1985 No. 336

SOCIAL SECURITY

The Supplementary Benefit (Requirements and Resources) (Miscellaneous Provisions) (No. 2) Regulations (Northern Ireland) 1985

Made . . . . . 25th November 1985

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 3(3), 4(1A) and 41(4) of, and paragraphs 1(2) and 2(1), (3) and (4) of Schedule 1 to, the Supplementary Benefits (Northern Ireland) Order 1977(**a**) and of all other powers enabling it in that behalf, and with the consent of the Department of Finance and Personnel(**b**), hereby makes the following regulations:

Citation and interpretation

1.—(1) These regulations may be cited as the Supplementary Benefit (Requirements and Resources) (Miscellaneous Provisions) (No. 2) Regulations (Northern Ireland) 1985.

(2) In these regulations "the Requirements Regulations" means the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983(**c**).

(3) Nothing in these regulations is to be construed as affecting the amount of any entitlement to benefit in respect of any period before the coming into operation of these regulations.

Revocation

2. The Supplementary Benefit (Requirements and Resources) (Miscellaneous Provisions) Regulations (Northern Ireland) 1985(**d**) and the Supplementary Benefit (Requirements) (Amendment) Regulations (Northern Ireland) 1985(**e**) are hereby revoked.

Definition of "close relative" in the Requirements Regulations

3. For the definition of "close relative" in regulation 2(1) of the Requirements Regulations (interpretation) there shall be substituted the following definition—

> " "close relative" means parent, son, daughter, step-parent, step-son, step-daughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law or sister-in-law;".

(**a**) 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: Article 4(1A) was substituted by paragraph 11 of Schedule 1 to the Social Security Adjudications (Northern Ireland) Order 1983 (S.I. 1983/1524 (N.I. 17))

(**b**) Formerly the Department of Finance: *see* S.I. 1982/338 (N.I. 6), Article 3. *See also* Article 41(1) of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by the Social Security (Northern Ireland) Order 1980

(**c**) S.R. 1983 No. 61; the relevant amending regulations are S.R. 1983 No. 215, S.R. 1984 Nos. 348 and 446 and S.R. 1985 No. 207

(**d**) S.R. 1985 No. 91

(**e**) S.R. 1985 No. 186

Arrangements as to boarders

4.—(1) Regulation 9 of the Requirements Regulations (modification of normal requirements of boarders) shall be amended as follows—

(*a*) for paragraph (6) there shall be substituted the following paragraph—

"(6) Subject to paragraphs (6A) and (13), the maximum amount in respect of the assessment unit as a whole referred to in paragraph (1)(*a*) shall be the aggregate of the following amounts—

(*a*) in respect of each member of the assessment unit who is a dependant aged less than 11, 1½ times the amount referred to in paragraph (5)(*c*); and

(*b*) in respect of each other member of the assessment unit, the appropriate amount provided by Schedule 1A.";

(*b*) for paragraph (6A) there shall be substituted the following paragraph—

"(6A) Subject to paragraph (13), where the accommodation provided for the claimant is accommodation to which paragraph 4 or 5 of Schedule 1A relates (hostels or ordinary board and lodging), the maximum amount specified in paragraph (6) shall be increased by any excess of the actual charge over that maximum up to £17·30 or, if the increase is payable under sub-paragraph (*a*) or (*c*) of this paragraph and the claimant is a relevant person, up to £34·60 in the case of—

(*a*) a claimant who has attained pensionable age or a relevant person or his partner either of whom is aged 65 or over; or

(*b*) a claimant or any other member of the assessment unit who is infirm by reason of physical or mental disability; or

(*c*) a claimant in respect of whom or of whose accommodation one or more of the following conditions are satisfied—

(i) he is a person in respect of whom the Department has power to provide residential accommodation under Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1972(**a**) (care of mothers and young children) but has declined to exercise that power,

(ii) he is a person suffering from a mental disorder within the meaning of the Mental Health Act 1961(**b**) in respect of whom the Department has, under Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1972 (prevention of illness, care and after-care), made arrangements for the provision of residential accommodation in a private household or in premises which are not required to be registered in accordance with Schedule 5 to that Order,

(iii) he is a person who is resident in premises which are used for the rehabilitation of alcoholics or drug addicts and is so resident for the purposes of such rehabilitation,

so, however, that only one increase shall be applicable under this paragraph in respect of any member of the assessment unit and the amount payable by virtue of this paragraph in respect of a claimant and his partner shall not exceed £34·60 and, if any member of the assessment unit who is a boarder is receiving attendance allowance under section 35 of the Act, an increase of disablement pension under section 61 of the Act, constant attendance allowance by virtue of Article 14 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(**c**), or constant attendance allowance by virtue of Article 14 of the Personal Injuries (Civilians) Scheme 1983(**d**), an increase shall only be payable to the extent that the excess of the actual charge over the maximum amount is more than the amount of

