

(a) in pursuance—

(i) of Part III of the National Assistance Act 1948; or

(ii) of paragraph 2 of Schedule 8 to the National Health Service Act 1977; or

(iii) of Part IV of the Social Work (Scotland) Act 1968; or

(iv) of section 7 of the Mental Health (Scotland) Act 1984; or

(b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability.

Severe disablement allowance

68 Entitlement and rate

(1) Subject to the provisions of this section, a person shall be entitled to a severe disablement allowance for any day ("the relevant day") if he satisfies—

(a) the conditions specified in subsection (2) below; or

(b) the conditions specified in subsection (3) below.

(2) The conditions mentioned in subsection (1)(a) above are that—

(a) on the relevant day he is incapable of work; and

(b) he has been incapable of work for a period of not less than 196 consecutive days—

(i) beginning not later than the day on which he attained the age of 20; and

(ii) ending immediately before the relevant day.

(3) The conditions mentioned in subsection (1)(b) above are that—

(a) on the relevant day he is both incapable of work and disabled; and

(b) he has been both incapable of work and disabled for a period of not less than 196 consecutive days ending immediately before the relevant day.

(4) A person shall not be entitled to a severe disablement allowance if—

(a) he is under the age of 16; or

(b) he is receiving full-time education; or

(c) he does not satisfy the prescribed conditions—

(i) as to residence in Great Britain; or

(ii) as to presence there; or

(d) he has attained pensionable age and—

(i) was not entitled to a severe disablement allowance immediately before he attained that age; and

(ii) is not treated by regulations as having been so entitled immediately before he attained that age.

(5) A person shall not be entitled to a severe disablement allowance for any day which as between him and his employer falls within a period of entitlement for the purposes of statutory sick pay.

(6) A person is disabled for the purposes of this section if he suffers from loss of physical or mental faculty such that the extent of the resulting disablement assessed in accordance with Schedule 6 to this Act amounts to not less than 80 per cent.

(7) A severe disablement allowance shall be paid at the weekly rate specified in Schedule 4, Part III, paragraph 2.

(8) The amount of severe disablement allowance payable for any relevant day shall be one sixth of the weekly rate referred to in subsection (7) above.

(9) In any case where—

(a) a severe disablement allowance is payable to a woman in respect of one or more relevant days in a week; and

(b) an amount of statutory maternity pay becomes payable to her on any day in that week,

the amount of the severe disablement allowance (including any increase for a child or adult dependant under section 90(a) below) so payable shall be reduced by the amount of the statutory maternity pay, and only the balance (if any) shall be payable.

(10) Where—

(a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and

(b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and

(c) he qualified for a disability working allowance for that week by virtue of a severe disablement allowance having been payable to him; and

(d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is a day on which he is incapable of work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to a severe disablement allowance,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for a severe disablement allowance for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day on which he was both incapable of work and disabled.

(11) Regulations—

(a) may direct that persons who—

(i) have attained retiring age; and

(ii) were entitled to a severe disablement allowance immediately before they attained that age,

shall continue to be so entitled notwithstanding that they do not satisfy the conditions specified in subsection (2) or (3) above;

(b) may direct—

(i) that persons who have previously been entitled to a severe disablement allowance shall be entitled to such an allowance notwithstanding that they do not satisfy the conditions specified in subsection (2)(b) or (3)(b) above;

(ii) that subsections (2)(b) and (3)(b) above shall have effect in relation to such persons subject to such modifications as may be specified in the regulations;

(c) may prescribe the circumstances in which a person is or is not to be treated—

(i) as incapable of work; or

(ii) as receiving full-time education;

(d) may provide that, where the net amount of councillor's allowance (within the meaning of section 58 above) to which a person is entitled in respect of any week exceeds a prescribed sum, then, except in prescribed cases, an amount equal to the excess shall be deducted from the amount of any severe disablement allowance to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable; and

(e) may provide for disqualifying a person from receiving a severe disablement allowance for such period not exceeding 6 weeks as may be determined in accordance with the Administration Act if—

(i) he has become incapable of work through his own misconduct; or

(ii) he fails without good cause to attend for, or to submit himself to, such medical or other examination or treatment as may be required in accordance with the regulations, or to observe any prescribed rules of behaviour.

(12) In determining whether a person satisfies the conditions specified in subsection (2)(b) and (3)(b) above he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

(a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor, but

(b) would not have been so treated apart from this subsection.

(13) In this section—

"councillor" and "pre-commencement period" have the meanings assigned to them by section 58(4) above;

"retiring age" means 70 in the case of a man and 65 in the case of a woman,

and section 58(5) above has effect for the purposes of subsection (12) above as it has effect for the purposes of section 58 above.

69 Severe disablement allowance: age related addition

(1) If a person was under the age of 60 on the day on which he qualified for severe disablement allowance, the weekly rate of his severe disablement allowance shall be increased by an age related addition at whichever of the weekly rates specified in the second column of paragraph 3 of Part III of Schedule 4 to this Act is applicable in his case, that is to say—

(a) the higher rate, if he was under the age of 40 on the day on which he qualified for severe disablement allowance;

(b) the middle rate, if he was between the ages of 40 and 50 on that day; or

(c) the lower rate, if he was between the ages of 50 and 60 on that day.

(2) Subject to subsection (4) below, for the purposes of this section the day on which a person qualified for severe disablement allowance is his first day of incapacity for work in the period of not less than 196 consecutive days mentioned in section 68(2)(b) or (3)(b) above, as the case may be, which preceded the first day in his current period of entitlement.

(3) For the purposes of this section, a person's "current period of entitlement" is a current period—

(a) which consists of one or more consecutive days on which he is or has been entitled to a severe disablement allowance; and

(b) which begins immediately after the last period of one or more consecutive days for which he was not entitled to such an allowance.

(4) Regulations—

(a) may prescribe cases where a person is to be treated for the purposes of this section as having qualified for severe disablement allowance on a prescribed day earlier than the day ascertained in accordance with subsection (2) above;

(b) may provide for days which are not days of incapacity for work in relation to a person to be treated as days of incapacity for work for the purpose of determining under this section the day on which he qualified for severe disablement allowance; and

(c) may make provision for disregarding prescribed days in computing any period of consecutive days for the purposes of subsection (3) above.

Invalid care allowance

70 Invalid care allowance

(1) A person shall be entitled to an invalid care allowance for any day on which he is engaged in caring for a severely disabled person if—
  (a) he is regularly and substantially engaged in caring for that person;
  (b) he is not gainfully employed; and
  (c) the severely disabled person is either such relative of his as may be prescribed or a person of any such other description as may be prescribed.

(2) In this section, "severely disabled person" means a person in respect of whom there is payable either an attendance allowance or a disability living allowance by virtue of entitlement to the care component at the highest or middle rate or such other payment out of public funds on account of his need for attendance as may be prescribed.

(3) A person shall not be entitled to an allowance under this section if he is under the age of 16 or receiving full-time education.

(4) A person shall not be entitled to an allowance under this section unless he satisfies prescribed conditions as to residence or presence in Great Britain.

(5) Subject to subsection (6) below, a person who has attained pensionable age shall not be entitled to an allowance under this section unless he was so entitled (or is treated by regulations as having been so entitled) immediately before attaining that age.

(6) Regulations may make provision whereby a person who has attained retiring age, and was entitled to an allowance under this section immediately before attaining that age, continues to be so entitled notwithstanding that he is not caring for a severely disabled person or no longer satisfies the requirements of subsection (1)(a) or (b) above.

(7) No person shall be entitled for the same day to more than one allowance under this section; and where, apart from this subsection, two or more persons would be entitled for the same day to such an allowance in respect of the same severely disabled person, one of them only shall be entitled and that shall be such one of them—
  (a) as they may jointly elect in the prescribed manner, or
  (b) as may, in default of such an election, be determined by the Secretary of State in his discretion.

(8) Regulations may prescribe the circumstances in which a person is or is not to be treated for the purposes of this section as engaged, or regularly and substantially engaged, in caring for a severely disabled person, as gainfully employed or as receiving full-time education.

(9) An invalid care allowance shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 4.

(10) In this section "retiring age" means 70 in the case of a man and 65 in the case of a woman.

Disability living allowance

71 Disability living allowance

(1) Disability living allowance shall consist of a care component and a mobility component.

(2) A person's entitlement to a disability living allowance may be an entitlement to either component or to both of them.

(3) A person may be awarded either component for a fixed period or for life, but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.

(4) The weekly rate of a person's disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.

(5) The weekly rate of a person's disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.

(6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Great Britain.

72 The care component

(1) Subject to the provisions of this Act, a person shall be entitled to the care component of a disability living allowance for any period throughout which—

(a) he is so severely disabled physically or mentally that—

(i) he requires in connection with his bodily functions attention from another person for a significant portion of the day (whether during a single period or a number of periods); or

(ii) he cannot prepare a cooked main meal for himself if he has the ingredients; or

(b) he is so severely disabled physically or mentally that, by day, he requires from another person—

(i) frequent attention throughout the day in connection with his bodily functions; or

(ii) continual supervision throughout the day in order to avoid substantial danger to himself or others; or

(c) 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) Subject to the following provisions of this section, a person shall not be entitled to the care component of a disability living allowance unless—

(a) throughout—

(i) the period of 3 months immediately preceding the date on which the award of that component would begin; or

(ii) such other period of 3 months as may be prescribed,

he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1)(a) to (c) above; and

(b) he is likely to continue to satisfy one or other of those conditions throughout—

(i) the period of 6 months beginning with that date; or

(ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.

(3) Three weekly rates of the care component shall be prescribed.

(4) The weekly rate of the care component payable to a person for each week in the period for which he is awarded that component shall be—

(a) the highest rate, if he falls within subsection (2) above by virtue of having satisfied or being likely to satisfy both the conditions mentioned in subsection (1)(b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (2) above and that mentioned in paragraph (b) of that subsection;

(b) the middle rate, if he falls within that subsection by virtue of having satisfied or being likely to satisfy one or other of those conditions throughout both those periods; and

(c) the lowest rate in any other case.

(5) For the purposes of this section, a person who is terminally ill, as defined in section 66(2) above, and makes a claim expressly on the ground that he is such a person, shall be taken—

(a) to have satisfied the conditions mentioned in subsection (1)(b) and (c) above for the period of 3 months immediately preceding the date of the claim, or, if later, the first date on which he is terminally ill (so however that the care component shall not be payable by virtue of this paragraph for any period preceding that date); and

(b) to satisfy or to be likely to satisfy those conditions for the remainder of his life beginning with that date.

(6) For the purposes of this section in its application to a person for any period in which he is under the age of 16—

(a) sub-paragraph (ii) of subsection (1)(a) above shall be omitted; and

(b) neither the condition mentioned in sub-paragraph (i) of that paragraph nor any of the conditions mentioned in subsection (1)(b) and (c) above shall be taken to be satisfied unless—

(i) he has requirements of a description mentioned in subsection (1)(a), (b) or (c) above substantially in excess of the normal requirements of persons of his age; or

(ii) he has substantial requirements of any such description which younger persons in normal physical and mental health may also have but which persons of his age and in normal physical and mental health would not have.

(7) Subject to subsections (5) and (6) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy such of the conditions mentioned in subsection (1)(a) to (c) above as may be prescribed.

(8) Regulations may provide that a person shall not be paid any amount in respect of a disability living allowance which is attributable to entitlement to the care component for a period when he is a person for whom accommodation is provided—

(a) in pursuance—

(i) of Part III of the National Assistance Act 1948 or paragraph 2 of Schedule 8 to the National Health Service Act 1977; or

(ii) of Part IV of the Social Work (Scotland) Act 1968 or section 7 of the Mental Health (Scotland) Act 1984; or

(b) in circumstances in which the cost is, or may be, borne wholly or partly out of public or local funds, in pursuance of those enactments or of any other enactment relating to persons under disability or to young persons or to education or training.

73 The mobility component

(1) Subject to the provisions of this Act, a person shall be entitled to the mobility component of a disability living allowance for any period in which he is over the age of 5 and throughout which—

(a) he is suffering from physical disablement such that he is either unable to walk or virtually unable to do so; or

(b) he falls within subsection (2) below; or

(c) he falls within subsection (3) below; or

(d) he is able to walk but is so severely disabled physically or mentally that, disregarding any ability he may have to use routes which are familiar to him on his own, he cannot take advantage of the faculty out of doors without guidance or supervision from another person most of the time.

(2) A person falls within this subsection if—

(a) he is both blind and deaf; and

(b) he satisfies such other conditions as may be prescribed.

(3) A person falls within this subsection if—

(a) he is severely mentally impaired; and

(b) he displays severe behavioural problems; and

(c) he satisfies both the conditions mentioned in section 72(1)(b) and (c) above.

(4) For the purposes of this section in its application to a person for any period in which he is under the age of 16, the condition mentioned in subsection (1)(d) above shall not be taken to be satisfied unless—

(a) he requires substantially more guidance or supervision from another person than persons of his age in normal physical and mental health would require; or

(b) persons of his age in normal physical and mental health would not require such guidance or supervision.

(5) Subject to subsection (4) above, circumstances may be prescribed in which a person is to be taken to satisfy or not to satisfy a condition mentioned in subsection (1)(a) or (d) or subsection (2)(a) above.

(6) Regulations shall specify the cases which fall within subsection (3)(a) and (b) above.

(7) A person who is to be taken for the purposes of section 72 above to satisfy or not to satisfy a condition mentioned in subsection (1)(b) or (c) of that section is to be taken to satisfy or not to satisfy it for the purposes of subsection (3)(c) above.

(8) A person shall not be entitled to the mobility component for a period unless during most of that period his condition will be such as permits him from time to time to benefit from enhanced facilities for locomotion.

(9) A person shall not be entitled to the mobility component of a disability living allowance unless—

(a) throughout—

(i) the period of 3 months immediately preceding the date on which the award of that component would begin; or

(ii) such other period of 3 months as may be prescribed,

he has satisfied or is likely to satisfy one or other of the conditions mentioned in subsection (1) above; and

(b) he is likely to continue to satisfy one or other of those conditions throughout—

(i) the period of 6 months beginning with that date; or

(ii) (if his death is expected within the period of 6 months beginning with that date) the period so beginning and ending with his death.

(10) Two weekly rates of the mobility component shall be prescribed.

(11) The weekly rate of the mobility component payable to a person for each week in the period for which he is awarded that component shall be—

(a) the higher rate, if he falls within subsection (9) above by virtue of having satisfied or being likely to satisfy one or other of the conditions mentioned in subsection (1)(a), (b) and (c) above throughout both the period mentioned in paragraph (a) of subsection (9) above and that mentioned in paragraph (b) of that subsection; and

(b) the lower rate in any other case.

(12) For the purposes of this section in its application to a person who is terminally ill, as defined in section 66(2) above, and who makes a claim expressly on the ground that he is such a person—

(a) subsection (9)(a) above shall be omitted; and

(b) subsection (11)(a) above shall have effect as if for the words from “both” to “subsection”, in the fourth place where it occurs, there were substituted the words “the period mentioned in subsection (9)(b) above”.

(13) Regulations may prescribe cases in which a person who has the use—

(a) of an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978 or provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972; or

(b) of any prescribed description of appliance supplied under the enactments relating to the National Health Service being such an appliance as is primarily designed to afford a means of personal and independent locomotion out of doors,

is not to be paid any amount attributable to entitlement to the mobility component or is to be paid disability living allowance at a reduced rate in so far as it is attributable to that component.

(14) A payment to or in respect of any person which is attributable to his entitlement to the mobility component, and the right to receive such a payment, shall (except in prescribed circumstances and for prescribed purposes) be disregarded in applying any enactment or instrument under which regard is to be had to a person's means.

74 Mobility component for certain persons eligible for invalid carriages

(1) Regulations may provide for the issue, variation and cancellation of certificates in respect of prescribed categories of persons to whom this section applies; and a person in respect of whom such a certificate is issued shall, during any period while the certificate is in force, be deemed for the purposes of section 73 above to satisfy the condition mentioned in subsection (1)(a) of that section and to fall within paragraphs (a) and (b) of subsection (9) by virtue of having satisfied or being likely to satisfy that condition throughout both the periods mentioned in those paragraphs.

(2) This section applies to any person whom the Secretary of State considers—

(a) was on 1st January 1976 in possession of an invalid carriage or other vehicle provided in pursuance of section 33 of the Health Services and Public Health Act 1968 (which related to vehicles for persons suffering from physical defect or disability) or receiving payments in pursuance of subsection (3) of that section; or

(b) had at that date, or at a later date specified by the Secretary of State, made an application which the Secretary of State approved for such a carriage or vehicle or for such payments; or

(c) was, both at some time during a prescribed period before that date and at some time during a prescribed period after that date, in possession of such a carriage or vehicle or receiving such payments; or

(d) would have been, by virtue of any of the preceding paragraphs, a person to whom this section applies but for some error or delay for which in the opinion of the Secretary of State the person was not responsible and which was brought to the attention of the Secretary of State within the period of one year beginning with 30th March 1977 (the date of the passing of the Social Security (Miscellaneous Provisions) Act 1977, section 13 of which made provision corresponding to the provision made by this section).

