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STATUTORY INSTRUMENTS

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**2006 No. 223**

**The Child Benefit (General) Regulations 2006**

**PART 4**

Exclusions and priority

**Child benefit not payable: qualifying young person living with another as member of couple**

**12.**—(1) Child benefit is not payable to any person (“the claimant”) in respect of a qualifying young person for any week in which the qualifying young person is living with another—

- (a) as if they were spouses, or
- (b) as a member of a cohabiting same-sex couple,

unless paragraph (2) applies.

The person with whom the qualifying young person is living is referred to in paragraph (2) as “the cohabitee”.

(2) This paragraph applies if—

- (a) the cohabitee is receiving relevant education or approved training; and
- (b) the claimant is not the cohabitee.

**Qualifying young person in a relevant relationship**

**13.**—(1) A person (“the claimant”) shall be entitled to child benefit in respect of a qualifying young person in a relevant relationship by virtue of paragraph 3 of Schedule 9 to SSCBA <sup>M1</sup> or paragraph 3 of Schedule 9 to SSCB(NI)A (entitlement: children or qualifying young persons who are married or civil partners) only if—

- (a) the claimant is not the spouse or civil partner of that qualifying young person; and
- (b) the qualifying young person is not residing with his spouse or civil partner, or, if he is, the spouse or civil partner is receiving relevant education or approved training.

(2) In paragraph (1) “relevant relationship” means a marriage or a civil partnership.

**Marginal Citations**

**M1** [Paragraph 3](#) has been amended by paragraph 17 of Part 1 of Schedule 1 to the Child Benefit Act

**Election under Schedule 10 to SSCBA and Schedule 10 to SSCB(NI)A**

**14.**—(1) An election under Schedule 10 to SSCBA and Schedule 10 to SSCB(NI)A (any election under that Schedule to be made in the prescribed manner) shall be made by giving notice in writing to the Commissioners at an appropriate office on a form approved by the Commissioners or in such

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other manner being in writing as the Commissioners may accept as sufficient in the circumstances of any particular case or class of cases.

(2) An election is not effective to confer entitlement to child benefit in respect of a child or qualifying young person for any week earlier than the week following that in which it is made if the earlier week is one in respect of which child benefit has been paid in respect of that child or qualifying young person and has not been required to be repaid or voluntarily repaid or recovered.

(3) An election may be superseded by a subsequent election made in accordance with this regulation.

### **Modification of priority between persons entitled to child benefit**

**15.**—(1) If a person entitled to child benefit in respect of a child or qualifying young person in priority to another person gives the Commissioners notice in writing at an appropriate office that he does not wish to have such priority, the provisions of Schedule 10 to SSCBA and Schedule 10 to SSCB(NI)A (priority between persons entitled) have effect with the modification that that person does not have such priority.

(2) A notice under paragraph (1)—

- (a) is not effective in relation to any week, before the date on which the election becomes effective, for which child benefit in respect of that child or qualifying young person is paid to the person who made the election or to another person on his behalf; and
- (b) ceases to have effect if the person who gave it makes a further claim to child benefit in respect of that child or qualifying young person.

### **Child or qualifying young persons in detention, care etc.**

**16.**—(1) Paragraph 1 of Schedule 9 to SSCBA and paragraph 1 of Schedule 9 to SSCB(NI)A do not apply to disentitle a person to child benefit in respect of a child or qualifying young person for any week—

- (a) unless that week is the 9th or a subsequent week in a series of consecutive weeks in which either of those paragraphs has applied to that child or qualifying young person; or
- (b) notwithstanding paragraph (a), if—
  - (i) that week is one in which falls the first day in a period of seven consecutive days in which the child or qualifying young person lives with that person for at least a part of the first day and throughout the following six days;
  - (ii) that week is one in which falls the first day in a period of seven consecutive days throughout which the child or qualifying young person lives with that person, being a period of seven consecutive days which immediately follows either a similar period of seven consecutive days or the period of seven consecutive days referred to in head (i) above;
  - (iii) that week is one in which falls the day, or the first day in a period of less than seven consecutive days, throughout which the child or qualifying young person lives with that person, being a day or days which immediately follow the period of seven consecutive days referred to in head (i) above or a period of seven consecutive days referred to in head (ii), or
  - (iv) as at that week that person establishes that he is a person with whom the child or qualifying young person ordinarily lives throughout at least one day in each week.

This paragraph is subject to the following qualifications.

(2) For the purposes of paragraph (1), a person shall not be regarded as having a child or qualifying young person living with him throughout any day or week unless he actually has that child or qualifying young person living with him throughout that day or week.

