STATUTORY INSTRUMENTS

1967 No. 760

SOCIAL SECURITY

The National Insurance (Computation of Earnings) Regulations 1967

Made - - - -	11*th May* 1967
Laid before Parliament	23*rd May* 1967
Coming into Operation	5*th June* 1967

The National Insurance Joint Authority, in exercise of powers conferred by section 114(5) of the National Insurance Act 1965(**a**), and the Minister of Social Security, in conjunction with the Treasury so far as relates to matters with regard to which the Treasury have so directed, in exercise of powers conferred by sections 49(6) and 81(3) of that Act, in each case in exercise of all other powers enabling them in that behalf, and after considering the report of the National Insurance Advisory Committee on the preliminary draft submitted to them, hereby make the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Computation of Earnings) Regulations 1967 and shall come into operation on 5th June 1967.

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

" the Act " means the National Insurance Act 1965 ;

" the Industrial Injuries Act " means the National Insurance (Industrial Injuries) Act 1965(**b**) ;

" the Minister " means the Minister of Social Security ;

" the determining authorities " means the Chief National Insurance Commissioner appointed under section 9 of the National Insurance Act 1966(**c**) and any other National Insurance Commissioner so appointed or any tribunal constituted under subsection (3) of that section, a local tribunal constituted under section 77 of the Act or an insurance officer appointed under section 68(1) of the Act ;

" gainful occupation " includes any occupation in an employment which, in accordance with the provisions of the Act and of the regulations made thereunder relating to the classification of insured persons or to certain persons in Her Majesty's Forces, is to be disregarded ;

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

(3) References in these regulations to any enactment or regulations shall, unless the context otherwise requires, include a reference to such enactment or regulations as amended by any subsequent enactment, order or regulations.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**d**) shall apply for the purpose of the interpretation of these regulations as they apply for the purpose of the interpretation of an Act of Parliament.

(**a**) 1965 c. 51. (**b**) 1965 c. 52. (**c**) 1966 c. 6. (**d**) 1889 c. 63.

Revocation of regulation 4 of the General Benefit Regulations

2. Regulation 4 of the National Insurance (General Benefit) Regulations 1948(a), as amended(b), (computation of earnings) is hereby revoked.

Calculation and estimation of amount of earnings

3.—(1) For the purposes of the Act and of any regulations made thereunder (other than for the purposes of the classification of insured persons), the amount of a person's earnings derived from a gainful occupation shall be calculated or estimated in the manner and on the basis set out in these regulations.

(2) Except in the case of earnings to which regulation 6 or 8 of these regulations applies—

(*a*) the amount of a person's earnings derived from a gainful occupation shall be the whole of the earnings from that occupation except in so far as regulations 4 and 5 of these regulations provide that no account shall be taken of certain payments or perquisites and that certain payments shall be deducted ;

(*b*) where a person derives from a gainful occupation earnings which do not consist of salary, wages or fees related to a fixed period or where by reason of the circumstances of the occupation in which he is engaged the earnings derived from that occupation are not immediately ascertainable, such earnings shall be calculated for any day or week on or in which that person is following that occupation by dividing the total amount of the earnings accruing over such period as the determining authorities regard as appropriate in the circumstances of the case by the number of days or weeks in that period during which that person has followed that occupation.

Payments to be disregarded in calculating earnings

4. Except in the case of earnings to which regulation 6 or 8 of these regulations applies, in calculating or estimating the amount of a person's earnings derived from a gainful occupation, no account shall be taken—

(1) for the purposes of the Act and of any regulations made thereunder of the value of—

(*a*) meal vouchers supplied to the person, where the vouchers are not transferable and are valid for meals only, up to three shillings for each working day ;

(*b*) meals provided for the person by the employer at the place of work ;

(*c*) accommodation provided by the employer in which the person is required to live as a condition of his employment ;

(*d*) food or produce provided by the employer to the person for his personal needs ;

(2) for the purposes only of sections 30 and 43 of the Act, of any sums of money, in so far as such sums do not in total exceed ten pounds, or of any remuneration in kind, received in December of any year on or after the first Monday of that month by way of Christmas bonus :

(a) S.I. 1948/1278 (Rev. XVI, p. 179: 1948 I, p. 2626).
(b) The relevant amending instruments are S.I. 1949/1984, 1957/1888, 1963/394, 1965/40, 1524 (1949 I, p. 2691; 1957 I, p. 1534; 1963 I, p. 424; 1965 I, p. 47, II, p. 4409).

Provided that a sum shall not be treated as received by a person by way of Christmas bonus if—

(i) it is one of a series of sums paid to him at regular intervals of less than one year; or

(ii) it accrues to him as overtime or incentive payment or is otherwise directly related to the hours of work or the amount of work performed by him.

Deductions to be made in calculating earnings

5. Except in the case of earnings to which regulation 6 or 8 of these regulations applies, in calculating for the purposes of the Act and of any regulations made thereunder the amount of a person's earnings derived from a gainful occupation, there shall be deducted from that amount any contribution payable under the Act, the Industrial Injuries Act or any scheme made under either of those Acts and duly paid by the person or by his employer on his behalf where the amount of that contribution is duly recovered from him by the employer, and the following payments where made by that person, if the payments are not otherwise reimbursed—

(*a*) expenses reasonably incurred by him in respect of travel between his place of residence and his place of work and in respect of travel which he is obliged to undertake in connection with and for the purposes of his employment;

(*b*) the cost to him of premises, other than premises in which he normally resides, and of tools and equipment reasonably required by him for the purposes of his employment;

(*c*) the cost to him of protective clothing obtained and reasonably required by him for the purposes of his employment, and of laundering and cleaning such clothing, and the cost to him of excessive wear and tear of his clothing attributable to the conditions and circumstances of his employment;

(*d*) subscriptions paid by him to any association of employed persons or other association or body, the payment of which is reasonable in the circumstances of his employment;

(*e*) the reasonable cost to him of making necessary provision for the care of a member of his household because of his necessary absence from home to carry out his duties in connection with his employment;

(*f*) where no meal voucher has been provided, the cost to him, up to three shillings on each occasion, of any meal taken during the hours of his employment;

(*g*) any other expenses (not being sums the deduction of which from wages or salary is authorised by statute) reasonably incurred by the person in connection with and for the purposes of his employment.

