1987 No. 122

SOCIAL SECURITY

The Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1987

Made . . . . . *19th March 1987*

Coming into operation . . *6th April 1987*

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 28, 52(1)(*s*) and (*t*), 54 and 84 of the Social Security (Northern Ireland) Order 1986(**a**) and, as regards the revocations and consequential amendments in the Schedule, the powers specified in the Schedule, and of all other powers enabling it in that behalf, hereby makes the following regulations:

(a) S.I. 1986/1888 (N.I. 18); Article 28 has effect in relation to supplementary benefit by virtue of paragraph 2 of Schedule 7; Articles 52 and 54 have effect, by virtue of paragraphs 1, 3 and 5 of Schedule 7, in relation to supplementary benefit and other benefits under earlier enactments as well as the benefits specified in Articles 52(2) and 54(10). Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c. 15) (extent of powers) to apply to the enabling provisions under which these regulations are made; section 155(3A) of that Act was inserted by Article 63(1)

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Payments on account, Overpayments and Recovery) Regulations (Northern Ireland) 1987 and shall come into operation on 6th April 1987.

(2) In these regulations—

"the Act" means the Social Security (Northern Ireland) Act 1975(**a**);

"the Order" means the Social Security (Northern Ireland) Order 1986;

"adjudicating authority" means, as the case may be, the Chief or any other adjudication officer, a social security appeal tribunal, the Chief or any other Social Security Commissioner or a Tribunal of Commissioners;

"benefit" means any benefit under the Act(**b**), child benefit, family income supplement, supplementary benefit and any social fund payment under Article 33(2)(*a*) of the Order (maternity and funeral expenses);

"child benefit" means benefit under Part II of the Child Benefit (Northern Ireland) Order 1975(**c**);

"the Claims and Payments Regulations" means the Child Benefit (Claims and Payments) Regulations (Northern Ireland) 1985(**d**), the Family Income Supplements (Claims and Payments) Regulations (Northern Ireland) 1980(**e**), regulations 5 to 9 of the Social Security (Mobility Allowance) Regulations (Northern Ireland) 1975(**f**), the Social Security (Mobility Allowance) (Motability Payment Arrangements) Regulations (Northern Ireland) 1978(**g**), the Social Security (Claims and Payments) Regulations (Northern Ireland) 1977(**h**), the Social Fund Maternity and Funeral Expenses (Claims and Payments) Regulations (Northern Ireland) 1987(**i**) and the Supplementary Benefit (Claims and Payments) Regulations (Northern Ireland) 1981(**j**);

(**a**) 1975 c. 15

(**b**) Amendments altering the range of benefits available under this Act were made by Articles 2(3), 17, 18 and 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), Article 32 of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16)), Articles 5 to 7 of, and Schedule 3 to, the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8)) and Articles 37 to 43 of, and Schedule 3 and paragraph 13 of Schedule 4 to, the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))

(**c**) S.I. 1975/1504 (N.I. 16)

(**d**) S.R. 1985 No. 124

(**e**) S.R. 1980 No. 376; the relevant amending regulations are S.R. 1983 No. 216 and S.R. 1984 No. 174

(**f**) S.R. 1975 No. 280; the relevant amending regulations are S.R. 1981 No. 407, S.R. 1982 No. 284, S.R. 1983 No. 233, S.R. 1984 No. 174 and S.R. 1986 No. 341

(**g**) S.R. 1978 No. 222, as amended by S.R. 1982 No. 381

(**h**) S.R. 1977 No. 351; the relevant amending regulations are S.R. 1978 No. 90, S.R. 1979 No. 259, S.R. 1980 Nos. 267, 385 and 452, S.R. 1981 No. 281, S.R. 1982 Nos. 153, 284, 302 and 318, S.R. 1983 Nos. 36 and 203, S.R. 1984 Nos. 123, 174, 317 and 382, S.R. 1985 Nos. 92 and 226 and S.R. 1986 Nos. 157 and 326

(**i**) S.R. 1987 No. 100

(**j**) S.R. 1981 No. 368; the relevant amending regulations are S.R. 1982 Nos. 140, 240, 295 and 324, S.R. 1983 Nos. 191, 290 and 322, S.R. 1984 Nos. 174 and 266, S.R. 1985 No. 176 and S.R. 1986 No. 365

