1980 No. 375

FAMILY INCOME SUPPLEMENTS

The Family Income Supplements (General) Regulations (Northern Ireland) 1980

Made . . . . . *24th October 1980*

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

ARRANGEMENT OF REGULATIONS

Regulations

1. Citation, commencement and interpretation
2. Computation of normal gross income of members of a family
3. Circumstances in which benefit may be made payable otherwise than for fifty-two weeks beginning with the date of the claim therefor and in which the rate of benefit payable may be increased
4. Circumstances in which payment of supplementary benefit is to make benefit under the Act not payable for a family or not receivable by a person
5. Circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work
6. Circumstances in which a person is to be treated as not providing in whole or in part for the requirements of a child
7. Claims for a child who could be included in more than one family for the purposes of the Act
8. Circumstances in which a family is to be treated as being or as not being in Northern Ireland
9. Circumstances in which a person of or over the age of sixteen is to be treated as a child
10. Recovery of overpayments of benefit
11. Determination of claims and questions
12. Review of determinations
13. Notifying persons of determinations
14. Revocations

SCHEDULE—Revocations

The Department(**a**) of Health and Social Services, in exercise of the powers conferred on it by sections 4, 5(2), 6, 8(2) and (3) and 10(2) of the Family Income Supplements Act (Northern Ireland) 1971(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

(**a**) Formerly Ministry: *see* 1973 c. 36 Sch. 5 para. 8(1)

(**b**) 1971 c. 8 (N.I.); section 6(1) was amended by Article 8(3) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and section 6(2) and (3) substituted by section 3 of the Pensioners and Family Income Supplement Payments Act 1972 (c. 75)

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Family Income Supplements (General) Regulations (Northern Ireland) 1980 and shall come into operation on 24th November 1980.

(2) In these regulations—

"the Act" means the Family Income Supplements Act (Northern Ireland) 1971;

"advanced education" means full-time education for the purposes of—

(*a*) a course in preparation for a Degree, a Diploma of Higher Education, a Higher National Diploma or a teaching qualification; or

(*b*) any other course which is certified by the Department as being a course of a standard above Ordinary National Diploma or General Certificate of Education (advanced level);

"Appeal Tribunal" has the same meaning as in section 7(3) of the Act;

"attendance allowance" means—

(*a*) an attendance allowance under section 35 of the Social Security (Northern Ireland) Act 1975(**c**);

(*b*) an increase of disablement pension under section 61 or 63 of that Act (increases in respect of the need for constant attendance);

(*c*) a payment under regulations made in exercise of the power in section 150(3)(*b*) of that Act (constant attendance allowance and an increase for exceptionally severe disablement for certain pre-1948 cases);

(*d*) an increase of allowance under Article 8 of the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966(**d**) (constant attendance allowance for certain persons to whom that Scheme applies) or under the corresponding provision of any Scheme which may replace the said Scheme of 1966;

(*e*) an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension, including an allowance in respect of exceptionally severe disablement;

"benefit" means a family income supplement under the Act;

"beneficiary" means a person by whom benefit is or was receivable and any person authorised or appointed to act for such a person;

"claim" means a claim for benefit;

"determining authority" means, as the case may require, a supplement officer, the Appeal Tribunal as defined in section 7(3) of the Act or a Social Security Commissioner(**e**) within the meaning of the Social Security (Northern Ireland) Act 1975;

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

"Education and Library Board" means a Board established under Article 3 of, and Part I of Schedule 2 to, the Education and Libraries (Northern Ireland) Order 1972(**f**);

"educational maintenance allowance" means the gross amount of any allowance paid by an Education and Library Board for the maintenance (in whole or in part) of a child aged not less than sixteen years undergoing a course of education other than a course of advanced education;

(**c**) 1975 c. 15
(**d**) S.I. 1966/164 (1966 I, p. 303)
(**e**) *See* section 12 of the Social Security Act 1980 (c. 30)
(**f**) S.I. 1972/1263 (N.I. 12)

"recognised educational establishment" means an establishment recognised by the Department as being, or as comparable to, a university, college or school;

"supplement officer" shall have the same meaning as in section 16(1) of the Act(**g**);

"war disablement pension" means—

(*a*) a pension or other benefit administered by the Secretary of State for Social Services and awarded in respect of disablement—

(i) due to service in the armed forces of the Crown; or, as the case may be,

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

(*b*) any retired pay or pension to which section 365(1) of the Income and Corporation Taxes Act 1970(**k**) 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 sub-paragraphs (*a*) or (*b*) of this definition.