Calculation of earnings of certain retirement pensioners and adult dependants

6. Where in any week a person (being a retirement pensioner or an adult dependant thereof) is gainfully occupied in employment in Great Britain (not being employment under a contract of service) in any occupation (that is to say, in any trade, profession, business or vocation) and where the determining authorities are satisfied that for his accounting period, being a period in which that week occurs or ends, a return or state-

ment of the profits or gains of the occupation has been or will be delivered to the Inland Revenue for tax purposes, then for the purposes of sections 30(7) and 43 of the Act that person's earnings from that occupation for that week shall be calculated by dividing the total amount of the profits or gains from that occupation for that accounting period (as determined or agreed as the basis for an assessment to income tax) by the number of weeks in that accounting period, being periods of seven days beginning with the day on which that accounting period begins, in which that person has been following that occupation:

Provided that, for the purpose of adjusting a retirement pension under section 30(7) of the Act, any days in an accounting period occurring before the date on which a person becomes entitled to that pension and profits or gains arising in respect of those days (estimated in such manner as seems to the determining authorities to be appropriate in the circumstances of the case) shall be disregarded.

Interim Payments

7.—(1) Where the amount of a person's earnings for any week is to be determined in accordance with the provisions of regulation 6 of these regulations and the question of the amount of that person's earnings for any such week has not been determined, the Minister may, pending the determination of that question, direct that payment of retirement pension or any increase thereof shall, in so far as the rate or amount of the benefit depends on the determination of that question, be suspended, and may make such interim payments (but not exceeding the amount of retirement pension or any increase thereof which, apart from earnings, would be payable) as he thinks appropriate having regard to all the circumstances of the case; and the determining authorities when that question is determined by them shall, where no benefit is then awarded or if benefit is then awarded where the total amount of any interim payments made in respect of the period to which the award relates exceeds the total amount of the benefit so awarded, require repayment of the excess payment and, in so far as the total amount of any interim payments made does not exceed the total amount of the benefit then awarded, shall direct that the interim payments shall be treated as having been made on account of the benefit then awarded.

(2) Where in accordance with paragraph (1) of this regulation the determining authorities require repayment of any interim payments made by the Minister, the provisions of the Act and of the regulations made thereunder shall apply to the sum required to be repaid as if that sum had been a payment of benefit duly made.

(3) The provisions of the Act and of the regulations made thereunder relating to the time and manner of payment of retirement pension, to the extinguishment of the right to sums payable by way of retirement pension which are not obtained within the prescribed time and to the information to be given when obtaining payment of retirement pension shall apply to any interim payment by virtue of this regulation as if it were a payment of retirement pension.

Calculation of earnings from boarders or lodgers in the case of certain retirement pensioners and adult dependants

8. Where a person who is a retirement pensioner or an adult dependant thereof (not being a person to whom regulation 6 of these regulations applies) takes in boarders or lodgers, the amount of the earnings derived

by that person from the taking in of such boarders or lodgers shall, for the purposes of sections 30(7) and 43 of the Act, be assessed for any week by taking into account—

(*a*) in the case of each boarder or lodger who is receiving full board and lodging, where no reduction of charges is made on account of age, half the amount paid by or in respect of the boarder or lodger in excess of three pounds a week;

(*b*) in any other case, half the amount paid by or in respect of each boarder or lodger in excess of such sum less than three pounds a week as the determining authorities consider to be reasonable in the circumstances of the case.

Earnings of wife of retirement pensioner

9. In calculating under the foregoing provisions of these regulations the weekly earnings of the wife of a beneficiary for the purposes of section 43(1) of the Act (increase of unemployment benefit, sickness benefit or retirement pension subject to earnings for the wife of a beneficiary), the week by reference to which such earnings shall be so calculated shall be, in the case of an increase of retirement pension, the calendar week ending last before any week for which the beneficiary is entitled to a retirement pension.

Given under the official seal of the National Insurance Joint Authority.

(L.S.)

N. E. Wade,
A person authorised by the National Insurance Joint Authority to act on behalf of the Secretary, National Insurance Joint Authority.

11th May 1967.

Margaret Herbison,
Minister of Social Security.

11th May 1967.

E. Alan Fitch,
B. K. O'Malley,
Two of the Lords Commissioners of Her Majesty's Treasury.

11th May 1967.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make provision for the manner in and basis on which earnings are to be calculated or estimated for the purposes of the National Insurance Act 1965 and of the regulations made thereunder. In particular they specify what payments are to be disregarded and what deductions are to be made in calculating earnings, and deal specifically with the case of certain persons employed in business on their own account and certain persons who take in boarders or lodgers. They also provide for interim payments to be made by the Minister of Social Security in certain cases in which the amount of earnings, where it affects benefit, cannot be immediately determined.

The Report of the National Insurance Advisory Committee, dated 11th May 1967, on the preliminary draft of these Regulations is contained in Command Paper (Cmnd. 3288) published by Her Majesty's Stationery Office.