1981 No. 370

SOCIAL SECURITY

The Supplementary Benefit (Resources) Regulations (Northern Ireland) 1981

Made . . . . . *11th November 1981*

Coming into operation . . . *21st December 1981*

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The Department of Health and Social Services, in exercise of the powers conferred on it by paragraph 1(2) and (3) of Schedule 1 to the Supplementary Benefits (Northern Ireland) Order 1977(**a**) and of all other powers enabling it in that behalf, and for the purpose only of consolidating regulations hereby revoked, and with the consent of the Department of Finance(**b**), hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Supplementary Benefit (Resources) Regulations (Northern Ireland) 1981 and shall come into operation on 21st December 1981.

Interpretation

2.—(1) In these regulations—

"the Order" means the Supplementary Benefits (Northern Ireland) Order 1977;

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

"the Taxes Act" means the Income and Corporation Taxes Act 1970(**d**);

"Aggregation Regulations" means the Supplementary Benefit (Aggregation) Regulations (Northern Ireland) 1981(**e**);

"allowance" means a supplementary allowance under Article 3(1)(*b*);

"assessment unit" means the claimant, and any partner and dependant of the claimant;

"benefit week" has the meaning assigned to it in regulation 7 of the Determination of Questions Regulations (date of commencement, change and termination of entitlement to pensions and allowances);

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

"claimant" means a claimant for supplementary benefit and references to a claimant's resources include, where under the provisions of the Order the requirements and resources of any person fall to be aggregated with and treated as those of the claimant, the resources of that person;

"the Department" means the Department of Health and Social Services;

"dependant" means a person whose requirements and resources are by virtue of paragraph 3(2) of Schedule 1 aggregated with and treated as those of the claimant;

"Determination of Questions Regulations" means the Supplementary Benefit (Determination of Questions) Regulations (Northern Ireland) 1980(**g**);

(**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

(**b**) *See* Article 41(1) of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by the Social Security (Northern Ireland) Order 1980

(**c**) 1975 c. 15

(**d**) 1970 c. 10

(**e**) S.R. 1981 No. 373

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

(**g**) S.R. 1980 No. 423, as amended by S.R. 1981 No. 215

"education authority" means a Northern Ireland department or a department of the Government of the United Kingdom, an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1972(**a**), a local education authority as defined in section 114(1) of the Education Act 1944(**b**), an education authority as defined in section 135(1) of the Education (Scotland) Act 1980(**c**) and any body which is a research council for the purposes of the Science and Technology Act 1965(**d**);

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

"home" means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises and land not so occupied which it would be impracticable or unreasonable to expect to be sold separately;

"liable relative" means a spouse or former spouse, or a parent of a dependant, including a person who has not been adjudged putative father of a child but by reason of payments which he is making to or in respect of that child may reasonably be treated as such a father; and "payment made by or derived from a liable relative" shall be construed accordingly, except that a reference to such a payment shall not include a reference to a payment derived from the estate of a deceased liable relative;

"occupational pension scheme" means an occupational pension scheme within the meaning of the Social Security Pensions (Northern Ireland) Order 1975(**f**); and "occupational pension" shall be construed accordingly, except that any reference to an occupational pension shall not include a reference to any element of that pension payable by way of compensation for injury, disease, disablement or death suffered by a person by reason of the service or employment in which he was engaged;

"partner" means one of a married or unmarried couple;

"pension" means a supplementary pension under Article 3(1)(*a*);

"person affected by a trade dispute" means a person whose requirements fall to be disregarded to any extent by virtue of Article 12;

"Requirements Regulations" means the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1980(**g**);

"single parent" means a person who has a dependant and is not a partner;

"student" means a person under pensionable age who has ceased relevant education and is attending a course of full-time education, and he shall be deemed to be a student during any period when he is not in attendance but in respect of which he receives a grant or award from a Minister of the Crown or an education authority; and "disabled student" means a person who by reason of a disability would, in comparison with other students, be unlikely to be able to obtain employment within a reasonable period of time;

"war disablement pension" means—

(*a*) a pension or other benefit awarded—

(i) in respect of disablement due to service in the armed forces of the Crown being a pension or other benefit within the meaning of section

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(**a**) S.I. 1972/1263 (N.I. 12)
(**b**) 1944 c. 31
(**c**) 1980 c. 44
(**d**) 1965 c. 4
(**e**) 1971 c. 8 (N.I.)
(**f**) S.I. 1975/1503 (N.I. 15)
(**g**) S.R. 1980 No. 347, as amended by S.R. 1980 No. 422 and S.R. 1981 Nos. 105, 241, 275 and 282

12(1) of the Social Security (Miscellaneous Provisions) Act 1977(**a**); or, as the case may be,

(ii) under the Personal Injuries (Emergency Provisions) Act 1939(**b**), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**c**) or the Polish Resettlement Act 1947(**d**);

(*b*) any retired pay or pension to which section 365(1) of the Taxes Act applies, not being retired pay, pension or allowance to which sub-paragraph (*a*) of this definition applies; or

(*c*) any payment which the Department accepts as being analogous to any such retired pay, pension or allowance as is referred to in the preceding sub-paragraphs of this definition.