75 Persons 65 or over

(1) Except to the extent to which regulations provide otherwise, no person shall be entitled to either component of a disability living allowance for any period after he attains the age of 65 otherwise than by virtue of an award made before he attains that age.

(2) Regulations may provide in relation to persons who are entitled to a component of a disability living allowance by virtue of subsection (1) above that any provision of this Act which relates to disability living allowance, other than section 74 above, so far as it so relates, and any provision of the Administration Act which is relevant to disability living allowance—

(a) shall have effect subject to modifications, additions or amendments; or

(b) shall not have effect.

76 Disability living allowance - supplementary

(1) Subject to subsection (2) below, a person shall not be entitled to a disability living allowance for any period preceding the date on which a claim for it is made or treated as made by him or on his behalf.

(2) Notwithstanding anything in subsection (1) above, provision may be made by regulations for a person to be entitled to a component of a disability living allowance for a period preceding the date on which a claim for such an allowance is made or treated as made by him or on his behalf if he has previously been entitled to that component.

(3) For the purposes of sections 72(5) and 73(12) above where—

(a) a person purports to make a claim for a disability living allowance on behalf of another; and

(b) the claim is made expressly on the ground that the person on whose behalf it purports to be made is terminally ill,

that person shall be regarded as making the claim notwithstanding that it is made without his knowledge or authority.

Guardian's allowance

77 Guardian's allowance

(1) A person shall be entitled to a guardian's allowance in respect of a child if—

(a) he is entitled to child benefit in respect of that child, and

(b) the circumstances are any of those specified in subsection (2) below;

but this subsection is subject, in particular, to section 81 below.

(2) The circumstances referred to in subsection (1)(b) above are—

(a) that both of the child's parents are dead; or

(b) that one of the child's parents is dead and the person claiming a guardian's allowance shows that he was at the date of the death unaware of, and has failed after all reasonable efforts to discover, the whereabouts of the other parent; or

(c) that one of the child's parents is dead and the other is in prison.

(3) There shall be no entitlement to a guardian's allowance in respect of a child unless at least one of the child's parents satisfies, or immediately before his death satisfied, such conditions as may be prescribed as to nationality, residence, place of birth or other matters.

(4) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, payment of an amount by way of a guardian's allowance, that amount shall not be payable unless one of the conditions specified in subsection (5) below is satisfied.

(5) Those conditions are—

(a) that the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or

(b) that the requisite contributions are being made to the cost of providing for the child.

(6) The condition specified in subsection (5)(b) above is to be treated as satisfied if, but only if—

(a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (4) above—

(i) by the beneficiary; or

(ii) where the beneficiary is one of two spouses residing together, by them together; and

(b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 143(1)(b) below.

(7) A guardian's allowance in respect of a child shall be payable at the weekly rate specified in Schedule 4, Part III, paragraph 5.

(8) Regulations—

(a) may modify subsection (2) or (3) above in relation to cases in which a child has been adopted or is illegitimate, or the marriage of a child's parents has been terminated by divorce;

(b) shall prescribe the circumstances in which a person is to be treated for the purposes of this section as being in prison (by reference to his undergoing a sentence of imprisonment for life or of a prescribed minimum duration, or to his being in legal custody in prescribed circumstances); and

(c) may, for cases where entitlement to a guardian's allowance is established by reference to a person being in prison, provide—

(i) for requiring him to pay to the National Insurance Fund sums paid by way of a guardian's allowance;

(ii) for suspending payment of an allowance where a conviction, sentence or order of a court is subject to appeal, and for matters arising from the decision of an appeal;

(iii) for reducing the rate of an allowance in cases where the person in prison contributes to the cost of providing for the child.

(9) Where a husband and wife are residing together and, apart from this subsection, they would each be entitled to a guardian's allowance in respect of the same child, only the wife shall be entitled, but payment may be made either to her or to him unless she elects in the prescribed manner that payment is not to be made to him.

(10) Subject to subsection (11) below, no person shall be entitled to a guardian's allowance in respect of a child of which he or she is the parent.

(11) Where a person—

(a) has adopted a child; and

(b) was entitled to guardian's allowance in respect of the child immediately before the adoption,

subsection (10) above shall not terminate his entitlement.

Benefits for the aged

78 Category C and Category D retirement pensions and other benefits for the aged

(1) A person who was over pensionable age on 5th July 1948 and who satisfies such conditions as may be prescribed shall be entitled to a Category C retirement pension at the appropriate weekly rate.

(2) If a woman whose husband is entitled to a Category C retirement pension—
- (a) is over pensionable age; and
- (b) satisfies such other conditions as may be prescribed,

she shall be entitled to a Category C retirement pension at the appropriate weekly rate.

(3) A person who is over the age of 80 and satisfies such conditions as may be prescribed shall be entitled to a Category D retirement pension at the appropriate weekly rate if—
- (a) he is not entitled to a Category A, Category B or Category C retirement pension; or
- (b) he is entitled to such a pension, but it is payable at a weekly rate which, disregarding those elements specified in subsection (4) below, is less than the appropriate weekly rate.

(4) The elements referred to in subsection (3)(b) above are—
- (a) any additional pension;
- (b) any increase so far as attributable to—
  - (i) any additional pension, or
  - (ii) any increase in a guaranteed minimum pension;
- (c) any graduated retirement benefit; and
- (d) any increase (for dependants) under section 80, 83 or 85 below.

(5) The appropriate weekly rate of a Category C retirement pension—
- (a) shall be the lower rate specified in Schedule 4, Part III, paragraph 6, where—
  - (i) the pensioner is a married woman, and
  - (ii) she has not, at any time since she became entitled to her pension, ceased to be a married woman; and
- (b) shall be the higher rate so specified in any other case.

(6) The appropriate weekly rate of a Category D retirement pension shall be that specified in Schedule 4, Part III, paragraph 7.

(7) Entitlement to a Category C or Category D retirement pension shall continue throughout the pensioner's life.

(8) A Category C or Category D retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of section 5(1)(k) of the Administration Act.

(9) Regulations may provide for the payment—
- (a) to a widow whose husband was over pensionable age on 5th July 1948; or
- (b) to a woman whose marriage to a husband who was over pensionable age on that date was terminated otherwise than by his death,

of a Category C retirement pension or of benefit corresponding to a widow's pension or a widowed mother's allowance; and any such retirement pension or any such benefit shall be at the prescribed rate.

79 Age addition

(1) A person who is over the age of 80 and entitled to a retirement pension of any category shall be entitled to an increase of the pension, to be known as "age addition".

(2) Where a person is in receipt of a pension or allowance payable by the Secretary of State by virtue of any prescribed enactment or instrument (whether passed or made before or after this Act) and—
   (a) he is over the age of 80; and
   (b) he fulfils such other conditions as may be prescribed,

   he shall be entitled to an increase of that pension or allowance, also known as age addition.

(3) Age addition shall be payable for the life of the person entitled, at the weekly rate specified in Schedule 4, Part III, paragraph 8.

PART IV

INCREASES FOR DEPENDANTS

Child dependants

80 Beneficiary's dependent children

(1) Subject to section 61 above and to the following provisions of this Part of this Act, the weekly rate of any benefit to which this subsection applies shall, for any period for which the beneficiary is entitled to child benefit in respect of a child or children, be increased in respect of that child, or each respectively of those children, by the amount specified in relation to the benefit in question in Schedule 4, Part IV, column (2).

(2) Subsection (1) above applies to—
   (a) unemployment benefit where the beneficiary is over pensionable age;
   (b) sickness benefit where the beneficiary is over pensionable age;
   (c) invalidity pension; and
   (d) Category A, Category B or Category C retirement pension.

(3) In any case where—
   (a) a beneficiary is one of two persons who are—
      (i) spouses residing together; or
      (ii) an unmarried couple; and
   (b) the other person had earnings in any week,

   the beneficiary's right to payment of increases for the following week under subsection (1) above shall be determined in accordance with subsection (4) below.

(4) No such increase shall be payable—
   (a) in respect of the first child where the earnings were £115 or more; and

(b) in respect of a further child for each complete £15 by which the earnings exceeded £115.

(5) Subject to section 81 below, the weekly rate of a widowed mother's allowance payable by virtue of subsection (1)(a) of section 37 above shall be increased for any period in respect of the child or, if more than one, each respectively of the children falling within subsection (2)(a), (b) or (c) of that section in respect of whom she is for the time being entitled to child benefit by the amount specified in relation to that allowance in Schedule 4, Part IV, column (2).

(6) Subject to section 81 below, the weekly rate of a child's special allowance shall, for any period for which the beneficiary is entitled to child benefit in respect of two or more children with respect to whom the conditions specified in section 56(1)(b) and (c) above are satisfied, be increased in respect of each respectively of those children other than the elder or eldest by the amount specified in relation to that allowance in Schedule 4, Part IV, column (2).

(7) In this section—

"unmarried couple" means a man and a woman who are not married to each other but are living together as husband and wife; and

"week" means such period of 7 days as may be prescribed for the purposes of this section.

81 Restrictions on increase - child not living with beneficiary etc

(1) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, payment of an amount by way of an increase under section 80 above of any benefit, that amount shall not be payable unless one of the conditions specified in subsection (2) below is satisfied.

(2) Those conditions are—

(a) that the beneficiary would be treated for the purposes of Part IX of this Act as having the child living with him; or

(b) that the requisite contributions are being made to the cost of providing for the child.

(3) The condition specified in subsection (2)(b) above is to be treated as satisfied if, but only if—

(a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (1) above—

(i) by the beneficiary; or

(ii) where the beneficiary is one of two spouses residing together, by them together; and

(b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying section 143(1)(b) below.

Adult dependants

82 Short-term benefit: increase for adult dependants

(1) Subject to section 61 above and section 87 below, the weekly rate of unemployment benefit or sickness benefit shall be increased by the amount specified in relation to the benefit in question in Schedule 4, Part IV, column (3), for any period during which—

(a) the beneficiary is—

(i) residing with his wife, or

(ii) contributing to the maintenance of his wife at a weekly rate not less than that amount; and

(b) his wife does not have weekly earnings which exceed that amount.

(2) Subject, in particular, to subsection (5) and section 87 below, the weekly rate—

(a) of unemployment benefit or sickness benefit in the case of a beneficiary not entitled to an increase under subsection (1) above, and

(b) of a maternity allowance in any case,

shall be increased by the amount specified in relation to the benefit in question in Schedule 4, Part IV, column (3) ("the amount of the relevant increase") for any period to which this subsection applies by virtue of subsection (3) or (4) below.

(3) Subsection (2) above applies by virtue of this subsection to any period during which—

(a) the beneficiary's husband does not have weekly earnings which exceed the amount of the relevant increase, and

(b) either she and her husband are residing together or she is contributing to his maintenance at a weekly rate not less than that amount.

(4) Subsection (2) above applies by virtue of this subsection to any period during which a person—

(a) who is neither the spouse of the beneficiary nor a child, and

(b) in respect of whom such further conditions as may be prescribed are fulfilled,

has the care of a child or children in respect of whom the beneficiary is entitled to child benefit.

(5) A beneficiary shall not under subsection (2) above be entitled for the same period to an increase of benefit in respect of more than one person.

83 Pension increase (wife)

(1) This section applies to—

(a) a Category A or Category C retirement pension;

(b) an invalidity pension under section 33 or 41 above.

(2) Subject to subsection (3) below, the weekly rate of a pension to which this section applies, when payable to a man, shall be increased by the amount specified in relation to the pension in Schedule 4, Part IV, column (3)—

(a) for any period during which the pensioner is residing with his wife; or

(b) for any period during which the pensioner is contributing to the maintenance of his wife at a weekly rate not less than that amount, and his wife does not have weekly earnings which exceed that amount.

(3) Regulations may provide that for any period during which the pensioner is residing with his wife and his wife has earnings—
   (a) the increase of benefit under this section shall be subject to a reduction in respect of the wife's earnings; or
   (b) there shall be no increase of benefit under this section.

84 Pension increase (husband)

(1) Where a Category A retirement pension is payable to a woman for any period—
   (a) which began immediately upon the termination of a period for which the pensioner was entitled to an increase in unemployment benefit, sickness benefit or invalidity pension by virtue of section 82(3) above or 86(1) below, and
   (b) during which the requirements of either paragraph (a) or (b) of subsection (2) below are satisfied (without interruption),

   then the weekly rate of the pensioner's Category A retirement pension shall be increased by the amount specified in relation to that pension in Schedule 4, Part IV, column (3) ("the specified amount").

(2) The requirements referred to in subsection (1)(b) above are—
   (a) that the pensioner is residing with her husband;
   (b) that the pensioner is contributing to the maintenance of her husband at a weekly rate not less than the specified amount, and her husband does not have weekly earnings which exceed that amount.

(3) Regulations may provide that for any period during which the pensioner is residing with her husband and her husband has earnings—
   (a) the increase of benefit under this section shall be subject to a reduction in respect of the husband's earnings; or
   (b) there shall be no increase of benefit under this section.

85 Pension increase (person with care of children)

(1) This section applies to—
   (a) a Category A retirement pension;
   (b) a Category C retirement pension payable by virtue of section 78(1) above;
   (c) an invalidity pension under section 33, 40 or 41 above.

(2) Subject to the following provisions, the weekly rate of a pension to which this section applies shall be increased by the amount specified in relation to that pension in Schedule 4, Part IV, column (3) for any period during which a person who is neither the spouse of the pensioner nor a child has the care of a child or children in respect of whom the pensioner is entitled to child benefit.

(3) Subsection (2) above does not apply if the pensioner is a man whose wife is entitled to a Category B retirement pension, or to a Category C retirement pension by virtue of section 78(2) above or in such other cases as may be prescribed.

(4) Regulations may, in a case within subsection (2) above in which the person there referred to is residing with the pensioner and fulfils such further conditions as may be prescribed, authorise an increase of benefit under this section, but subject, taking

account of the earnings of the person residing with the pensioner, other than such of that person's earnings as may be prescribed, to provisions comparable to those that may be made by virtue of section 83(3) above.

86 Increase of woman's invalidity pension (husband)

(1) Subject to section 87 below, the weekly rate of an invalidity pension payable to a woman shall be increased by the amount specified in relation to an invalidity pension in Schedule 4, Part IV, column (3) for any period during which either—

(a) the pensioner and her husband are residing together and he does not have earnings at a weekly rate in excess of the amount specified in Schedule 4, Part I, paragraph 1; or

(b) they are not residing together, he does not have earnings at a weekly rate in excess of the amount specified in relation to an invalidity pension in Schedule 4, Part IV, column (3) and she is contributing to his maintenance at a weekly rate not less than the amount so specified.

(2) Regulations may provide that—

(a) the increase of benefit under this section shall be subject to a reduction in respect of the husband's earnings; or

(b) there shall be no increase of benefit under this section.

87 Rate of increase where associated retirement pension is attributable to reduced contributions

(1) Where a person—

(a) is entitled—

(i) to unemployment benefit by virtue of section 25(2)(b) or (c) above, or

(ii) to sickness benefit by virtue of section 31(2)(b) or (c) above, or

(iii) to an invalidity pension by virtue of section 33(2) above; and

(b) would have been entitled only by virtue of section 60(1) above to the retirement pension by reference to which the rate of that benefit or invalidity pension is determined,

the amount of any increase of the benefit or invalidity pension attributable to sections 82 to 86 above shall not be determined in accordance with those sections but shall be determined in accordance with regulations.

(2) The regulations shall not provide for any such increase in a case where the retirement pension by reference to which the rate of the said benefit or invalidity pension is determined—

(a) would have been payable only by virtue of section 60 above; and

(b) would, in consequence of a failure to satisfy a contribution condition, have contained no basic pension.

88 Pension increases to be in respect of only one adult dependant

A pensioner shall not under sections 83 to 86 above be entitled for the same period to an increase of benefit in respect of more than one person.

Miscellaneous

89 Earnings to include occupational and personal pensions for purposes of provisions relating to increases of benefits in respect of child or adult dependants

(1) Except as may be prescribed, in section 80 and sections 82 to 86 above any reference to earnings includes a reference to payments by way of occupational or personal pension.

(2) For the purposes of the provisions mentioned in subsection (1) above, the Secretary of State may by regulations provide, in relation to cases where payments by way of occupational or personal pension are made otherwise than weekly, that any necessary apportionment of the payments shall be made in such manner and on such basis as may be prescribed.

90 Beneficiaries under sections 68 and 70

The weekly rates—

(a) of a severe disablement allowance, and

(b) of an invalid care allowance,

shall, in such circumstances as may be prescribed, be increased for child or adult dependants by the appropriate amount specified in relation to the allowance in question in Schedule 4, Part IV.

