Draft Regulations laid before Parliament under section 11(3) of the Social Security Fraud Act 2001, section 80(1) of the Social Security Act 1998 and section 5A(3) of the Pensions Appeal Tribunals Act 1943 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

SOCIAL SECURITY

The Social Security (Loss of Benefit) Regulations 2001

Made - - - -	*2001*
Coming into force - -	*1st April 2002*

Whereas a draft of this instrument was laid before Parliament in accordance with section 11(3) of the Social Security Fraud Act 2001(**1**), section 80(1) of the Social Security Act 1998(**2**) and section 5A(3) of the Pensions Appeal Tribunals Act 1943(**3**) and approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 7(3) to (6), 8(3) and (4), 9(2) to (5), 10(1) and (2) and 11(1) of the Social Security Fraud Act 2001(**4**), section 189(4) of the Social Security Administration Act 1992(**5**), sections 79(4) and 84 of, and paragraph 9 of Schedule 2 to, the Social Security Act 1998(**6**) and section 5A(2) of the Pensions Appeal Tribunals Act 1943(**7**), and of all other powers enabling him in that behalf, by this Instrument, which is made before the end of the period of 6 months beginning with the coming into force of sections 7 to 13 of the Social Security Fraud Act 2001 and which contains only regulations made by virtue of, or consequential upon, those sections(**8**), hereby makes the following Regulations:

(**1**) 2001 c. 11.
(**2**) 1998 c. 14.
(**3**) 1943 c. 39.
(**4**) Section 11(1) is cited because of the meaning ascribed to the word "prescribed".
(**5**) 1992 c. 5; section 189 is applied to regulations made under sections 7 to 10 of the Social Security Fraud Act 2001 by section 11(4) of that Act.
(**6**) Section 84 is cited because of the meaning ascribed to the word "prescribe".
(**7**) Section 5A was inserted by section 57 of the Child Support, Pensions and Social Security Act 2000 (c. 19).
(**8**) Section 12(3) of the Social Security Fraud Act 2001 added sections 7 to 11 of that Act, and paragraph 104 of Schedule 7 to the Social Security Act 1998 added Chapter II of Part I of that Act to the list of "relevant enactments" in respect of which regulations are to be referred to the Social Security Advisory Committee. These Regulations are made within six months of the coming into force of the relevant provisions of the 2001 Act and are therefore exempt from this requirement by virtue of section 173(5)(b) of the Social Security Administration Act 1992.

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Loss of Benefit) Regulations 2001 and shall come into force on 1st April 2002.

(2) In these Regulations, unless the context otherwise requires—

"the Act" means the Social Security Fraud Act 2001;

"the Benefits Act" means the Social Security Contributions and Benefits Act 1992(**9**);

"the Council Tax Benefit Regulations" means the Council Tax Benefit (General) Regulations 1992(**10**);

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations 1987(**11**);

"the Income Support Regulations" means the Income Support (General) Regulations 1987(**12**);

"the Jobseekers Act" means the Jobseekers Act 1995(**13**);

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations 1996(**14**);

"claimant" in a regulation means the person claiming the sanctionable benefit referred to in that regulation;

"disqualification period" means the period in respect of which the restrictions on payment of a relevant benefit apply in respect of an offender in accordance with section 7(6) of the Act and shall be interpreted in accordance with regulation 2; and

"offender" means the person who is subject to the restriction in the payment of his benefit in accordance with section 7 of the Act.

(3) Expressions used in these Regulations which are defined either for the purposes of the Jobseekers Act or for the purposes of the Jobseeker's Allowance Regulations shall, except where the context otherwise requires, have the same meaning as for the purposes of that Act or, as the case may be, those Regulations.

