STATUTORY INSTRUMENTS

1971 No. 226

SOCIAL SECURITY

The Family Income Supplements (General) Regulations 1971

Made - - - -	*11th February* 1971
Laid before Parliament	*22nd February* 1971
Coming into Operation	*3rd May* 1971

The Secretary of State for Social Services, in exercise of powers conferred upon him by sections 4(2), 5(2), 6(2), 8(2) and (3) and 10(2) of the Family Income Supplements Act 1970(a), and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Family Income Supplements (General) Regulations 1971, and shall come into operation on 3rd May 1971.

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

" the Act " means the Family Income Supplements Act 1970 ;

" the Appeal Tribunal " has the same meaning as in section 7(3) of the Act ;

" the appointed day " means the day appointed by the Secretary of State under section 16 of the Act ;

" attendance allowance " means an attendance allowance under the National Insurance Acts 1965 to 1970 ; an increase of disablement pension under section 15 of the National Insurance (Industrial Injuries) Act 1965(b) ; a payment under regulations made in exercise of the power in section 81(2)(*b*) of that Act ; an increase of allowance under Article 8 of the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966(c) ; and an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension, including an allowance in respect of exceptionally severe disablement ;

" benefit " means a family income supplement under the Act ;

" beneficiary " means a person by whom benefit is or was receivable and any person authorised or appointed to act for such a person ;

" claim " means a claim for benefit ;

" the Commission " means the Supplementary Benefits Commission ;

" war disablement pension " means—

(*a*) retired pay, pension or allowance granted under powers conferred by or under the Ministry of Pensions Act 1916(d), the Air Force (Constitution) Act 1917(e), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(f), the Personal Injuries

(a) 1970 c. 55. (b) 1965 c. 52. (c) S.I. 1966/164 (1966 I, p. 303). (d) 1916 c. 65. (e) 1917 c. 51. (f) 1939 c. 83.

(Emergency Provisions) Act 1939(a), the Polish Resettlement Act 1947(b), the Home Guard Act 1951(c) or the Ulster Defence Regiment Act 1969(d); and

(*b*) injury or disablement pension payable under any scheme made under the Injuries in War Compensation Act 1914(e) and the Injuries in War Compensation Act 1915(f), or under any War Risks Compensation Scheme for the Mercantile Marine;

and other expressions have the same meanings as in the Act.

(3) References in these regulations to any enactment or regulation shall, except in so far as the context otherwise requires, include references to such enactment or regulation as amended or extended by or under any other enactment, order or regulation and as including references to any enactment or regulation thereby consolidated.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(g) shall apply for the purposes of the interpretation of these regulations (including any regulations read as one therewith) as they apply for the purposes of the interpretation of an Act of Parliament.

Computation of normal gross income of members of a family

2.—(1) For the purposes of the Act, a person's normal gross income and the weekly amount thereof shall be calculated or estimated in the manner provided in the following provisions of this regulation.

(2) In so far as a person's normal gross income consists of earnings from a gainful occupation, the weekly amount of that person's normal gross income therefrom shall be calculated or estimated by reference to the average of his earnings from that occupation over the period of the five weeks (being pay-weeks if in respect of that occupation he is paid weekly) or the two pay-months (if in respect of that occupation he is paid monthly) immediately preceding the date on which the claim is made, so, however, that in any case, and in particular in a case where a person has been working abnormally long or short hours in a gainful occupation, or has commenced working in a gainful occupation shortly before the claim is made, or is following a gainful occupation from which his earnings normally fluctuate at approximately the same time or times each year, or is following a gainful occupation otherwise than under a contract of service, the Commission or the Appeal Tribunal may have regard to the average of a person's earnings from a gainful occupation over such other period or periods as may appear to them to be appropriate in order properly to determine what is that person's normal weekly income therefrom.

(3) In so far as a person's earnings from any gainful occupation comprise salary, wages or fees related to a fixed period, the gross amount thereof shall be taken into account; and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account.