91 Effect of trade disputes on entitlement to increases

(1) A beneficiary shall not be entitled—

(a) to an increase in any benefit under sections 82 to 88 above; or

(b) to an increase in benefit for an adult dependant by virtue of regulations under section 90 above,

if the person in respect of whom he would be entitled to the increase falls within subsection (2) below.

(2) A person falls within this subsection if—

(a) he is disqualified under section 27 above for receiving unemployment benefit; or

(b) he would be so disqualified if he were otherwise entitled to that benefit.

92 Dependency increases: continuation of awards in cases of fluctuating earnings

(1) Where a beneficiary—

(a) has been awarded an increase of benefit under this Part of this Act, but

(b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person ("the relevant earner") exceed the amount of the increase or, as the case may be, some specified amount,

then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.

(2) In this section the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this section, would be taken into account in

determining whether the beneficiary is entitled to the increase in question for that week.

93 Dependency increases on termination of employment after period of entitlement to disability working allowance

Where—

(a) a person becomes entitled to an invalidity pension or a severe disablement allowance by virtue of section 33(7), 42 or 68(10) above; and

(b) when he was last entitled to that pension or allowance, it was increased in respect of a dependant by virtue of—

(i) regulation 8(6) of the Social Security Benefit (Dependency) Regulations 1977;

(ii) regulation 2 of the Social Security (Savings for Existing Beneficiaries) Regulations 1984;

(iii) regulation 3 of the Social Security Benefit (Dependency) Amendment Regulations 1984; or

(iv) regulation 4 of the Social Security Benefit (Dependency and Computation of Earnings) Amendment Regulations 1989,

for the purpose of determining whether his pension or allowance should be increased by virtue of that regulation for any period beginning with the day on which he again becomes entitled to his pension or allowance, the increase in respect of that dependant shall be treated as having been payable to him on each day between the last day on which his pension or allowance was previously payable and the day on which he again becomes entitled to it.

PART V

BENEFIT FOR INDUSTRIAL INJURIES

General provisions

94 Right to industrial injuries benefit

(1) Industrial injuries benefit shall be payable where an employed earner suffers personal injury caused after 4th July 1948 by accident arising out of and in the course of his employment, being employed earner's employment.

(2) Industrial injuries benefit consists of the following benefits—

(a) disablement benefit payable in accordance with sections 103 to 105 below, paragraphs 2 and 3 of Schedule 7 below and Parts II and III of that Schedule;

(b) reduced earnings allowance payable in accordance with Part IV;

(c) retirement allowance payable in accordance with Part V; and

(d) industrial death benefit, payable in accordance with Part VI.

(3) For the purposes of industrial injuries benefit an accident arising in the course of an employed earner's employment shall be taken, in the absence of evidence to the contrary, also to have arisen out of that employment.

(4) Regulations may make provision as to the day which, in the case of night workers and other special cases, is to be treated for the purposes of industrial injuries benefit as the day of the accident.

(5) Subject to sections 117, 119 and 120 below, industrial injuries benefit shall not be payable in respect of an accident happening while the earner is outside Great Britain.

(6) In the following provisions of this Part of this Act "work" in the contexts "incapable of work" and "incapacity for work" means work which the person in question can be reasonably expected to do.

95 Relevant employments

(1) In section 94 above, this section and sections 98 to 109 below "employed earner's employment" shall be taken to include any employment by virtue of which a person is, or is treated by regulations as being for the purposes of industrial injuries benefit, an employed earner.

(2) Regulations may provide that any prescribed employment shall not be treated for the purposes of industrial injuries benefit as employed earner's employment notwithstanding that it would be so treated apart from the regulations.

(3) For the purposes of the provisions of this Act mentioned in subsection (1) above an employment shall be an employed earner's employment in relation to an accident if (and only if) it is, or is treated by regulations as being, such an employment when the accident occurs.

(4) Any reference in the industrial injuries and diseases provisions to an "employed earner" or "employed earner's employment" is to be construed, in relation to any time before 6th April 1975, as a reference respectively to an "insured person" or "insurable employment" within the meaning of the provisions relating to industrial injuries and diseases which were in force at that time.

(5) In subsection (4) above "the industrial injuries and diseases provisions" means—
   (a) this section and sections 96 to 110 below;
   (b) any other provisions of this Act so far as they relate to those sections; and
   (c) any provisions of the Administration Act so far as they so relate.

96 Persons treated as employers for certain purposes

In relation to—
   (a) a person who is an employed earner for the purposes of this Part of this Act otherwise than by virtue of a contract of service or apprenticeship; or
   (b) any other employed earner—
      (i) who is employed for the purpose of any game or recreation and is engaged or paid through a club; or
      (ii) in whose case it appears to the Secretary of State there is special difficulty in the application of all or any of the provisions of this Part of this Act relating to employers,

regulations may provide for a prescribed person to be treated in respect of industrial injuries benefit and its administration as the earner's employer.

97 Accidents in course of illegal employments

(1) Subsection (2) below has effect in any case where—

(a) a claim is made for industrial injuries benefit in respect of an accident, or of a prescribed disease or injury; or

(b) an application is made under section 44 of the Administration Act for a declaration that an accident was an industrial accident, or for a corresponding declaration as to a prescribed disease or injury.

(2) The Secretary of State may direct that the relevant employment shall, in relation to that accident, disease or injury, be treated as having been employed earner's employment notwithstanding that by reason of a contravention of, or non-compliance with, some provision contained in or having effect under an enactment passed for the protection of employed persons or any class of employed persons, either—

(a) the contract purporting to govern the employment was void; or

(b) the employed person was not lawfully employed in the relevant employment at the time when, or in the place where, the accident happened or the disease or injury was contracted or received.

(3) In subsection (2) above "relevant employment" means—

(a) in relation to an accident, the employment out of and in the course of which the accident arises; and

(b) in relation to a prescribed disease or injury, the employment to the nature of which the disease or injury is due.

98 Earner acting in breach of regulations, etc

An accident shall be taken to arise out of and in the course of an employed earner's employment, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if—

(a) the accident would have been taken so to have arisen had the act not been done in contravention of any such regulations or orders, or without such instructions, as the case may be; and

(b) the act is done for the purposes of and in connection with the employer's trade or business.

99 Earner travelling in employer's transport

(1) An accident happening while an employed earner is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be taken to arise out of and in the course of his employment if—

(a) the accident would have been taken so to have arisen had he been under such an obligation; and

(b) at the time of the accident, the vehicle—

(i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and

(ii) is not being operated in the ordinary course of a public transport service.

(2) In this section references to a vehicle include a ship, vessel, hovercraft or aircraft.

100 Accidents happening while meeting emergency

An accident happening to an employed earner in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be taken to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

101 Accident caused by another's misconduct etc

An accident happening after 19th December 1961 shall be treated for the purposes of industrial injuries benefit, where it would not apart from this section be so treated, as arising out of an employed earner's employment if—

(a) the accident arises in the course of the employment; and

(b) the accident either is caused—

(i) by another person's misconduct, skylarking or negligence, or

(ii) by steps taken in consequence of any such misconduct, skylarking or negligence, or

(iii) by the behaviour or presence of an animal (including a bird, fish or insect),

or is caused by or consists in the employed earner being struck by any object or by lightning; and

(c) the employed earner did not directly or indirectly induce or contribute to the happening of the accident by his conduct outside the employment or by any act not incidental to the employment.

Sickness benefit

102 Sickness benefit in respect of industrial injury

(1) In any case where—

(a) an employed earner is incapable of work as a result of a personal injury of a kind mentioned in section 94(1) above; and

(b) the contribution conditions are not satisfied in respect of him,

those conditions shall be taken to be satisfied for the purposes of paragraph (a) or, as the case may be, paragraph (b) of section 31(2) above.

(2) In the case of a person who—

(a) is entitled, by virtue of this section, to sickness benefit under subsection (2)(b) of section 31 above, and

(b) is not also entitled to sickness benefit under subsection (2)(c) of that section,

the weekly rate at which sickness benefit is payable shall be determined in accordance with regulations.

(3) In subsection (1) above "contribution conditions" means—

(a) in the case of a person who is under pensionable age, the contribution conditions specified for sickness benefit in Schedule 3, Part I, paragraph 2; and

(b) in the case of a person who has attained pensionable age but who is not for the time being entitled to a Category A or Category B retirement pension, the contribution conditions for a Category A retirement pension specified in Schedule 3, Part I, paragraph 5.

Disablement pension

103 Disablement pension

(1) Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 1st October 1986, 20 per cent.

(2) In the determination of the extent of an employed earner's disablement for the purposes of this section there may be added to the percentage of the disablement resulting from the relevant accident the assessed percentage of any present disablement of his—

(a) which resulted from any other accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, and

(b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement,

(as well as any percentage which may be so added in accordance with regulations under subsection (2) of section 109 below made by virtue of subsection (4)(b) of that section).

(3) Subject to subsection (4) below, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—

(a) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10, and

(b) if it is not a multiple of 5, as being the nearest percentage which is a multiple of 10,

and where the assessment of disablement on a claim made on or after 1st October 1986 is less than 20 per cent., but not less than 14 per cent., it shall be treated as 20 per cent.

(4) Where subsection (2) above applies, subsection (3) above shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.

(5) In this Part of this Act "assessed", in relation to the extent of any disablement, means assessed in accordance with Schedule 6 to this Act; and for the purposes of that Schedule there shall be taken to be no relevant loss of faculty when the extent of the resulting disablement, if so assessed, would not amount to 1 per cent.

(6) A person shall not be entitled to a disablement pension until after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident.

(7) Subject to subsection (8) below, where disablement pension is payable for a period, it shall be paid at the appropriate weekly rate specified in Schedule 4, Part V, paragraph 1.

(8) Where the period referred to in subsection (7) above is limited by reference to a definite date, the pension shall cease on the death of the beneficiary before that date.

104 Increase where constant attendance needed

(1) Where a disablement pension is payable in respect of an assessment of 100 per cent., then, if as the result of the relevant loss of faculty the beneficiary requires constant attendance, the weekly rate of the pension shall be increased by an amount, not exceeding the appropriate amount specified in Schedule 4, Part V, paragraph 2 determined in accordance with regulations by reference to the extent and nature of the attendance required by the beneficiary.

(2) An increase of pension under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.

(3) The Secretary of State may by regulations direct that any provision of sections 64 to 67 above shall have effect, with or without modifications, in relation to increases of pension under this section.

(4) In subsection (3) above, "modifications" includes additions and omissions.

105 Increase for exceptionally severe disablement

(1) Where a disablement pension is payable to a person—

(a) who is or, but for having received medical or other treatment as an in-patient in a hospital or similar institution, would be entitled to an increase of the weekly rate of the pension under section 104 above, and the weekly rate of the increase exceeds the amount specified in Schedule 4, Part V, paragraph 2(a); and

(b) his need for constant attendance of an extent and nature qualifying him for such an increase at a weekly rate in excess of that amount is likely to be permanent,

the weekly rate of the pension shall, in addition to any increase under section 104 above, be further increased by the amount specified in Schedule 4, Part V, paragraph 3.

(2) An increase under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.

Other benefits and increases

106 Benefits and increases subject to qualifications as to time

Schedule 7 to this Act shall have effect in relation—

(a) to unemployability supplement;

(b) to disablement gratuity;

(c) to increases of disablement pension during hospital treatment;

(d) to reduced earnings allowance;

(e) to retirement allowance; and

(f) to industrial death benefit,

for all of which the qualifications include special qualifications as to time.

Successive accidents

107 Adjustments for successive accidents

(1) Where a person suffers two or more successive accidents arising out of and in the course of his employed earner's employment—

(a) he shall not for the same period be entitled (apart from any increase of benefit mentioned in subsection (2) below) to receive industrial injuries benefit by way of two or more disablement pensions at an aggregate weekly rate exceeding the appropriate amount specified in Schedule 4, Part V, paragraph 4; and

(b) regulations may provide for adjusting—

(i) disablement benefit, or the conditions for the receipt of that benefit, in any case where he has received or may be entitled to a disablement gratuity;

(ii) any increase of benefit mentioned in subsection (2) below, or the conditions for its receipt.

(2) The increases of benefit referred to in subsection (1) above are those under the following provisions of this Act—

section 104,

section 105,

paragraph 2, 4 or 6 of Schedule 7.

Prescribed industrial diseases etc.

108 Benefit in respect of prescribed industrial diseases, etc

(1) Industrial injuries benefits shall, in respect of a person who has been in employed earner's employment, be payable in accordance with this section and sections 109 and 110 below in respect of—

(a) any prescribed disease, or

(b) any prescribed personal injury (other than an injury caused by accident arising out of and in the course of his employment),

which is a disease or injury due to the nature of that employment and which developed after 4th July 1948.

(2) A disease or injury may be prescribed in relation to any employed earners if the Secretary of State is satisfied that—

(a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and

(b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.

(3) Regulations prescribing any disease or injury for those purposes may provide that a person who developed the disease or injury on or at any time after a date specified in the regulations (being a date before the regulations came into force but not before 5th July 1948) shall be treated, subject to any prescribed modifications of this section or section 109 or 110 below, as if the regulations had been in force when he developed the disease or injury.

(4) Provision may be made by regulations for determining—

(a) the time at which a person is to be treated as having developed any prescribed disease or injury; and

(b) the circumstances in which such a disease or injury is, where the person in question has previously suffered from it, to be treated as having recrudesced or as having been contracted or received afresh.

(5) Notwithstanding any other provision of this Act, the power conferred by subsection (4)(a) above includes power to provide that the time at which a person shall be treated as having developed a prescribed disease or injury shall be the date on which he first makes a claim which results in the payment of benefit by virtue of this section or section 110 below in respect of that disease or injury.

(6) Nothing in this section or in section 109 or 110 below affects the right of any person to benefit in respect of a disease which is a personal injury by accident within the meaning of this Part of this Act, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment.

109 General provisions relating to benefit under section 108

(1) Subject to the power to make different provision by regulations, and to the following provisions of this section and section 110 below—

(a) the benefit payable under section 108 above in respect of a prescribed disease or injury, and

(b) the conditions for receipt of benefit,

shall be the same as in the case of personal injury by accident arising out of and in the course of employment.

(2) In relation to prescribed diseases and injuries, regulations may provide—

(a) for modifying any provisions contained in this Act or the Administration Act which relate to disablement benefit or reduced earnings allowance or their administration; and

(b) for adapting references in this Act and that Act to accidents,

and for the purposes of this subsection the provisions of the Administration Act which relate to the administration of disablement benefit or reduced earnings allowance shall be taken to include section 1 and any provision which relates to the administration of both the benefit in question and other benefits.

(3) Without prejudice to the generality of subsection (2) above, regulations under that subsection may in particular include provision—

(a) for presuming any prescribed disease or injury—

(i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at

the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury,

(ii) not to be due to the nature of a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury;

(b) for such matters as appear to the Secretary of State to be incidental to or consequential on provisions included in the regulations by virtue of subsection (2) and paragraph (a) above.

(4) Regulations under subsection (2) above may also provide—

(a) that, in the determination of the extent of an employed earner's disablement resulting from a prescribed disease or injury, the appropriate percentage may be added to the percentage of that disablement; and

(b) that, in the determination of the extent of an employed earner's disablement for the purposes of section 103 above, the appropriate percentage may be added to the percentage of disablement resulting from the relevant accident.

(5) In subsection (4)(a) above "the appropriate percentage" means the assessed percentage of any present disablement of the earner which resulted—

(a) from any accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, or

(b) from any other prescribed disease or injury due to the nature of that employment and developed after 4th July 1948,

and in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement.

(6) In subsection (4)(b) above "the appropriate percentage" means the assessed percentage of any present disablement of the earner—

(a) which resulted from any prescribed disease or injury due to the nature of his employment and developed after 4th July 1948, and

(b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement.

(7) Where regulations under subsection (2) above—

(a) make provision such as is mentioned in subsection (4) above, and

(b) also make provision corresponding to that in section 103(3) above,

they may also make provision to the effect that those corresponding provisions shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.

110 Respiratory diseases

(1) As respects pneumoconiosis, regulations may further provide that, where a person is found to be suffering from pneumoconiosis accompanied by tuberculosis, the effects of the tuberculosis shall be treated for the purposes of this section and sections 108 and 109 above as if they were effects of the pneumoconiosis.

(2) Subsection (1) above shall have effect as if after "tuberculosis" (in both places) there were inserted "emphysema or chronic bronchitis", but only in relation to a person the extent of whose disablement resulting from pneumoconiosis, or from pneumoconiosis

accompanied by tuberculosis, would (if his physical condition were otherwise normal) be assessed at not less than 50 per cent.

(3) A person found to be suffering from pneumoconiosis shall be treated for the purposes of this Act as suffering from a loss of faculty such that the assessed extent of the resulting disablement amounts to not less than 1 per cent.

(4) In respect of byssinosis, a person shall not (unless regulations otherwise provide) be entitled to disablement benefit unless he is found to be suffering, as the result of byssinosis, from loss of faculty which is likely to be permanent.

