1993 No. 149

HOUSING; RATES; SOCIAL SECURITY

The Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993

Made . . . . . *29th March 1993*

Coming into operation . . *1st April 1993*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 67(2), 72(8), 122(1)(*a*), (*c*) and (*d*), 129(2), 131(1), 132(3) and (4)(*a*) and (*b*) and 133(2)(*c*) and (*d*)(i), (*h*), (*i*) and (*l*) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(**a**) and sections 5(1)(*j*), (*l*), (*m*), (*p*) and (*q*), 25(1)(*b*) and 71(1)(*b*) of the Social Security Administration (Northern Ireland) Act 1992(**b**) and of all other powers enabling it in that behalf, and after agreement by the Social Security Advisory Committee that proposals to make these regulations should not be referred to it(**c**), hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefits (Amendments Consequential Upon the Introduction of Community Care) Regulations (Northern Ireland) 1993 and shall come into operation on 1st April 1993.

(2) In these regulations—

"the Attendance Allowance Regulations" means the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1992(**d**);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(**e**);

"the Disability Living Allowance Regulations" means the Social Security (Disability Living Allowance) Regulations (Northern Ireland) 1992(**f**);

"the Housing Benefit Regulations" means the Housing Benefit (General) Regulations (Northern Ireland) 1987(**g**);

(**a**) 1992 c. 7
(**b**) 1992 c. 8
(**c**) *See* section 150(1)(*b*) of the Social Security Administration (Northern Ireland) Act 1992
(**d**) S.R. 1992 No. 20, amended by S.R. 1992 Nos. 143 and 481
(**e**) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 67 and 141, S.R. 1989 No. 40, S.R. 1990 No. 398 and S.R. 1991 No. 488
(**f**) S.R. 1992 No. 32; relevant amending regulations are S.R. 1992 No. 144
(**g**) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 Nos. 314 and 424, S.R. 1989 No. 408, S.R. 1990 Nos. 297 and 442 and S.R. 1992 Nos. 404 and 549

''the Income Support Regulations'' means the Income Support (General) Regulations (Northern Ireland) 1987(**a**).

(3) The Interpretation Act (Northern Ireland) 1954(**b**) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of the Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(*a*) after the definition of ''the 1972 Order'' there shall be inserted the following definition—

'' ''the Registered Homes Order'' means the Registered Homes (Northern Ireland) Order 1992(**c**);'';

(*b*) the definition of ''home for persons in need'' shall be omitted;

(*c*) after the definition of ''premises'' there shall be inserted the following definition—

'' ''preserved right'' means a preserved right for the purpose of regulation 19;'';

(*d*) after the definition of ''residential accommodation'' there shall be inserted the following definitions—

'' ''residential allowance'' means the weekly amount determined in accordance with paragraph 2A of Schedule 2(**d**);

''residential care home'' except in paragraph 2A of Schedule 2, has the meaning prescribed in regulation 19(2);''.

(3) In regulation 17(1) (applicable amounts) after sub-paragraph (*b*) there shall be inserted the following sub-paragraph—

''(*bb*) an amount in respect of himself or, if he is a member of a family, an amount in respect of any member of the family aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (applicable amounts);''.

(4) In regulation 18(1) (polygamous marriages) after sub-paragraph (*c*) there shall be inserted the following sub-paragraph—

''(*cc*) an amount, whether in respect of himself or any member of his household aged 16 or over, determined in accordance with paragraph 2A of Schedule 2 (applicable amounts);''.

(5) In regulation 19 (persons in residential care homes and nursing homes)—

(**a**) S.R. 1987 No. 459; relevant amending rules are S.R. 1988 Nos. 146, 193, 274, 318 and 431, S.R. 1989 Nos. 139 and 395, S.R. 1990 Nos. 33 and 131, S.R. 1991 Nos. 46, 170, 204 and 338 and S.R. 1992 Nos. 6, 18, 147, 201 and 403

(**b**) 1954 c. 33 (N.I.)

(**c**) S.I. 1992/3204 (N.I. 20)

(**d**) Paragraph 2A is inserted by regulation 2(6) of these regulations

(*a*) in paragraph (1) for the words preceding "his weekly applicable amount" there shall be substituted the following—

"19.—(1) Subject to regulation 22 (reductions in applicable amounts), where a claimant has a preserved right and either—

(*a*) lives in a residential care home or nursing home; or

(*b*) is a member of a family and he and the members of his family live in such a home,";

(*b*) after paragraph (1ZA) there shall be inserted the following paragraphs—

"(1ZB) Subject to paragraph (1ZE), in this regulation a person has a preserved right where—

(*a*) on 31st March 1993, he was living in a home for persons in need or a nursing home, and—

(i) was entitled to income support for the benefit week in which that day fell and his applicable amount was calculated in accordance with Part I of Schedule 4 (applicable amounts of persons in residential care homes and nursing homes), or

(ii) was not in that week entitled to income support because he was able to meet the cost of the accommodation from other sources available to him, but subsequently becomes entitled to income support; or

(*b*) he would have been living in a home for persons in need or nursing home on 31st March 1993 but for an absence which, including that day, does not exceed—

(i) except in a case to which head (ii) applies—

(*aa*) 4 weeks, where the person was before his absence a temporary resident in the home, or

(*bb*) 13 weeks, where the person was before his absence a permanent resident in the home, or

(ii) 52 weeks, where throughout the period of absence the person was a patient,

and the provisions of sub-paragraph (*a*) would have applied to him but for that absence.

