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## STATUTORY INSTRUMENTS

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# 1982 No. 1408

## The Social Security (General Benefit) Regulations 1982

### PART III

#### PROVISIONS RELATING TO INDUSTRIAL INJURIES BENEFIT ONLY

##### INDUSTRIAL DEATH BENEFIT

#### **Widow's pension**

**23.** Section 67 (death benefit for widows) shall have effect as if the reference in section 67(1) (conditions of entitlement to such benefit) to periodical payments of not less than the prescribed amount were a reference to periodical payments which would amount to an average weekly rate of not less than 25 pence.

#### **Additional entitlement to higher permanent rate of widow's pension under section 67**

**24.**—(1) The following provisions of this regulation shall apply in determining whether a woman is entitled to industrial death benefit at the higher permanent rate specified in paragraph 13(b) of Part V of Schedule 4 to the Act by virtue of satisfying the requirement in section 68(2)(a) (higher weekly rate of industrial death benefit payable to the widow of the deceased for a period for which she is entitled or treated as entitled to an allowance under section 70 (industrial death benefit for children)).

(2) The widow of the deceased shall be treated as entitled to an allowance under the said section 70 for any period during which she is residing with a person under the age of 19 in respect of whom the deceased—

- (a) at his death was entitled to child benefit; or
- (b) at the time of his death could have been entitled to child benefit or treated as having been so entitled had that person then been under the age of 16 or not absent from Great Britain; and,

where, at the expiration of such a period as aforesaid, the widow has attained the age of forty, she shall be treated as entitled to that allowance for any period thereafter.

#### **Widows to be treated as entitled to a pension for the purposes of right to a remarriage gratuity**

**25.** A widow who would be entitled to a pension under section 67 immediately before her remarriage but for the operation of the proviso to section 67(2) shall be treated as if she were entitled thereto for the purpose of a right to a gratuity under section 67 on her remarriage.

#### **Death benefit for relatives**

**26.** For the purposes of section 72 (death benefit for such relatives of a deceased insured person as may be prescribed) the relatives shall be the persons who bear any such relationship to the deceased as is specified in Schedule 5 to these regulations (otherwise than as a parent within the meaning of

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section 71 (death benefit for parents)), and shall include any person who would be such a relative if some person born illegitimate had been born legitimate.

### **Death benefit under section 72 for a posthumous son or daughter**

**27.** The provisions of section 72 shall apply to a posthumous son or daughter (whether legitimate or illegitimate) of a deceased man as if—

- (a) for the conditions specified in subsection (1) there were substituted the condition that the mother of such son or daughter was at the deceased's death being wholly or mainly maintained by the deceased, or would but for the relevant accident have been so maintained; and
- (b) the conditions specified in paragraphs (a) and (b) of subsection (2), and every reference to death benefit by way of a gratuity or an allowance and to the several conditions for the receipt of such benefit, were omitted; and
- (c) in subsection (7)—
  - (i) the references to a relative who was a child at the deceased's death were references to a relative who is a posthumous son or daughter of the deceased; and
  - (ii) for paragraph (b) there were substituted the following paragraph—

“(b) unless such relative is on ceasing to be a child permanently incapable of self-support by reason of some physical or mental infirmity which is congenital in origin.”.

### **Calculation of the amount of parent's or relative's gratuity**

**28.** For the purposes of section 74(1)(b) (amount of death benefit payable by way of a gratuity to a beneficiary as a parent or relative other than a beneficiary who, at the deceased's death, was, or would but for the relevant accident have been, wholly maintained by the deceased) the maximum amount of any such gratuity payable to a beneficiary as a parent within the meaning of section 71 or as a relative prescribed for the purposes of section 72 shall be determined in accordance with the provisions of Schedule 6 to these regulations.

### **Application of limits imposed on death gratuities by Schedule 9 to the Act**

**29.** In any case in which, but for the provisions of paragraph 6 of Schedule 9 to the Act (provisions limiting the amount of death benefit by way of gratuities payable in respect of any death), the aggregate amount of death benefit which would be payable to two or more persons by way of parents' or relatives' gratuities, as the case may be, would exceed the total amount respectively specified in relation to such gratuities in sub-paragraphs (1) and (2) of the said paragraph 6, being—

- (a) £78 in relation to parents' gratuities; and
- (b) £52 or £104 (as the case may be) in relation to relatives' gratuities;

the amount payable to any person by way of a parent's or a relative's gratuity (as the case may be) shall, subject to the provisions of the Act limiting the amount so payable to any one person, be determined in accordance with the provisions of Schedule 7 to these regulations.

### **Death within prescribed period**

**30.** For the purposes of Schedule 9 to the Act (provisions limiting the benefit payable in respect of any death), and by virtue of the provisions of paragraph 8 of that Schedule, a person entitled, or who may become entitled, to any benefit mentioned in that Schedule in respect of any death shall be disregarded if he dies within 6 months after the deceased's death without being awarded that benefit.

### **Priority of title to allowance or allowances under section 70**

**31.** Where in respect of the same death each of 2 or more persons satisfies the conditions of section 70 for the receipt of an allowance in respect of the same child, the person entitled to the allowance shall, as between such persons, be determined subject to the provisions of paragraph 1(c) of Schedule 9 to the Act in accordance with the order of priority specified in Schedule 8 to these regulations.

### **Circumstances in which higher rate of allowance under section 70(2) is payable to a person other than the widow of the deceased**

**32.—**(1) For the purposes of section 70(2) (industrial death benefit at higher rate) for any period during which the conditions of paragraph (2) of this regulation are satisfied, a person, not being the widow of the deceased person, who is entitled to an allowance in respect of a child under section 70(1) shall be entitled to that allowance at the higher rate referred to in the said section 70(2).