Old cases

111 Workmen's compensation etc

Schedule 8 to this Act shall have effect—

(a) to continue workmen's compensation;

(b) to enable schemes—

(i) to supplement workmen's compensation; and

(ii) to provide for the payment of allowances or other benefits for industrial diseases in respect of employment before 5th July 1948; and

(c) to enable regulations to confer rights to other payments in respect of such employment.

PART VI

MISCELLANEOUS PROVISIONS RELATING TO PARTS I TO V

Earnings

112 Certain sums to be earnings

(1) Regulations may provide—

(a) that any employment protection entitlement shall be deemed for the purposes of Parts I to V of this Act to be earnings payable by and to such persons as are prescribed and to be so payable in respect of such periods as are prescribed; and

(b) that those periods shall, so far as they are not periods of employment, be deemed for those purposes to be periods of employment.

(2) In subsection (1) above "employment protection entitlement" means—

(a) any sum, or a prescribed part of any sum, mentioned in subsection (3) below; and

(b) prescribed amounts which the regulations provide are to be treated as related to any of those sums.

(3) The sums referred to in subsection (2) above are the following—

(a) a sum payable in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement under the Employment Protection (Consolidation) Act 1978;

(b) a sum payable by way of pay in pursuance of an order under that Act for the continuation of a contract of employment;

(c) a sum payable by way of remuneration in pursuance of a protective award under the Employment Protection Act 1975.

Disqualification and suspension

113 General provisions as to disqualification and suspension

(1) Except where regulations otherwise provide, a person shall be disqualified for receiving any benefit under Parts II to V of this Act, and an increase of such benefit shall not be payable in respect of any person as the beneficiary's wife or husband, for any period during which the person—

(a) is absent from Great Britain; or

(b) is undergoing imprisonment or detention in legal custody.

(2) Regulations may provide for suspending payment of such benefit to a person during any period in which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

(3) Regulations may provide for a person who would be entitled to any such benefit but for the operation of any provision of this Act or the Administration Act to be treated as if entitled to it for the purposes of any rights or obligations (whether his own or another's) which depend on his entitlement, other than the right to payment of the benefit.

Persons maintaining dependants etc.

114 Persons maintaining dependants, etc

(1) Regulations may provide for determining the circumstances in which a person is or is not to be taken, for the purposes of Parts II to V of this Act—

(a) to be wholly or mainly, or to a substantial extent, maintaining, or to be contributing at any weekly rate to the maintenance of, another person; or

(b) to be, or have been, contributing at any weekly rate to the cost of providing for a child.

(2) Regulations under this section may provide, for the purposes of the provisions relating to an increase of benefit under Parts II to V of this Act in respect of a wife or other adult dependant, that where—

(a) a person is partly maintained by each of two or more beneficiaries, each of whom would be entitled to such an increase in respect of that person if he were wholly or mainly maintaining that person, and

(b) the contributions made by those two or more beneficiaries towards the maintenance of that person amount in the aggregate to sums which would, if they had been contributed by one of those beneficiaries, have been sufficient to satisfy the requirements of regulations under this section,

that person shall be taken to be wholly or mainly maintained by such of those beneficiaries as may be prescribed.

(3) Regulations may provide for any sum or sums paid by a person by way of contribution towards either or both of the following, that is to say—

(a) the maintenance of his or her spouse, and
(b) the cost of providing for one or more children,

to be treated for the purposes of any of the provisions of this Act specified in subsection (4) below as such contributions, of such respective amounts equal in the aggregate to the said sum or sums, in respect of such persons, as may be determined in accordance with the regulations so as to secure as large a payment as possible by way of benefit in respect of the dependants.

(4) The provisions in question are sections 56, 81 to 84, 86 and paragraphs 5 and 6 of Schedule 7 to this Act.

Special cases

115 Crown employment - Parts I to VI

(1) Subject to the provisions of this section, Parts I to V and this Part of this Act apply to persons employed by or under the Crown in like manner as if they were employed by a private person.

(2) Subsection (1) above does not apply to persons serving as members of Her Majesty's forces in their capacity as such.

(3) Employment as a member of Her Majesty's forces and any other prescribed employment under the Crown are not, and are not to be treated as, employed earner's employment for any of the purposes of Part V of this Act.

(4) The references to Parts I to V of this Act in this section and sections 116, 117, 119, 120 and 121 below do not include references to section 111 above.

116 Her Majesty's forces

(1) Subject to section 115(2) and (3) above and to this section, a person who is serving as a member of Her Majesty's forces shall, while he is so serving, be treated as an employed earner, in respect of his membership of those forces, for the purposes—
(a) of Parts I to V and this Part of this Act; and
(b) of any provision of the Administration Act in its application to him as an employed earner.

(2) The Secretary of State may make regulations modifying Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been members of Her Majesty's forces; and regulations under this section may in particular provide—
(a) in the case of persons who are employed earners in respect of their membership of those forces, for reducing the rate of the contributions payable in respect of their employment and for determining—
(i) the amounts payable on account of those contributions by the Secretary of State and the time and manner of payment, and
(ii) the deductions (if any) to be made on account of those contributions from the pay of those persons;
(b) for preventing a person who is discharged from Her Majesty's forces at his own request from being thereby disqualified for receiving unemployment

benefit on the ground that he has voluntarily left his employment without just cause.

(3) For the purposes of Parts I to V and this Part of this Act, Her Majesty's forces shall be taken to consist of such establishments and organisations as may be prescribed, being establishments and organisations in which persons serve under the control of the Defence Council.

117 Mariners, airmen, etc

(1) The Secretary of State may make regulations modifying provisions of Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been, or are to be, employed on board any ship, vessel, hovercraft or aircraft.

(2) Regulations under subsection (1) above may in particular provide—

(a) for any such provision to apply to such persons, notwithstanding that it would not otherwise apply;

(b) for excepting such persons from the application of any such provision where they neither are domiciled nor have a place of residence in any part of Great Britain;

(c) for requiring the payment of secondary Class 1 contributions in respect of such persons, whether or not they are (within the meaning of Part I of this Act) employed earners;

(d) for the taking of evidence, for the purposes of any claim to benefit, in a country or territory outside Great Britain, by a British consular official or such other person as may be prescribed;

(e) for enabling persons who are or have been so employed to authorise the payment of the whole or any part of any benefit to which they are or may become entitled to such of their dependants as may be prescribed.

118 Married women and widows

The Secretary of State may make regulations modifying any of the following provisions of this Act, namely—

(a) Part I;

(b) Part II (except section 60); and

(c) Parts III and IV,

in such manner as he thinks proper, in their application to women who are or have been married.

119 Persons outside Great Britain

The Secretary of State may make regulations modifying Parts I to V of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons who are or have been outside Great Britain at any prescribed time or in any prescribed circumstances.

120 Employment at sea (continental shelf operations)

(1) The Secretary of State may make regulations modifying Parts I to V and this Part of this Act, and any provision of Part II of the Administration Act which replaces provisions of Part III of the 1975 Act, in such manner as he thinks proper, in their application to persons in any prescribed employment (whether under a contract of service or not) in connection with continental shelf operations.

(2) "Continental shelf operations" means any activities which, if paragraphs (a) and (d) of subsection (6) of section 23 of the Oil and Gas (Enterprise) Act 1982 (application of civil law to certain offshore activities) were omitted, would nevertheless fall within subsection (2) of that section.

(3) In particular (but without prejudice to the generality of subsection (1) above), the regulations may provide for any prescribed provision of Parts I to V and this Part of this Act to apply to any such person notwithstanding that he does not fall within the description of an employed or self-employed earner, or does not fulfil the conditions prescribed under section 1(6) above as to residence or presence in Great Britain.

121 Treatment of certain marriages

(1) Regulations may provide—

(a) for a voidable marriage which has been annulled, whether before or after the date when the regulations come into force, to be treated for the purposes of the provisions to which this subsection applies as if it had been a valid marriage which was terminated by divorce at the date of annulment;

(b) as to the circumstances in which, for the purposes of the enactments to which this section applies—

(i) a marriage celebrated under a law which permits polygamy; or

(ii) any marriage during the subsistence of which a party to it is at any time married to more than one person,

is to be treated as having, or not having, the consequences of a marriage celebrated under a law which does not permit polygamy.

(2) Subsection (1) above applies—

(a) to any enactment contained in Parts I to V or this Part of this Act; and

(b) to regulations under any such enactment.

Interpretation

122 Interpretation of Parts I to VI and supplementary provisions

(1) In Parts I to V above and this Part of this Act, unless the context otherwise requires—

"beneficiary", in relation to any benefit, means the person entitled to that benefit;

"benefit" means—

(a) benefit under Parts II to V of this Act other than Old Cases payments;

(b) as respects any period before 1st July 1992 but not before 6th April 1975, benefit under Part II of the 1975 Act; or

(c) as respects any period before 6th April 1975, benefit under—

(d) the National Insurance Act 1946 or 1965; or

(ii) the National Insurance (Industrial Injuries) Act 1946 or 1965;

"child" means a person under the age of 19 who would be treated as a child for the purposes of Part IX of this Act or such other person under that age as may be prescribed;

"claim" is to be construed in accordance with "claimant";

"claimant", in relation to benefit other than industrial injuries benefit, means a person who has claimed benefit;

"claimant", in relation to industrial injuries benefit, means a person who has claimed industrial injuries benefit;

"contract of service" means any contract of service or apprenticeship whether written or oral and whether express or implied;

"current", in relation to the lower and upper earnings limits under section 5(1) above, means for the time being in force;

"day of incapacity for work" and "day of interruption of employment" have the meanings assigned to them by section 57 above;

"deferred" and "period of deferment" have the meanings assigned to them by section 55 above;

"earner" and "earnings" are to be construed in accordance with sections 3, 4 and 112 above;

"employed earner" has the meaning assigned to it by section 2 above;

"employment" includes any trade, business, profession, office or vocation and "employed" has a corresponding meaning;

"entitled", in relation to any benefit, is to be construed in accordance with—

(a) the provisions specifically relating to that benefit;

(b) in the case of a benefit specified in section 20(1) above, section 21 above; and

(c) sections 1 to 3 and 68 of the Administration Act;

"industrial injuries benefit" means benefit under Part V of this Act, other than under Schedule 8;

"initial primary percentage" is to be construed in accordance with section 8(1) and (2) above and as referring to the percentage rate from time to time specified in section 8(2)(a) above as the initial primary percentage;

"the Inland Revenue" means the Commissioners of Inland Revenue;

"late husband", in relation to a woman who has been more than once married, means her last husband;

"long-term benefit" has the meaning assigned to it by section 20(2) above;

"loss of physical faculty" includes disfigurement whether or not accompanied by any loss of physical faculty;

"lower earnings limit" and "upper earnings limit" are to be construed in accordance with section 5(1) above and references to the lower or upper earnings limit of a tax year are to whatever is (or was) for that year the limit in force under that subsection;

"main primary percentage" is to be construed in accordance with section 8(1) and (2) above and as referring to the percentage rate from time to time specified in section 8(2)(b) above as the main primary percentage;

"medical examination" includes bacteriological and radiographical tests and similar investigations, and "medically examined" has a corresponding meaning;

"medical treatment" means medical, surgical or rehabilitative treatment (including any course or diet or other regimen), and references to a person receiving or submitting himself to medical treatment are to be construed accordingly;

"the Northern Ireland Department" means the Department of Health and Social Services for Northern Ireland;

"Old Cases payments" means payments under Part I or II of Schedule 8 to this Act;

"payments by way of occupational or personal pension" means, in relation to a person, periodical payments which, in connection with the coming to an end of an employment of his, fall to be made to him-

(a) out of money provided wholly or partly by the employer or under arrangements made by the employer; or

(b) out of money provided under an enactment or instrument having the force of law in any part of the United Kingdom or elsewhere; or

(c) under a personal pension scheme as defined in section 84(1) of the 1986 Act; or

(d) under a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988; or

(e) under a personal pension scheme approved under Chapter IV of that Part of that Act,

and such other payments as are prescribed;

"pensionable age" means—

(a) the age of 65, in the case of a man; and

(b) the age of 60, in the case of a woman;

"pneumoconiosis" means fibrosis of the lungs due to silica dust, asbestos dust, or other dust, and includes the condition of the lungs known as dust-reticulation;

"prescribe" means prescribe by regulations;

"primary percentage" is to be construed in accordance with section 8(1) and (2) above;

"qualifying earnings factor" means an earnings factor equal to the lower earnings limit for the tax year in question multiplied by 52;

"relative" includes a person who is a relative by marriage;

"relevant accident" means the accident in respect of which industrial injuries benefit is claimed or payable;

"relevant injury" means the injury in respect of which industrial injuries benefit is claimed or payable;

"relevant loss of faculty" means—

(a) in relation to severe disablement allowance, the loss of faculty which results in the disablement; or

(b) in relation to industrial injuries benefit, the loss of faculty resulting from the relevant injury;

"self-employed earner" has the meaning assigned to it by section 2 above;

"short-term benefit" has the meaning assigned to it by section 20(2) above;

"tax week" means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of

a tax year (or, in the case of a tax year ending in a leap year, the last two days) to be treated accordingly as a separate tax week;

"tax year" means the 12 months beginning with 6th April in any year, the expression "1978-79" meaning the tax year beginning with 6th April 1978, and any correspondingly framed reference to a pair of successive years being construed as a reference to the tax year beginning with 6th April in the earlier of them;

"trade or business" includes, in relation to a public or local authority, the exercise and performance of the powers and duties of that authority;

"trade union" means an association of employed earners;

"week", except in relation to disability working allowance, means a period of 7 days beginning with Sunday.

(2) Regulations may make provision modifying the meaning of "employment" for the purposes of any provision of Parts I to V and this Part of this Act.

(3) Provision may be made by regulations as to the circumstances in which a person is to be treated as residing or not residing with another person for any of the purposes of Parts I to V and this Part of this Act and as to the circumstances in which persons are to be treated for any of those purposes as residing or not residing together.

(4) A person who is residing with his spouse shall be treated for the purposes of Parts I to V and this Part of this Act as entitled to any child benefit to which his spouse is entitled.

(5) Regulations may, for the purposes of any provision of those Parts under which the right to any benefit or increase of benefit depends on a person being or having been entitled to child benefit, make provision whereby a person is to be treated as if he were or had been so entitled or as if he were not or had not been so entitled.

(6) For the purposes of Parts I to V and this Part of this Act a person is "permanently incapable of self-support" if (but only if) he is incapable of supporting himself by reason of physical or mental infirmity and is likely to remain so incapable for the remainder of his life.

PART VII

INCOME-RELATED BENEFITS

General

123 Income-related benefits

(1) Prescribed schemes shall provide for the following benefits (in this Act referred to as "income-related benefits")—

(a) income support;

(b) family credit;

(c) disability working allowance;

(d) housing benefit; and

(e) community charge benefits.

(2) The Secretary of State shall make copies of schemes prescribed under subsection (1)(a), (b) or (c) above available for public inspection at local offices of the Department of Social Security at all reasonable hours without payment.

(3) Every authority granting housing benefit—

(a) shall take such steps as appear to them appropriate for the purpose of securing that persons who may be entitled to housing benefit from the authority become aware that they may be entitled to it; and

(b) shall make copies of the housing benefit scheme, with any modifications adopted by them under the Administration Act, available for public inspection at their principal office at all reasonable hours without payment.

(4) Each charging authority shall take such steps as appear to it appropriate for the purpose of securing that any person who may be entitled to a community charge benefit as regards a personal or collective community charge of the authority becomes aware that he may be entitled to it.

(5) Each levying authority shall take such steps as appear to it appropriate for the purpose of securing that any person who may be entitled to a community charge benefit in respect of a personal community charge payable to the authority becomes aware that he may be entitled to it.

(6) Each charging authority and each levying authority shall make copies of the community charge benefits scheme, with any modifications adopted by it under the Administration Act, available for public inspection at its principal office at all reasonable hours without payment.

Income support

124 Income support

(1) A person in Great Britain is entitled to income support if—

(a) he is of or over the age of 18 or, in prescribed circumstances and for a prescribed period, of or over the age of 16 or he is a person to whom section 125(1) below applies;

(b) he has no income or his income does not exceed the applicable amount;

(c) he is not engaged in remunerative work and, if he is a member of a married or unmarried couple, the other member is not so engaged; and

(d) except in such circumstances as may be prescribed—

(i) he is available for, and actively seeking, employment;

(ii) he is not receiving relevant education.

(2) In subsection (1)(a) 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.

(3) Circumstances may be prescribed in which a person must not only satisfy the condition specified in subsection (1)(d)(i) above but also be registered in the prescribed manner for employment.

(4) Subject to subsection (5) below, where a person is entitled to income support, then—
- (a) if he has no income, the amount shall be the applicable amount; and
- (b) if he has income, the amount shall be the difference between his income and the applicable amount.

(5) 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.

(6) Subsection (5) 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.

125 Severe hardship cases

(1) 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.

