
STATUTORY INSTRUMENTS

1995 No. 482

SOCIAL SECURITY

The Disability Working Allowance and Income Support (General) Amendment Regulations 1995

Made - - - - 28th February 1995

Laid before Parliament 7th March 1995

Coming into force—

for the purposes of regulations 1, 3 and 4, on 11th April 1995;

for the purposes of regulations 2 and 5 to 20 on 13th April 1995

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 124(1)(d)(i) and (3), 129(2B)(b) and (c)^{M1} and (8), 135(1), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992^{M2}, section 12(1) of the Social Security (Incapacity for Work) Act 1994^{M3} and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of regulations 1, 3, 4, 6, 8, 9, 15, 17 and 19(5) should not be referred to it^{M4}, by this instrument which is otherwise made before the end of the period of 6 months beginning with the coming into force of the enactments under which it is made^{M5}, hereby makes the following Regulations:

Marginal Citations

- M1** Subsection (2B) is inserted by section 10(3) of the [Social Security \(Incapacity for Work Act\) 1994 \(c.18\)](#).
- M2** [1992 c.4; section 137\(1\)](#) is an interpretation provision and is cited because of the meaning assigned to the word "prescribed".
- M3** [1994 c.18](#).
- M4** [See section 173\(1\)\(b\) of the Social Security Administration Act 1992 \(c.5\)](#).
- M5** [See section 173\(5\)\(a\) of the Social Security Administration Act 1992 \(c.5\)](#).

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Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Disability Working Allowance and Income Support (General) Amendment Regulations 1995 and shall come into force—

- (a) for the purposes of this regulation and regulations 3 and 4, on 11th April 1995;
- (b) for the purposes of regulations 2 and 5 to 20, on 13th April 1995.

(2) Regulations 3 and 4 shall have effect in relation to any particular claimant—

- (a) except where sub-paragraph (b) applies, on 11th April 1995;
- (b) where a claimant has an award of disability working allowance which is current on 10th April 1995, on the day following the expiration of that award.

(3) Regulations 2 and 18 shall have effect in relation to any particular claimant—

- (a) except where sub-paragraph (b) applies, on 13th April 1995;
- (b) where a claimant has an award of disability working allowance which is current on 12th April 1995, on the day following the expiration of that award.

(4) Regulations 5 to 17, 19 and 20 of these Regulations shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 13th April 1995 which applies in his case.

(5) In these Regulations—

“adjudication officer” means an adjudication officer appointed under section 38 of the Social Security Administration Act 1992 ^{M6};

“benefit week” has the same meaning as in the Income Support Regulations;

“claimant” means a claimant for disability working allowance or, as the case may be, for income support;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 ^{M7};

“the Disability Working Allowance Regulations” means the Disability Working Allowance (General) Regulations 1991 ^{M8};

“the Income Support Regulations” means the Income Support (General) Regulations 1987 ^{M9}.

Marginal Citations

M6 1992 c.5.

M7 1992 c.4.

M8 S.I. 1991/2887.

M9 S.I. 1987/1967.

Insertion of regulations 7A and 7B in the Disability Working Allowance Regulations

2. After regulation 7 of the Disability Working Allowance Regulations (income related benefits) there shall be inserted the following regulations—

“ Definition of “training for work”

7A. For the purposes of section 129(2A) of the Contributions and Benefits Act ^{M10} (which provides that a period of training for work may count towards the period of qualification for disability working allowance) “training for work” also includes any

training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills.

Days to be disregarded

7B.—(1) For the purposes of section 129(2B)(c) of the Contributions and Benefits Act (days to be disregarded in determining a period of training for work) there shall be disregarded any day on which the claimant was—

- (a) on holiday;
- (b) attending court as a justice of the peace, a party to any proceedings, a witness or a juror;
- (c) suffering from some disease or bodily or mental disablement as a result of which he was unable to attend training for work, or his attendance would have put at risk the health of other persons;
- (d) unable to participate in training for work because—
 - (i) he was looking after a child because the person who usually looked after that child was unable to do so;
 - (ii) he was looking after a member of his family who was ill;
 - (iii) he was required to deal with some domestic emergency; or
 - (iv) he was arranging or attending the funeral of his partner or a relative; or
- (e) authorised by the training provider to be absent from training for work.

