EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations, which are made in consequence of the provisions concerning death grant in the National Insurance Act, 1957, apply certain provisions of the National Insurance (Claims and Payments) Regulations, 1948, to claims for, and payments of, death grant as if it were a benefit due to the deceased at his death. They amend the National Insurance (Death Grant) Regulations, 1949, with respect to deaths abroad and add new provisions to those regulations with respect to the persons on whose insurance death grant may be paid in the case of a child.

The remaining provisions are of a minor or consequential character.

The preliminary draft of these Regulations was submitted to the National Insurance Advisory Committee in accordance with section 77 of the National Insurance Act, 1946, and their report thereon, dated the 29th November, 1957, is contained in House of Commons Paper No. 37 (Session 1957-58) published by Her Majesty's Stationery Office.

1957 No. 1888

The National Insurance (General Benefit) Amendment Regulations, 1957

Made - - - -	*31st October,* 1957
Laid before Parliament	*7th November,* 1957
Coming into Operation	*18th November,* 1957

The National Insurance Joint Authority(a), in exercise of powers conferred by sections 24 (2) (*c*) and 78 (5) of the National Insurance Act, 1946(b), and the Minister of Pensions and National Insurance, in exercise of powers conferred by sections 24 (2) (*c*), as extended by section 24 (2A) (which has effect by virtue of section 3 (2) of the National Insurance Act, 1957(c)), 34 (as amended by sections 3 (4) and 6 (6) of the said Act of 1957), 47 and 78 (3) (as amended by section 2 of, and paragraph 7 of the Schedule to, the Family Allowances and National Insurance Act, 1956(d)), of the said Act of 1946, in conjunction with the Treasury so far as relates to matters with regard to which the Treasury have so directed, and in each case in exercise of all other powers enabling them in that behalf, hereby make the following regulations:—

Citation, interpretation and commencement

1. These regulations, which may be cited as the National Insurance (General Benefit) Amendment Regulations, 1957, shall be read as one with the National Insurance (General Benefit) Regulations, 1948(e), as amended(f) (hereinafter referred to as "the principal regulations") and shall come into operation on the 18th November, 1957.

(a) *See* s. 63 (2), National Insurance Act, 1946, and National Insurance (Northern Ireland Reciprocal Arrangements) Regulations, 1948 (S.I. 1948/211 (Rev. XVI, p. 367: 1948 I, p. 2905)).
(b) 9 & 10 Geo. 6. c. 67.
(c) 5 & 6 Eliz. 2. c. 26.
(d) 4 & 5 Eliz. 2. c. 50.
(e) S.I. 1948/1278 (Rev. XVI, p. 179: 1948 I, p. 2626).
(f) S.I. 1949/1204, 1984, 2318 (1949 I, pp. 2708, 2691, 2692).

Amendment of regulation 1 of the principal regulations

2. In paragraph (2) of regulation 1 of the principal regulations (which makes provision for their interpretation) the following definition shall be inserted after the definition of " the Industrial Injuries Act " :—

" ' the Act of 1957 ' means the National Insurance Act, 1957 ".

Amendment of regulation 4 of the principal regulations

3.—(1) Regulation 4 of the principal regulations (which relates to the computation of earnings) shall be amended in accordance with the following provisions of this regulation and shall accordingly have effect as set out in the Schedule to these regulations.

(2) In sub-paragraph (*a*) of paragraph (1) of the said regulation 4, after the words " insured persons " there shall be inserted the words " or in accordance with the provisions of regulation 3 of the National Insurance (Members of the Forces) Regulations, 1949(a) (which provides for the disregarding of the employment of certain persons in Her Majesty's Forces) ", and sub-paragraph (*c*) of the said paragraph (1) shall be omitted.

(3) In paragraph (2) of the said regulation 4, after the words " which subsection ", there shall be inserted the words " as amended by section 3 of the Act of 1957 " and for the word " twenty " there shall be substituted the word " forty ", and in sub-paragraph (*a*) of the said paragraph (2), for the words " period of seven days immediately preceding ", there shall be substituted the words " calendar week ending last before ".

Provisions added to the principal regulations

4.—(1) The following provisions shall be added after regulation 4 of the principal regulations :—

" *Increase of benefit for wife*

4A. For the purposes of an increase of unemployment benefit, sickness benefit or a retirement pension under section 24 of the Act (which relates to increase of benefit for adult dependants) two spouses shall not be deemed to have ceased to reside together by reason of any absence of either or both of them while receiving medical or other treatment as an in-patient in a hospital or similar institution, notwithstanding that such absence is not temporary.