(1ZC) Subject to paragraphs (1ZD) and (1ZE), a person also has a preserved right where—

(*a*) on 31st March 1993 he was living in a home for persons in need or nursing home within the meaning of paragraph (2) as then in operation, and was entitled to income support but his applicable amount was not calculated in accordance with Part I of Schedule 4 because he was a person to whom paragraph 13 of Schedule 4 applied; and

(*b*) after 31st March 1993, either—

(i) he moved from the home in which he was residing on that date to a residential care home or another nursing home, or

(ii) the ownership of the home changed,

and in the home to which he moved, or as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a person other than a close relative of his or by any member of his family, and are provided on a commercial basis.

(1ZD) Where a person has a preserved right under paragraph (1ZC), that right shall commence on the first full day of residence in the residential care home or nursing home to which he moved, or, as the case may be, the day after the ownership of the property changed.

(1ZE) Paragraphs (1ZB) and (1ZC) shall cease to apply to a person who has a preserved right where he is absent from a residential care home or nursing home and that absence exceeds a period of—

(*a*) except in a case to which sub-paragraph (*b*) applies—

(i) 4 weeks, where the person was before his absence a temporary resident in the home, or

(ii) 13 weeks, where the person was before his absence a permanent resident in the home; or

(*b*) 52 weeks, where throughout the period of absence the person was a patient.

(1ZF) (*a*) A person who acquired a preserved right under paragraph (1ZB) or (1ZC) shall cease to have that right where either—

(i) he moves from the home he resided in, or would, but for an absence specified in paragraph (1ZB)(*b*), have resided in, on 31st March 1993, to a residential care home or another nursing home, or

(ii) the ownership of that home changes,

and in the home to which he moves or, as the case may be, following the change of ownership, the accommodation and meals (if any) are provided for him by a close relative of his, or by a member of his family, and are provided otherwise than on a commercial basis;

(*b*) a preserved right acquired under paragraph (1ZB) or (1ZC) which ceased to apply to a person in accordance with sub-paragraph (*a*) shall, notwithstanding that paragraph, revive and again apply in his case where—

(i) he moves from the home mentioned in sub-paragraph (*a*)(i) to another residential care home or nursing home, or

(ii) the ownership of that home changes, or in the case of a home mentioned in sub-paragraph (*a*)(ii), changes again,

and in the home to which he moves or, as the case may be, following the change or further change of ownership, the accommodation and meals (if any) are provided for him otherwise than by a close relative of his, or by a member of his family, and are provided on a commercial basis.

(1ZG) For the purposes of paragraphs (1ZB) and (1ZE) a person is a permanent resident in a home for persons in need, residential care home or nursing home where the home is his principal place of abode, and a temporary resident where it is not.

(1ZH) In this regulation the expression ''home for persons in need'' has the meaning it bore on 31st March 1993.''.

(6) In Schedule 2 (applicable amounts) after paragraph 2 there shall be inserted the following paragraph—

''2A.—(1) The weekly amount for the purposes of regulations 17(1)(*bb*) and 18(1)(*cc*) in respect of a person who satisfies the conditions specified in sub-paragraph (2) shall be £45·00.

(2) Subject to sub-paragraphs (3) and (4), the conditions are—

(*a*) the person resides in a residential care home or a nursing home and for this purpose a person shall be regarded as residing in such a home during any period of absence from the home which does not exceed 6 days;

(*b*) he does not have a preserved right;

(*c*) he is aged 16 or over;

(*d*) both the person's accommodation and such meals (if any) as are provided for him are provided on a commercial basis; and

(*e*) no part of the weekly charge for accommodation is met by housing benefit.

(3) For the purposes of sub-paragraph (2), but subject to sub-paragraph (4), a person resides in a residential care home where the home in which he resides is—

(*a*) registered under Part II of the Registered Homes Order; or

(*b*) managed or provided by a body incorporated by Royal Charter or constituted by a statutory provision (other than a Health and Social Services Board) and provides both board and personal care for the claimant,

and a person resides in a nursing home where the home in which he resides is such a home for the purposes of regulation 19.

(4) For the purposes of sub-paragraph (2), a person shall not be regarded as residing in a nursing home where the home in which he resides is a hospice, and for this purpose ''hospice'' means a nursing home which is registered under Part III of the Registered Homes Order and which provides nursing for persons resident therein who suffer from a progressive disease and for whom the purpose of treatment is palliative.