(2) For the purposes of paragraph (1)(d)(iv), “relative” means close relative, grandparent, grandchild, uncle, aunt, nephew or niece..”

Marginal Citations

M10 Subsections (2A) and (2B) are inserted by section 10(3) of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#).

Amendment of regulation 51 of the Disability Working Allowance Regulations

3.—(1) Regulation 51 of the Disability Working Allowance Regulations (determination of appropriate maximum disability working allowance) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1) after sub-paragraph (c) there shall be added the following sub-paragraph—

“(d) in respect of any child or young person to whom paragraph (1A) applies, the allowance specified in paragraph 5 of column (2) of Schedule 5..”

(3) After paragraph (1) there shall be inserted the following paragraphs—

“(1A) This paragraph applies to a child or young person for whom the claimant or his partner is responsible and who is a member of the claimant’s household, and—

- (a) in respect of whom disability living allowance is payable, or has ceased to be payable solely because he is a patient; or
- (b) who is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 ^{M11} (welfare services) or, in Scotland, has been certified as blind and in consequence he is registered as blind in a register maintained by or on behalf of a regional or islands council; or

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(c) who ceased to be registered as blind in such a register within the 28 weeks immediately preceding the date of claim.

(1B) For the purposes of paragraph (1A)(a), “patient” has the same meaning it has in regulation 10..”

Marginal Citations

M11 1948 c.29; section 29 was amended by the [National Assistance \(Amendment\) Act 1959 \(c.30\)](#), [section 1\(2\)](#); the [Mental Health \(Scotland\) Act 1960 \(c.61\)](#), [sections 113\(1\)](#) and 114 and Schedule 4; the [Social Work \(Scotland\) Act 1968 \(c.49\)](#), [section 95\(2\)](#) and Schedule 9 Part I; the [Local Government Act 1972 \(c.70\)](#), sections 195(6), 272(1), [Schedule 23 paragraph 2](#) and Schedule 30; the [Employment and Training Act 1973 \(c.50\)](#), [section 14\(1\)](#) and Schedule 3 paragraph 3; the [National Health Service Act 1977 \(c.49\)](#), [section 129](#) and Schedule 15 paragraph 6; the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [section 30](#) and Schedule 10 Part I; the [Children Act 1989 \(c.41\)](#) section 108(5) and Schedule 13 paragraph 11(2); and the [National Health Service and Community Care Act 1990 \(c.19\)](#), [section 44\(7\)](#).

Amendment of Schedule 5 to the Disability Working Allowance Regulations

4. In Schedule 5 to the Disability Working Allowance Regulations (determination of appropriate maximum disability working allowance)—

(a) in column (1) after paragraph 4 there shall be added the following paragraph—

“**5.** Child or young person to whom regulation 51(1A) applies (disabled child or young person).; and”

(b) in column (2) after paragraph 4 there shall be added the following paragraph—

“**5.** £19.80.”

Amendment of regulation 4 of the Income Support Regulations

5. In regulation 4 of the Income Support Regulations (temporary absence from Great Britain) for head (v) of paragraph (2)(c) ^{M12} there shall be substituted the following head—

“(v) on the day on which the absence began he had satisfied the provisions of paragraph 5 of Schedule 1 (persons incapable of work) for a continuous period of not less than—

(aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act ^{M13}, or who is entitled to the highest rate of the care component of disability living allowance; or

(bb) 364 days in any other case,

and for this purpose any two or more separate periods separated by a break of not more than 56 days shall be treated as one continuous period..”

Marginal Citations

M12 Head (v) was added by [S.I. 1988/663](#).