Increase of benefit for female person having care of child

4B. For the purposes of paragraph (*c*) of subsection (2) of section 24 of the Act (which paragraph relates to increase of unemployment benefit or sickness benefit for a female person, not being a child, who has the care of a child or children of the beneficiary's family) and of subsection (2A) of the said section 24 (which subsection has effect by virtue of section 3 of the Act of 1957 and relates to increase of retirement pension in respect of such a female person), the following further conditions shall apply in relation to any such female person :—

(1) A beneficiary shall not be entitled to an increase of benefit under the said subsection (2) or (2A) in respect of any such female person unless—

(*a*) she is residing with the beneficiary ; or

(a) S.I. 1949/875 (1949 I, p. 2731).

(*b*) she is employed by the beneficiary in an employment from which her weekly earnings (calculated or estimated in such manner and on such basis as is prescribed for the purposes of the said subsection (1) of section 24) are not less than the amount set out in the fifth column of Part I of the Second Schedule to the Act, and was so employed by him before he became unemployed or incapable of work or retired from regular employment, as the case may be, subject to the qualification that the condition of employment before that event shall not apply in a case where the necessity for her employment first arose thereafter; or

(*c*) the beneficiary is contributing to her maintenance at a weekly rate of not less than the amount set out in the fifth column of Part I of the Second Schedule to the Act.

(2) A beneficiary shall not be entitled to an increase of benefit under the said subsection (2) or (2A) in respect of any such female person for any period during which that female person—

(*a*) is undergoing imprisonment or detention in legal custody; or

(*b*) (not being a person who is employed by, but is not residing with, the beneficiary) is engaged in any gainful occupation or occupations (other than her employment by the beneficiary in caring for a child or children of the beneficiary's family) from which her weekly earnings (calculated or estimated in such manner and on such basis as is prescribed for the purposes of the said subsection (1) of section 24) exceed forty shillings; or

(*c*) is absent from Great Britain, except in the case of sickness benefit or a retirement pension for any period during which she is residing with the beneficiary outside Great Britain and for which, by virtue of the provisions of regulation 7 of the National Insurance (Residence and Persons Abroad) Regulations, 1948(**a**), as amended(**b**), the beneficiary is not disqualified for receiving that benefit.

(3) A beneficiary shall not be entitled to an increase of benefit under the said subsection (2) or (2A) in respect of any such female person unless the beneficiary is entitled to an increase of benefit in respect of a child of his family as specified in paragraph (*c*) of the said subsection (2), or would be so entitled but for the provisions of any regulations for the time being in force under the Act relating to overlapping benefits."

(2) The following provisions shall be added after regulation 5 of the principal regulations:—

"*Contribution to maintenance of adult dependant*

5A. For the purposes of subsection (1) of section 24 of the Act (which relates to an increase of unemployment benefit, sickness benefit or a retirement pension in respect of a wife) or of sub-paragraph (*c*) of paragraph (1) of regulation 4B of these regulations—

(*a*) a beneficiary shall not be deemed to satisfy the requirement contained in the said subsection (1) or sub-paragraph (*c*) that he is contributing to the maintenance of the wife or female person, as the case may be, at a weekly rate of not less than the amount set out in the fifth column of Part I of the Second Schedule to the Act, unless when in

(**a**) S.I. 1948/1275 (Rev. XVI, p. 88: 1948 I, p. 2864).
(**b**) The relevant amending regulations are S.I. 1955/983 (1955 I, p. 1624).

employment, or not incapable of work, or not retired from regular employment, as the case may be (except in a case where the dependency did not arise until after that time) he contributed to her maintenance at a weekly rate of not less than that amount; and

(*b*) in a case where an increase of benefit is, apart from the said requirement, payable at a weekly rate less than that specified in the Second Schedule to the Act, a beneficiary shall, subject to the foregoing paragraph, be deemed to satisfy the said requirement, if he is contributing to the maintenance of the wife or female person, as the case may be, at a weekly rate of not less than that of the increase.

Children treated as included in family for increase of certain benefits

5B. For the purposes of subsection (3) of section 6 of the Act of 1957 (which provides for treating a child as included in a man's family for the purpose of an increase of unemployment benefit, sickness benefit or a retirement pension under section 23 of the Act where the beneficiary is contributing to the cost of providing for the child at a weekly rate which, though not less than the prescribed rate, is less than the minimum rate for the time being required for the purposes of subsection (2) of section 3 of the Family Allowances Act, 1945(a)), the prescribed rate in relation to the said section 23 shall be a rate equal to the amount specified in the fourth column of Part I of the Second Schedule to the Act in relation to the benefit in question:

Provided that a person shall not be deemed for the purposes of the said subsection (3) to be so contributing at a weekly rate not less than the prescribed rate unless on the day for which the increase of benefit is claimed another child was, or was under subsection (2) of the said section 23 treated as, or could under paragraph 3 of the Schedule to the Family Allowances Act, 1945, have been treated as, included in his family.