(2) Any such direction may specify a period for which subsection (1) above is to apply to the person to whom the direction relates.

(3) 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.

(4) 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.

(5) In this section "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.

126 Trade disputes

(1) This section applies to a person, other than a child or a person of a prescribed description—
- (a) who is disqualified under section 27 above for receiving unemployment benefit; or
- (b) who would be so disqualified if otherwise entitled to that benefit,

except during any period shown by the person to be a period of incapacity for work by reason of disease or bodily or mental disablement or to be within the maternity period.

(2) In subsection (1) above "the maternity period" means the period commencing at the beginning of the 6th week before the expected week of confinement and ending at the end of the 7th week after the week in which confinement takes place.

(3) For the purpose of calculating income support—

(a) so long as this section applies to a person who is not a member of a family, the applicable amount shall be disregarded;

(b) so long as it applies to a person who is a member of a family but is not a member of a married or unmarried couple, the portion of the applicable amount which is included in respect of him shall be disregarded;

(c) so long as it applies to one of the members of a married or unmarried couple—

(i) if the applicable amount consists only of an amount in respect of them, it shall be reduced to one half; and

(ii) if it includes other amounts, the portion of it which is included in respect of them shall be reduced to one-half and any further portion of it which is included in respect of the member of the couple to whom this section applies shall be disregarded;

(d) so long as it applies to both the members of a married or unmarried couple—

(i) if neither of them is responsible for a child or person of a prescribed description who is a member of the same household, the applicable amount shall be disregarded; and

(ii) in any other case, the portion of the applicable amount which is included in respect of them and any further portion of it which is included in respect of either of them shall be disregarded.

(4) Where a reduction under subsection (3)(c) above would not produce a sum which is a multiple of 5p, the reduction shall be to the nearest lower sum which is such a multiple.

(5) Where this section applies to a person for any period, then, except so far as regulations provide otherwise—

(a) in calculating the entitlement to income support of that person or a member of his family the following shall be treated as his income and shall not be disregarded—

(i) any payment which he or a member of his family receives or is entitled to obtain by reason of the person to whom this section applies being without employment for that period; and

(ii) without prejudice to the generality of sub-paragraph (i) above, any amount which becomes or would on an application duly made become available to him in that period by way of repayment of income tax deducted from his emoluments in pursuance of section 203 of the Income and Corporation Taxes Act 1988 (PAYE); and

(b) any payment by way of income support for that period or any part of it which apart from this paragraph would be made to him, or to a person whose applicable amount is aggregated with his—

(i) shall not be made if the weekly rate of payment is equal to or less than the relevant sum; or

(ii) if it is more than the relevant sum, shall be at a weekly rate equal to the difference.

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

(7) Subject to subsection (8) below, "the relevant sum" for the purposes of subsection (5) above shall be £22.50.

(8) If an order under section 150 of the Administration Act (annual up-rating) has the effect of increasing payments of income support, from the time when the order comes into force there shall be substituted, in subsection (5)(b) above, for the references to the sum for the time being mentioned in it references to a sum arrived at by—

(a) increasing that sum by the percentage by which the personal allowance under paragraph 1(1) of Part I of Schedule 2 to the Income Support (General) Regulations 1987 for a single person aged not less than 25 has been increased by the order; and

(b) if the sum as so increased is not a multiple of 50p, disregarding the remainder if it is 25p and, if it is not, rounding it up or down to the nearest 50p,

and the order shall state the substituted sum.

127 Effect of return to work

If a person returns to work with the same employer after a period during which section 126 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 124(1) 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 accordance with the regulations 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.

Family credit

128 Family credit

(1) Subject to regulations under section 5(1)(a) of the Administration Act, a person in Great Britain is entitled to family credit if, when the claim for it is made or is treated as made—

(a) his income—

(i) does not exceed the amount which is the applicable amount at such date as may be prescribed; or

(ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which subsection (2)(b) below provides is made;

(b) he or, if he is a member of a married or unmarried couple, he or the other member of the couple, is engaged and normally engaged in remunerative work;

(c) except in such circumstances as may be prescribed, neither he nor any member of his family is entitled to a disability working allowance; and

(d) he or, if he is a member of a married or unmarried couple, he or the other member, is responsible for a member of the same household who is a child or a person of a prescribed description.

(2) Where a person is entitled to family credit, then—

(a) if his income does not exceed the amount which is the applicable amount at the date prescribed under subsection (1)(a)(i) above, the amount of the family credit shall be the amount which is the appropriate maximum family credit in his case; and

(b) if his income exceeds the amount which is the applicable amount at that date, the amount of the family credit shall be what remains after the deduction from the appropriate maximum family credit of a prescribed percentage of the excess of his income over the applicable amount.

(3) Family credit shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of family credit and the rate at which it is payable shall not be affected by any change of circumstances during that period or by any order under section 150 of the Administration Act.

(4) Regulations may provide that an award of family credit shall terminate—

(a) if a person who was a member of the family at the date of the claim becomes a member of another family and some member of that family is entitled to family credit; or

(b) if income support or a disability working allowance becomes payable in respect of a person who was a member of the family at the date of the claim for family credit.

(5) Regulations shall prescribe the manner in which the appropriate maximum family credit is to be determined in any case.

(6) The provisions of this Act relating to family credit apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

Disability working allowance

129 Disability working allowance

(1) A person in Great Britain who has attained the age of 16 and qualifies under subsection (2) below is entitled to a disability working allowance if, when the claim for it is made or is treated as made—

(a) he is engaged and normally engaged in remunerative work;

(b) he has a physical or mental disability which puts him at a disadvantage in getting a job;

(c) his income—

(i) does not exceed the amount which is the applicable amount at such date as may be prescribed; or

(ii) exceeds it, but only by such an amount that there is an amount remaining if the deduction for which subsection (5)(b) below provides is made; and

(d) except in such circumstances as may be prescribed, neither he nor, if he has a family, any member of it, is entitled to family credit.

(2) Subject to subsection (4) below, a person qualifies under this subsection if—

(a) for one or more of the 56 days immediately preceding the date when the claim for a disability working allowance is made or is treated as made there was payable to him one or more of the following—

(i) an invalidity pension under section 33, 40 or 41 above;

(ii) a severe disablement allowance;

(iii) income support, housing benefit or community charge benefit,

or a corresponding benefit under any enactment having effect in Northern Ireland;

(b) when the claim for a disability working allowance is made or is treated as made, there is payable to him one or more of the following—

(i) an attendance allowance;

(ii) a disability living allowance;

(iii) an increase of disablement pension under section 104 above;

(iv) an analogous pension increase under a war pension scheme or an industrial injuries scheme,

or a corresponding benefit under any enactment having effect in Northern Ireland; or

(c) when the claim for a disability working allowance is made or is treated as made, he has an invalid carriage or other vehicle provided by the Secretary of State under section 5(2)(a) of the National Health Service Act 1977 and Schedule 2 to that Act or under section 46 of the National Health Service (Scotland) Act 1978 or provided under Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

(3) For the purposes of subsection (1) above a person has a disability which puts him at a disadvantage in getting a job only if he satisfies prescribed conditions or prescribed circumstances exist in relation to him.

(4) If the only benefit mentioned in paragraph (a) of subsection (2) above which is payable to a person as there mentioned is—

(a) a benefit mentioned in sub-paragraph (iii) of that paragraph; or

(b) a corresponding benefit under any enactment having effect in Northern Ireland,

he only qualifies under that subsection in prescribed circumstances.

(5) Where a person is entitled to a disability working allowance, then—

(a) if his income does not exceed the amount which is the applicable amount at the date prescribed under subsection (1)(c)(i) above, the amount of the disability working allowance shall be the amount which is the appropriate maximum disability working allowance in his case; and

(b) if his income exceeds that amount, the amount of the disability working allowance shall be what remains after the deduction from the appropriate maximum disability working allowance of a prescribed percentage of the excess of his income over that amount.

(6) A disability working allowance shall be payable for a period of 26 weeks or such other period as may be prescribed and, subject to regulations, an award of a disability working allowance and the rate at which it is payable shall not be affected by any change of circumstances during that period or by any order under section 150 of the Administration Act.

(7) Regulations may provide that an award of a disability working allowance to a person shall terminate if—

(a) a disability working allowance becomes payable in respect of some other person who was a member of his family at the date of his claim for a disability working allowance; or

(b) income support or family credit becomes payable in respect of a person who was a member of the family at that date.

(8) Regulations shall prescribe the manner in which the appropriate maximum disability working allowance is to be determined in any case.

(9) The provisions of this Act relating to disability working allowance apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

Housing benefit

130 Housing benefit

(1) A person is entitled to housing benefit if—

(a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home;

(b) there is an appropriate maximum housing benefit in his case; and

(c) either—

(i) he has no income or his income does not exceed the applicable amount; or

(ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which subsection (3)(b) below provides is made.

(2) In subsection (1) above "payments in respect of a dwelling" means such payments as may be prescribed, but the power to prescribe payments does not include power to prescribe mortgage payments or, in relation to Scotland, payments under heritable securities.

(3) Where a person is entitled to housing benefit, then—

(a) if he has no income or his income does not exceed the applicable amount, the amount of the housing benefit shall be the amount which is the appropriate maximum housing benefit in his case; and

(b) if his income exceeds the applicable amount, the amount of the housing benefit shall be what remains after the deduction from the appropriate maximum

housing benefit of prescribed percentages of the excess of his income over the applicable amount.

(4) Regulations shall prescribe the manner in which the appropriate maximum housing benefit is to be determined in any case.

(5) Regulations under subsection (4) above may provide for benefit to be limited by reference to determinations made by rent officers in exercise of functions conferred under section 121 of the Housing Act 1988 or section 70 of the Housing (Scotland) Act 1988.

Community charge benefits

131 Community charge benefits

(1) A person is entitled to a community charge benefit in respect of a particular day falling after 31st March 1990 if each of the three conditions set out in subsections (3) to (6) below is fulfilled.

(2) A community charge benefit—

(a) shall not be allowed to a person in respect of any day falling before the day on which his entitlement is to be regarded as commencing for that purpose by virtue of paragraph (l) of section 6(1) of the Administration Act; but

(b) may be allowed to him in respect of not more than 6 days immediately following the day on which his period of entitlement would otherwise come to an end, if his entitlement is to be regarded by virtue of that paragraph as not having ended for that purpose.

(3) In relation to England and Wales, the first condition is that—

(a) for the day the person concerned is shown, in a charging authority's community charges register, as subject to a personal community charge of the authority and is not there shown as undertaking a full-time course of education on the day, or

(b) the day consists of or falls within a contribution period in respect of which the person concerned is liable to pay an amount under section 9 of the 1988 Act (collective community charge contributions).

(4) In relation to Scotland, the first condition is that—

(a) in respect of the day the person concerned is shown, in a community charges register, as being liable to pay the personal community charge and is not there shown as undertaking a full-time course of education or nursing education on the day, or

(b) the day consists of or falls within a contribution period in respect of which the person concerned is liable to pay a collective community charge contribution under section 11(11) of the 1987 Act.

(5) The second condition is that there is an appropriate maximum community charge benefit in the case of the person concerned.

(6) The third condition is that—

(a) the day falls within a week in respect of which the person concerned has no income,

(b) the day falls within a week in respect of which his income does not exceed the applicable amount, or

(c) neither paragraph (a) nor paragraph (b) above is fulfilled in his case but amount A exceeds amount B.

(7) As regards a person—

(a) amount A is the appropriate maximum community charge benefit in his case, and

(b) amount B is a prescribed percentage of the difference between his income in respect of the week in which the day falls and the applicable amount.

(8) In respect of the same day, a person shall be entitled to a separate community charge benefit in respect of each charge or contribution period concerned (if more than one).

(9) But regulations may provide that if—

(a) a person would (apart from the regulations) be entitled, in respect of the same day, to separate community charge benefits, and

(b) the circumstances are such as are prescribed,

he shall not be entitled to such one of the benefits as may be identified in accordance with prescribed rules.

(10) Where a person is entitled to a community charge benefit in respect of a day, and subsection (6)(a) or (b) above applies, the amount to which he is entitled shall be the amount which is the appropriate maximum community charge benefit in his case.

(11) Where a person is entitled to a community charge benefit in respect of a day, and subsection (6)(c) above applies, the amount to which he is entitled shall be found by deducting amount B from amount A, where "amount A" and "amount B" have the meanings given by subsection (7) above.

(12) Regulations shall prescribe the manner in which the appropriate maximum community charge benefit is to be determined in any case.

132 Couples

(1) As regards any case where a person is a member of a married or unmarried couple throughout a particular day, regulations may make such provision as the Secretary of State sees fit as to—

(a) the entitlement of the person to a community charge benefit in respect of the day, and

(b) the amount to which he is entitled.

(2) Nothing in subsections (3) to (8) below shall prejudice the generality of subsection (1) above.

(3) The regulations may provide that prescribed provisions shall apply instead of prescribed provisions of this Part of this Act, or that prescribed provisions of this Part of this Act shall not apply or shall apply subject to prescribed amendments or adaptations.

(4) The regulations may provide that, for the purpose of calculating in the case of the person concerned the matters mentioned in subsection (5) below, prescribed amounts relating to the person and his partner are to be aggregated and the aggregate is to be apportioned.

(5) The matters are income, capital, the applicable amount, and the appropriate maximum community charge benefit.

(6) The regulations may—
- (a) amend section 139(6) of the Administration Act so as to allow for disregarding the whole or part of any pension payable to the partner of the person concerned in determining the latter's income;
- (b) amend section 139(7) of that Act accordingly.

(7) The regulations may contain different provision as to the following different cases—
- (a) cases where the first condition is fulfilled on the day concerned by the person concerned but not by his partner;
- (b) cases where the first condition is fulfilled on the day concerned by the person concerned and by his partner.

(8) The regulations may include such supplementary, incidental or consequential provisions as appear to the Secretary of State to be necessary or expedient.

(9) In this section—
- (a) references to a person's partner are to the other member of the couple concerned, and
- (b) references to the first condition are to the condition mentioned in section 131(3) or (4) above (as the case may be).

133 Polygamous marriages

(1) This section applies to any case where—
- (a) throughout a particular day a person (the person in question) is a husband or wife by virtue of a marriage entered into under a law which permits polygamy; and
- (b) either party to the marriage has for the time being any spouse additional to the other party.

(2) For the purposes of section 132 above neither party to the marriage shall be taken to be a member of a couple on the day.

(3) Regulations under this section may make such provision as the Secretary of State sees fit as to—
- (a) the entitlement of the person in question to a community charge benefit in respect of the day, and
- (b) the amount to which he is entitled.

(4) Without prejudice to the generality of subsection (3) above the regulations may include provision equivalent to that included under section 132 above subject to any modifications the Secretary of State sees fit.

General

134 Exclusions from benefit

(1) No person shall be entitled to an income-related benefit if his capital or a prescribed part of it exceeds the prescribed amount.

(2) Except in prescribed circumstances the entitlement of one member of a family to any one income-related benefit excludes entitlement to that benefit for any other member for the same period.

(3) Subsection (2) above does not prevent different members of the same family becoming entitled to different community charge benefits by virtue of their fulfilling the conditions in respect of different charges or of different contribution periods.

(4) Where the amount of any income-related benefit would be less than a prescribed amount, it shall not be payable except in prescribed circumstances.

135 The applicable amount

(1) The applicable amount, in relation to any income-related benefit, shall be such amount or the aggregate of such amounts as may be prescribed in relation to that benefit.

(2) The power to prescribe applicable amounts conferred by subsection (1) above includes power to prescribe nil as an applicable amount.

(3) In prescribing, for the purposes of income support, amounts under subsection (1) above in respect of accommodation in any area for qualifying persons in cases where prescribed conditions are fulfilled, the Secretary of State shall take into account information provided by local authorities or other prescribed bodies or persons with respect to the amounts which they have agreed to pay for the provision of accommodation in relevant premises in that area.

(4) In subsection (3) above—

"accommodation" includes any board or care;

"local authority"—

(a) in relation to areas in England and Wales, has the same meaning as it has in Part III of the National Assistance Act 1948; and

(b) in relation to areas in Scotland, has the meaning given by section 1(2) of the Social Work (Scotland) Act 1968;

"qualifying person" means any person who falls within—

(a) subsection (1) of section 26A of the National Assistance Act 1948 (which is inserted by the National Health Service and Community Care Act 1990 and relates to persons ordinarily resident in residential care or nursing homes immediately before the commencement of that section); or

(b) subsection (1) of section 86A of the Social Work (Scotland) Act 1968 (the corresponding provision for Scotland),

or who would fall within either of those subsections apart from any regulations under subsection (3) of the section in question;

"relevant premises"—

(a) in relation to areas in England and Wales, has the meaning given by section 26A(2) of the National Assistance Act 1948; and

(b) in relation to areas in Scotland, has the meaning given by section 86A(2) of the Social Work (Scotland) Act 1968.