M13 Section 30B is inserted by section 2(1) of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#).

Amendment of regulation 8 of the Income Support Regulations

^{F1}6.

F1 Reg. 6 revoked (7.10.1996, in accordance with reg. 1(2)) by [The Income Support \(General\) \(Jobseeker's Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#), **reg. 1(1)**, (2), 28, Sch. 3 (with reg. 27)

Amendment of regulation 9 of the Income Support Regulations

^{F2}7.

F2 Reg. 7 revoked (7.10.1996, in accordance with reg. 1(2)) by [The Income Support \(General\) \(Jobseeker's Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#), **reg. 1(1)**, (2), 28, Sch. 3 (with reg. 27)

Amendment of regulation 11 of the Income Support Regulations

^{F3}8.

F3 Reg. 8 revoked (7.10.1996, in accordance with reg. 1(2)) by [The Income Support \(General\) \(Jobseeker's Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#), **reg. 1(1)**, (2), 28, Sch. 3 (with reg. 27)

Amendment of regulation 22 of the Income Support Regulations

^{F4}9.

F4 Reg. 9 revoked (7.10.1996, in accordance with reg. 1(2)) by [The Income Support \(General\) \(Jobseeker's Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#), **reg. 1(1)**, (2), 28, Sch. 3 (with reg. 27)

Amendment of regulation 31 of the Income Support Regulations

10. In regulation 31(2) of the Income Support Regulations (date on which income is treated as paid) ^{M14} for the words "sickness or invalidity benefit" there shall be substituted the words "short-term or long-term incapacity benefit", and the words "under the Social Security Act" shall be omitted.

Marginal Citations

M14 Relevant amending instruments are [S.I. 1988/663](#) and 1445.

Amendment of regulation 32 of the Income Support Regulations

11. In regulation 32(4)(a) of the Income Support Regulations (calculation of weekly amount of income) ^{M15} for the words "sickness or invalidity benefit" there shall be substituted the words "short-term or long-term incapacity benefit", and the words "under the Social Security Act" shall be omitted.

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Marginal Citations
M15 Relevant amending instruments are [S.I. 1988/663](#) and 1445.

Amendment of regulation 73 of the Income Support Regulations

12. In regulation 73(3) of the Income Support Regulations (amount of income support payable for part-weeks)^{M16} for the words “sickness or invalidity benefit” there shall be substituted the words “short-term or long-term incapacity benefit”.

Marginal Citations
M16 Regulations 73 to 77 were added by [S.I. 1988/663](#); relevant amending instrument is [S.I. 1988/1445](#).

Amendment of regulation 75 of the Income Support Regulations

13. In paragraphs (b), (e) and (f) of regulation 75 of the Income Support Regulations (modifications in the calculation of income)^{M17} for the words “sickness or invalidity benefit” in each place where they occur there shall be substituted the words “short-term or long-term incapacity benefit”, and the words “under the Social Security Act” in each place where they occur shall be omitted.

Marginal Citations
M17 Relevant amending instrument is [S.I. 1988/1445](#).

Amendment of paragraph 5 of Schedule 1 to the Income Support Regulations

^{F5}14.

F5 Reg. 14 revoked (7.10.1996, in accordance with reg. 1(2)) by [The Income Support \(General\) \(Jobseeker’s Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#), **reg. 1(1)**, (2), 28, Sch. 3 (with reg. 27)

Amendment of paragraph 7 of Schedule 1 to the Income Support Regulations

^{F6}15.

F6 Reg. 14 revoked (7.10.1996, in accordance with reg. 1(2)) by [The Income Support \(General\) \(Jobseeker’s Allowance Consequential Amendments\) Regulations 1996 \(S.I. 1996/206\)](#), **reg. 1(1)**, (2), 28, Sch. 3 (with reg. 27)

Amendment of Schedule 2 to the Income Support Regulations

16.—(1) Paragraph 12 of Schedule 2 to the Income Support Regulations (additional condition for the higher pensioner and disability premiums)^{M18} shall be amended in accordance with the following provisions of this regulation and regulation 17.