Contribution towards cost of providing for child

5C.—(1) For the purposes of paragraphs (*a*), (*b*), (*c*) and (*d*) of subsection (4) of section 6 of the Act of 1957 (which, in relation to certain benefits and increases of benefit under the Act in respect of a child, makes it a condition of payment of the benefit that, unless the child is living with the beneficiary, contributions towards the cost of providing for the child are being made at a weekly rate not less than that of the amount in question), a person shall be deemed to be contributing towards the cost of providing for a child at a weekly rate not less than that required by the said subsection (4)—

(*a*) as respects any period in respect of which the child is treated as included in the person's family by virtue of subsection (3) of the said section 6 and the person is, apart from the said subsection (4), entitled to receive payment—

(i) in respect of the child, of an amount under section 23 of the Act by way of an increase of unemployment benefit, sickness benefit or a retirement pension, at the rate appropriate to the elder or eldest child of a family; and

(ii) in respect of some other child, of such an amount, at the rate appropriate to a child other than the elder or eldest; and

(*b*) as respects any period in respect of which the child is included in the person's family and, apart from the said subsection (4), the person is

(a) 8 & 9 Geo. 6. c. 41.

not entitled to receive payment in respect of the child of any amount such as is referred to in the said paragraphs (*a*), (*b*), (*c*) and (*d*).

(2) Where the amount in question is an increase of unemployment benefit, sickness benefit or a retirement pension, references in sub-paragraph (*b*) of the foregoing paragraph to a child included in the person's family shall include a child who, had the person been entitled to unemployment benefit, sickness benefit or a retirement pension in respect of any period to which the sub-paragraph refers, would have been treated as included in his family by virtue of subsection (3) of the said section 6.

Allocation of contributions for wife or children

5D.—(1) Subject to the provisions of this regulation, any sum or sums paid by a person by way of contribution towards either or both of the following, that is to say, the maintenance of his wife and the cost of providing for one or more children, being children to whom this regulation refers, shall be treated for the purposes of section 5 and subsections (3) and (4) of section 6 of the Act of 1957 and subsection (1) of section 24 of the Act as such contributions, of such respective amounts equal in the aggregate to the said sum or sums, in respect of such of the persons hereinafter mentioned, that is to say, his wife or any child or children to whom this regulation refers, as may be determined by the determining authority so as to secure as large a payment as possible by way of benefit in respect of dependants.

(2) A determination under the foregoing paragraph, made in order to ascertain, for the purpose of the said section 5, the weekly rate at which the husband had before his death been contributing to the cost of providing for a child, may be varied on review from time to time by the determining authority so often as may be necessary to secure as large a payment as possible by way of child's special allowance, so, however, that no such review shall affect entitlement in respect of any period before the date of the review.

(3) The children to whom this regulation refers are any children who, in the period for which the sum in question is paid by the person, either are included in that person's family or though not so included could have been treated under paragraph 3 of the Schedule to the Family Allowances Act, 1945, as so included, or would have been, or could have been treated under that paragraph as, so included had the person contributed to the cost of providing for the child at a sufficient weekly rate:

Provided that, for the purpose only of such determination as is referred to in paragraph (2) of this regulation, the children to whom this regulation refers are any children such as are mentioned in paragraph (*b*) of subsection (2) of the said section 5.

(4) A sum paid by way of contribution towards the maintenance of a wife shall not be treated by virtue of this regulation as a sum paid by way of contribution towards the cost of providing for a child or children, and a sum paid by way of contribution towards the cost of providing for a child or children shall not be so treated as a sum paid by way of contribution towards the maintenance of a wife, unless in either case the child or children is or are included in the family of the wife or though not so included could have been treated under paragraph 3 of the Schedule to the Family Allowances Act, 1945, as so included:

Provided that, for the purpose only of such determination as is referred to in paragraph (2) of this regulation, a child shall be deemed to satisfy

the condition contained in this paragraph if he would have satisfied it but for the fact that he was not then in Great Britain."

Revocation

5. Paragraph (9) of regulation 8 of the principal regulations (which paragraph relates to repayment of benefit by a married woman who has not given notice of her marriage) is hereby revoked but without prejudice to anything duly done or suffered, or to any right, privilege, obligation or liability acquired, accrued or incurred, thereunder.