(2) The conditions referred to in paragraph (1) are—

- (a) that the widow of the deceased is entitled to benefit under sections 67 and 68 in respect of the death of the deceased person; and
- (b) that the said widow was, immediately before the period referred to in paragraph (1), entitled to the higher rate of allowance provided for in section 70(2) in respect of the child; and
- (c) that the said widow has not ceased to reside with the child.

### **Circumstances in which a deceased person who was not entitled to child benefit is to be treated as having been so entitled for the purposes of sections 70 or 73**

**33.—**(1) A deceased person shall be treated, for the purposes of sections 70 or 73 as having been entitled to child benefit in respect of a child at his death, or as the case may be, throughout the period between the date of the relevant accident and his death, if—

- (a) that child was a legitimate son or daughter of the deceased and either the deceased or his spouse was living with the child or was contributing towards the cost of providing for the child at the appropriate rate or the deceased would, but for the relevant injury or disease, have so contributed; or
- (b) the child was an illegitimate son or daughter of the deceased and the deceased was either living with the child or was contributing towards the cost of providing for the child at the appropriate rate or would but for the relevant injury or disease have so contributed; or
- (c) the child, not being a son or daughter of the deceased, was wholly or mainly maintained by the deceased or would, but for the relevant injury or disease, have been so maintained; or
- (d) the child, not being a son or daughter of the deceased, was living at the time of the deceased's death with the deceased's spouse or was being maintained by that spouse at the appropriate rate and he or she was a child who at the time of the death of a person to whom the deceased's spouse had previously been married (and whose marriage to the deceased's spouse had been terminated by death) had been living with or maintained at the appropriate rate by that person; or
- (e) the child was a posthumous legitimate child of the deceased.

(2) The expression 'appropriate rate' in paragraph (1) means a weekly rate not less than the rate which would have been payable as child benefit in respect of an only, elder or eldest child.

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### **Circumstances in which a deceased person is to be treated as not having been entitled to child benefit for the purposes of sections 68 or 70**

**34.** Notwithstanding that he was at his death entitled to child benefit in respect of a child, a deceased person shall be treated, for the purposes of section 68 (rate of widow's industrial death benefit) or section 70 (industrial death benefit for children) as having been not so entitled if—

- (a) that child was not his son or daughter; and
- (b) neither of the conditions set out in sub-paragraph (c) or (d) of the last foregoing regulation was fulfilled in relation to him; and
- (c) the child was not a step-child of the deceased.

### **Circumstances in which a person is to be treated as if he were entitled to child benefit for the purposes of section 70**

**35.—(1)** Any person to whom section 70 (industrial death benefit for children) applies shall, for the purposes of the said section 70, be treated as if he were entitled to child benefit in respect of a child if the period in question is one throughout which—

- (a) that person, or his spouse with whom he is residing, would have been entitled to child benefit in respect of that child had the child been born at the end of the week immediately preceding the week in which birth occurred; or
- (b) that person satisfies the conditions for entitlement to child benefit with the exception only of a condition in section 6(2) or section 13(3)(b) of the Child Benefit Act (period for which claim to child benefit may be effective and condition relating to presence in Great Britain respectively) or regulations<sup>(1)</sup> made under the latter section.

(2) For the purpose of determining whether a person is entitled to industrial death benefit for a child under section 70, where in respect of a child the said benefit is payable to a person for a continuous period of 7 days and would have been payable to that person for the immediately preceding 7 days had he been entitled to child benefit in respect of that child for an earlier week, he shall be treated as if he were entitled to child benefit for that earlier week.

(3) The expression 'earlier week' in paragraph (2) means the week immediately preceding the first week for which the person referred to in that paragraph was entitled to child benefit in respect of the child referred to in that paragraph.

(4) For the purposes of paragraph (1) the word 'week' has the meaning assigned to it by section 24(1) of the Child Benefit Act.

### **Circumstances in which a person entitled to child benefit is to be treated as if he were not so entitled**

**36.** For the purposes of section 70 (industrial death benefit for children) a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for any day following the day on which that child died.

### **Provisions as to maintenance for purposes of death benefit**

**37.—(1)** For the purposes of the provisions of Chapters IV and V of Part II of the Act which relate to death benefit, a deceased person shall not, subject to the provisions of the next succeeding paragraph, be deemed to have been, at his death, or for any period before his death—

- (a) wholly maintaining another person unless he normally contributed the whole of the actual cost of that other person's maintenance;

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(1) See S.I. 1976/963 regulation 5, as amended by S.I. 1976/1758.

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- (b) mainly maintaining another person unless he normally contributed more than half the actual cost of that other person's maintenance;
  - (c) to a substantial extent maintaining another person unless he normally contributed not less than an average weekly amount of 25 pence towards the cost of that person's maintenance.
- (2) In the case of a posthumous son or daughter of the deceased, such son or daughter shall be deemed to have been wholly maintained by the deceased at his death if the condition specified in regulation 27(a) is satisfied in his case.
- (3) Where—
- (a) a person was partly maintained by each of two or more employed earners of whom the first-mentioned person was a parent within the meaning of section 71 or a relative prescribed for the purposes of section 72, as the case may be; and
  - (b) the employed earners have died as the results of accidents arising out of and in the course of their employed earner's employment;

the parent or relative may by notice in writing designate one of those employed earners as shall thereafter be treated as having received from the person so designated contributions to his maintenance equal to the aggregate amount which the said employed earners were together contributing before the accidents happened, and as having received nothing from the others.

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