STATUTORY INSTRUMENTS

1975 No. 554

SOCIAL SECURITY

The Social Security (Overlapping Benefits) Regulations 1975

Made - - - -	3*rd April* 1975
Laid before Parliament	4*th April* 1975
Coming into Operation	6*th April* 1975

The Secretary of State for Social Services, in exercise of powers conferred by sections 83(1) and 85 of the Social Security Act 1975**(a)** and section 2 of, and paragraphs 3 and 9 of Schedule 3 to, the Social Security (Consequential Provisions) Act 1975**(b)** in that behalf, without having referred any proposals on the matter to the National Insurance Advisory Committee since it appears to her that by reason of urgency it is inexpedient to do so, hereby makes the following regulations:—

Citation and commencement

1. These regulations may be cited as the Social Security (Overlapping Benefits) Regulations 1975 and shall come into operation on 6th April 1975.

Interpretation

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

"the Act" means the Social Security Act 1975;

"death benefit" means any benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) in respect of the death of any person;

"the deceased" means, in relation to any death benefit, the person in respect of whose death that benefit, apart from these regulations, is payable;

"dependency benefit" means that benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) to a person in respect of another person who is a child or an adult dependant; it includes child's special allowance and any personal benefit by way of pension payable to a child under any Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme but does not include benefit under section 73 of the Act (allowances to a woman who has care of children of man who died as a result of an industrial accident);

"disablement pension" includes a disablement payment on a pension basis and retired pay or pension in respect of any disablement, wound, injury or disease;

"personal benefit" means any benefit, pension or allowance which is not a dependency benefit and which is payable to any person;

(a) 1975 c. 14. **(b)** 1975 c. 18.

"Personal Injuries Scheme" means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939**(a)** or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939**(b)**;

"Pneumoconiosis and Byssinosis Benefit Scheme" means any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975**(c)**;

"Service Pensions Instrument" means those provisions and only those provisions of any Royal Warrant, Order in Council or other instrument (not being a 1914—1918 War Injuries Scheme) under which a death or a disablement pension (not including a pension calculated or determined by reference to length of service) and allowances for dependants payable with either such pension may be paid out of public funds in respect of any death or disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council;

"training allowance" means an allowance (whether by way of periodical grants or otherwise) payable, out of public funds, by a Government department or by or on behalf of the Manpower Services Commission to a person for his maintenance, or in respect of any dependant of his, for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him or so provided or approved by or on behalf of the said Commission; but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education or is training as a teacher;

"treatment allowance" means an allowance payable under a Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme only to a person undergoing a course of medical, surgical or rehabilitative treatment in consequence of a disablement in respect of which a pension may be or has been paid, or an allowance payable to any such person pending the determination of the question whether he is entitled to receive such a pension;

"unemployability supplement" includes an increase on account of unemployability under—

(*a*) any Pneumoconiosis and Byssinosis Benefit Scheme; and

(*b*) any Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme;

"war pension death benefit" means a death benefit by way of pension or allowance, under any Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme, but does not include a rent allowance or a grant payable by reason of the beneficiary being in receipt of a pension and being a specific age which is not less than 65 or a pension or an allowance calculated by reference to the necessities of the beneficiary;

"1914—1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914**(d)** or under the Injuries in War Compensation Act 1914 (Session 2)**(e)** or any Government scheme for

(a) 1939 c. 82.
(b) 1939 c. 83.
(c) 1975 c. 16.
(d) 1914 c. 30.
(e) 1914 (5 & 6 Geo. 5) c. 18.

compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914—1918 War;

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

(2) Unless the context otherwise requires, any reference in these regulations to—

(*a*) a numbered section is to the section of the Act bearing that number;

(*b*) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;

(*c*) any provision made by or contained in an enactment or instrument shall 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.

(3) 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.

Adjustment of personal benefit under Chapters I and II of Part II of the Act where other personal benefit under those Chapters is payable

3.—(1) Subject to paragraphs (2) and (3) where 2 or more personal benefits (whether of the same or a different description) are, or but for this regulation would be, payable under Chapters I and II of Part II of the Act (which relate to benefits other than industrial injuries benefits) for any period, an adjustment shall be made in accordance with paragraph (4).