Transitory provisions

6.—(1) The provisions of regulation 4A, which, by regulation 4 of these regulations, is added to the principal regulations, shall apply to absence commencing before as well as after the date on which these regulations come into force, subject to the qualification that no benefit shall be payable by virtue of the said regulation 4A in respect of any period before that date.

(2) In the application to any person of regulation 5C, which, by the said regulation 4, is added to the principal regulations, a period before the date on which these regulations come into force shall be deemed to be a period to which sub-paragraph (*b*) of paragraph (1) of the said regulation 5C applies, if it is a period for which a child is included in that person's family or would, had these regulations and subsection (3) of section 6 of the Act of 1957 then been in operation, have been treated as so included under paragraph (2) of the said regulation 5C.

Given under the official seal of the National Insurance Joint Authority this 28th day of October, nineteen hundred and fifty-seven.

(L.S.) *Ian G. Gilbert,*
Secretary,
National Insurance Joint Authority.

Given under the official seal of the Minister of Pensions and National Insurance this 29th day of October, nineteen hundred and fifty-seven.

(L.S.) *John Boyd-Carpenter,*
Minister of Pensions and National Insurance.

Dated this 31st day of October, nineteen hundred and fifty-seven.

Harwood Harrison,
Anthony Barber,
Two of the Lords Commissioners of
Her Majesty's Treasury.

SCHEDULE Regulation 3 (1)

REGULATION 4 OF THE PRINCIPAL REGULATIONS AS AMENDED*

Computation of earnings

4.—(1) For the purposes of subsection (5) of section 78 of the Act (which subsection empowers the Minister to prescribe the basis on which the amount of a person's earnings for any period shall be calculated or estimated for the purposes of the Act) the following provisions shall apply:—

(*a*) The earnings to be taken into account shall be limited to the net remuneration or profit derived by the person from any occupation or occupations

* The words added or substituted by these regulations are shown in italics.

(including any occupation in an employment which, in accordance with any provision of the Act and the regulations made thereunder relating to the classification of insured persons, *or in accordance with the provisions of regulation* 3 *of the National Insurance* (*Members of the Forces*) *Regulations*, 1949 (*which provides for the disregarding of the employment of certain persons in Her Majesty's Forces*), is to be disregarded) and, in particular, in so far as the earnings consist of salary or wages, no account shall be taken of—

(i) any sums the deduction of which from salary or wages is authorised by statute;

(ii) the reasonable expenses, if any, incurred by the person in connection with the employment.

(*b*) Where the earnings of a person for any week are, by reason of the circumstances of the occupation in which he is engaged, not immediately ascertainable, the earnings for that week shall be calculated or estimated in such manner and on such basis as may be decided by the determining authority to be appropriate, having regard to all the circumstances of the case.

(2) For the purposes of subsection (1) of section 24 of the Act (which subsection, *as amended by section* 3 *of the Act of* 1957, provides for an increase of unemployment benefit, sickness benefit or retirement pension in respect of the wife of a beneficiary if her weekly earnings from any gainful occupation or occupations do not exceed *forty* shillings), the weekly earnings of the wife shall, subject to the provisions of paragraph (1) of this regulation, be ascertained in the following manner—

(*a*) in the case of a retirement pension, if there are earnings by the wife in the *calendar week ending last before* the day in the week prescribed for the payment of the pension, by reference to those earnings;

(*b*) in the case of any other benefit—

(i) where the wife is employed in one employment only in respect of which she receives a regular weekly wage of a fixed amount, by reference to that wage; or

(ii) where the wife is not so employed or does not receive a regular weekly wage of a fixed amount, and a claim for the increase is made in respect of a period of seven days (including the Sunday), by reference to her earnings in that period;

(*c*) in any case not covered by either of the foregoing sub-paragraphs, in such manner as the determining authority may decide to be appropriate, having regard to all the circumstances of the case.

(3) The provisions of this regulation shall not apply for the purpose of the classification of insured persons.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations amend those provisions of the National Insurance (General Benefit) Regulations, 1948, which relate to the computation of earnings. They also add to those regulations provisions affecting the right to increases of benefit in respect of adult dependants and children, and revoke a provision of those regulations relating to the repayment of benefit by a married woman who has not given notice of her marriage.

The preliminary draft of these Regulations was submitted to the National Insurance Advisory Committee in accordance with Section 77 of the National Insurance Act, 1946, and their report thereon, dated the 17th July, 1957, is contained in House of Commons Paper No. 4 (Session 1957-58) published by Her Majesty's Stationery Office.