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(2) In sub-paragraph (1)(a)(i) and (c)(i) for the words “invalidity pension” in each place where they occur there shall be substituted the words “long-term incapacity benefit”.

(3) After sub-paragraph (5) ^{M19} there shall be added the following sub-paragraph—

“(6) For the purposes of sub-paragraph (1)(a)(i) and (c)(i), a reference to a person in receipt of long-term incapacity benefit includes a person in receipt of short-term incapacity benefit at a rate equal to the long-term rate by virtue of section 30B(4)(a) of the Contributions and Benefits Act (short-term incapacity benefit for a person who is terminally ill), or who would be or would have been in receipt of short-term incapacity benefit at such a rate but for the fact that the rate of short-term incapacity benefit already payable to him is or was equal to or greater than the long-term rate..”

Marginal Citations

M18 Relevant amending instruments are [S.I. 1988/663](#) and 2022, 1991/2742 and 1994/2139.

M19 Sub-paragraph (5) was added by [S.I. 1988/2022](#).

Further amendment of paragraph 12 of Schedule 2 to the Income Support Regulations

17. Paragraph 12 of Schedule 2 to the Income Support Regulations shall also be amended by—

(a) substituting for head (b) of sub-paragraph (1) the following head—

“(b) the claimant—

(i) is entitled to statutory sick pay or is incapable of work in accordance with the provisions of Part XIIA of the Contributions and Benefits Act and the regulations made thereunder (incapacity for work) ^{M20}, and

(ii) has been so entitled or so incapable for a continuous period of not less than—

(aa) 196 days in the case of a claimant who is terminally ill within the meaning of section 30B(4) of the Contributions and Benefits Act ^{M21}; or

(bb) 364 days in any other case;

and for these purposes any two or more periods of entitlement or incapacity separated by a break of not more than 56 days shall be treated as one continuous period; or; and”

(b) omitting sub-paragraph (3).

Marginal Citations

M20 Part XIIA is inserted by sections 5 and 6(1) of the Social Security (Incapacity for Work) Act 1994.

M21 Section 30B is inserted by section 2(1) of the Social Security (Incapacity for Work) Act 1994.

Transitional provisions with respect to the Disability Working Allowance Regulations

18.—(1) Where invalidity pension was payable to the claimant for one or more of the 56 days immediately preceding the date on which the claim for disability working allowance was made or was treated as made, the payments shall be treated for the purposes of section 129(2)(a)(i) ^{M22} of the Contributions and Benefits Act as payments of long-term incapacity benefit.

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(2) Any day on which a claimant was entitled to invalidity pension under sections 33, 40 or 41 of the Contributions and Benefits Act as in force on 12th April 1995 shall be treated for the purposes of section 129(2A)(b)^{M23} of the Contributions and Benefits Act as a day on which he was entitled to long-term incapacity benefit.

Marginal Citations

M22 Section 129(2)(a)(i) of the Social Security Contributions and Benefits Act 1992 is amended by the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#), [Schedule 1 paragraph 32](#).

M23 Subsection (2A) is inserted by section 10(3) of the [Social Security \(Incapacity for Work\) Act 1994 \(c.18\)](#).

Transitional provisions with respect to the Income Support Regulations

19.—(1) Sickness benefit shall be a qualifying benefit for the purposes of regulation 9(2)(a)(i) of the Income Support Regulations, and for this purpose “sickness benefit” means sickness benefit under section 31 of the Social Security Contributions and Benefits Act 1992 as in force on 12th April 1995.

(2) Where the disability premium was applicable to a claimant on 12th April 1995 by virtue of paragraph 12(1)(b) of Schedule 2 to the Income Support Regulations as in force on that date, the disability premium shall continue to be applicable to that claimant for so long as paragraph 12(1)(b)(i) of that Schedule applies to him.