"family income supplement" means benefit under the Family Income Supplements Act (Northern Ireland) 1971(**a**);

"guardian's allowance" means an allowance under section 38 of the Act(**b**);

"severe disablement allowance" means an allowance under section 36 of the Act(**c**);

"supplementary allowance" means an allowance under Article 3(1)(*b*) of the Supplementary Benefits (Northern Ireland) Order 1977(**d**);

"supplementary benefit" means benefit under Part I of the Supplementary Benefits (Northern Ireland) Order 1977;

"supplementary pension" means a pension under Article 3(1)(*a*) of the Supplementary Benefits (Northern Ireland) Order 1977.

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

PART II

INTERIM PAYMENTS

Making of interim payments

2.—(1) The Department may, in its discretion, make an interim payment, that is to say a payment on account of any benefit to which it appears to it that a person is or may be entitled, in the following circumstances—

(*a*) a claim for that benefit has not been made in accordance with the Claims and Payments Regulations and it is impracticable for such a claim to be made immediately;

(*b*) a claim for that benefit has been so made, but it is impracticable for it or a reference, review, application or appeal which relates to it to be determined immediately; or

(*c*) an award of that benefit has been made but it is impracticable for the beneficiary to be paid immediately, except by means of an interim payment.

(2) On or before the making of an interim payment the recipient shall be given notice in writing of his liability under this Part to have it brought into account and to repay any overpayment.

Bringing interim payments into account

3. Where it is practicable to do so and notice has been given as required by regulation 2(2), the interim payment shall be brought into account as follows—

(**a**) 1971 c. 8 (N.I.); sections 6(1) and 8(3) were amended by Article 3 of, and Part III of Schedule 1 to, the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17))

(**b**) Section 38 was amended by paragraph 13 of Schedule 4 to the Child Benefit (Northern Ireland) Order 1975 (S.I. 1975/1504 (N.I. 16)) and Article 46 of the Social Security (Northern Ireland) Order 1986

(**c**) Section 36 was amended by Article 5(1) of the Health and Social Security (Northern Ireland) Order 1984 and paragraph 2 of Schedule 4 to the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16))

(**d**) S.I. 1977/2156 (N.I. 27); provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), are set out in Part II of that Schedule

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

(*a*) any interim payment made in anticipation of an award of benefit shall be offset by the adjudicating authority in reduction of the benefit to be awarded; and

(*b*) any interim payment (whether or not made in anticipation of an award) which is not offset under paragraph (*a*) shall be deducted by the Department from—

(i) the sum payable under the award of benefit on account of which the interim payment was made; or

(ii) any sum payable under any subsequent award of the same benefit to the same person.

Recovery of overpaid interim payments

4.—(1) Where the adjudicating authority has determined that an interim payment has been overpaid in circumstances which fall within paragraph (3) and that notice has been given as required by regulation 2(2), that authority shall determine the amount of the overpayment.

(2) The amount of the overpayment shall be recoverable by the Department by the same procedures and subject to the same conditions as if it were recoverable under Article 54(1) of the Order.

(3) The circumstances in which an interim payment may be determined to have been overpaid are as follows—

(*a*) an interim payment has been made under regulation 2(1)(*a*) or (*b*) but—

(i) the recipient has failed to make a claim in accordance with the Claims and Payments Regulations as soon as practicable, or having made such a claim has withdrawn it or is deemed to have withdrawn it; or

(ii) it has been determined that there is no entitlement on the claim, or that the entitlement is less than the amount of the interim payment; or

(*b*) an interim payment has been made under regulation 2(1)(*c*) which exceeds the entitlement under the award of benefit on account of which the interim payment was made.

PART III

OFFSETTING

Offsetting prior payment against subsequent award

5.—(1) Subject to regulation 6 (exception from offset of recoverable overpayment), any sum paid in respect of a period covered by a subsequent determination in any of the cases set out in paragraph (2) shall be offset against arrears of entitlement under the subsequent determination and, except to the extent that the sum exceeds the arrears, shall be treated as properly paid on account of them.

(2) Paragraph (1) applies in the following cases—