STATUTORY INSTRUMENTS

1974 No. 2008

SOCIAL SECURITY

The Social Security Benefit (Computation of Earnings) Regulations 1974

Made - - -	*3rd December* 1974
Laid before Parliament	*11th December* 1974
Coming into Operation	*6th April* 1975

The Secretary of State for Social Services, in exercise of the powers conferred on her by section 99(14) of, and paragraph 2(7) of Schedule 10 to, the Social Security Act 1973(**a**), and section 81(3) of the National Insurance Act 1965(**b**) as amended(**c**), and of all other powers enabling her in that behalf, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefit (Computation of Earnings) Regulations 1974 and shall come into operation on 6th April 1975.

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

"the 1965 Act" means the National Insurance Act 1965;

"the 1973 Act" means the Social Security Act 1973;

"the Acts" means the 1965 Act and the 1973 Act;

" earnings" means earnings derived from a gainful employment;

"employer" includes any person making a payment which is, or which falls to be taken into account in the calculation or estimation of, another's earnings;

"the determining authorities" means, as the case may require, the Chief National Insurance Commissioner appointed under section 87 of the 1973 Act or any other National Insurance Commissioner so appointed, a tribunal constituted under subsection (2) of that section, a local tribunal constituted under section 77 of the 1965 Act or an insurance officer appointed under section 68(1) of the 1965 Act;

(a) 1973 c. 38. (b) 1965 c. 51.

(c) The relevant amendments are contained in section 84(6) of, and paragraphs 1 and 15 of Part I of Schedule 21 to, the Social Security Act 1973.

"gainful employment" means employment as an employed earner or a self-employed earner, and includes any such employment which, in accordance with the provisions of the 1973 Act and of any regulations made under it, is to be disregarded in relation to liability for contributions;

and other expressions have the same meanings as in the 1973 Act.

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

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

Calculation and estimation of amount of earnings

2.—(1) For the purposes of any provision of the Acts and of any regulations made under them which relates to benefit under the Acts, the amount of a person's earnings for any period shall be calculated or estimated in the manner set out in these regulations.

(2) The amount of a person's earnings for any period to be taken into account shall be the whole of his earnings for that period except in so far as regulations 3 and 4 below provide that no account shall be taken of certain payments or perquisites and that certain payments shall be deducted.

(3) Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, if a person has earnings which do not consist of salary, wages, fees or other payments related to a fixed period or if his earnings from any employment for any period are not immediately ascertainable, the determining authorities shall calculate or estimate the amount of those earnings, for any day or week on or in which that person is following the employment from which they are derived, as best they may having regard to the information (if any) available to them and to what appear to them to be the probabilities of the case.

Payments to be disregarded

3.—(1) Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, in calculating or estimating the amount of a person's earnings for any period no account shall be taken—

(*a*) for the purposes of any provision of the Acts and of any regulations made under them which relates to benefit under the Acts, of the value—

(i) up to 15 pence for each working day, of meal vouchers supplied to him which are not transferable and are valid only for meals;

(**a**) 1889 c. 63.

(ii) of meals provided for him at the place of work;

(iii) of accommodation in which he is required to live as a condition of his employment; and

(iv) of food or produce provided for his personal needs and those of his household;

(*b*) for the purposes only of sections 23, 26, 34 and 35 of the 1973 Act, of any sums of money not exceeding £10 in the aggregate, or of the first £10 of any sums the aggregate of which exceeds that amount, and of any remuneration in kind, if those sums are or (as the case may be) that remuneration in kind is paid by the employer in December of any year by way of Christmas bonus.

(2) A sum shall not be treated as paid to a person by way of Christmas bonus within the meaning of paragraph (1)(*b*) of this regulation if—

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

(*b*) it is received by him by way of payment for work done and either accrues to him as overtime or incentive payment or is otherwise directly related to his hours of work or to the amount of work performed by him.