(2) Paragraph (1) shall not require the adjustment of, or by reference to,—

(*a*) a death grant;

(*b*) a maternity grant;

(*c*) any other sum paid otherwise than in respect of a period;

(*d*) an earnings-related supplement or earnings-related addition to any benefit (except as provided by regulation 4);

(*e*) an attendance allowance;

(*f*) graduated retirement benefit (except as provided by paragraph (5)).

(3) Paragraph (1) shall require an adjustment of—

(*a*) age addition only by reference to another age addition;

(*b*) invalidity allowance only by reference to an increase, under section 28(7), of a Category A retirement pension.

(4) Where an adjustment falls to be made in accordance with this paragraph and—

(*a*) one of the benefits is a contributory benefit and one is a non-contributory benefit, the non-contributory benefit shall be adjusted by deducting from it the amount of the contributory benefit and only the balance, if any, shall be payable;

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

(*b*) sub-paragraph (*a*) above does not apply, if one of the benefits is payable on a weekly basis—

(i) where the beneficiary has made application, before the payment is made, to have the benefit payable on a weekly basis adjusted, it shall be adjusted by deducting from it the amount of the other benefit and only the balance of it, if any, shall be payable,

(ii) in any other case, the benefit not payable on a weekly basis shall be adjusted by deducting from it the amount of the other benefit and only the balance of it, if any, shall be payable;

(*c*) sub-paragraphs (*a*) and (*b*) above do not apply, the amount payable in respect of the benefits in question shall be an amount equal to that which would but for this provision be payable in respect of—

(i) one of them, if they would have been payable at the same rate, or

(ii) the higher or highest of them, if they would have been payable at different rates,

so however that in a case where more than 2 benefits would be payable then the total amount payable shall not exceed the amount which would be ascertained under sub-paragraph (*c*).

(5) Where a person is entitled to a graduated retirement benefit and a Category D retirement pension, the latter shall be adjusted in accordance with paragraph (4)(*a*).

Special provisions for earnings-related supplements and earnings-related addition to widow's allowance

4.—(1) Where 2 or more earnings-related supplements to any benefits under the Act would apart from this regulation be payable for the same period, for the purposes of regulation 3(1) each such supplement shall be treated as part of the benefit it supplements.

(2) Where an earnings-related addition to widow's allowance would apart from this regulation be payable for the same period as any other benefit under the Act which is calculated by reference to the contributions of the deceased, that other benefit shall be adjusted by deducting from it the amount of the earnings-related addition.

(3) Paragraph (1) shall not apply where apart from this regulation a widow's allowance would be payable for the same period as 2 or more other benefits under the Act; in such a case the earnings-related supplement to any of those other benefits shall be adjusted so that only the higher or highest of them is payable.

Adjustments of personal benefit under Chapters I and II of Part II of the Act by reference to industrial injuries benefits and benefits not under the Act, and adjustments of industrial injuries benefits

5.—(1) Where a personal benefit which is specified in column 1 of the Schedule to these regulations ("the column 1 benefit") is, or but for this regulation would be, payable to a person for the same period as a personal benefit which is specified in the corresponding paragraph of column 2 of that Schedule ("the column 2 benefit") the column 1 benefit shall be adjusted by deducting from it the amount of the column 2 benefit and, subject to any further adjustment under regulation 3, only the balance, if any, shall be payable.

(2) Any reference in paragraph (1), or in the Schedule to these regulations,

to a benefit, other than a training allowance, does not include an earnings-related supplement or earnings-related addition to it.

(3) Paragraph (1) and the Schedule to these regulations shall have effect in relation to an attendance allowance, and to any benefit by reference to which it is to be adjusted, as requiring adjustment where both that allowance and the benefit are payable in respect of the same person (whether or not one or both of them are payable to him).

Adjustment of dependency benefit in respect of a child where other dependency benefit is payable for that child

6.—(1) Where dependency benefit under the Act is payable, or but for this regulation would be payable, to any person in respect of a child and any other dependency benefit specified in paragraph (2) is payable in respect of that child for the same period, an adjustment shall be made in accordance with regulation 3(4) so however that where one of the dependency benefits is death benefit under section 70 by way of an allowance the adjustment shall be made in accordance with paragraph (4).