(**a**) S.I. 1972/1265 (N.I. 14)
(**b**) 1961 c. 15 (N.I.)
(**c**) S.I. 1983/883
(**d**) S.I. 1983/686

whichever of the aforementioned allowances or increase of pension is in payment up to a maximum of the higher rate of attendance allowance specified in Schedule 4 to the Act.'';

(*c*) for paragraph (6B) there shall be substituted the following paragraph—

''(6B) The maximum amount applicable in respect of a dependant aged less than 11 calculated in the manner referred to in paragraph (6)(*a*), or a partner calculated in the manner referred to in paragraph 5(2) of Schedule 1A, shall be rounded to the nearest multiple of 5p by treating an odd amount of 2·5p or more as 5p, and by disregarding an odd amount of less than 2·5p.'';

(*d*) for all the words in paragraph (9) preceding sub-paragraph (*a*) there shall be substituted ''Subject to paragraph (13)(*e*), the allowance for personal expenses referred to in paragraph (1)(*b*) for any member of the assessment unit aged not less than 18, or a claimant or partner aged less than 18 but not less than 16, in a home for persons in need or a nursing home shall be £8·95, and in any other case that allowance shall be —'';

(*e*) for paragraphs (11) and (12) there shall be substituted the following paragraph—

''(11) Notwithstanding paragraph (10), a person shall not be a boarder for the purposes of this regulation if he is a person to whom any paragraph of Schedule 1B applies.'';

(*f*) after paragraph (12) there shall be added the following paragraph—

''(13)(*a*) Notwithstanding the provisions of paragraphs (6) to (11), sub-paragraphs (*b*) to (*g*) shall have effect where the claimant was in receipt of supplementary benefit as a boarder immediately before 29th April 1985, or would have been in receipt of such benefit but for the claimant's temporary absence from his accommodation in circumstances as set out in sub-paragraph (*h*) and, subject to that sub-paragraph (*h*), has continued since that date to be a boarder in the same accommodation; and for the purposes of this paragraph, a claimant to whom sub-paragraph (*b*), (*c*), (*d*) or (*e*) applies who changes his accommodation shall nevertheless be deemed to be in the same accommodation if the accommodation he moves to is a home for persons in need or a nursing home;

(*b*) where—

(i) the accommodation is a home for persons in need or a nursing home, and

(ii) the claimant or his partner had attained pensionable age on or before 29th April 1985,

the appropriate amount for the purposes of paragraph (6) shall be the weekly amount determined to be appropriate under paragraph (1)(*a*) prior to that date (hereafter in this paragraph referred to as ''the protected amount'') so long as the protected amount exceeds the amount that would otherwise be the appropriate amount under paragraph (6);

(*c*) where—

(i) the accommodation is a home for persons in need, a nursing home or a hostel, and

(ii) in the case of a home for persons in need or a nursing home, the claimant or his partner had not attained pensionable age on or before 29th April 1985,

the appropriate amount for the purposes of paragraph (6) shall, until 28th April 1986, (or such later date as in any particular case the Department in it's discretion determines in order to avoid exceptional hardship) be the protected amount so long as the protected amount exceeds the amount that would otherwise be the appropriate amount under paragraph (6);

(*d*) where—

(i) the accommodation is a home for persons in need or a nursing home, and

(ii) the claimant is in receipt of attendance allowance which, by virtue of regulation 11(4A) of the Resources Regulations(**a**), does not fall to be disregarded, and

(iii) immediately prior to 29th April 1985 the claimant was able to meet out of resources disregarded under regulation 11(4)(*b*) of the Resources Regulations, in whole or in part, the balance of the actual charge for such accommodation over the maximum amount determined under paragraph (6), and

(iv) on or after 29th April 1985 there has continued to be such a balance to be met,

then for the purposes of paragraph (6), the appropriate amount shall be increased by such amount, not exceeding the amount of such balance as could be met out of those resources immediately prior to 29th April 1985, as will enable such balance to be met in whole or in part as aforesaid, provided that, in the case of a person who had not attained pensionable age on or before that date no such increase shall be made after 28th April 1986, unless in any particular case the Department in it's discretion determines otherwise in order to avoid exceptional hardship;

(*e*) where the accommodation is a home for persons in need or a nursing home, the allowance for personal expenses for the purposes of paragraph (9) shall be the amount of the allowance for personal expenses payable by virtue of that paragraph prior to 29th April 1985 so long as that amount exceeds the appropriate allowance specified in that paragraph;

(*f*) where the accommodation is accommodation to which paragraph 5 of Schedule 1A relates (ordinary board and lodging), the appropriate amount for the purposes of paragraph (6) in the cases specified below shall, for the periods specified below in relation to those cases (''the relevant periods''), be the protected amount so long as that amount exceeds the amount that would otherwise be the appropriate amount under paragraph (6).

