

1997-16 Social Security (Open Long-Term Benefits Scheme)

Subsidiary Legislation made under s.26.

Social Security (Open Long-Term Benefits) (Overlapping Benefits) Regulations 1997

LN.1997/119

Commencement **1.4.1997**

| Amending enactments | Relevant current provisions | Commencement date |
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| 2007/133 | r. 7 | 1.9.2007 |
| 2009/021 | rr. 6(1)(a)-(b), 7, 10(1), (2)(b), 12 | 1.4.2008 |
| Act. 2011-29 | Sch. | 1.7.2009 |
| 2014-10 | rr. 7, 13, Sch. | 28.3.2014 |

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SCHEDULE

**PERSONAL BENEFITS WHICH ARE NOT
REQUIRED TO BE ADJUSTED.**

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In exercise of the powers conferred on him by section 26 of the Social Security (Open Long-Term Benefits Scheme) Act 1997 and of all other enabling powers, the Minister for Social Affairs has made the following regulations -

Title and commencement.

1. These Regulations may be cited as the Social Security (Open Long-Term Benefits) (Overlapping Benefits) Regulations 1997 and shall be deemed to have come into effect on the 1st day of April, 1997.

Interpretation.

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

“dependency benefit” means the increase in the rate of a benefit, pension or allowance (whether under the Act or otherwise) which, apart from these regulations, is payable to a person in respect of another person who is a child or an adult dependant;

“personal benefit” means that benefit, pension or allowance (whether under the Act or otherwise) which, apart from these regulations, is payable to a person otherwise than in respect of another person who is a child or adult dependant.

(2) Where under section 20 of the Social Security (Employment Injuries Insurance) Act an orphan’s pension is payable, it shall be treated for the purposes of these regulations as dependency benefit, payable to the person for the time being having the care of the orphan.

Adjustment of personal benefit under the Act where other personal benefit is payable.

3.(1) Where, for any period, any personal benefit under the Act and one or more of the personal benefits specified in paragraph (4) below (hereafter in these regulations referred to as “the specified benefits”) or any other personal benefit under the Act are, or, but for this regulation, would be payable to any person, then for that period—

- (a) every personal benefit under the Act which is or would be payable shall, subject to the provisions of regulation 4 below, be adjusted by reference to each of the specified benefits (if any) payable for that period, in accordance with the provisions of paragraph (2) below; and
- (b) where (after such adjustment, if any) more than one personal benefit under the Act would be payable for that period, an adjustment between those personal benefits shall be made in accordance with the provisions of paragraph (3) below.

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(2) Where in accordance with paragraph (1) above any personal benefit under the Act is required to be adjusted for any period by reference to any specified benefit or benefits, then the amount which, but for this regulation, would be payable for that period in respect of that personal benefit under the Act shall be reduced or extinguished by the deduction there from of the amount payable for that period in respect of that specified benefit or those specified benefits, and, subject to any further adjustment to be made in accordance with paragraph (3) below, only the balance (if any) shall be payable for that period in respect of that personal benefit under the Act.

(3) Where in accordance with paragraph (1) above an adjustment between any personal benefits under the Act is required to be made for any period, then the amount payable for that period in respect of those personal benefits shall be the amount which, but for this provision, would be payable for that period in respect of one of those personal benefits if they would be so payable at equal rates; or that one of them which would be so payable for that period at the higher or highest rate.

(4) The personal benefits referred to in this regulation as “the specified benefits” are any personal benefit by way of injury benefit or death benefit under the Social Security (Employment Injuries Insurance) Act.

Exceptions to regulation 3.

4. Any personal benefit under the Act, which is specified in the first column of the Schedule shall not be adjusted by reference to any specified benefit in the corresponding paragraph of the second column of the Schedule.

Adjustment of dependency benefit under the Act where other dependency benefit is payable.

5.(1) 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 a child or an adult dependant, that dependency benefit shall be adjusted -

- (a) in the case of dependency benefit in respect of a child, by reference to any other dependency benefit specified in paragraph (2) below which is payable for that period in respect of that child; or
- (b) in the case of dependency benefits in respect of an adult dependant, by reference to any other dependency benefit so specified which is payable for that period to

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that person in respect of that or any other adult dependant or to any person in respect of that adult dependant,

so that the amount which, but for this regulation, would be payable in respect of that dependency benefit under the Act shall be reduced or extinguished by the deduction from that amount of the amount payable for that period in respect of that other dependency benefit or those other dependency benefits by reference to which the dependency benefit under the Act is required to be adjusted and only the balance (if any) shall be payable for that period in respect of that dependency benefit under the Act.