(2) Subject to paragraph (3), the other dependency benefit referred to in paragraph (1) is any dependency benefit under—

(*a*) the Act;

(*b*) any Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme;

(*c*) any Pneumoconiosis and Byssinosis Benefit Scheme;

(*d*) any scheme, being a benefit by way of training allowance.

(3) Sub-paragraph (*b*) of paragraph (2) does not include an allowance payable for the purpose of the child's education and for the purposes of that sub-paragraph—

(*a*) any personal benefit by way of a pension payable to a child shall be treated as a dependency benefit payable to another person in respect of that child;

(*b*) any dependency benefit payable as part of a disablement pension shall be disregarded unless it is payable as an increase of an unemployability supplement.

(4) Where one of the dependency benefits is death benefit under section 70 by way of an allowance, the other benefit shall be adjusted by deducting from it the amount of that death benefit, and only the balance, if any, shall be payable.

Adjustment of dependency benefit in respect of an adult dependant where other dependency benefit is payable

7.—(1) Subject to paragraph (3), where for any period any dependency benefit under the Act is, or but for this regulation would be, payable to any person in respect of an adult dependant and any other dependency benefit specified in paragraph (2) is payable for that period to—

(*a*) that person in respect of that or any other adult dependant; or

(*b*) any other person in respect of that dependant,

an adjustment shall be made in accordance with regulation 3(4).

(2) The other dependency benefit referred to in paragraph (1) is any dependency benefit under—

(*a*) the Act;

(*b*) any Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme;

(*c*) any Pneumoconiosis and Byssinosis Benefit Scheme;

(*d*) any scheme being a benefit by way of training allowance.

(3) Paragraph (1) shall not require an adjustment to be made where one of the dependency benefits in question is an increase of benefit under section 44(3)(*c*), 46(2) or 66(1)(*d*) in respect of a person who is employed by the beneficiary but is not residing with him and the other such benefit is payable to a person other than the beneficiary.

(4) For the purposes of paragraph (2)(*b*) any dependency benefit which is payable with a disablement pension shall be disregarded unless it is payable as an increase of an unemployability supplement.

Adjustment of dependency benefit where certain personal benefit is payable

8.—(1) Subject to the following provisions of this regulation, where a dependency benefit under the Act is payable for the same period as one or more of the following personal benefits is, or but for the provisions of these regulations would be, payable to the dependant—

(*a*) a personal benefit under Chapter I or II of Part II of the Act (other than a benefit specified in regulation 3(2)(*a*) (*b*) (*c*) or (*e*));

(*b*) an unemployability supplement;

(*c*) injury benefit;

(*d*) industrial death benefit;

(*e*) war pension death benefit;

(*f*) a training allowance,

the dependency benefit shall be adjusted in accordance with paragraph (2).

(2) Where the weekly rate of the personal benefits (or if more than one, the aggregate weekly rate payable after any adjustment made by virtue of regulations 3(1) or 5(1))—

(*a*) is equal to or exceeds the weekly rate of the dependency benefit, the dependency benefit shall not be paid;

(*b*) in any other case, the weekly rate of the dependency benefit payable shall be adjusted, if necessary, so that it does not exceed the difference between the weekly rate of the personal benefit and that of the unadjusted dependency benefit.

(3) Paragraph (1) does not apply to an increase of benefit under section 44(3)(*c*), 46(2) or 66(1)(*d*) in respect of a person who is employed by, but is not residing with, the beneficiary.

(4) Where the personal benefit to which paragraph (1) applies is sickness benefit payable to a married woman which falls to be adjusted by virtue of regulations under section 85(1)(*b*) (hospital in-patients) and the dependency benefit would be payable to her husband, the rate of sickness benefit to be taken into account for the purposes of paragraph (1) shall be the rate after it has been so adjusted.

Dependency benefit under the Act not to be payable if a training allowance is payable

9. Dependency benefit under the Act shall not be payable to any person for any period in respect of which any personal benefit by way of training allowance is payable to him.

Increases in respect of more than one dependant to be treated as separate dependency benefits

10. For the purposes of these regulations, where dependency benefit by way of an increase is payable in respect of more than one person (whether a child or adult dependant), each such increase shall be treated as a separate dependency benefit.