The cases and relevant periods for the purposes of this paragraph are—

(i) cases where the protected amount includes an increase under paragraph (6A), for which cases the relevant period is the period ending on 28th April 1986, or such longer period as in any particular case the Department in it's discretion determines in order to avoid exceptional hardship;

(ii) cases where, at the coming into operation of the Supplementary Benefit (Requirements and Resources) (Miscellaneous Provisions) (No. 2) Regulations (Northern Ireland) 1985, there had not expired a period of 13 weeks beginning with the date of the adjudication officer's first decision as to the claimant's entitlement to supplementary benefit on or after 29th April 1985 (''review decision''), for which cases the relevant period is the period expiring at the expiration of that period of 13 weeks, or such longer period as in any particular case the Department in it's discretion determines in order to avoid exceptional hardship; and

(iii) cases not falling within head (i) or (ii) but where at the coming into operation of the Supplementary Benefit (Requirements and Resources) (Miscellaneous Provisions) (No. 2) Regulations (Northern Ireland) 1985 the claimant was nevertheless receiving the protected

(**a**) Added by regulation 4(5) of these regulations

amount, for which cases the period is such period as in any particular case the Department determines in order to avoid exceptional hardship;

(*g*) where the claimant is a person to whom paragraph 5 of Schedule 1B applies (persons under 26 who are available for employment), the period during which sub-paragraph (1) of that paragraph is not to have effect by virtue of sub-paragraph (2) of that paragraph shall be a period ending either 4 weeks or, as the case may be, 8 weeks after the review decision depending on whether the accommodation in question is in a board and lodging area in relation to which the appropriate initial period for the purpose of that sub-paragraph (2) is respectively either a period of 4 weeks or, as the case may be, a period of more than 4 weeks;

(*h*) the provisions of this paragraph shall have effect notwithstanding the temporary absence of a person from—

(i) a hostel for not more than 13 weeks; or

(ii) a home for persons in need or a nursing home for not more than either 12 months in the case of a person who is of pensionable age or for not more than 13 weeks in the case of a person who is under pensionable age; or

(iii) accommodation to which paragraph 5 of Schedule 1A relates (ordinary board and lodging) for not more than either 4 weeks or, in a case where the protected amount includes an increase under paragraph (6A), 13 weeks;

except, in the case of head (iii), where that person is a person to whom paragraph 5(2) of Schedule 1B applies (a boarder during an initial period);

(*i*) sub-paragraphs (*b*) to (*e*) shall also have effect notwithstanding the provisions of paragraphs (6) to (11) where—

(i) the claimant was a boarder in a home for persons in need or a nursing home immediately before 29th April 1985 and has continued after that date to be a boarder in the same accommodation within the meaning of sub-paragraph (*a*);

(ii) immediately before that date, the actual charge for the claimant's accommodation was being met either wholly or partly out of the claimant's resources, or, wholly or partly out of other resources which can no longer be made available for this purpose;

(iii) since that date the Department has not at any time accepted responsibility for the making of arrangements for the provision of such accommodation for the claimant; and

(iv) the Department, in it's discretion, has determined that this sub-paragraph shall have effect in the particular case of the claimant in order to avoid exceptional hardship;

and for the purpose of the said sub-paragraphs (*b*) to (*e*) having effect by virtue of this sub-paragraph, the protected amount shall be the weekly amount that would have been determined to be appropriate under paragraph (1)(*a*) prior to that date had the claimant been in receipt of supplementary benefit as a boarder in that accommodation.''.

(2) Regulation 10 of the Requirements Regulations (modification of normal requirements in special cases) shall be amended as follows—

(*a*) for all the words in paragraph (5) preceding sub-paragraph (*a*) there shall be substituted—

''(5) For the purposes of paragraph 1 of Schedule 2 a person to whom paragraph (5A) applies shall not be treated as being in residential accommodation, but, save as aforesaid, in that paragraph ''residential accommodation'' means accomodation for a person whose stay in the accommodation has, in the opinion