1980 No. 423

SUPPLEMENTARY BENEFITS

The Supplementary Benefit (Determination of Questions) Regulations (Northern Ireland) 1980

Made . . . . . *19th November 1980*

Coming into operation . . . *24th November 1980*

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 4(1) and (1A) and 19(1) and (2)(*d*), (*ee*) and (*f*) of the Supplementary Benefits (Northern Ireland) Order 1977(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Supplementary Benefit (Determination of Questions) Regulations (Northern Ireland) 1980 and shall come into operation on 24th November 1980.

(2) In these regulations—

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

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

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

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

"claimant" means a claimant for supplementary benefit;

"Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1977(**c**);

"Commissioner" has the same meaning as in the Act;

"order book" means a book containing a series of orders for the payment of a pension or allowance;

(**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(1) is further amended by Article 6(5) of the Social Security (No. 2) (Northern Ireland) Order 1980

(**b**) 1975 c. 15

(**c**) S.R. 1977 No. 351

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

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

"Resources Regulations" means the Supplementary Benefit (Resources) Regulations (Northern Ireland) 1980(**e**).

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

(4) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his last known address.

Determination of questions by benefit officers

2.—(1) Any question relating to supplementary benefit which arises under the Order and is not to be determined by the Department shall be referred forthwith to a benefit officer for determination.

(2) Different aspects of the same question may be dealt with by different benefit officers.

(3) Any question which is referred under paragraph (1) shall be taken into consideration and, so far as practicable, and subject to regulation 5 (reference of questions) and to compliance by the claimant with regulations 3 and 7 of the Supplementary Benefit (Claims and Payments) Regulations (Northern Ireland) 1980(**f**) (information to be given in connection with claims and payments), shall be determined within 14 days.

Notice of determinations and assessments by benefit officers

3.—(1) Subject to paragraphs (2) and (3), the Department shall give or send to the claimant written notice of any determination made by a benefit officer on a claim for supplementary benefit or on review (including refusal to review) under regulation 4.

(2) Where, under arrangements made by the Department, a pension or allowance is payable together with a benefit under the Act(**g**), notice of the aggregate amount so payable shall be notice for the purpose of paragraph (1).

(3) Written notice shall not be required of any determination—

(*a*) awarding benefit which is implemented by a cash payment; or

(*b*) terminating entitlement to a pension or allowance provided it is reasonable in the circumstances not to give written notice (for example where the reason for the termination is known to the claimant).

(4) So far as may be practicable, and subject to paragraph (5), where a determination to which paragraph (1) or (2) applies relates to a pension or allowance the Department shall also give or send to the claimant a written notice of assessment showing the total amounts, as determined by the benefit officer, of the normal, additional and housing requirements respectively and of the income resources taken into account.

(5) Paragraph (4) shall not apply to any determination—

(*a*) under the Supplementary Benefit (Urgent Cases) Regulations (Northern Ireland) 1980 or Part II of the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations (Northern Ireland) 1980(**h**) (urgent trade dispute cases);

(**d**) S.R. 1980 No. 347
(**e**) S.R. 1980 No. 348
(**f**) S.R. 1980 No. 399
(**g**) *See also* Article 2(3) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))
(**h**) S.R. 1980 No. 417

(*b*) that a pension or allowance is not payable either by reason of regulation 7 of the Resources Regulations (maximum capital resources for entitlement to supplementary benefit) or for any reason other than that the claimant's resources are sufficient to meet his requirements; or

(*c*) made on review under regulation 4, either under paragraph (5) of that regulation or where in other cases under that regulation (for example where housing requirements are increased to take account of a rent increase) the Department considers a written notice of assessment unnecessary.

Review of determinations

4.—(1) Subject to paragraphs (2) to (6) and to regulation 5(5) (review of decisions on referred questions), a determination relating to supplementary benefit, if made by a benefit officer, may be reviewed by a benefit officer if he is satisfied that it was based on a mistake as to the law, and, if made by any determining authority, may be reviewed by a benefit officer if—

(*a*) he is satisfied and, in the case of a decision of a Commissioner, satisfied by fresh evidence, that the determination was made in ignorance of, or was based on a mistake as to, some material fact; or

(*b*) there has been any relevant change of circumstances since the determination was made.