Deductions to be made

4. Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, in calculating or estimating for the purposes of any provision of the Acts and of any regulations made under them which relates to benefit the amount of a person's earnings for any period, there shall be deducted from the earnings which he derives from employment in that period—

(*a*) any contribution payable under Part I of the 1973 Act or any scheme made under the National Insurance (Industrial Injuries) Act 1965(**a**)—

(i) which his employer pays or is liable to pay on his behalf and the amount of which the employer deducts from a payment of his earnings from that employment; or

(ii) which is duly paid by him otherwise than as a secondary Class 1 contributor and which either is so paid in respect of any period falling wholly or partly within that period or is fairly attributable to that period or any part of it;

(*b*) expenses reasonably incurred by him without reimbursement in respect of—

(i) travel between his place of residence and his place of work and travel which he undertakes in connection with and for the purposes of that employment;

(**a**) 1965 c. 52.

(ii) premises (other than premises in which he normally resides), tools and equipment reasonably required by him for the purposes of that employment;

(iii) protective clothing reasonably required by him for the purposes of that employment (including the laundering and cleaning of such clothing) and excessive wear and tear of his clothing attributable to the conditions and circumstances of that employment;

(iv) subscriptions paid by him to any association of employed persons or other association or body to which, having regard to the nature or objects of the association or body and the nature and circumstances of that employment, it is reasonable for him to subscribe;

(v) the making of reasonable provision for the care of another member of his household because of his own necessary absence from home to carry out his duties in connection with that employment; and

(vi) the cost, up to 15 pence, of each meal taken during the hours of that employment for which no meal voucher has been provided; and

(*c*) any other expenses (not being sums the deduction of which from wages or salary is authorised by or under any enactment) reasonably incurred by him without reimbursement in connection with and for the purposes of that employment.

Calculation of earnings of certain retirement pensioners and adult dependants of pensioners

5.—(1) This regulation applies only where—

(*a*) a person (being a person entitled to a retirement pension or an adult dependant of a person entitled to a retirement pension or an invalidity pension) is in any week engaged in gainful employment in Great Britain;

(*b*) that employment is such that the earnings derived from it for that week are not immediately ascertainable; and

(*c*) the determining authorities are satisfied that a return or statement of the emoluments or the profits or gains from that employment for an assessment period in which that week ends has been or will be delivered to the Inland Revenue for tax purposes.

(2) For the purposes of sections 26(1) and 35 of the 1973 Act the earnings of a person to whom paragraph (1) of this regulation refers, from the employment and for the week there specified. shall, subject to paragraph (3) of this regulation, be calculated by dividing the total amount of his emoluments, profits or gains from that employment for that assessment period, as determined or agreed as the basis for an assessment to income tax, by the number of weeks in that assessment period in which he has been engaged in that employment.

(3) In the calculation for the purposes of section 26(1) of the 1973 Act of the earnings of a person entitled to a retirement pension there shall be disregarded—

(*a*) any days before the date on which he becomes entitled to that pension; and

(*b*) any earnings derived from his employment on those days;

and the earnings so derived shall be calculated or estimated by the determining authorities having regard to such information (if any) as may be available to them about the nature and circumstances of the employment and the nature and incidence of the earnings derived from it.

(4) In this regulation—

(*a*) "assessment period" means in the case of an employed earner an income tax year and in the case of a self-employed earner his accounting period;

(*b*) the reference in paragraph (1)(*b*) to earnings which are not immediately ascertainable shall be construed as including a reference to earnings which are not immediately ascertainable otherwise than by the application of regulation 7 below; and

(*c*) "weeks" in paragraph (2) means successive periods of which the first begins with the first day of the assessment period and each of the subsequent ones begins with the seventh day after the beginning of the one which precedes it; but "week" is not to be construed accordingly.

Interim payments

6.—(1) Where the amount of a person's earnings for any week falls to be calculated in accordance with regulation 5 above and has not been determined, the Secretary of State may direct that, pending the determination of that amount, payment of so much of any benefit by way of retirement pension or increase of either a retirement pension or an invalidity pension as may be affected by that determination shall be suspended.