(4) In these Regulations, unless the context otherwise requires, a reference—

(a) to a numbered regulation is to the regulation in these Regulations bearing that number;

(b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

Disqualification period

2.—(1) Subject to paragraph (2), the first day of the disqualification period for the purpose of section 7(6) of the Act shall be—

(a) where, on the determination day—

(i) the offender is in receipt of a sanctionable benefit;

(**9**) 1992 c. 4
(**10**) S.I. 1992/1814.
(**11**) S.I. 1987/1971.
(**12**) S.I. 1987/1967.
(**13**) 1995 c. 18.
(**14**) S.I. 1996/207.

(ii) the offender is a member of a joint-claim couple which is in receipt of a joint-claim jobseeker's allowance; or

(iii) the offender's family member is in receipt of income support, jobseeker's allowance, housing benefit or council tax benefit,

the day which is 28 days after the determination day;

(b) where sub-paragraph (a) does not apply, the day which is 28 days after the first day after the determination day on which the Secretary of State decides to award—

(i) a sanctionable benefit to the offender;

(ii) a joint-claim jobseeker's allowance to a joint-claim couple of which the offender is a member; or

(iii) income support, jobseeker's allowance, housing benefit or council tax benefit to an offender's family member.

(2) For the purposes of sub-paragraph (1), the first day of the disqualification period shall be no later than 3 years and 28 days after the date of the conviction of the offender for the benefit offence in the later proceedings referred to in section 7(1) of the Act and section 7(9) of the Act (date of conviction and references to conviction) shall apply for the purposes of this paragraph as it applies for the purposes of section 7 of the Act.

(3) In this regulation, "the determination day" means the day on which the Secretary of State determines that a restriction under—

(a) section 7 of the Act would be applicable to the offender were he in receipt of a sanctionable benefit;

(b) section 8 of the Act would be applicable to the offender were he a member of a joint-claim couple which is in receipt of a joint-claim jobseeker's allowance; or

(c) section 9 of the Act would be applicable to the offender's family member were that member in receipt of income support, jobseeker's allowance, housing benefit or council tax benefit.".

PART II

REDUCTIONS

Reduction of income support

3.—(1) Subject to paragraphs (2) to (4), any payment of income support which falls to be made to an offender in respect of any week in the disqualification period, or to an offender's family member in respect of any week in the relevant period, shall be reduced—

(a) where the claimant or a member of his family is pregnant or seriously ill, by a sum equivalent to 20 per cent.;

(b) where the applicable amount of the offender used to calculate that payment of income support has been reduced pursuant to regulation 22A of the Income Support Regulations(**15**) (appeal against a decision embodying an incapacity for work determination), whether or not the appeal referred to in that regulation is successful, by a sum equivalent to 20 per cent.;

(c) in any other case, by a sum equivalent to 40 per cent.

(**15**) Regulation 22A was inserted by S.I. 1996/206 and amended by S.I. 1999/2422, 1999/3109 and 2000/590.

of the applicable amount of the offender in respect of a single claimant for income support on the first day of the disqualification period or, as the case may be, on the first day of the relevant period, and specified in paragraph 1(1) of Schedule 2 to the Income Support Regulations.

(2) Payment shall not be reduced under paragraph (1) to below 10 pence per week.

(3) A reduction under paragraph (1) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.

(4) A payment of income support shall not be reduced as provided in paragraph (1) in respect of any week in the disqualification period in respect of which that payment of income support is subject to a restriction imposed pursuant to section 62 or 63 of the Child Support, Pensions and Social Security Act 2000 (loss of benefit provisions).

(5) Where the rate of income support payable to an offender or an offender's family member changes, the rules set out above for a reduction in the benefit payable shall be applied to the new rate and any adjustment to the reduction shall take effect from the first day of the first benefit week to start after the date of the change.

(6) In this regulation, "benefit week" shall have the same meaning as in regulation of 2(1) of the Income Support Regulations(**16**).