(2) The dependency benefits referred to in paragraph (1) above are any dependency benefit under the Act, other than by way of old age pension, or under the Social Security (Employment Injuries Insurance) Act, and any dependency benefit by way of unemployment benefit under the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act.

Adjustment of dependency benefit under the Act where personal benefit is payable.

6.(1) Where, for any period, any one or more of the personal benefits specified in paragraph (2) below is or are payable to any person—

- (a) if the monthly rate or aggregate monthly rate at which that personal benefit or those personal benefits (if more than one) is or are payable for that period is equal to or exceeds the full monthly rate of benefit payable in accordance with column 3 of Part V of Schedule 2 to the Social Security (Open Long-Term Benefits) Regulations 1997, there shall not be paid in respect of that person for that period any dependency benefit under the Act; and
- (b) in any other case, there shall not be paid in respect of that person for that period any dependency benefit under the Act at a monthly rate exceeding the difference between the monthly rate or aggregate monthly rate at which that personal benefit or those personal benefits (if more than one) is or are payable for that period and the rate of the full monthly rate of benefit payable in accordance with column 3 of Part V of Schedule 2 to the Social Security (Open Long-Term Benefits) Regulations 1997.

(2) The personal benefits referred to in paragraph (1) above are any personal benefit under the Act or under the Social Security (Non-Contributory Benefits and Unemployment Insurance) Act, and any personal benefit by way of injury or death benefit under the Social Security (Employment Injuries Insurance) Act.

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Gratuities.

7. Where a widow or surviving civil partner is entitled to death benefit under section 19 of the Social Security (Employment Injuries Insurance) Act, then, notwithstanding that she or he may have opted to receive a gratuity instead of a pension, she or he shall be treated for the purposes of these regulations as entitled to a pension at the monthly rate of £234.03 a month for life or until she or he remarries or enters into a further civil partnership.

Priority of title to increases of benefit.

8. Where two persons would be entitled to a dependency benefit under the Act in respect of a third person, the question of which person shall be entitled to the benefit shall be determined in accordance with the following order of priority—

- (a) such one of the two persons as may be designated in a written notice to the Director, signed by the other;
- (b) such one of the two persons as the Director may in his discretion determine, having regard to the circumstances of the case.

Two increases of the same benefit to be treated as separate benefits.

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

Provisions for adjusting benefit, etc., for part of a month.

10.(1) Where, in accordance with the provisions of these regulations, any benefit under the Act is required to be adjusted for a part only of a month, then, for the purposes of making that adjustment and of determining the amount of that benefit which is payable for the part (if any) of that month for which it is not so required to be adjusted, the amount of the appropriate monthly rate of that benefit and of every benefit (whether under the Act or otherwise) by reference to which it is so required to be adjusted shall, if it is not payable for that month at a daily rate equal to one-thirtieth of the appropriate monthly rate, be treated as being so payable.

(2) In this regulation—

- (a) the expression “benefit” includes any pension or allowance;

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- (b) the expression “appropriate monthly rate” means, in relation to any benefit, the monthly rate at which it would be payable but for the provisions of these regulations.

Persons to be treated as entitled to benefit for certain purposes.

11. Any person who would be entitled to any benefit under the Act but for these regulations shall be treated as if he so were entitled for the purpose of any rights or obligations under the Act (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.

Social assistance.

12. Where payments in respect of any benefit under the Act are in arrears for any period and social assistance grants, or Minimum Income Guarantee Payments, have been made by the Director for that period, the payments shall be abated to the extent to which the actual amount of those social assistance grants, or Minimum Income Guarantee Payments, exceeds what would have been their amount, as decided by the Director, if such payments had not fallen into arrears.

Guardian Allowance for a surviving civil partner who is made guardian of the deceased civil partner’s child/children.

13. If the parent of a child who is a party to a civil partnership dies and the surviving civil partner is determined to be the child’s Guardian, the surviving Guardian cannot claim Guardian Allowance provided he or she can claim Widows, Widower’s, surviving Civil Partners and children benefit under section 19 of the Social Security (Employment Injuries Insurance) Act.

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SCHEDULE

Regulation 4.

PERSONAL BENEFITS WHICH ARE NOT REQUIRED TO BE ADJUSTED.

| Personal benefits under the Act. 1. | Other personal benefits 2. |
|--|--|
| (1) Old age pension | (1)a. Injury benefit under the Social Security (Employment Injuries Insurance) Act; b. Death benefit payable to a woman or civil partner as the widow or surviving civil partner of the deceased under the Social Security (Employment Injuries Insurance) Act. |
| (2) Any personal benefit | (2) Death benefit payable to a person as the parent of the deceased under the Social Security (Employment Injuries Insurance) Act. |
| (3) Survivor's benefit | (3) Injury benefit under the Social Security (Employment Injuries Insurance) Act. |