Draft Statutory Instrument laid before Parliament under section 52(2) and (2A) of the Child Support Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2000 No.

FAMILY LAW

CHILD SUPPORT

The Child Support (Maintenance Calculations and Special Cases) Regulations 2000

Made - - - - 2000
Coming into force in accordance with regulation 1(4) and (5)

Whereas a draft of this Instrument was laid before Parliament in accordance with section 52(2) and (2A) of the Child Support Act 1991(**1**) and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 14(1) and (1A), 42, 51, 52(4) and 54 of, and paragraphs 3(2), 4(1)(b) and (c), 4(3), 5(a), 7(3), 9, 10 and 10C(2)(b) of Schedule 1 to, the Child Support Act 1991(**2**), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Child Support (Maintenance Calculations and Special Cases) Regulations 2000.

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

"the Act" means the Child Support Act 1991;

(**1**) 1991 c. 48. Section 52 is amended by section 25 of the Child Support, Pensions and Social Security Act 2000 (c. 19).
(**2**) Sections 14(1) and (1A), 51 and 54 are amended and Part I of Schedule 1 is substituted respectively by sections 12 of and paragraphs 11(7), 11(9) and 11(20) of Schedule 3 to and section 1 of the Child Support, Pensions and Social Security Act 2000. Section 54 is cited because of the meaning ascribed to the word "prescribed".

"Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992(**3**);

"Contributions and Benefits (Northern Ireland) Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**4**);

"couple" means a man and a woman who are—

(a) married to each other and are members of the same household; or

(b) not married to each other but are living together as husband and wife;

"course of advanced education" means—

(a) a full-time course leading to a postgraduate degree or comparable qualification, a first degree or comparable qualification, a Diploma of Higher Education, a higher national diploma, a higher national diploma or higher national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority or a teaching qualification; or

(b) any other full-time course which is a course of a standard above that of an ordinary national diploma, a national diploma or national certificate of the Business and Technology Education Council or the Scottish Qualifications Authority, the advanced level of the General Certificate of Education, a Scottish certificate of education (higher level), a Scottish certificate of sixth year studies or a Scottish National Qualification at Higher Level;

"day" includes any part of a day;

"day to day care" means—

(a) care of not less than 104 nights in total during the 12 month period ending with the relevant week; or

(b) where, in the opinion of the Secretary of State, a period other than 12 months is more representative of the current arrangements for the care of the child in question, care during that period of not less in total than the number of nights which bears the same ratio to 104 nights as that period bears to 12 months, and for the purpose of this definition—

  (i) where a child is a boarder at a boarding school or is a patient in a hospital or other circumstances apply, such as where the child stays with a person who is not a parent of the child, and which the Secretary of State regards as temporary, the person who, but for those circumstances, would otherwise provide day to day care of the child shall be treated as providing day to day care during the periods in question; and

  (ii) "relevant week" shall have the meaning ascribed to it in the definition in this paragraph, except that in a case where notification is given under regulation 7C of the Decisions and Appeals Regulations(**5**) to the relevant persons on different dates, "relevant week" means the period of 7 days immediately preceding the date of the latest notification;

"Decisions and Appeals Regulations" means the Social Security and Child Support (Decisions and Appeals) Regulations 1999(**6**);

"disabled person's tax credit" means a disabled person's tax credit under section 129 of the Contributions and Benefits Act(**7**);

(**3**) 1992 c. 4.
(**4**) 1992 c. 7.
(**5**) Regulation 7C was inserted by S.I. 2000/119.
(**6**) S.I. 1999/991. The Regulations were amended by S.I. 1999/1446, 1623, 1662, 1670, 2570, 2677, 3178, 2000/119, 127, 897, 1596 and 1982.
(**7**) *See* section 1 of, and paragraphs 1 and 2(h) of Schedule 1 to, the Tax Credits Act 1999 (c. 10).