(3) Paragraph (1) does not apply for any day in any week to a person (“the carer”) with whom a child or qualifying young person—

(a) is placed by a local authority in Great Britain in the carer's home in accordance with the provisions of—

(i) the Arrangements for Placements of Children (General) Regulations 1991 <sup>M2</sup>,

(ii) the Arrangements to Look After Children (Scotland) Regulations 1996 <sup>M3</sup>,

(iii) the Foster Placement (Children) Regulations 1991 <sup>M4</sup>, or

(iv) the Fostering of Children (Scotland) Regulations 1996 <sup>M5</sup>,

and that authority is making a payment, in respect of either the child or qualifying young person's accommodation or maintenance or both, under section 23 of the 1989 Act or under section 26 of the 1995 Act to the carer;

(b) is placed by an authority in Northern Ireland, in the carer's home in accordance with the provisions of the Foster Placement (Children) Regulations (Northern Ireland) 1996 <sup>M6</sup> where the authority has a duty to provide accommodation and maintenance for the child under the Arrangements for Placement of Children (General) Regulations (Northern Ireland) 1996 <sup>M7</sup>.

(4) Paragraph (1) does not apply in respect of any child or qualifying young person who—

(a) is being looked after by a local authority in Great Britain or by an authority in Northern Ireland, and

(b) has been placed for adoption by that authority in the home of a person proposing to adopt him,

provided that the local authority or authority is making a payment in respect of either the child or qualifying young person's accommodation or maintenance or both, under section 23 of the 1989 Act, under section 26 of the 1995 Act or under Article 27 of the 1995 Order.

(5) For the purposes of paragraph (4), placing for adoption means placing for adoption in accordance with—

(a) the Adoption Agencies Regulations 1983 <sup>M8</sup>,

(b) the Adoption Agencies (Scotland) Regulations 1984 <sup>M9</sup>, or

(c) the Adoption Agencies Regulations (Northern Ireland) 1989 <sup>M10</sup>.

#### **Marginal Citations**

**M2** [S.I. 1991/890](#).

**M3** [S.I. 1996/3262](#) (S. 252).

**M4** [S.I. 1991/910](#)

**M5** [S.I. 1996/3263](#) (S. 253).

**M6** [S.R. 1996 No. 467](#).

**M7** [S.R. 1996 No. 453](#).

**M8** [S.I. 1983/1964](#).

**M9** [S.I. 1984/988](#).

**M10** [S.R. 1989 No. 253](#).

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*Changes to legislation: There are currently no known outstanding effects for the The Child Benefit (General) Regulations 2006, PART 4. (See end of Document for details)*

### **Child or qualifying young person undergoing imprisonment or detention in legal custody**

17.—(1) For the purposes of paragraph 1(a) of Schedule 9 to SSCBA and paragraph 1(1)(a) of Schedule 9 to SSCB(NI)A, a child or qualifying young person is not regarded as undergoing imprisonment or detention in legal custody in any week unless—

- (a) in connection with a charge brought or intended to be brought against him in criminal proceedings at the conclusion of those proceedings, or
- (b) in the case of default of payment of a sum adjudged to be paid on conviction, in respect of such default,

a court imposes a penalty upon him.

(2) Subject to paragraph (3), paragraph 1(a) of Schedule 9 to SSCBA and paragraph 1(1)(a) of Schedule 9 to SSCB(NI)A do not apply to a child or qualifying young person in respect of any week in which that child or qualifying young person is liable to be detained in a hospital or similar institution in Great Britain or Northern Ireland as a person suffering from a mental disorder.

(3) Subject to paragraph (5), paragraph (2) does not apply where subsequent to the imposition of a penalty, the child or qualifying young person was removed to the hospital or similar institution while still liable to be detained as a result of that penalty and, in the case of a person who is liable to be detained in the hospital or similar institution by virtue of any provisions of the Mental Health Acts, a direction restricting his discharge has been given under any of those Acts and is still in force.

(4) In paragraph (3) a person who is liable to be detained by virtue of any provision of the Mental Health Acts shall be treated as if a direction restricting his discharge had been given under those Acts if he is to be so treated for the purposes of any of them.

(5) Where a certificate given by or on behalf of the Secretary of State shows the earliest date on which the child or qualifying young person would have been expected to be discharged from detention pursuant to the penalty if he had not been transferred to a hospital or similar institution, paragraph (3) shall not apply from the day following that date.

### **Child or qualifying young person in care**

18. For the purposes of paragraph 1(c) of Schedule 9 to SSCBA and paragraph 1(c) of Schedule 9 to SSCB(NI)A (child or qualifying young person in care in such circumstances as may be prescribed), the prescribed circumstances are that—

- (a) the child or qualifying young person is provided with, or placed in, accommodation under Part 3 of the 1989 Act, under Part 2 of the 1995 Act or under Part 4 of the 1995 Order and the cost of that child or qualifying young person's accommodation or maintenance is borne wholly or partly out of local authority funds, authority funds or any other public funds, and
- (b) the child or qualifying young person is not in residential accommodation in the circumstances prescribed in regulation 9.

### **Interpretation of facts existing in a week**

19. Where paragraph 1 of Schedule 9 to SSCBA or paragraph 1 of Schedule 9 to SSCB(NI)A applies, section 147(2) of SSCBA and section 143(2) of SSCB(NI)A (references to any condition being satisfied or any facts existing in a week to be construed as references to the condition being satisfied or the facts existing at the beginning of that week) has effect as if the words “at the beginning of that week” were substituted by “throughout any day in that week”.

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