(3) Paragraph (2) shall not apply to a claimant to whom paragraph 12(1)(b)(i) of Schedule 2 to the Income Support Regulations has ceased to apply for a period of more than 56 continuous days.

(4) Where on 12th April 1995 paragraph 5 of Schedule 1 to the Income Support Regulations (persons incapable of work) as in force on that date applied to a claimant, but the disability premium was not applicable to him, that claimant shall be treated for the purposes of paragraph 12(1) of Schedule 2 to the Income Support Regulations as if, throughout the period that paragraph 5 of Schedule 1 had applied to him, paragraph 12(1)(b)(i) of Schedule 2 applied to him.

(5) [^{F7}Where it is determined on or after 13th April 1995] that a claimant fails to satisfy the incapacity for work test, in accordance with regulations made under section 171C of the Contributions and Benefits Act ^{M24} (the all work test), on its first application to the claimant concerned, and the claimant, immediately prior to [^{F8}13th April 1995], was either—

- (a) incapable of work and had been so for a continuous period of 28 weeks in circumstances to which paragraph 5 of Schedule 1 of the Income Support Regulations refers (persons incapable of work not required to be available for employment); or
- (b) in receipt of invalidity benefit or severe disablement allowance,

then, in a case in which either regulations 8(2A) or 11(2A) of the Income Support Regulations applies (persons not required to be available for employment and registration for employment), notwithstanding regulation 22(1A) and (5A) of the Income Support Regulations (reductions in applicable amounts), the amount of any income support to which the claimant is entitled shall be calculated in accordance with regulation 17 of those Regulations.

[^{F9}(6) Where—

- (a) a determination of the amount of a person’s benefit has been made in a case to which paragraph (5) of this regulation, as originally made, had effect; and
- (b) an appeal to which regulation 8(2A) or 11(2A) of the Income Support Regulations (persons not required to be available or registered for employment) refers, remains outstanding on 2nd October 1995;

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the amount of any benefit to which he is entitled shall continue to be determined under paragraph (5), as originally made, until the determination of the appeal.]

- F7** Words in [reg. 19\(2\)](#) substituted (6.9.1999) by [The Social Security Act 1998 \(Commencement No. 9, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2422\)](#), [Sch. 11](#)
- F8** Words in [reg. 19\(5\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), [regs. 1\(1\)\(a\)](#), [8\(2\)\(a\)](#)
- F9** [Reg. 19\(6\)](#) added (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Income-related Benefits Schemes and Social Security \(Claims and Payments\) \(Miscellaneous Amendments\) Regulations 1995 \(S.I. 1995/2303\)](#), [regs. 1\(1\)\(a\)](#), [8\(2\)\(b\)](#)

Marginal Citations

- M24** Section 171C was inserted in the Contributions and Benefits Act by section 5 of the Social Security (Incapacity for Work) Act 1994 (c.18.).

Savings with respect to the Income Support Regulations

20.—(1) Where a person was not required to be available for employment on 12th April 1995 by virtue of regulation 8(2) of the Income Support Regulations as in force on that date, that regulation shall continue to apply in that person's case as if regulation 6 of these Regulations had not been made.

(2) Where a claimant was not required to register for employment on 12th April 1995 by virtue of regulation 11(2) of the Income Support Regulations as in force on that date, that regulation shall continue to apply in that claimant's case as if regulation 8 of these Regulations had not been made.

(3) Where a claimant appeals against a decision of an adjudication officer that he is not incapable of work, and that decision was made on or before 12th April 1995, regulations 8 and 11 of the Income Support Regulations shall apply in that claimant's case as if these Regulations had not been made.

(4) Where the higher pensioner premium was applicable to a claimant on, or at any time during the 8 weeks immediately preceding, 12th April 1995 by virtue of paragraph 12(1)(c)(i) of Schedule 2 to the Income Support Regulations as in force on that date, paragraph 12 of that Schedule shall continue to apply in that claimant's case as if regulation 16 of these Regulations had not been made.