(2) Except in so far as the context otherwise requires any reference in these regulations to a numbered Article or Schedule is to the Article of or Schedule to the Order bearing that number.

(3) These regulations shall be subject to Article 6 of the Social Security (No. 2) (Northern Ireland) Order 1980(**e**) (supplementary benefit in cases affected by trade disputes).

Calculation of resources

3.—(1) For the purposes of Schedule 1 resources for any period shall be calculated in the manner set out in these regulations.

(2) For the purposes of these regulations resources shall consist of capital resources and income resources, and in particular—

(*a*) any grant or gratuity paid under the Act shall be treated as a capital resource;

(*b*) any lump sum payment, including any instalment of a lump sum which falls to be paid by instalments, made, whether in pursuance of a court order or otherwise, by or derived from a liable relative, shall be treated—

(i) in a case where, if the payment were treated as a capital resource, the claimant's capital resources would exceed the amount mentioned in regulation 7, as a capital resource,

(ii) in any other case, as an income resource to which regulation 13 applies;

(*c*) any instalment of any other lump sum payment which falls to be paid by instalments shall be treated—

(i) in a case where, if the outstanding instalments were treated as a capital resource, the claimant's capital resources would exceed the amount mentioned in regulation 7, as an income resource,

(ii) in any other case, as a capital resource;

(*d*) any amount which becomes available to any member of the assessment unit by way of repayment of income tax which has been deducted from his emoluments in pursuance of section 204 of the Taxes Act (pay as you earn) shall be treated—

(i) where that member is not in receipt of regular earnings from employment because either he is a person affected by a trade dispute or his employment has been temporarily suspended but not terminated, as an income resource only in the week in which it is received,

(ii) in any other case, as a capital resource;

(**a**) 1977 c. 5
(**b**) 1939 c. 82
(**c**) 1939 c. 83
(**d**) 1947 c. 19
(**e**) S.I. 1980/1087 (N.I. 13)

(*e*) any other repayment of income tax shall be treated as an income resource (for the period to which regulation 9(2)(*a*) applies).

(3) Where a resource which falls to be taken into account in accordance with these regulations would otherwise include a fraction of a penny that fraction shall be disregarded.

Notional resources

4.—(1) Any resource of which a member of the assessment unit has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if it were still possessed by him.

(2) Any resource which either—

(*a*) would become available to a member of the assessment unit upon application duly being made, but which has not been acquired by him; or

(*b*) is due to be paid to a member of the assessment unit but—

(i) has not been paid to him, and

(ii) is not a payment prescribed in regulation 3 or 5 of the Supplementary Benefit (Duplication and Overpayment) Regulations (Northern Ireland) 1980(**a**) (payments prescribed pursuant to paragraphs (1) and (2) of Article 16 — prevention of duplication of payments) and not made on or before the date prescribed in relation to it pursuant to paragraph (1) or (2) of Article 16,

may, if in the opinion of the benefit officer it is reasonable in the circumstances to do so, be treated as if it were possessed by him.

(3) Where a member of the assessment unit performs for another person a service for which that person makes either no payment or a payment less than that paid for comparable employment, an amount of earnings calculated by reference to such employment and the means of that person may be treated as if it were actually paid to and possessed by the member of the assessment unit.

(4) Notwithstanding that it is not actually made, a student shall be treated as possessing any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student's grant or award unless the student is—

(*a*) a single parent;

(*b*) a partner; or

(*c*) a disabled student.

(5) Any payment made—

(*a*) by a person in respect of a member of the assessment unit (but not to another member) shall be treated as possessed by that member notwithstanding that it is made to a third party;

(*b*) to a member of the assessment unit in respect of a third party (but not in respect of another member) shall be treated as possessed by that third party notwithstanding that it is made to that member,

unless, having regard to the purpose of the payment, the terms under which it is made and its amount, it is unreasonable to do so.

(**a**) S.R. 1980 No. 396 to which there are amendments not relevant to the subject matter of these regulations