(4) In so far as a person's normal gross income does not consist of earnings from a gainful occupation, the weekly amount thereof shall be calculated or estimated on such basis as appears to the Commission or the Appeal Tribunal to be appropriate in the circumstances of the particular case.

(a) 1939 c. 82. (b) 1947 c. 19. (c) 1951 c. 8 (15 & 16 Geo. 6 & 1 Eliz. 2.).
(d) 1969 c. 65. (e) 1914 c. 30. (f) 1915 c. 24. (g) 1889 c. 63.

(5) In calculating or estimating a person's normal gross income and the weekly amount thereof, there shall be disregarded—

(*a*) the whole of any sums by way of attendance allowance ;

(*b*) the whole of any payments made in respect of a child who is boarded out for the purposes of the Boarding-Out of Children Regulations 1955(**a**) or the Boarding-Out of Children (Scotland) Regulations 1959(**b**) ;

(*c*) the whole of any sums by way of benefit under the Act ;

(*d*) the whole of any sums by way of benefit under the Ministry of Social Security Act 1966(**c**) ; and

(*e*) up to £2·00 a week of any war disablement pension payable.

Circumstances in which benefit may be made payable otherwise than for twenty-six weeks beginning with the date of the claim therefor

3.—(1) Benefit may be made payable otherwise than for a period of twenty-six weeks beginning with the date of the claim therefor in the circumstances set out in the following paragraphs of this regulation.

(2) Subject to paragraph (4) of this regulation, where the available evidence leaves the Commission or the Appeal Tribunal in doubt as to the rate at which benefit should be payable, but satisfies them that benefit should be payable at not less than a certain weekly rate, they may determine that benefit shall be payable at the latter rate for a period of less than twenty-six weeks, but not less than four weeks.

(3) Where a beneficiary makes a claim not more than four weeks before or after the expiration of a period for which benefit is payable (hereinafter in this paragraph referred to as a " renewal claim "), any benefit payable on the basis of the renewal claim shall be payable for a period commencing immediately after the expiration of the period for which benefit was previously payable.

(4) Where the Commission or the Appeal Tribunal determine that benefit is payable in relation to a claim made during the transitional period, that is to say a claim made on or after the date on which these regulations come into operation but before the appointed day, benefit shall be payable for such period beginning on the appointed day, being a period of not more than thirty-nine weeks or less than four weeks, as the Secretary of State shall in any case decide.

Circumstances in which payment of supplementary benefit is to make benefit under the Act not payable for a family or not receivable by a person

4.—(1) Subject to the provisions of paragraph (2) of this regulation, no benefit shall be paid for any family during any period during which, due to the refusal or neglect of a person by whom the benefit is receivable to maintain any other person included in the family, the requirements of that other person are taken into account for the purposes of any benefit under the Ministry of Social Security Act 1966(**c**).

(2) Where a family includes both a man and a woman and benefit is receivable by either of them, paragraph (1) of this regulation shall not apply if it is due to the refusal or neglect of one only of them to maintain any other person included in the family that the requirements of that other person have been taken into account for the purposes of any benefit under

(**a**) S.I. 1955/1377 (1955 I, p. 286). (**b**) S.I. 1959/835 (1959 I, p. 579). (**c**) 1966 c. 20.

the said Act of 1966, but benefit shall cease to be receivable by that one of them due to whose refusal or neglect to maintain any other person included in the family the requirements of that other person are taken into account for the purposes of any benefit under the said Act of 1966.

Circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work

5. A person shall be treated as being engaged and normally engaged in remunerative full-time work if he is and is normally engaged in remunerative work for not less than thirty hours a week, and shall be treated as not being engaged and normally engaged in remunerative full-time work unless he is and is normally engaged in remunerative work for not less than thirty hours a week.

Circumstances in which a person is to be treated as not providing in whole or in part for the requirements of a child

6. A person shall be treated as not providing in whole or in part for the requirements of any child who is boarded-out for the purposes of the Boarding-Out of Children Regulations 1955 or the Boarding-Out of Children (Scotland) Regulations 1959.