Provisions for adjusting benefit for part of a week

11.—(1) Where an adjustment falls to be made under these regulations for a part of a week, any benefit (whether under the Act of otherwise) which is not payable for that week at a daily rate equal to one-sixth of the appropriate weekly rate for each day of the week except Sunday, shall be deemed to be so payable.

(2) Where the benefit in question is unemployment benefit, sickness benefit or invalidity benefit and the beneficiary is a person in whose case the day to be disregarded in accordance with regulations made under section 17(1)(*e*) is a day other than Sunday, the reference in paragraph (1) to Sunday shall be construed as a reference to that other day.

(3) In paragraph (1) "appropriate weekly rate" means the weekly rate at which the benefit in question would be payable but for these regulations.

Priority to title to increases of benefit

12. Where, but for the provisions of these regulations, 2 persons would be entitled to an increase of benefit under the Act in respect of a third person, the person entitled to the increase shall—

(*a*) if one of them is designated in a written notice to the Secretary of State signed by the other, be the one so designated;

(*b*) in any other case, be determined by the Secretary of State under section 93(1)(*c*).

Persons to be treated as entitled to benefit for certain purposes

13. Any person who would be entitled to any benefit under the Act but for these regulations shall be treated as if he were entitled thereto for the purpose of any rights or obligations under the Act and the regulations made under it (whether of himself or some other person) which depend on his being so entitled, other than for the purposes of the right to payment of that benefit.

Prevention of double adjustments

14. No adjustment shall be made under regulations 5 to 8 to any benefit under the Act by reference to a benefit which has itself been adjusted by reference to that benefit under the Act.

Signed by authority of the Secretary of State for Social Services,

Brian O'Malley,
Minister of State,
Department of Health and Social Security.

3rd April 1975.

THE SCHEDULE

Regulation 5

PERSONAL BENEFITS WHICH ARE REQUIRED TO BE ADJUSTED BY REFERENCE TO BENEFITS NOT UNDER CHAPTERS I AND II OF PART II OF THE ACT

Column 1 Personal benefit under the Act	Column 2 Other personal benefit by reference to which the benefit in column 1 is to be adjusted
1. Unemployment benefit, sickness benefit or invalidity benefit	1. Injury benefit, unemployability supplement and training allowance
2. Maternity allowance	2. Injury benefit and training allowance
3. Widow's benefit and benefit by virtue of section 39(4) corresponding to widowed mother's allowance or widow's pension	3. Injury benefit, unemployability supplement, industrial death benefit or war pension death benefit in either case payable to a woman as widow of the deceased and (except where the benefit in column 1 is widow's allowance) training allowance
4. Category A retirement pension (except any age addition)	4. Injury benefit, unemployability supplement, training allowance and (in so far as the retirement pension is payable wholly or in part by virtue of a woman's husband's contributions or consists of an increase under section 28(5)) war pension death benefit or industrial death benefit which in either case is payable to her as his widow
5. Category B, C or D retirement pension (except any age addition)	5 Injury benefit, unemployability supplement, industrial death benefit or war pension death benefit in either case payable to a woman as the widow of the deceased and training allowance
6 Attendance allowance	6. Any benefit based on need for attendance under section 61 or under any Pneumoconiosis and Byssinosis Benefit Scheme, Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme
7. Invalidity allowance	7. An increase under section 59(1) of an unemployability supplement and an additional allowance payable only to a beneficiary who is entitled to an unemployability supplement under any Personal Injuries Scheme, Service Pensions Instrument or 1914—1918 War Injuries Scheme
8. Injury benefit	8. Unemployability supplement
9. Unemployability supplement	9. Any other unemployability supplement
10. Increase of disablement pension during hospital treatment	10. Treatment allowance

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations contain provisions relating to adjustment of benefits under the Social Security Act 1975 by reference to other benefits payable for the same period.

The principal matters dealt with are adjustment of personal benefit under Chapters I, II and IV of Part II of the Act (regulations 3 and 5), earnings-related supplement (regulation 4) and dependency benefit (regulations 6 to 9). The regulations also contain miscellaneous provisions incidental to those matters.

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