"effective date" means the date on which a maintenance calculation takes effect for the purposes of the Act;

"employed earner" has the same meaning as in section 2(1)(a) of the Contributions and Benefits Act except that it shall include—

(a) a person gainfully employed in Northern Ireland; and

(b) a person to whom section 44(2A)(**8**) of the Act applies;

"family" means—

(a) a couple (including the members of a polygamous marriage) and any member of the same household for whom one or more of them is responsible and who is a child; or

(b) a person who is not a member of a couple and a member of the same household for whom that person is responsible and who is a child;

"home" means—

(a) the dwelling in which a person and any family of his normally live; or

(b) if he or they normally live in more than one home, the principal home of that person and any family of his,

and for the purpose of determining the principal home in which a person normally lives no regard shall be had to residence in a residential care home or a nursing home during a period which does not exceed 52 weeks or, where it appears to the Secretary of State that the person will return to his principal home after that period has expired, such longer period as the Secretary of State considers reasonable to allow for the return of that person to that home;

"Income Support Regulations" means the Income Support (General) Regulations 1987(**9**);

"the Jobseekers Act" means the Jobseekers Act 1995(**10**);

"Maintenance Calculation Procedure Regulations" means the Child Support (Maintenance Calculation Procedure) Regulations 2000(**11**);

"net weekly income" has the meaning given in the Schedule to these Regulations;

"nursing home" has the same meaning as in regulation 19(3) of the Income Support Regulations;

"occupational pension scheme" means such a scheme within the meaning in section 1 of the Pension Schemes Act 1993(**12**) and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988(**13**);

"partner" means—

(a) in relation to a member of a couple, the other member of that couple;

(b) in relation to a member of a polygamous marriage, any other member of that marriage with whom he lives;

"patient" means a person (other than a person who is serving a sentence of imprisonment or detention in a young offender institution within the meaning of the Criminal Justice Act 1982(**14**) or the Prisons (Scotland) Act 1989(**15**) who is regarded as receiving free in-

(**8**) Section 44(2A) is inserted by section 22 of the Child Support, Pensions and Social Security Act 2000.
(**9**) S.I. 1987/1967; the relevant amending instruments are S.I. 1988/663, 1228, 1445, 2022, 1989/534, 1034, 1678, 1990/547, 1168, 1776; 1991/236, 387, 503, 1559.
(**10**) 1995 c. 18.
(**11**) S.I. 2000/ .
(**12**) 1993 c. 48.
(**13**) 1988 c. 1.
(**14**) 1982 c. 48. The Act is amended by the Criminal Justice Act 1988 (c. 33).
(**15**) 1989 c. 45.

patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975(**16**);

"person" does not include a local authority;

"personal pension scheme" means such a scheme within the meaning in section 1 of the Pension Schemes Act 1993 and which is approved for the purposes of Part XIV of the Income and Corporation Taxes Act 1988;

"polygamous marriage" means any marriage during the subsistence of which a party to it is married to more than one person and in respect of which any ceremony of marriage took place under the law of a country which at the time of that ceremony permitted polygamy;

"prisoner" means a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court other than a person whose detention is under the Mental Health Act 1983(**17**) or the Mental Health (Scotland) Act 1984(**18**);

"relevant week" means—

(a) in relation to an application for child support maintenance—

(i) where the application is made by a non-resident parent, the period of 7 days immediately before the application is made; and

(ii) in any other case, the period of 7 days immediately before the date of notification to the non-resident parent and for this purpose "the date of notification to the non-resident parent" means the date on which the non-resident parent is first given notice by the Secretary of State under the Maintenance Calculation Procedure Regulations that an application for a maintenance calculation has been made, or treated as made, as the case may be, in relation to which the non-resident parent is named as the parent of the child to whom the application relates;

(b) where a decision ("the original decision") is to be—

(i) revised under section 16 of the Act; or

(ii) superseded by a decision under section 17 of the Act on the grounds that the original decision was made in ignorance of, or was based upon a mistake as to, some material fact or was erroneous in point of law,

the period of 7 days which was the relevant week for the purposes of the original decision;

(c) where a decision ("the original decision") is to be superseded under section 17 of the Act—