(5) In relation to income support, housing benefit and any community charge benefit, the applicable amount for a severely disabled person shall include an amount in respect of his being a severely disabled person.

(6) Regulations may specify circumstances in which persons are to be treated as being or as not being severely disabled.

136 Income and capital

(1) Where a person claiming an income-related benefit is a member of a family, the income and capital of any member of that family shall, except in prescribed circumstances, be treated as the income and capital of that person.

(2) Regulations may provide that capital not exceeding the amount prescribed under section 134(1) above but exceeding a prescribed lower amount shall be treated, to a prescribed extent, as if it were income of a prescribed amount.

(3) Income and capital shall be calculated or estimated in such manner as may be prescribed.

(4) A person's income in respect of a week shall be calculated in accordance with prescribed rules; and the rules may provide for the calculation to be made by reference to an average over a period (which need not include the week concerned).

(5) Circumstances may be prescribed in which—

(a) a person is treated as possessing capital or income which he does not possess;

(b) capital or income which a person does possess is to be disregarded;

(c) income is to be treated as capital;

(d) capital is to be treated as income.

137 Interpretation of Part VII and supplementary provisions

(1) In this Part of this Act, unless the context otherwise requires—

"charging authority" has the same meaning as in the 1988 Act;

"child" means a person under the age of 16;

"contribution period", in relation to England and Wales, has the same meaning as in section 9 of the 1988 Act;

"contribution period", in relation to Scotland, means a continuous period of residence in any premises (which falls in a chargeable financial year) in respect of each day of which a person is liable to pay a collective community charge contribution under section 11(11) of the 1987 Act;

"dwelling" means any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises;

"family" means—

(a) a married or unmarried couple;

(b) a married or unmarried couple and a member of the same household for whom one of them is or both are responsible and who is a child or a person of a prescribed description;

(c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description;

"industrial injuries scheme" means a scheme made under Schedule 8 to this Act or section 159 of the 1975 Act or under the Old Cases Act;

"levying authority" has the same meaning as in the 1987 Act;

"married couple" means a man and woman who are married to each other and are members of the same household;

"the 1987 Act" means the Abolition of Domestic Rates Etc. (Scotland) Act 1987;

"the 1988 Act" means the Local Government Finance Act 1988;

"prescribed"means specified in or determined in accordance with regulations;

"unmarried couple" means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances;

"war pension scheme" means a scheme under which war pensions (as defined in section 25 of the Social Security Act 1989) are provided;

"week", in relation to community charge benefits, means a period of 7 days beginning with a Monday.

(2) Regulations may make provision for the purposes of this Part of this Act—

(a) as to circumstances in which a person is to be treated as being or not being in Great Britain;

(b) continuing a person's entitlement to benefit during periods of temporary absence from Great Britain;

(c) as to what is or is not to be treated as remunerative work or as employment;

(d) as to circumstances in which a person is or is not to be treated as—

(i) engaged or normally engaged in remunerative work;

(ii) available for employment; or

(iii) actively seeking employment;

(e) as to what is or is not to be treated as relevant education;

(f) as to circumstances in which a person is or is not to be treated as receiving relevant education;

(g) specifying the descriptions of pension increases under war pension schemes or industrial injuries schemes that are analogous to the benefits mentioned in section 129(2)(b)(i) to (iii) above;

(h) as to circumstances in which a person is or is not to be treated as occupying a dwelling as his home;

(i) for treating any person who is liable to make payments in respect of a dwelling as if he were not so liable;

(j) for treating any person who is not liable to make payments in respect of a dwelling as if he were so liable;

(k) for treating as included in a dwelling any land used for the purposes of the dwelling;

(l) as to circumstances in which persons are to be treated as being or not being members of the same household;

(m) as to circumstances in which one person is to be treated as responsible or not responsible for another.

PART VIII

THE SOCIAL FUND

138 Payments out of the social fund

(1) Payments may be made out of the social fund, in accordance with this Part of this Act—

(a) of prescribed amounts, whether in respect of prescribed items or otherwise, to meet, in prescribed circumstances, maternity expenses and funeral expenses; and

(b) to meet other needs in accordance with directions given or guidance issued by the Secretary of State.

(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) The power to make a payment out of the social fund such as is mentioned in subsection (1)(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.

(4) In this section "prescribed" means specified in or determined in accordance with regulations.

139 Awards by social fund officers

(1) The questions whether a payment such as is mentioned in section 138(1)(b) above is to be awarded and how much it is to be shall be determined by a social fund officer.

(2) A social fund officer may determine that an award shall be payable in specified instalments at specified times.

(3) A social fund officer may determine that an award is to be repayable.

(4) 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.

(5) Payment of an award shall be made to the applicant unless the social fund officer determines otherwise.

140 Principles of determination

(1) In determining whether to make an award to the applicant or the amount or value to be awarded a social fund officer shall have regard, subject to subsection (2) below, to all the circumstances of the case and, in particular—

(a) the nature, extent and urgency of the need;

(b) the existence of resources from which the need may be met;

(c) the possibility that some other person or body may wholly or partly meet it;

(d) where the payment is repayable, the likelihood of repayment and the time within which repayment is likely;

(e) any relevant allocation under section 168(1) to (4) of the Administration Act.

(2) A social fund officer shall determine any question in accordance with any general directions issued by the Secretary of State and in determining any question shall take account of any general guidance issued by him.

(3) Without prejudice to the generality of subsection (2) above, the Secretary of State may issue directions under that subsection for the purpose of securing that a social fund officer or group of social fund officers shall not in any specified period make awards of any specified description which in the aggregate exceed the amount, or a specified portion of the amount, allocated to that officer or group of officers under section 168(1) to (4) of the Administration Act for payments under awards of that description in that period.

(4) Without prejudice to the generality of subsection (2) 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 138(1)(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;

(e) that payments to meet a category of need specified in the direction shall in all cases or in no case be repayable; and

(f) that a payment such as is mentioned in section 138(1)(b) above shall only be awarded to a person if either—

(i) he is in receipt of a benefit which is specified in the direction and the circumstances are such as are so specified; or

(ii) in a case where the conditions specified in sub-paragraph (i) above are not satisfied, the circumstances are such as are specified in the direction,

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.

(5) In determining a question a social fund officer shall take account (subject to any directions or guidance issued by the Secretary of State under this section) of any guidance issued by the social fund officer nominated for his area under section 64 of the Administration Act.

PART IX

CHILD BENEFIT

141 Child benefit

A person who is responsible for one or more children in any week shall be entitled, subject to the provisions of this Part of this Act, to a benefit (to be known as "child benefit") for that week in respect of the child or each of the children for whom he is responsible.

142 Meaning of "child"

(1) For the purposes of this Part of this Act a person shall be treated as a child for any week in which—

(a) he is under the age of 16; or

(b) he is under the age of 18 and not receiving full-time education and prescribed conditions are satisfied in relation to him; or

(c) he is under the age of 19 and receiving full-time education either by attendance at a recognised educational establishment or, if the education is recognised by the Secretary of State, elsewhere.

(2) The Secretary of State may recognise education provided otherwise than at a recognised educational establishment for a person who, in the opinion of the Secretary of State, could reasonably be expected to attend such an establishment only if the Secretary of State is satisfied that education was being so provided for that person immediately before he attained the age of 16.

(3) Regulations may prescribe the circumstances in which education is or is not to be treated for the purposes of this Part of this Act as full-time.

(4) In determining for the purposes of paragraph (c) of subsection (1) above whether a person is receiving full-time education as mentioned in that paragraph, no account shall be taken of such interruptions as may be prescribed.

(5) Regulations may provide that a person who in any week ceases to fall within subsection (1) above shall be treated as continuing to do so for a prescribed period; but no person shall by virtue of any such regulations be treated as continuing to fall within that subsection for any week after that in which he attains the age of 19.

143 Meaning of "person responsible for child"

(1) For the purposes of this Part of this Act a person shall be treated as responsible for a child in any week if—

(a) he has the child living with him in that week; or

(b) he is contributing to the cost of providing for the child at a weekly rate which is not less than the weekly rate of child benefit payable in respect of the child for that week.

(2) Where a person has had a child living with him at some time before a particular week he shall be treated for the purposes of this section as having the child living with him in that week notwithstanding their absence from one another unless, in the 16 weeks

preceding that week, they were absent from one another for more than 56 days not counting any day which is to be disregarded under subsection (3) below.

(3) Subject to subsection (4) below, a day of absence shall be disregarded for the purposes of subsection (2) above if it is due solely to the child's—

(a) receiving full-time education by attendance at a recognised educational establishment;

(b) undergoing medical or other treatment as an in-patient in a hospital or similar institution; or

(c) being, in such circumstances as may be prescribed, in residential accommodation pursuant to arrangements made under—

(i) section 21 of the National Assistance Act 1948;

(ii) the Children Act 1989; or

(iii) the Social Work (Scotland) Act 1968.

(4) The number of days that may be disregarded by virtue of subsection (3)(b) or (c) above in the case of any child shall not exceed such number as may be prescribed unless the person claiming to be responsible for the child regularly incurs expenditure in respect of the child.

(5) Regulations may prescribe the circumstances in which a person is or is not to be treated—

(a) as contributing to the cost of providing for a child as required by subsection (1)(b) above; or

(b) as regularly incurring expenditure in respect of a child as required by subsection (4) above;

and such regulations may in particular make provision whereby a contribution made or expenditure incurred by two or more persons is to be treated as made or incurred by one of them or whereby a contribution made or expenditure incurred by one of two spouses residing together is to be treated as made or incurred by the other.

144 Exclusions and priority

(1) Regulations may provide that child benefit shall not be payable by virtue—

(a) of paragraph (b) of section 142(1) above and regulations made under that paragraph; or

(b) of paragraph (c) of that subsection,

in such cases as may be prescribed.

(2) Schedule 9 to this Act shall have effect for excluding entitlement to child benefit in other cases.

(3) Where, apart from this subsection, two or more persons would be entitled to child benefit in respect of the same child for the same week, one of them only shall be entitled; and the question which of them is entitled shall be determined in accordance with Schedule 10 to this Act.

145 Rate of child benefit

(1) Child benefit shall be payable at such weekly rate as may be prescribed.

(2) Different rates may be prescribed in relation to different cases, whether by reference to the age of the child in respect of whom the benefit is payable or otherwise.

(3) The power to prescribe different rates under subsection (2) above shall be exercised so as to bring different rates into force on such day as the Secretary of State may by order specify.

(4) No rate prescribed in place of a rate previously in force shall be lower than the rate that it replaces.

(5) Regulations under this section shall be made by the Secretary of State in conjunction with the Treasury.

(6) An order under subsection (3) above may be varied or revoked at any time before the date specified thereby.

(7) An order under that subsection shall be laid before Parliament after being made.

146 Persons outside Great Britain

(1) Regulations may modify the provisions of this Part of this Act in their application to persons who are or have been outside Great Britain at any prescribed time or in any prescribed circumstances.

(2) Subject to any regulations under subsection (1) above, no child benefit shall be payable in respect of a child for any week unless—
   (a) he is in Great Britain in that week; and
   (b) either he or at least one of his parents has been in Great Britain for more than 182 days in the 52 weeks preceding that week.

(3) Subject to any regulations under subsection (1) above, no person shall be entitled to child benefit for any week unless—
   (a) he is in Great Britain in that week; and
   (b) he has been in Great Britain for more than 182 days in the 52 weeks preceding that week.

147 Interpretation of Part IX and supplementary provisions

(1) In this Part of this Act—

"prescribed" means prescribed by regulations;

"recognised educational establishment" means an establishment recognised by the Secretary of State as being, or as comparable to, a university, college or school;

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

"week" means a period of 7 days beginning with a Monday.

(2) Subject to any provision made by regulations, references in this Part of this Act to any condition being satisfied or any facts existing in a week shall be construed as references to the condition being satisfied or the facts existing at the beginning of that week.

(3) References in this Part of this Act to a parent, father or mother of a child shall be construed as including references to a step-parent, step-father or step-mother.

(4) Regulations may prescribe the circumstances in which persons are or are not to be treated for the purposes of this Part of this Act as residing together.

(5) Regulations may make provision as to the circumstances in which—
  (a) a marriage celebrated under a law which permits polygamy; or
  (b) a marriage during the subsistence of which a party to it is at any time married to more than one person,

  is to be treated for the purposes of this Part of this Act as having, or not having, the consequences of a marriage celebrated under a law which does not permit polygamy.

(6) Nothing in this Part of this Act shall be construed as conferring a right to child benefit on any body corporate; but regulations may confer such a right on voluntary organisations and for that purpose may make such modifications as the Secretary of State thinks fit—
  (a) of any provision of this Part of this Act; or
  (b) of any provision of the Administration Act relating to child benefit.

PART X

CHRISTMAS BONUS FOR PENSIONERS

148 Entitlement of pensioners to Christmas bonus

(1) Any person who in any year—
  (a) is present or ordinarily resident in the United Kingdom or any other member State at any time during the relevant week; and
  (b) is entitled to a payment of a qualifying benefit in respect of a period which includes a day in that week or is to be treated as entitled to a payment of a qualifying benefit in respect of such a period,

  shall, subject to the following provisions of this Part of this Act and to section 1 of the Administration Act, be entitled to payment under this subsection in respect of that year.

(2) Subject to the following provisions of this Part of this Act, any person who is a member of a couple and is entitled to a payment under subsection (1) above in respect of a year shall also be entitled to payment under this subsection in respect of that year if—
  (a) both members have attained pensionable age not later than the end of the relevant week; and
  (b) the other member satisfies the condition mentioned in subsection (1)(a) above; and
  (c) either—
    (i) he is entitled or treated as entitled, in respect of the other member, to an increase in the payment of the qualifying benefit; or
    (ii) the only qualifying benefit to which he is entitled is income support.

(3) A payment under subsection (1) or (2) above—
  (a) is to be made by the Secretary of State; and

(b) is to be of £10 or such larger sum as the Secretary of State may by order specify.

(4) Where the only qualifying benefit to which a person is entitled is income support, he shall not be entitled to a payment under subsection (1) above unless he has attained pensionable age not later than the end of the relevant week.

(5) Only one sum shall be payable in respect of any person.

149 Provisions supplementary to section 148

(1) For the purposes of section 148 above the Channel Islands, the Isle of Man and Gibraltar shall be treated as though they were part of the United Kingdom.

(2) A person shall be treated for the purposes of section 148(1)(b) above as entitled to a payment of a qualifying benefit if he would be so entitled—

(a) in the case of a qualifying benefit other than income support, but for the fact that he or, if he is a member of a couple, the other member is entitled to receive some other payment out of public funds;

(b) in the case of income support, but for the fact that his income or, if he is a member of a couple, the income of the other member was exceptionally of an amount which resulted in his having ceased to be entitled to income support.

(3) A person shall be treated for the purposes of section 148(2)(c)(i) above as entitled in respect of the other member of the couple to an increase in a payment of a qualifying benefit if he would be so entitled—

(a) but for the fact that he or the other member is entitled to receive some other payment out of public funds;

(b) but for the operation of any provision of section 83(2) or (3) above or paragraph 6(4) of Schedule 7 to this Act or any regulations made under paragraph 6(3) of that Schedule whereby entitlement to benefit is affected by the amount of a person's earnings in a given period.

(4) For the purposes of section 148 above a person shall be taken not to be entitled to a payment of a war disablement pension unless not later than the end of the relevant week he has attained the age of 70 in the case of a man or 65 in the case of a woman.

(5) A sum payable under section 148 above shall not be treated as benefit for the purposes of any enactment or instrument under which entitlement to the relevant qualifying benefit arises or is to be treated as arising.

(6) A payment and the right to receive a payment—

(a) under section 148 above or any enactment corresponding to it in Northern Ireland; or

(b) under regulations relating to widows which are made by the Secretary of State under any enactment relating to police and which contain a statement that the regulations provide for payments corresponding to payments under that section,

shall be disregarded for all purposes of income tax and for the purposes of any enactment or instrument under which regard is had to a person's means.

150 Interpretation of Part X

(1) In this Part of this Act "qualifying benefit" means—

(a) a retirement pension;
(b) an invalidity pension;
(c) a widowed mother's allowance or widow's pension;
(d) a severe disablement allowance;
(e) an invalid care allowance;
(f) industrial death benefit;
(g) an attendance allowance;
(h) an unemployability supplement or allowance;
(i) a war disablement pension;
(j) a war widow's pension;
(k) income support.