(2) A determination shall not be revised on review under paragraph (1) where the effect of the revision would be to increase the amount of the supplementary benefit payable in respect of any past period—

(*a*) which falls more than 52 weeks before the date on which the review was requested or was (or, but for this paragraph, would have been) made; or

(*b*) which is subsequent to the period mentioned in sub-paragraph (*a*) and has been followed by termination or interruption of entitlement to a pension or allowance and—

(i) the total amount of the increase would be £5 or less, or

(ii) the grounds for review are a material fact or relevant change of circumstances of which the claimant was aware but of which he previously failed to furnish information to the Department.

(3) Where a pension or allowance is being paid by an order book no review shall be made under paragraph (1)(*b*) during the currency of the book if the sole effect would be to reduce the weekly amount of the pension or allowance by less than 50 pence.

(4) A change mentioned in sub-paragraph (*a*) or (*b*) of regulation 16(2) of the Requirements Regulations (fall in interest rates and reduction of outstanding mortgage capital where amount applicable for mortgage interest) shall be deemed not to be a change of circumstances if the amount of the instalments payable to the mortgagee remains constant but, in such a case, where a determination is subsequently reviewed under paragraph (1)(*b*) above, that review shall also take account of any such change.

(5) A determination under the Order made by a determining authority may be reviewed by a benefit officer for the sole purpose of giving effect to any change in—

(*a*) any amount specified in Schedule 1 or in the Requirements Regulations in connection with the determination of requirements;

(*b*) the prescribed rate of any payment—

(i) under the Act, the Child Benefit (Northern Ireland) Order 1975(**i**) or the Family Income Supplements Act (Northern Ireland) 1971(**j**), or

(**i**) S.I. 1975/1504 (N.I. 16)
(**j**) 1971 c. 8 (N.I.)

(ii) made by virtue of any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(**k**), or

(iii) made by virtue of any regulations made under section 2 of the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975(**l**), or

(iv) of a war disablement pension or war widow's pension, as defined in regulation 2(1) of the Supplementary Benefit (Duplication and Overpayment) Regulations (Northern Ireland) 1980(**m**); or

(*c*) the rate determined for the purposes of Article 99(2) of the Health and Personal Social Services (Northern Ireland) Order 1972(**n**) (lower rate of payment in respect of certain accommodation for persons in need),

but any such change shall be deemed not to be a change of circumstances for the purpose of paragraph (1).

(6) A determination relating to supplementary benefit made by a determining authority shall be reviewed by a benefit officer where this is necessary to give effect to—

(*a*) regulation 8(4)(*b*)(i) or (ii) of the Requirements Regulations (subsequent determination of claim for unemployment benefit where normal requirements modified in cases of actual or notional disqualification);

(*b*) a decision given on a question referred to an insurance officer under regulation 5; or

(*c*) a change of circumstances to which regulation 10(5) of the Supplementary Benefit (Transitional) Regulations (Northern Ireland) 1980(**o**) (reduction of transitional additions on change of circumstances) applies, and paragraph (5) above shall not apply in any such case.

(7) In this regulation "determining authority" means, as the case may require, a benefit officer, an Appeal Tribunal or a Commissioner.

Reference of questions

5.—(1) This regulation shall apply to the following questions—

(*a*) whether a person's requirements fall to be disregarded to any extent by virtue of Article 12 (persons affected by trade disputes);

(*b*) whether regulation 8 of the Requirements Regulations (modification of normal requirements in certain cases of actual or notional unemployment benefit disqualification) applies to a person by virtue of paragraph (1)(*c*) of that regulation and, if so, the period of its application by virtue of paragraph (4)(*c*) of that regulation;

(*c*) whether by virtue of regulation 7(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations (Northern Ireland) 1980(**p**) a person is, subject to regulations 7(2) and 8 of those regulations, to be treated as available for employment and whether by virtue of regulation 8(1)(*b*) of those regulations he is not to be so treated;

(*d*) whether regulation 11 of the Supplementary Benefit (Conditions of Entitlement) Regulations (Northern Ireland) 1980 (circumstances in which persons are to be treated as receiving relevant education) applies to a person as being a person in respect of whom child benefit would, if a claim were made for it, be payable under Part II of the Child Benefit (Northern Ireland)

(**k**) 1975 c. 16
(**l**) 1975 c. 17
(**m**) S.R. 1980 No. 396
(**n**) S.I. 1972/1265 (N.I. 14)
(**o**) S.R. 1980 No. 349
(**p**) S.R. 1980 No. 416