Computation of normal gross income of members of a family

2.—(1) For the purposes of the Act, a person's normal gross income and the weekly amount thereof shall be calculated or estimated in the manner provided in paragraphs (2) to (6).

(2) In so far as a person's normal gross income consists of earnings from a gainful occupation, the weekly amount of that person's normal gross income therefrom shall be calculated or estimated by reference to the average of his earnings from that occupation over the period of the five weeks (being pay-weeks if in respect of that occupation he is paid weekly) or the two pay-months (if in respect of that occupation he is paid monthly) immediately preceding the date on which the claim is made, save, however, that in any case, and in particular in a case where a person has been working abnormally long or short hours in a gainful occupation, or has commenced working in a gainful occupation shortly before the claim is made, or is following a gainful occupation from which his earnings normally fluctuate at approximately the same time or times each year, or is following a gainful occupation otherwise than under a contract of service, the determining authority may have regard to the average of a person's earnings from a gainful occupation over such other period or periods as may appear to it to be appropriate in order properly to determine what is that person's normal weekly income therefrom.

(3) In so far as a person's earnings from any gainful occupation comprise salary, wages or fees related to a fixed period, the gross amount thereof shall be taken into account; and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account.

(4) In so far as a person's normal gross income does not consist of earnings from a gainful occupation, the weekly amount thereof shall be calculated or estimated on such basis as appears to the determining authority to be appropriate in the circumstances of the particular case.

(**g**) Section 16(1) was amended by Article 8(6) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

(**h**) 1939 c. 82

(**i**) 1939 c. 83

(**j**) 1947 c. 19

(**k**) 1970 c. 10

(5) In calculating or estimating a person's normal gross income and the weekly amount thereof, there shall be deducted—

(*a*) the whole of any sums by way of attendance allowance;

(*b*) the whole of any payments made in respect of a child who is boarded-out for the purposes of the Children and Young Persons (Boarding-Out) Regulations (Northern Ireland) 1976(**l**);

(*c*) the whole of any sums by way of benefit under the Act;

(*d*) the whole of any sums by way of benefit under the Supplementary Benefits (Northern Ireland) Order 1977(**m**);

(*e*) up to £4·00 a week of any sums (other than sums payable by way of attendance allowance) payable by way of a war disablement pension;

(*f*) the whole of any sums by way of a rent allowance under Part X of the Rent (Northern Ireland) Order 1978(**n**);

(*g*) the whole of any sums by way of benefit under the Child Benefit (Northern Ireland) Order 1975(**o**);

(*h*) the whole of any sums by way of mobility allowance under section 37A of the Social Security (Northern Ireland) Act 1975(**p**); and

(*i*) the whole of any award of educational maintenance allowance.

(6) The normal gross income of a family shall include the income of a child of that family derived from—

(*a*) the mother or father of that child, or any other person under a legally enforceable obligation to maintain that child;

(*b*) any fund to which the mother or father of that child, or any other person under a legally enforceable obligation to maintain that child, has contributed.

Circumstances in which benefit may be made payable otherwise than for fifty-two weeks beginning with the date of the claim therefor and in which the rate of benefit payable may be increased

3.—(1) Where the available evidence leaves the determining authority in doubt as to the rate at which benefit should be payable, but satisfies it that benefit should be payable at not less than a certain weekly rate, it may determine that benefit shall be payable at the latter rate for a period of less than fifty-two weeks, but not less than four weeks.

(2) Where a beneficiary makes a claim not more than four weeks before or after the expiration of a period for which benefit is payable (hereinafter in this paragraph referred to as a "renewal claim"), any benefit payable on the basis of the renewal claim shall be payable for a period commencing immediately after the expiration of the period for which benefit was previously payable.

(3) Subject to the provisions of paragraph (4), where a regulation has been made in exercise of powers conferred by the Act and a claim is made on or after the date on which the statutory rule containing that regulation has been made but before the date on which that regulation comes into operation, benefit shall be payable on that claim from and including the date on which that regulation comes into operation if—

(**l**) S.R. 1976 No. 19 (I, p. 53)

(**m**) S.I. 1977/2156 (N.I. 27); this Order as amended (except Articles 1, 42 and Schedules 4 to 7) is set out in Part II of Sch. 2 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

(**n**) S.I. 1978/1050 (N.I. 20)

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

(**p**) Section 37A was inserted by Article 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))