STATUTORY RULES OF NORTHERN IRELAND

1994 No. 485

SOCIAL SECURITY

The Social Security (Incapacity Benefit — Increases for Dependants) Regulations (Northern Ireland) 1994

Made - - - - 14th December 1994
Coming into operation in accordance with regulation 1(1)

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 3(2), 80(7), 86A, 87, 89, 90, 114(1) and 121(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**1**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Incapacity Benefit — Increases for Dependants) Regulations (Northern Ireland) 1994 and shall come into operation as follows—

(a) regulations 1 to 15(6)(a), (6)(b)(ii) and (c)(ii), (7) and (8) on 13th April 1995; and

(b) regulation 15(6)(b)(i) and (c)(i) on 13th May 1995.

(2) In these regulations—

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992(**2**);

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northeern Ireland) Act 1992;

"benefit week" means a period of seven days ending with the day on which the benefit is due to be paid;

(**1**) 1992 c. 7; section 86A was inserted by Article 4(4) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)); sections 87 and 89 are amended by paragraphs 24 and 26 respectively of Schedule 1 to that Order with effect from 6th April 1995

(**2**) 1992 c. 8

"entitled to child benefit" includes treated as so entitled;

"parent" has the meaning that it bears for the purposes of Part IX of the Contributions and Benefits Act;

"standard rate of increase" means the amount specified in column (3) of Part IV of Schedule 4 to the Contributions and Benefits Act which is appropriate in the case of the beneficiary.

(3) In these regulations, except where the context otherwise requires—

(a) a reference to a numbered regulation is a reference to the regulation in these regulations which bears that number; and

(b) a reference in a regulation to a numbered paragraph is a reference to the paragraph in that regulation which bears that number.

Provisions as to maintenance for the purposes of increase of benefit in respect of dependants

2.—(1) Subject to paragraph (2), a beneficiary shall not, for the purposes of the Contributions and Benefits Act, in so far as they relate to incapacity benefit and of those regulations, be deemed to be wholly or mainly maintaining another person unless the beneficiary—

(a) when incapable of work, contributes towards the maintenance of that person an amount not less than the amount of increase of benefit received in respect of that person; and

(b) when in employment, or not incapable of work, (except in a case where the dependency did not arise until after that time) contributed more than half of the actual cost of maintenance of that person.

(2) In a case where—

(a) a person is partly maintained by each of two or more other persons each of whom could be entitled to an increase of benefit under the Contributions and Benefits Act in respect of that person if he were wholly or mainly maintaining that person; and

(b) the contributions made by those other persons towards the maintenance of that person amount in the aggregate to sums which, if they were contributed by one of them, would be sufficient to satisfy the requirements of paragraph (1),

that person shall, for the purposes of that Act in so far as they relate to incapacity benefit, be deemed to be wholly or mainly maintained by that one of the said other persons who—

(i) makes the larger or largest contribution to the maintenance of that person, or

(ii) in a case where no person makes the larger or largest contribution, is the elder or eldest of the said other persons, or

(iii) in any case, is a person designated in that behalf by a notice in writing signed by a majority of the said other persons and addressed to the Department,

so long as that one of the said other persons continues to be entitled to benefit under that Act and to satisfy the condition contained in paragraph (1)(a).

(3) A notice given under paragraph (2) and the designation contained in it may be revoked at any time by a fresh notice signed by a majority of such persons and another one of their number may be designated thereby, and accordingly, the provisions of that paragraph shall apply to the one so last designated.

Allocation of contributions for a spouse or child

3.—(1) Subject to paragraphs (2) and (3), for the purposes of the Contributions and Benefits Act in so far as they relate to incapacity benefit, any sum paid by a person by way of contribution towards—

(a) the maintenance of his spouse,

(b) the cost of providing for a relevant child; or

(c) both that maintenance and that cost,

shall be treated for the purposes of section 81(2)(b) of that Act (restrictions on increase — child not living with beneficiary, etc.) and regulations 9 and 12 as such contributions of such respective amounts equal in the aggregate to the sum in respect of his spouse or any relevant child, as may be determined by the adjudicating authority so as to secure as large a payment as possible byway of benefit in respect of dependents.

(2) Any sum paid by way of contribution towards the maintenance of a spouse shall not be treated by virtue of this regulation as a sum paid by way of contribution towards the cost of providing for a relevant child, and any sum paid by way of contribution towards the cost of providing for a relevant child shall not be treated as a sum paid by way of contribution towards the maintenance of a spouse, unless in either case the spouse is entitled to child benefit in respect of that relevant child.

(3) In this regulation—

"adjudicating authority" means any person or body with responsibility under the Administration Act and regulations made under that Act, for the determination of claims for benefit and questions arising in connection with a claim for, or award of, or disqualification for receiving, benefits;

"relevant child" means a child in respect of whom, in the period for which the sum in question is paid by a person, that person is entitled to child benefit or would have been so entitled had he contributed to the cost of providing for the child at a sufficient weekly rate.

Deeming abated benefit to be a contribution for the maintenance of c hild or adult dependants

4. Where, for any period, a person (in this regulation referred to as A) is entitled to, or to an increase in the amount of, any benefit prescribed under section 72(3)(a) of the Administration Act (income support and other payments) in respect of another person (in this regulation referred to as B) and the amount of, or of the increase in, any, such benefit is abated under that section, then in determining for the purpose of the Contributions and Benefits Act whether A is wholly or mainly maintaining or is contributing at any weekly rate to the maintenance of, or is or has been contributing at any weekly rate to the cost of providing for, B, the amount by which such benefit for any week has been so abated shall be deemed to be a contribution of that amount for that week made by A for the maintenance B.