(2) In this Part of this Act—

"attendance allowance" means—

(a) an attendance allowance;
(b) a disability living allowance;
(c) an increase of disablement pension under section 104 or 105 above;
(d) a payment under regulations made in exercise of the powers in section 159(3)(b) of the 1975 Act or paragraph 7(2) of Schedule 8 to this Act;
(e) an increase of allowance under Article 8 of the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983 (constant attendance allowance for certain persons to whom that Scheme applies) or under the corresponding provision of any Scheme which may replace that Scheme;
(f) an allowance in respect of constant attendance on account of disablement for which a person is in receipt of war disablement pension, including an allowance in respect of exceptionally severe disablement;

"pensionable age" means—

(a) in the case of a man, the age of 65;
(b) in the case of a woman, the age of 60;

"retirement pension" includes graduated retirement benefit, if paid periodically;

"unemployability supplement or allowance" means—

(a) an unemployability supplement payable under Part I of Schedule 7 to this Act; or
(b) any corresponding allowance payable—
(c) by virtue of paragraph 6(4)(a) of Schedule 8 to this Act;
(ii) by way of supplement to retired pay or pension exempt from income tax under section 315(1) of the Income and Corporation Taxes Act 1988;
(iii) under the Personal Injuries (Emergency Provisions) Act 1939; or
(iv) by way of supplement to retired pay or pension under the Polish Resettlement Act 1947;

"war disablement pension" means—

(a) any retired pay, pension or allowance granted in respect of disablement under powers conferred by or under the Air Force (Constitution) Act 1917, the Personal Injuries (Emergency Provisions) Act 1939, the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939, the Polish Resettlement Act 1947, or Part VII or section 151 of the Reserve Forces Act 1980;

(b) without prejudice to paragraph (a) of this definition, any retired pay or pension to which subsection (1) of section 315 of the Income and Corporation Taxes Act 1988 applies;

"war widow's pension" means any widow's pension or allowance granted in respect of a death due to service or war injury and payable by virtue of any enactment mentioned in paragraph (a) of the preceding definition or a pension or allowance for a widow granted under any scheme mentioned in subsection (2)(e) of the said section 315;

and each of the following expressions, namely "attendance allowance", "unemployability supplement or allowance", "war disablement pension" and "war widow's pension", includes any payment which the Secretary of State accepts as being analogous to it.

(3) References in this Part of this Act to a "couple" are references to a married or unmarried couple; and for this purpose "married couple" and "unmarried couple" are to be construed in accordance with Part VII of this Act and any regulations made under it.

(4) In this Part of this Act "the relevant week", in relation to any year, means the week beginning with the first Monday in December or such other week as may be specified in an order made by the Secretary of State.

PART XI

STATUTORY SICK PAY

Employer's liability

151 Employer's liability

(1) Where an employee has a day of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 152 to 154 below are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (to be known as "statutory sick pay") in respect of that day.

(2) Any agreement shall be void to the extent that it purports—

(a) to exclude, limit or otherwise modify any provision of this Part of this Act, or

(b) to require an employee to contribute (whether directly or indirectly) towards any costs incurred by his employer under this Part of this Act.

(3) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory sick pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (2)(a) above if the employer—

(a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or

(b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

(4) For the purposes of this Part of this Act a day shall not be treated as a day of incapacity for work in relation to any contract of service unless on that day the employee concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.

(5) In any case where an employee has more than one contract of service with the same employer the provisions of this Part of this Act shall, except in such cases as may be prescribed and subject to the following provisions of this Part of this Act, have effect as if the employer were a different employer in relation to each contract of service.

(6) Circumstances may be prescribed in which, notwithstanding the provisions of subsections (1) to (5) above, the liability to make payments of statutory sick pay is to be a liability of the Secretary of State.

The qualifying conditions

152 Period of incapacity for work

(1) The first condition is that the day in question forms part of a period of incapacity for work.

(2) In this Part of this Act "period of incapacity for work" means any period of four or more consecutive days, each of which is a day of incapacity for work in relation to the contract of service in question.

(3) Any two periods of incapacity for work which are separated by a period of not more than 8 weeks shall be treated as a single period of incapacity for work.

(4) The Secretary of State may by regulations direct that a larger number of weeks specified in the regulations shall be substituted for the number of weeks for the time being specified in subsection (3) above.

(5) No day of the week shall be disregarded in calculating any period of consecutive days for the purposes of this section.

(6) A day may be a day of incapacity for work in relation to a contract of service, and so form part of a period of incapacity for work, notwithstanding that—

(a) it falls before the making of the contract or after the contract expires or is brought to an end; or

(b) it is not a day on which the employee concerned would be required by that contract to be available for work.

153 Period of entitlement

(1) The second condition is that the day in question falls within a period which is, as between the employee and his employer, a period of entitlement.

(2) For the purposes of this Part of this Act a period of entitlement, as between an employee and his employer, is a period beginning with the commencement of a period of incapacity for work and ending with whichever of the following first occurs—

(a) the termination of that period of incapacity for work;

(b) the day on which the employee reaches, as against the employer concerned, his maximum entitlement to statutory sick pay (determined in accordance with section 155 below);

(c) the day on which the employee's contract of service with the employer concerned expires or is brought to an end;

(d) in the case of an employee who is, or has been, pregnant, the day immediately preceding the beginning of the disqualifying period.

(3) Schedule 11 to this Act has effect for the purpose of specifying circumstances in which a period of entitlement does not arise in relation to a particular period of incapacity for work.

(4) A period of entitlement as between an employee and an employer of his may also be, or form part of, a period of entitlement as between him and another employer of his.

(5) The Secretary of State may by regulations—

(a) specify circumstances in which, for the purpose of determining whether an employee's maximum entitlement to statutory sick pay has been reached in a period of entitlement as between him and an employer of his, days falling within a previous period of entitlement as between the employee and any person who is or has in the past been an employer of his are to be counted; and

(b) direct that in prescribed circumstances an employer shall provide a person who is about to leave his employment, or who has been employed by him in the past, with a statement in the prescribed form containing such information as may be prescribed in relation to any entitlement of the employee to statutory sick pay.

(6) Regulations may provide, in relation to prescribed cases, for a period of entitlement to end otherwise than in accordance with subsection (2) above.

(7) In a case where the employee's contract of service first takes effect on a day which falls within a period of incapacity for work, the period of entitlement begins with that day.

(8) In a case where the employee's contract of service first takes effect between two periods of incapacity for work which by virtue of section 152(3) above are treated as one, the period of entitlement begins with the first day of the second of those periods.

(9) In any case where, otherwise than by virtue of section 6(1)(b) above, an employee's earnings under a contract of service in respect of the day on which the contract takes effect do not attract a liability to pay secondary Class 1 contributions, subsections (7) and (8) above shall have effect as if for any reference to the contract first taking effect there were substituted a reference to the first day in respect of which the employee's earnings attract such a liability.

(10) Regulations shall make provision as to an employer's liability under this Part of this Act to pay statutory sick pay to an employee in any case where the employer's contract of service with that employee has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory sick pay.

(11) Subsection (2)(d) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement.

(12) In this section—

"confinement" is to be construed in accordance with section 171(1) below;

"disqualifying period" means—

(a) in relation to a woman entitled to statutory maternity pay, the maternity pay period; and

(b) in relation to a woman entitled to maternity allowance, the maternity allowance period;

"maternity allowance period" has the meaning assigned to it by section 35(2) above, and

"maternity pay period" has the meaning assigned to it by section 165(1) below.

154 Qualifying days

(1) The third condition is that the day in question is a qualifying day.

(2) The days which are for the purposes of this Part of this Act to be qualifying days as between an employee and an employer of his (that is to say, those days of the week on which he is required by his contract of service with that employer to be available for work or which are chosen to reflect the terms of that contract) shall be such day or days as may, subject to regulations, be agreed between the employee and his employer or, failing such agreement, determined in accordance with regulations.

(3) In any case where qualifying days are determined by agreement between an employee and his employer there shall, in each week (beginning with Sunday), be at least one qualifying day.

(4) A day which is a qualifying day as between an employee and an employer of his may also be a qualifying day as between him and another employer of his.

Limitations on entitlement, etc.

155 Limitations on entitlement

(1) Statutory sick pay shall not be payable for the first three qualifying days in any period of entitlement.

(2) An employee shall not be entitled, as against any one employer, to an aggregate amount of statutory sick pay in respect of any one period of entitlement which exceeds his maximum entitlement.

(3) The maximum entitlement as against any one employer is reached on the day on which the amount to which the employee has become entitled by way of statutory sick pay during the period of entitlement in question first reaches or passes the entitlement limit.

(4) The entitlement limit is an amount equal to 28 times the appropriate weekly rate set out in section 157 below.

(5) Regulations may make provision for calculating the entitlement limit in any case where an employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of entitlement.

156 Notification of incapacity for work

(1) Regulations shall prescribe the manner in which, and the time within which, notice of any day of incapacity for work is to be given by or on behalf of an employee to his employer.

(2) An employer who would, apart from this section, be liable to pay an amount of statutory sick pay to an employee in respect of a qualifying day (the "day in question") shall be entitled to withhold payment of that amount if—

(a) the day in question is one in respect of which he has not been duly notified in accordance with regulations under subsection (1) above; or

(b) he has not been so notified in respect of any of the first three qualifying days in a period of entitlement (a "waiting day") and the day in question is the first qualifying day in that period of entitlement in respect of which the employer is not entitled to withhold payment—

(i) by virtue of paragraph (a) above; or

(ii) in respect of an earlier waiting day by virtue of this paragraph.

(3) Where an employer withholds any amount of statutory sick pay under this section—

(a) the period of entitlement in question shall not be affected; and

(b) for the purposes of calculating his maximum entitlement in accordance with section 155 above the employee shall not be taken to have become entitled to the amount so withheld.

Rates of payment, etc.

157 Rates of payment

(1) Statutory sick pay shall be payable by an employer at the weekly rate of—

(a) £52.50, in a case where the employee's normal weekly earnings under his contract of service with that employer are not less than £190; or

(b) £45.30, in any other case.

(2) The Secretary of State may by order—

(a) substitute alternative provisions for the paragraphs of subsection (1) above; and

(b) make such consequential amendments as appear to him to be required of any provision contained in this Part of this Act.

(3) The amount of statutory sick pay payable by any one employer in respect of any day shall be the weekly rate applicable on that day divided by the number of days which are, in the week (beginning with Sunday) in which that day falls, qualifying days as between that employer and the employee concerned.

158 Recovery by employers of amounts paid by way of statutory sick pay

(1) Regulations shall make provision—

(a) entitling, except in prescribed circumstances, any employer who has made one or more payments of statutory sick pay in a prescribed period to recover an amount equal to the sum of—

(i) the aggregate of such of those payments as qualify for small employers' relief; and

(ii) an amount equal to 80 per cent. of the aggregate of such of those payments as do not so qualify,

by making one or more deductions from his contributions payments; and

(b) for the payment, in prescribed circumstances, by or on behalf of the Secretary of State of sums to employers who are unable so to recover the whole, or any part, of the amounts which they are entitled to recover by virtue of paragraph (a) above.

(2) For the purposes of this section, a payment of statutory sick pay which an employer is liable to make to an employee for any day which forms part of a period of incapacity for work qualifies for small employers' relief if—

(a) on that day the employer is a small employer who has been liable to pay statutory sick pay in respect of that employee for earlier days forming part of that period of incapacity for work; and

(b) the aggregate amount of those payments exceeds the entitlement threshold, that is to say, an amount equal to W x R, where—

W is a prescribed number of weeks; and

R is the appropriate weekly rate set out in section 157 above;

and regulations may make provision for calculating the entitlement threshold in any case where the employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of incapacity for work.

(3) For the purposes of this section, "small employer" shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—

(a) may define that expression by reference to the amount of an employer's contributions payments for any prescribed period; and

(b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—

(i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and

(ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.

(4) In this section "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.

(5) Regulations under this section may, in particular,—

(a) provide for any deduction made in accordance with the regulations to be disregarded for prescribed purposes; and

(b) provide for the rounding up or down of any fraction of a penny which would otherwise result from calculating the amount which an employer is entitled to recover for any period by virtue of subsection (1)(a) above.

(6) Where, in accordance with any provision of regulations made under this section, an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions as having been—

(a) paid (on such date as may be determined in accordance with the regulations); and

(b) received by the Secretary of State,

towards discharging the liability mentioned in subsection (4) above.

(7) Any day of incapacity for work falling before 6th April 1991 shall be left out of account for the purposes of subsection (2) above.

159 Power to substitute provisions for s. 158(2)

(1) If the Secretary of State by order so provides for any tax year, the following subsections shall have effect for that tax year in substitution for section 158(2) above—

"(2A) For the purposes of this section, a payment of statutory sick pay which an employer is liable to make to an employee for any day in a tax year qualifies for small employers' relief if—

(a) on that day the employer is a small employer who has been liable to make payments of statutory sick pay for earlier days in that tax year in respect of any employees of his; and

(b) the aggregate of any such payments for those earlier days exceeds a prescribed sum.

(2B) In any case where—

(a) an employer is liable to make two or more payments of statutory sick pay for the same day in a tax year; and

(b) by virtue of the condition in subsection (2A)(b) above, none of those payments would qualify for small employers' relief; but

(c) that condition would have been fulfilled in relation to a proportion of the aggregate amount of those payments, had he been liable—

(i) to pay as statutory sick pay for an earlier day in that tax year, instead of for the day in question, the smallest part of that aggregate that would enable that condition to be fulfilled; and

(ii) to pay the remainder as statutory sick pay for the day in question,

he shall be treated for the purposes of subsection (2A) above as if he had been liable to make payments of statutory sick pay as mentioned in paragraph (c) above instead of as mentioned in paragraph (a) above.

(2C) If, in a case not falling within subsection (2B) above—

(a) an employer is liable to make a single payment of statutory sick pay for a day in a tax year; and

(b) by virtue of the condition in subsection (2A)(b) above, that payment would not qualify for small employers' relief; but

(c) that condition would have been fulfilled in relation to a proportion of that payment, had he been liable—

(i) to pay as statutory sick pay for an earlier day in that tax year, instead of for the day in question, the smallest part of that payment that would enable that condition to be fulfilled; and

(ii) to pay the remainder as statutory sick pay for the day in question,

he shall be treated for the purposes of subsection (2A) above as if he had been liable to make payments of statutory sick pay as mentioned in paragraph (c) above instead of the payment mentioned in paragraph (a) above.".

(2) Without prejudice to section 175(4) below, the Secretary of State may by regulations make such transitional or consequential provision or savings as he considers necessary or expedient in connection with the coming into force of an order under subsection (1) above or the expiry or revocation of any such order and the consequent revival of section 158(2) above.

Miscellaneous

160 Relationship with benefits and other payments, etc

Schedule 12 to this Act has effect with respect to the relationship between statutory sick pay and certain benefits and payments.

161 Crown employment - Part XI

(1) Subject to subsection (2) below, the provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.

(2) The provisions of this Part of this Act do not apply in relation to persons serving as members of Her Majesty's forces, in their capacity as such.

(3) For the purposes of this section Her Majesty's forces shall be taken to consist of such establishments and organisations as may be prescribed, being establishments and organisations in which persons serve under the control of the Defence Council.

162 Special classes of persons

(1) The Secretary of State may make regulations modifying this Part of this Act in such manner as he thinks proper in their application to any person who is, has been or is to be—

(a) employed on board any ship, vessel, hovercraft or aircraft;

(b) outside Great Britain at any prescribed time or in any prescribed circumstances; or

(c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.

(2) Regulations under subsection (1) above may in particular provide—

(a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;

(b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;

(c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;

(d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

163 Interpretation of Part XI and supplementary provisions

(1) In this Part of this Act—

"contract of service" (except in paragraph (a) of the definition below of "employee") includes any arrangement providing for the terms of appointment of an employee;

"employee" means a person who is—

(a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and

(b) over the age of 16;

but subject to regulations, which may provide for cases where any such person is not to be treated as an employee for the purposes of this Part of this Act and for cases where any person who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

"employer", in relation to an employee and a contract of service of his, means a person who under section 6 above is, or but for subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract;

"period of entitlement" has the meaning given by section 153 above;

"period of incapacity for work" has the meaning given by section 152 above;

"period of interruption of employment" has the same meaning as it has in the provisions of this Act relating to unemployment benefit, sickness benefit and invalidity benefit by virtue of section 57(1)(d) above;

"prescribed" means prescribed by regulations;

"qualifying day" has the meaning given by section 154 above;

"week" means any period of 7 days.

(2) For the purposes of this Part of this Act an employee's normal weekly earnings shall, subject to subsection (4) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under his contract of service with the employer in question.

(3) For the purposes of subsection (2) above, the expressions "earnings" and "relevant period" shall have the meaning given to them by regulations.

(4) In such cases as may be prescribed an employee's normal weekly earnings shall be calculated in accordance with regulations.

(5) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or such of its provisions as may be prescribed—

(a) two or more employers are to be treated as one;

(b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

(6) Where, in consequence of the establishment of one or more National Health Service trusts under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, a person's contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—

(a) the conditions that must be satisfied if a person is to be entitled to make such an election;

(b) the manner in which, and the time within which, such an election is to be made;

(c) the persons to whom, and the manner in which, notice of such an election is to be given;

(d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;

(e) the time for which such an election is to have effect;

(f) which one of the person's employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract;

and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.