Claims for a child who could be included in more than one family for the purposes of the Act

7. Where, apart from the provisions of this regulation, a child could be included in more than one family for the purposes of the Act, it shall be included in such family as the persons claiming benefit agree, or, in default of agreement, in such family as the Commission or the Appeal Tribunal shall, in its discretion, determine.

Circumstances in which a family is to be treated as being or as not being in Great Britain

8. A family shall be treated as being in Great Britain if, and shall be treated as not being in Great Britain unless, at the date when benefit is claimed it is ordinarily resident in the United Kingdom and at least one member of the family who is not a child is resident in Great Britain, so, however, that if the Parliament of Northern Ireland enacts provisions for purposes similar to the purposes of the Act, a family shall in any event be treated as not being in Great Britain where that date falls within a period during which any member of it is a member of a family for which benefit in respect of that period is payable or has been paid under such provisions.

Circumstances in which a person of or over the age of sixteen is to be treated as a child

9. A person of or over the age of sixteen shall be treated as a child for the purposes of the Act while he continues to receive full-time instruction in a school or to receive full-time instruction of a kind given in a school; and for the purposes of this regulation "school" has the same meaning as in the Education Act 1944(a) or, in Scotland, the Education (Scotland) Act 1962(b).

(a) 1944 c. 31. (b) 1962 c. 47.

Recovery of overpayments of benefit

10. Where it is found by the Commission or the Appeal Tribunal that sums paid by way of benefit were not due and the persons by whom the sums were receivable cannot satisfy the Commission or the Appeal Tribunal that they had disclosed all material facts, the Secretary of State shall be entitled to recover the sums from the persons by whom they were receivable.

Review of determinations made by the Commission and the Appeal Tribunal

11.—(1) A determination made by the Commission may be reviewed by the Commission if it is satisfied that it was based on a mistake as to the law; and a determination made by the Commission or by the Appeal Tribunal may be reviewed by the Commission if—

(*a*) the Commission is satisfied that the determination was made in ignorance of, or was based on a mistake as to, some material fact; or

(*b*) the Commission is satisfied that benefit should not be paid for any family or should not be receivable by any person by reason of the provisions of regulation 4 of these regulations.

(2) Any determination made by the Commission on a review and any determination made by the Commission refusing to review a determination under paragraph (1) of this regulation shall be subject to appeal in like manner as an original determination by the Commission.

Notice of determinations by the Commission

12. A person whose right to benefit is affected by a determination made by the Commission shall be given notice in writing of that determination, of the reasons therefor and of his right of appeal therefrom; and where such a person is a member of a family which includes both a man and a woman the foregoing requirement as to the giving of notice shall, unless in any case or class of cases the Secretary of State otherwise directs, be deemed to have been complied with in relation to both that man and that woman if one of them is given notice as aforesaid.

Keith Joseph,
Secretary of State for
Social Services.

11th February 1971.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations contain miscellaneous provisions relating to the Family Income Supplements Act 1970 (hereafter called "the Act").

Regulation 1 contains various definitions for the purposes of the Regulations; Regulation 2 relates to the computation of the normal gross income of members of a family; Regulation 3 relates to the circumstances in

which benefit may be awarded for a period other than one of twenty-six weeks beginning with the date of the claim; Regulation 4 relates to the circumstances in which payment of benefit under the Ministry of Social Security Act 1966 may make benefit under the Act not payable for a family or receivable by a person; Regulation 5 relates to the circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work; Regulation 6 relates to the circumstances in which a person is to be treated as not providing in whole or in part for the requirements of a child; Regulation 7 makes provision for the situation where a child could be included in more than one family for the purposes of the Act; Regulation 8 relates to the circumstances in which a family is to be treated as being or as not being in Great Britain; Regulation 9 relates to the circumstances in which a person of or over the age of 16 is to be treated as a child for the purposes of the Act; Regulation 10 relates to the recovery of overpayments of benefit under the Act; Regulation 11 relates to the review of determinations by the Supplementary Benefits Commission and the Appeal Tribunal; and Regulation 12 relates to notifying persons of determinations made by the Supplementary Benefits Commission.