Signed by authority of the Secretary of State for Social Security.

Roger Evans
Parliamentary Under-Secretary of State,
Department of Social Security

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Disability Working Allowance (General) Regulations 1991 (S.I. 1991/2887) and the Income Support (General) Regulations 1987 (S.I.1987/1967) and are in part consequential on the coming into force of the Social Security (Incapacity for Work) Act 1994, which replaces sickness and invalidity benefits with incapacity benefit, and provides for a new test of incapacity for work.

The Disability Working Allowance (General) Regulations are amended to—
further define training for work and to list days which are to be disregarded in establishing whether a person was engaged in a period of training for work (regulation 2);
provide an additional allowance in respect of a disabled child in the maximum disability working allowance (regulations 3 and 4); and
make transitional arrangements consequential on the abolition of invalidity pension and the introduction of incapacity benefit (regulation 18).

The Income Support (General) Regulations are amended to—

0 provide that a claimant may be entitled to income support whilst absent from Great Britain if he had been incapable of work for 364 days before the absence began, or 196 days in the case of a claimant who is terminally ill or who is entitled to the highest rate of the care component of disability living allowance, and they provide that this period of incapacity may be broken by gaps of up to 56 days (regulation 5);

0 provide that a claimant who has failed the incapacity for work test and is appealing against that decision is not required to be available for work or to register for employment, but that a claimant in these circumstances who has failed the “all-work” test will have the personal allowance element of his applicable amount reduced by 20 per cent (regulations 6, 8 and 9);

0 provide that a person is exempt from the requirement to be available for work where he is incapable of work or where he fails the incapacity test solely on grounds of misconduct or similar matters (regulation 14);

0 provide that a student may be entitled to income support if his applicable amount includes the disability premium or severe disability premium, or if he has been incapable of work for 196 days, and they provide that this period of incapacity may be broken by gaps of up to 56 days (regulation 15);

0 extend the qualifying period for the disability premium on grounds of incapacity for work from 28 weeks to 364 days, except for claimants who are terminally ill, and they provide that the qualifying period may be broken by gaps of up to 56 days; they also permit the disability premium to be excluded from the applicable amount in respect of any period during which a claimant fails the incapacity test on grounds of misconduct or similar matters (regulations 16 and 17); and

0 make additional minor consequential and transitional amendments, and savings (regulations 7, 10 to 13, 19 and 20).

Regulations 2 and 18 of these Regulations are made under section 129(2B) of the Social Security Contributions and Benefits Act 1992 and section 12(1) of the Social Security (Incapacity for Work) Act 1994 respectively and regulations 5, 7, 10 to 14, 16, 19(1) to (4) and 20 are made under section 12 of the Social Security (Incapacity for Work) Act 1994, and are made before the end of the period of six months beginning with the coming into force of that provision. Accordingly they are exempted by section 173(5)(a) of the Social Security Administration Act 1992 from reference to the Social Security Advisory Committee and have not been so referred.

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An assessment of the cost to business of applying these Regulations in so far as they relate to Disability Working Allowance has been placed in the Libraries of both Houses of Parliament. Copies can be obtained by post from: DSS Deregulation Unit, The Adelphi, John Adam Street, London WC2N 6HT.

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Changes and effects yet to be applied to :

- reg. 6 revoked by [S.I. 1996/206 reg. 28Sch. 3](#)
- reg. 7 revoked by [S.I. 1996/206 reg. 28Sch. 3](#)
- reg. 8 revoked by [S.I. 1996/206 reg. 28Sch. 3](#)
- reg. 9 revoked by [S.I. 1996/206 reg. 28Sch. 3](#)
- reg. 14 revoked by [S.I. 1996/206 reg. 28Sch. 3](#)
- reg. 15 revoked by [S.I. 1996/206 reg. 28Sch. 3](#)