(7) Regulations may provide for periods of work which begin on one day and finish on the following day to be treated, for the purposes of this Part of this Act, as falling solely within one or other of those days.

PART XII

STATUTORY MATERNITY PAY

164 Statutory maternity pay - entitlement and liability to pay

(1) Where a woman who is or has been an employee satisfies the conditions set out in this section, she shall be entitled, in accordance with the following provisions of this Part of this Act, to payments to be known as "statutory maternity pay".

(2) The conditions mentioned in subsection (1) above are—

(a) that she has been in employed earner's employment with an employer for a continuous period of at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of confinement but has ceased to work for him, wholly or partly because of pregnancy or confinement;

(b) that her normal weekly earnings for the period of 8 weeks ending with the week immediately preceding the 14th week before the expected week of confinement are not less than the lower earnings limit in force under section 5(1)(a) above immediately before the commencement of the 14th week before the expected week of confinement; and

(c) that she has become pregnant and has reached, or been confined before reaching, the commencement of the 11th week before the expected week of confinement.

(3) The liability to make payments of statutory maternity pay to a woman is a liability of any person of whom she has been an employee as mentioned in subsection (2)(a) above.

(4) Except in such cases as may be prescribed, a woman shall be entitled to payments of statutory maternity pay only if—

(a) she gives the person who will be liable to pay it notice that she is going to be absent from work with him, wholly or partly because of pregnancy or confinement; and

(b) the notice is given at least 21 days before her absence from work is due to begin or, if that is not reasonably practicable, as soon as is reasonably practicable.

(5) The notice shall be in writing if the person who is liable to pay the woman statutory maternity pay so requests.

(6) Any agreement shall be void to the extent that it purports—

(a) to exclude, limit or otherwise modify any provision of this Part of this Act; or

(b) to require an employee or former employee to contribute (whether directly or indirectly) towards any costs incurred by her employer or former employer under this Part of this Act.

(7) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory maternity pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (6)(a) above if the employer—

(a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or

(b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

(8) Regulations shall make provision as to a former employer's liability to pay statutory maternity pay to a woman in any case where the former employer's contract of service with her has been brought to an end by the former employer solely, or mainly, for the purpose of avoiding liability for statutory maternity pay.

(9) The Secretary of State may by regulations—

(a) specify circumstances in which, notwithstanding subsections (1) to (8) above, there is to be no liability to pay statutory maternity pay in respect of a week;

(b) specify circumstances in which, notwithstanding subsections (1) to (8) above, the liability to make payments of statutory maternity pay is to be a liability of his;

(c) specify in what circumstances employment is to be treated as continuous for the purposes of this Part of this Act;

(d) provide that a woman is to be treated as being employed for a continuous period of at least 26 weeks where—

(i) she has been employed by the same employer for at least 26 weeks under two or more separate contracts of service; and

(ii) those contracts were not continuous;

(e) provide that any of the provisions specified in subsection (10) below shall have effect subject to prescribed modifications—

(i) where a woman has been dismissed from her employment;

(ii) where a woman is confined before the beginning of the 14th week before the expected week of confinement; and

(iii) in such other cases as may be prescribed;

(f) provide for amounts earned by a woman under separate contracts of service with the same employer to be aggregated for the purposes of this Part of this Act; and

(g) provide that—

(i) the amount of a woman's earnings for any period, or

(ii) the amount of her earnings to be treated as comprised in any payment made to her or for her benefit,

shall be calculated or estimated in such manner and on such basis as may be prescribed and that for that purpose payments of a particular class or description made or falling to be made to or by a woman shall, to such extent as may be prescribed, be disregarded or, as the case may be, be deducted from the amount of her earnings.

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

(a) subsection (2)(a) and (b) above; and

(b) section 166(2), (4) and (5) below.

165 The maternity pay period

(1) Statutory maternity pay shall be payable, subject to the provisions of this Part of this Act, in respect of each week during a prescribed period ("the maternity pay period") of a duration not exceeding 18 weeks.

(2) Subject to subsections (3) and (7) below, the first week of the maternity pay period shall be the 11th week before the expected week of confinement.

(3) Cases may be prescribed in which the first week of the period is to be a prescribed week later than the 11th week before the expected week of confinement, but not later than the 6th week before the expected week of confinement.

(4) Statutory maternity pay shall not be payable to a woman by a person in respect of any week during any part of which she works under a contract of service with him.

(5) It is immaterial for the purposes of subsection (4) above whether the work referred to in that subsection is work under a contract of service which existed immediately before the maternity pay period or a contract of service which did not so exist.

(6) Except in such cases as may be prescribed, statutory maternity pay shall not be payable to a woman in respect of any week after she has been confined and during any part of which she works for any employer who is not liable to pay her statutory maternity pay.

(7) Regulations may provide that this section shall have effect subject to prescribed modifications in relation—

(a) to cases in which a woman has been confined before the 11th week before the expected week of confinement; and

(b) to cases in which—

(i) a woman is confined during the period beginning with the 11th week, and ending with the 7th week, before the expected week of confinement; and

(ii) the maternity pay period has not then commenced for her.

166 Rates of payment

(1) There shall be two rates of statutory maternity pay, in this Act referred to as "the higher rate" and "the lower rate".

(2) The higher rate is a weekly rate equivalent to nine-tenths of a woman's normal weekly earnings for the period of 8 weeks immediately preceding the 14th week before the expected week of confinement or the weekly rate prescribed under subsection (3) below, whichever is the higher.

(3) The lower rate is such weekly rate as may be prescribed.

(4) Subject to the following provisions of this section, statutory maternity pay shall be payable at the higher rate to a woman who for a continuous period of at least 2 years ending with the week immediately preceding the 14th week before the expected week of confinement has been an employee in employed earner's employment of any person liable to pay it to her, and shall be so paid by any such person in respect of the first 6 weeks in respect of which it is payable.

(5) Statutory maternity pay shall not be payable at the higher rate to a woman whose relations with the person liable to pay it are or were governed by a contract of service which normally involves or involved employment for less than 16 hours weekly unless during a continuous period of at least 5 years ending with the week immediately preceding the 14th week before the expected week of confinement her contract of service normally involved employment for 8 hours or more weekly.

(6) The Secretary of State may by regulations make provision as to when a contract of service is to be treated for the purposes of subsection (5) above as normally involving or having involved employment—

(a) for less than 16 hours weekly; or

(b) for 8 hours or more weekly,

or as not normally involving or having involved such employment.

(7) Statutory maternity pay shall be payable to a woman at the lower rate if she is entitled to statutory maternity pay but is not entitled to payment at the higher rate.

(8) If a woman is entitled to statutory maternity pay at the higher rate, she shall be entitled to it at the lower rate in respect of the portion of the maternity pay period after the end of the 6 week period mentioned in subsection (4) above.

167 Recovery of amounts paid by way of statutory maternity pay

(1) Regulations shall make provision—

(a) entitling, except in prescribed circumstances, any person who has made a payment of statutory maternity pay to recover the amount so paid by making one or more deductions from his contributions payments;

(b) for the payment, in prescribed circumstances, by the Secretary of State or by the Commissioners of Inland Revenue on behalf of the Secretary of State, of sums to persons who are unable so to recover the whole, or any part, of any payments of statutory maternity pay which they have made;

(c) giving any person who has made a payment of statutory maternity pay a right, except in prescribed circumstances, to an amount, determined in such manner as may be prescribed—

(i) by reference to secondary Class 1 contributions paid in respect of statutory maternity pay; or

(ii) by reference to secondary Class 1 contributions paid in respect of statutory sick pay; or

(iii) by reference to the aggregate of secondary Class 1 contributions paid in respect of statutory maternity pay and secondary Class 1 contributions paid in respect of statutory sick pay;

(d) providing for the recovery, in prescribed circumstances, of the whole or any part of any such amount from contributions payments;

(e) for the payment in prescribed circumstances, by the Secretary of State or by the Commissioners of Inland Revenue on behalf of the Secretary of State, of the whole or any part of any such amount.

(2) In this section "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.

(3) Regulations under subsection (1) above may, in particular, provide for any deduction made in accordance with the regulations to be disregarded for prescribed purposes.

(4) Where, in accordance with any provision of regulations made under this section, an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions as having been—

(a) paid (on such date as may be determined in accordance with the regulations); and

(b) received by the Secretary of State,

towards discharging the employer's liability in respect of such contributions.

168 Relationship with benefits and other payments etc

Schedule 13 to this Act has effect with respect to the relationship between statutory maternity pay and certain benefits and payments.

169 Crown employment - Part XII

The provisions of this Part of this Act apply in relation to women employed by or under the Crown as they apply in relation to women employed otherwise than by or under the Crown.

170 Special classes of persons

(1) The Secretary of State may make regulations modifying this Part of this Act in such manner as he thinks proper in their application to any person who is, has been or is to be—

(a) employed on board any ship, vessel, hovercraft or aircraft;

(b) outside Great Britain at any prescribed time or in any prescribed circumstances; or

(c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.

(2) Regulations under subsection (1) above may in particular provide—

(a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;

(b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;

(c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;

(d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

171 Interpretation of Part XII and supplementary provisions

(1) In this Part of this Act—

"confinement" means—

(a) labour resulting in the issue of a living child, or

(b) labour after 28 weeks of pregnancy resulting in the issue of a child whether alive or dead,

and "confined" shall be construed accordingly; and where a woman's labour begun on one day results in the issue of a child on another day she shall be taken to be confined on the day of the issue of the child or, if labour results in the issue of twins or a greater number of children, she shall be taken to be confined on the day of the issue of the last of them;

"dismissed" is to be construed in accordance with section 55(2) to (7) of the Employment Protection (Consolidation) Act 1978;

"employee" means a woman who is—

(a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and

(b) over the age of 16;

but subject to regulations which may provide for cases where any such woman is not to be treated as an employee for the purposes of this Part of this Act and for cases where a woman who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

"employer", in relation to a woman who is an employee, means a person who under section 6 above is, or but for subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any of her earnings;

"maternity pay period" has the meaning assigned to it by section 165(1) above;

"modifications" includes additions, omissions and amendments, and related expressions shall be construed accordingly;

"prescribed" means specified in or determined in accordance with regulations;

"week" means a period of 7 days beginning with Sunday or such other period as may be prescribed in relation to any particular case or class of cases.

(2) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed—

(a) two or more employers are to be treated as one;

(b) two or more contracts of service in respect of which the same woman is an employee are to be treated as one.

(3) Where, in consequence of the establishment of one or more National Health Service trusts under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, a woman's contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, regulations may make provision enabling her to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—

(a) the conditions that must be satisfied if a woman is to be entitled to make such an election;

(b) the manner in which, and the time within which, such an election is to be made;

(c) the persons to whom, and the manner in which, notice of such an election is to be given;

(d) the information which a woman who makes such an election is to provide, and the persons to whom, and the time within which, she is to provide it;

(e) the time for which such an election is to have effect;

(f) which one of the woman's employers under the two or more contracts is to be regarded for the purposes of statutory maternity pay as her employer under the one contract;

and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.

(4) For the purposes of this Part of this Act a woman's normal weekly earnings shall, subject to subsection (6) below, be taken to be the average weekly earnings which in the relevant period have been paid to her or paid for her benefit under the contract of service with the employer in question.

(5) For the purposes of subsection (4) above "earnings" and "relevant period" shall have the meanings given to them by regulations.

(6) In such cases as may be prescribed a woman's normal weekly earnings shall be calculated in accordance with regulations.

PART XIII

GENERAL

Interpretation

172 Application of Act in relation to territorial waters

In this Act—

(a) any reference to Great Britain includes a reference to the territorial waters of the United Kingdom adjacent to Great Britain;

(b) any reference to the United Kingdom includes a reference to the territorial waters of the United Kingdom.

173 Age

For the purposes of this Act a person—

(a) is over or under a particular age if he has or, as the case may be, has not attained that age; and

(b) is between two particular ages if he has attained the first but not the second;

and in Scotland (as in England and Wales) the time at which a person attains a particular age expressed in years is the commencement of the relevant anniversary of the date of his birth.

174 References to Acts

In this Act—

"the 1975 Act" means the Social Security Act 1975;

"the 1986 Act" means the Social Security Act 1986;

"the Administration Act" means the Social Security Administration Act 1992;

"the Consequential Provisions Act" means the Social Security (Consequential Provisions) Act 1992;

"the Northern Ireland Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"the Old Cases Act" means the Industrial Injuries and Diseases (Old Cases) Act 1975; and

"the Pensions Act" means the Social Security Pensions Act 1975.

Subordinate legislation

175 Regulations, orders and schemes

(1) Subject to section 145(5) above, regulations and orders under this Act shall be made by the Secretary of State.

(2) Powers under this Act to make regulations, orders or schemes shall be exercisable by statutory instrument.

(3) Except in the case of an order under section 145(3) above and in so far as this Act otherwise provides, any power under this Act to make regulations or an order may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition;

and where such a power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes; and powers to make regulations or an order for the purposes of any one provision of this Act are without prejudice to powers to make regulations or an order for the purposes of any other provision.

(4) Without prejudice to any specific provision in this Act, any power conferred by this Act to make regulations or an order (other than the power conferred in section 145(3) above) includes power to make thereby such incidental, supplementary, consequential or transitional provision as appears to the Secretary of State to be expedient for the purposes of the regulations or order.

(5) Without prejudice to any specific provisions in this Act, a power conferred by any provision of this Act except—

(a) sections 30, 47(6), 57(9)(a) and 145(3) above and paragraph 3(9) of Schedule 7 to this Act;

(b) section 122(1) above in relation to the definition of "payments by way of occupational or personal pension"; and

(c) Part XI,

to make regulations or an order includes power to provide for a person to exercise a discretion in dealing with any matter.

(6) Any power conferred by this Act to make orders or regulations relating to housing benefit or community charge benefits shall include power to make different provisions for different areas.

(7) Any power of the Secretary of State under any provision of this Act, except the provisions mentioned in subsection (5)(a) and (b) above and Part IX, to make

any regulations or order, where the power is not expressed to be exercisable with the consent of the Treasury, shall if the Treasury so direct be exercisable only in conjunction with them.

(8) Any power under any of sections 116 to 120 above to modify provisions of this Act or the Administration Act extends also to modifying so much of any other provision of this Act or that Act as re-enacts provisions of the 1975 Act which replaced provisions of the National Insurance (Industrial Injuries) Acts 1965 to 1974.

(9) A power to make regulations under any of sections 116 to 120 above shall be exercisable in relation to any enactment passed after this Act which is directed to be construed as one with this Act; but this subsection applies only so far as a contrary intention is not expressed in the enactment so passed, and is without prejudice to the generality of any such direction.

(10) Any reference in this section or section 176 below to an order or regulations under this Act includes a reference to an order or regulations made under any provision of an enactment passed after this Act and directed to be construed as one with this Act; but this subsection applies only so far as a contrary intention is not expressed in the enactment so passed, and without prejudice to the generality of any such direction.

176 Parliamentary control

(1) Subject to the provisions of this section, a statutory instrument containing (whether alone or with other provisions)—

(a) regulations made by virtue of—

section 11(3);
section 18;
section 19(4) to (6);
section 28(3);
section 32(2);
section 59(2);
section 104(3);
section 117;
section 118;
section 145;
section 158(2) or (3);

(b) regulations prescribing payments for the purposes of the definition of "payments by way of occupational or personal pension" in section 122(1) above;

(c) an order under—

section 28(2);
section 57(8);
section 148(3)(b);
section 157(2);
section 159(1),

shall not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House.

(2) Subsection (1) above does not apply to a statutory instrument by reason only that it contains—

(a) regulations under section 117 which the instrument states are made for the purpose of making provision consequential on the making of an order under section 141, 143, 145, 146 or 162 of the Administration Act;

(b) regulations under powers conferred by any provision mentioned in paragraph (a) of that subsection (other than section 158(2) or (3)) which are to be made for the purpose of consolidating regulations to be revoked in the instrument;

(c) regulations which, in so far as they are made under powers conferred by any provision mentioned in paragraph (a) of that subsection (other than section 145 or 158(2) or (3)), only replace provisions of previous regulations with new provisions to the same effect.

(3) A statutory instrument—

(a) which contains (whether alone or with other provisions) any order, regulations or scheme made under this Act by the Secretary of State, other than an order under section 145(3) above; and

(b) which is not subject to any requirement that a draft of the instrument shall be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Short title, commencement and extent

177 Short title, commencement and extent

(1) This Act may be cited as the Social Security Contributions and Benefits Act 1992.

(2) This Act is to be read, where appropriate, with the Administration Act and the Consequential Provisions Act.

(3) The enactments consolidated by this Act are repealed, in consequence of the consolidation, by the Consequential Provisions Act.

(4) Except as provided in Schedule 4 to the Consequential Provisions Act, this Act shall come into force on 1st July 1992.

(5) The following provisions extend to Northern Ireland—

section 16 and Schedule 2;

section 116(2); and

this section.

(6) Except as provided by this section, this Act does not extend to Northern Ireland.