(i) on an application made for the purpose on the basis that a material change of circumstances has occurred since the original decision was made, the period of 7 days immediately preceding the date on which that application was made;

(ii) subject to sub-paragraph (b), in a case where a relevant person is given notice under regulation 7C of the Decisions and Appeals Regulations, the period of 7 days immediately preceding the date of that notification,

except that where, under paragraph 15 of Schedule 1 to the Act, the Secretary of State makes separate maintenance calculations in respect of different periods in a particular case, because he is aware of one or more changes of circumstances which occurred after the date which is applicable to that case, the relevant week for the purposes of each separate maintenance calculation made to take account of each such change of circumstances shall be the period of 7 days immediately before the date on which notification was given to the Secretary of State of the change of circumstances relevant to that separate maintenance calculation;

(**16**) 1975/555; relevant amending instruments are S.I. 1977/1693, 1987/1683 and 1999/1326.
(**17**) 1983 c. 20.
(**18**) 1984 c. 36.

"residential care home" has the same meaning as in regulation 19(3) of the Income Support Regulations;

"retirement annuity contract" means an annuity contract for the time being approved by the Board of Inland Revenue as having for its main object the provision of a life annuity in old age or the provision of an annuity for a partner or dependant and in respect of which relief from income tax may be given on any premium;

"self-employed earner" has the same meaning as in section 2(1)(b) of the Contributions and Benefits Act except that it shall include a person gainfully employed in Northern Ireland otherwise than in employed earner's employment (whether or not he is also employed in such employment);

"student" means a person, other than a person in receipt of a training allowance, who is aged less than 19 and attending a full-time course of advanced education or who is aged 19 or over and attending a full-time course of study at an educational establishment; and for the purposes of this definition—

(a) a person who has started on such a course shall be treated as attending it throughout any period of term or vacation within it, until the last day of the course or such earlier date as he abandons it or is dismissed from it;

(b) a person on a sandwich course (within the meaning of paragraph 1(1) of Schedule 5 to the Education (Mandatory Awards) (No. 2) Regulations 1993(**19**)) shall be treated as attending a full-time course of advanced education or, as the case may be, of study;

"training allowance" means an allowance payable under section 2 of the Employment and Training Act 1973(**20**), or section 2 of the Enterprise and New Towns (Scotland) Act 1990(**21**);

"work-based training for young people or, in Scotland, Skillseekers training" means—

(a) arrangements made under section 2 of the Employment and Training Act 1973 or section 2 of the Enterprise and New Towns (Scotland) Act 1990; or

(b) arrangements made by the Secretary of State for persons enlisted in Her Majesty's forces for any special term of service specified in regulations made under section 2 of the Armed Forces Act 1966(**22**) (power of Defence Council to make regulations as to engagement of persons in regular forces),

for purposes which include the training of persons who, at the beginning of their training, are under the age of 18;

"working families' tax credit" means a working families' tax credit under section 128 of the Contributions and Benefits Act(**23**); and

"year" means a period of 52 weeks.

(3) The following other description of children is prescribed for the purposes of paragraph 10C(2)(b) of Schedule 1 to the Act (relevant other children)—

children other than qualifying children in respect of whom the non-resident parent or his partner would receive child benefit under Part IX of the Contributions and Benefits Act but who do not solely because the conditions set out in section 146 of that Act (persons outside Great Britain) are not met.

(4) Subject to paragraph (5), these Regulations shall come into force in relation to a particular case on the day on which Part I of Schedule 1 to the 1991 Act as amended by the Child Support, Pensions and Social Security Act 2000 comes into force in relation to that type of case.

(**19**) S.I. 1993/2914.
(**20**) 1973 c. 50. Section 2 was substituted by the Employment Act 1988 (c. 19), section 25(1).
(**21**) 1990 c. 35.
(**22**) 1966 c. 45.
(**23**) *See* Section 1 of, and paragraphs 1 and 2(g) of Schedule 1 to, the Tax Credits Act 1999 (c. 10).