(2) In any case in which the Secretary of State has given such a direction he may make such interim payments (not exceeding the amount of retirement pension or increase of either a retirement pension or an invalidity pension which would be payable if there were no earnings) as he may think appropriate in the circumstances.

(3) After such interim payments have been made to a person for any period and the amount of the earnings in question has been determined—

(*a*) if the determining authorities determine that for that period benefit, or (if some benefit has already been awarded and paid) additional benefit, is payable to him they shall direct that those interim payments shall, so far as they do not exceed that benefit or additional benefit, be treated as having been made on account of it;

(*b*) if the determining authorities determine that for that period there is payable to him—

(i) no benefit, or (if some benefit has already been awarded and paid) no additional benefit, or

(ii) benefit, or (if some benefit has already been awarded and paid) additional benefit, which is less than the amount of those interim payments,

they shall require repayment of those interim payments or (as the case may be) of so much of those interim payments as exceeds that benefit or additional benefit.

(4) Where the amount of a person's earnings from any employment has been determined in accordance with regulation 5 above and subsequently the amount of his emoluments, profits or gains from it for any relevant period as determined or agreed as the basis for an assessment to income tax is varied, the determining authorities may review their determination; and if, as a result of such a review, that determination is revised the provisions of paragraph (3) of this regulation shall apply in respect and in consequence of the revised determination as they apply in respect and in consequence of an original determination.

(5) The provisions of the Acts and of the regulations made under them shall apply to any interim payment required to be repaid by virtue of paragraph (3) or paragraph (4) of this regulation as if it had been a payment of benefit required to be repaid.

(6) The provisions of the Acts and of the regulations made under them relating to—

(*a*) the time and manner of payment of benefit,

(*b*) the extinguishment of the right to sums payable by way of benefit which are not obtained within the prescribed time, and

(*c*) the information to be given when obtaining payment of benefit,

shall apply to and in respect of any interim payment by virtue of this regulation as if it were a payment of the appropriate pension or increase of pension.

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

7. The amount of the earnings for any week derived from the taking in of boarders or lodgers by a person who is entitled to a retirement pension or is an adult dependant of a person entitled to a retirement pension or an invalidity pension shall, for the purposes of sections 26(1) and 35 of the 1973 Act, if it does not fall to be calculated in accordance with regulation 5 above, be taken to be—

(*a*) in respect of each boarder or lodger who is receiving full board and lodging and for whom no reduction of charges is made on account of his youth, half the amount paid by or in respect of him in excess of £6 a week; and

(*b*) in respect of any other boarder or lodger, half the amount paid by or in respect of him in excess of such sum less than £6 a week as the determining authorities consider to be reasonable in the circumstances having regard, in particular but not exclusively, to what is provided for him by way of board and lodging.

Barbara Castle,

Secretary of State for Social Services.

3rd December 1974.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations provide for the way in which the earnings of a person to whom benefit is or may be payable or of such a person's dependant are to be calculated or estimated for the purposes of those provisions of the National Insurance Act 1965 and the Social Security Act 1973, and the regulations made under those Acts, by which the right to or the amount of benefit depends on the amount of those earnings. Regulation 2 provides, in particular, for the method of calculation or estimation where a person's earnings are not immediately ascertainable. Regulations 3 and 4 provide for certain payments and perquisites to be disregarded or deducted. Regulations 5 and 6 provide for cases where the earnings of a pensioner or a pensioner's dependant are not immediately ascertainable and he makes a return for tax purposes; for the suspension of benefit in such cases until the amount of the earnings is established; and for the making of interim payments. Regulation 7 provides for the calculation of earnings from taking in boarders and lodgers.

These Regulations, being made before the day appointed for the coming into force of section 2 of the Social Security Act 1973, by virtue of section 48(2) of and paragraph 16 of Schedule 12 to that Act are not required to be referred to the National Insurance Advisory Committee and have not been so referred.

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