Reduction of joint-claim jobseeker's allowance

4. In respect of any part of the disqualification period when section 8(2) of the Act does not apply, the reduced rate of joint-claim jobseeker's allowance payable to the member of that couple who is not the offender shall be—

(a) in any case in which the member of the couple who is not the offender satisfies the conditions set out in section 2 of the Jobseekers Act (contribution-based conditions), a rate equal to the amount calculated in accordance with section 4(1) of that Act;

(b) in any case where the couple are a couple in hardship for the purposes of regulation 11, a rate equal to the amount calculated in accordance with regulation 16;

(c) in any other case, a rate calculated in accordance with section 4(3A) of the Jobseekers Act(**17**) save that the applicable amount shall be the amount determined by reference to paragraph 1(1) of Schedule 1 to the Jobseeker's Allowance Regulations as if the member of the couple who is not the offender were a single claimant.

PART III

HARDSHIP

Meaning of "person in hardship"

5.—(1) In this Part of these Regulations, a "person in hardship" means, for the purposes of regulation 6, a person, other than a person to whom paragraph (3) or (4) applies, where—

(a) she is a single woman who is pregnant and in respect of whom the Secretary of State is satisfied that, unless a jobseeker's allowance is paid, she will suffer hardship;

(b) he is a single person who is responsible for a young person and the Secretary of State is satisfied that, unless a jobseeker's allowance is paid, the young person will suffer hardship;

(c) he is a member of a married or unmarried couple where—

(**16**) The definition was amended by S.I. 1988/1445.
(**17**) Section 4(3A) was inserted by section 59 of, and paragraph 5(3) of Schedule 7 to, the Welfare Reform and Pensions Act 1999 (c. 30).

(i) the woman is pregnant; and

(ii) the Secretary of State is satisfied that, unless a jobseeker's allowance is paid, the woman will suffer hardship;

(d) he is a member of a polygamous marriage and—

(i) one member of the marriage is pregnant; and

(ii) the Secretary of State is satisfied that, unless a jobseeker's allowance is paid, that woman will suffer hardship;

(e) he is a member of a married or unmarried couple or of a polygamous marriage where—

(i) one or both members of the couple, or one or more members of the polygamous marriage, are responsible for a child or young person; and

(ii) the Secretary of State is satisfied that, unless a jobseeker's allowance is paid, the child or young person will suffer hardship;

(f) he has an award of a jobseeker's allowance which includes or would, if a claim for a jobseeker's allowance from him were to succeed, have included in his applicable amount a disability premium and the Secretary of State is satisfied that, unless a jobseeker's allowance is paid, the person who would satisfy the conditions of entitlement to that premium would suffer hardship;

(g) he suffers, or his partner suffers, from a chronic medical condition which results in functional capacity being limited or restricted by physical impairment and the Secretary of State is satisfied that—

(i) the suffering has already lasted, or is likely to last, for not less than 26 weeks; and

(ii) unless a jobseeker's allowance is paid to that person, the probability is that the health of the person suffering would, within 2 weeks of the Secretary of State making his decision, decline further than that of a normally healthy adult and that person would suffer hardship;

(h) he does, or his partner does, or in the case of a person who is married to more than one person under a law which permits polygamy, at least one of those person does, devote a considerable portion of each week to caring for another person who—

(i) is in receipt of an attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Benefits Act;

(ii) has claimed either attendance allowance or disability living allowance, but only for so long as the claim has not been determined, or for 26 weeks from the date of claiming, whichever is the earlier; or

(iii) has claimed either attendance allowance or disability living allowance and has an award of either attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Benefits Act for a period commencing after the date on which that claim was made,

and the Secretary of State is satisfied, after taking account of the factors set out in paragraph (5), in so far as they are appropriate to the particular circumstances of the case, that the person providing the care will not be able to continue doing so unless a jobseeker's allowance is paid to the offender;

(i) he is a person or is the partner of a person to whom section 16 of the Jobseekers Act applies by virtue of a direction issued by the Secretary of State, except where the person to whom the direction applies does not satisfy the requirements of section 1(2)(a) to (c) of that Act;

(j) he is a person—