Attribution of earnings

5.—(1) Subject to paragraph (4), for the purposes of section 80(3) and (4) of the Contributions and Benefits Act(**3**) (beneficiary's dependent children) and regulation 10, the week to which a person's earnings are to be attributed shall be determined in accordance with paragraphs (2) to (4).

(2) Earnings derived from employment as an employed earner or as a self-employed earner (determined in accordance with regulations 2 (calculation and estimation of amount of earnings), 3 (payments to be disregarded), 4 (deductions to be made) and 7 (calculation of earnings from boarders or lodgers of certain retirement pensioners and adult dependents of pensioners) of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978(**4**)) which are payable in respect of a period shall be attributed at a weekly amount to a period equal in length to the period

(**3**) Section 80(4) was amended by Article 8 of the Social Security Benefits Up-rating Order (Northern Ireland) 1993 (S.R. 1993 No. 150), the amounts being maintained in force by Article 8 of the Social Security Benefits Up-rating Order (Northern Ireland) 1994 (S.R. 1994 No. 74)

(**4**) S.R. 1978 No. 371; relevant amending regulations are S.R. 1979 No. 97, S.R. 1987 No. 201, S.R. 1989 Nos. 373 and 438, S.R. 1990 No. 398 and S.R. 1992 Nos. 96 and 298

in respect of which they are paid beginning with the date on which they are treated as paid under paragraph (3).

(3) A payment of earnings to which paragraph (2) applies shall be treated as paid—

(a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid; and

(b) in any other case, on the first day of the benefit week in which it is due to be paid.

(4) This regulation does not apply in any case to which regulation 5 of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978 (calculation of earnings of certain retirement pensioners and adult dependents of pensioners) applies.

PART II

CHILD DEPENDANTS

Circumstances in which a person not entitled to child benefit is to be treated as if so entitled

6.—(1) For the purposes of section 80 of the Contribution and Benefits Act(**5**), in so far as they relate to incapacity benefited a person shall be treated as if he were entitled to child benefit in respect of a child for any period throughout which—

(a) child benefit has been awarded to a parent of that child with whom that child is living and with whom that person is residing and either—

(i) the child is being wholly or mainly maintained by that person, or

(ii) that person is also a parent of the child; or

(b) he, or his spouse with whom he is residing, would have been entitled to child benefit in, respect of that child had the child been born at the end of the week immediately preceding the week in which the birth occurred.

(2) Where for any period a person who is in Northern Ireland could have been entitled to receive payment of an amount by way of an increase of incapacity benefit in respect of a child but for the fact that, in pursuance of any agreement with the government of a country outside the United Kingdom, he, or his spouse who is residing with him, is entitled in respect of the child in question to the family benefits of that country and is not entitled to child benefit, he shall for the purposes of entitlement to the said payment be treated as if he were entitled to child benefit for the period in question.

(3) For the purposes of paragraph (1)—

(a) "week" means a period of 7 days beginning with a Monday; and

(b) a child shall not be regarded as living with a person unless he can be so regarded for the purposes of section 139 of the Contributions and Benefits Act (meaning of "person responsible for child").

Circumstances in which a person entitled to child benefit is to be treated as if not so entitled

7.—(1) For the purposes of secton 8o of the Contributions and Benefits Act, in so far as they relate to incapacity, benefit, a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for—

(a) any period throughout which—

(**5**) Section 80(2) is amended by Article 4(3) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 6th April 1995

(i) that person, not being a parent of the child, does not fall to be treated as responsible for the child under section 139 of that Act, and

(ii) a parent of that child falls to be treated as responsible for the child under that section;

(b) any period throughout which—

(i) that person, not being a parent of the child, falls to be treated as responsible for the child under section 139 of that Act, and

(ii) a parent of that child also falls to be treated as responsible for the child under that section; or

(c) any day following the day on which that child died.

(2) Paragraph (1)(b) shall not apply in the case of a person who is wholly or mainly maintaining the child referred to in that sub-paragraph.

(3) For the purposes of section 80 of the Contributions and Benefits Act a person who is entitled to child benefit in respect of a child shall be treated as not so entitled for any period for which that benefit is not payable by virtue of any of the provisions of regulations 7 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child), 8, (exclusion from benefit of children aged sixteen but, under the age of nineteen who are receiving advanced education), 9 (child receiving training under the youth training programme) or 9A (child receiving income support) of the Child Benefit (General) Regulations (Northern Ireland) 1979(**6**) or any provision contained in regulations made under section 140(1) of that Act (exclusions and priority) in so far as those regulations provide that child benefit is not to be payable by virtue of section 138(1)(b) of that Act (meaning of "child") and regulations made under that paragraph.)

Contribution towards cost of providing for child

8.—(1) Where, apart from section 81(1) of the Contributions and Benefits Act, a person is entitled to receive, in respect of a of a particular child, an increase of incapacity benefit under any of the provisions of section 80 of that Act for any period, and neither of the conditions set out in paragraph (2) is satisfied, that person shall, for the purposes of section 81(2) of that Act, be deemed as respects that period to be making the contributions so required at a weekly rate not less than that required by that section if—

(a) he gives an undertaking in writing to make such contributions; and

(b) on receiving the amount of the benefit or increase in question, he in fact makes such contributions.

(2) The conditions referred to in paragraph (1) are—

(a) that the person would be treated for the purposes of Part IX of the Contributions and Benefits Act as having the child living with him; or

(b) that contributions are being made to the cost of providing for the child at a rate equal to the amount of the relevant increase of benefit.

(3) Where, in respect of any period, a person fails to make contributions which he has undertaken to make in accordance with paragraph (1), the decision awarding the increase for that period in respect of the child shall be revised.

(4) Except in a case to which applies either—

(**6**) S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 Nos. 132 and 273