1980 No. 348

SUPPLEMENTARY BENEFITS

The Supplementary Benefit (Resources) Regulations (Northern Ireland) 1980

Made . . . . . 10th October 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 Article 4(2) of, and 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 with the consent of the Department of Finance(**b**), hereby makes the following regulations:

(**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

PART I

GENERAL

Citation and commencement

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

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**);

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

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

"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 to the Order aggregated with and treated as those of the claimant;

"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(**f**), a local education authority as defined in section 114(1) of the Education Act 1944(**g**), an education authority as defined in section 145(16) of the Education (Scotland) Act 1962(**h**), and any body which is a research council for the purposes of the Science and Technology Act 1965(**i**);

"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, former spouse or parent; and, for the purposes of these regulations, shall include a person who has not been adjudged putative father of a child but is making payments to or in respect of that child;

"occupational pension scheme" means an occupational pension scheme within the meaning of the Social Security Pensions (Northern Ireland) Order 1975(**j**); and "occupational pension" shall be construed accordingly, except that any

(c) 1975 c. 15
(d) 1970 c. 10
(e) S.I. 1975/1504 (N.I. 16)
(f) S.I. 1972/1263 (N.I. 12)
(g) 1944 c. 31
(h) 1962 c. 47; section 145(16) was amended by the Local Government (Scotland) Act 1974 c. 65, section 129 and Schedule 11, para. 12
(i) 1965 c. 4
(j) S.I. 1975/1503 (N.I. 15)

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;

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

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

"student" means a person under pensionable age who has left school and is attending a course of full-time education, including 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 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(**l**), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**m**) or the Polish Resettlement Act 1947(**n**);

(*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.

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 under the Act and any graduated retirement benefit which is paid other than periodically shall be treated as a capital resource;

(*b*) where—

(i) a lump sum payment is made, whether in pursuance of a court order or otherwise, by or derived from a liable relative, and

(ii) if that lump sum payment were treated as a capital resource the claimant's capital resources would exceed the amount mentioned in regulation 7,

that lump sum payment shall be treated as a capital resource and regulation 11(3) shall not apply;

(**k**) S.R. 1980 No. 347
(**l**) 1939 c. 82
(**m**) 1939 c. 83
(**n**) 1947 c. 19

(*c*) where—

(i) a lump sum payment, other than one mentioned in sub-paragraph (*b*)(i), falls to be paid by instalments, and

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

any such instalments shall be treated as an income resource;

(*d*) any amount which becomes available to any member of the assessment unit by way of repayment of income tax 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 there is a stoppage of work due to a trade dispute at his place of employment or his employment has been temporarily suspended but not terminated, as an income resource only in the week to which regulation 9(2)(*c*) or, as the case may be, (*d*) applies,

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

(*e*) any repayment of income tax other than one to which sub-paragraph (*d*) applies shall be treated as an income resource for a period to which regulation 9(2)(*a*) or, as the case may be, (*b*) applies.

Notional resources

4.—(1) Any resource of which a person 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—

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

(*b*) is due to be paid to a person, but which has not been paid to him,

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) Paragraph (2) shall not apply to any payment which—

(*a*) is prescribed pursuant to Article 16(1) and (2) (prevention of duplication of payments of supplementary benefit and prescribed payments and benefits); and

(*b*) is not made on or before the date which is prescribed in relation to it pursuant to those paragraphs.

(4) Where a person performs an unpaid service for another person who has the means to pay for that service and for which in the ordinary course he would pay, an amount calculated by reference to comparable employment and the means of that other person may be treated as if it were actually paid to and possessed by the first-mentioned person.

(5) 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 education authority takes into account in assessing the amount of the student's grant or award, notwithstanding that the contribution is not actually made, unless he is—

(*a*) a single parent;

(*b*) a partner; or

(*c*) a disabled student.

(6) 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.

(7) A person shall be treated as possessing the whole or any appropriate share calculated in accordance with paragraph (8) of any resources held under a trust, whether created by virtue of a statutory provision or otherwise, under which the trustees have any express or implied discretion to pay him, or apply for his benefit, any income or capital, unless that person is a dependant and the trust funds are derived from a payment, whether in pursuance of a court order or otherwise, in consequence of a personal or criminal injury to that dependant.

(8) A person to whom paragraph (7) applies shall be treated as possessing a resource either in whole or in part having regard to—

(*a*) the number of beneficiaries under the trust; and

(*b*) the terms of the trust, either express or implied,

but no resource shall be treated as possessed by virtue of these paragraphs for such period, not exceeding 3 months from the date on which it would otherwise have been so treated, as is necessary to enable the trustees to make arrangements for payments to be made to that person.

(9) Where—

(*a*) a claim is made by, or in respect of, a seasonal worker in respect of any day in his off-season; and

(*b*) his total earnings from his last period of normal employment exceed either twice the total requirements which would, during that period, have been applicable to him under the Requirements Regulations, or three times the total of normal requirements which would, during that period, have been applicable to a person to whom paragraph 4 of the Table in paragraph 2 of Schedule 1 (certain householders) applies, whichever is the greater,

the amount of the excess mentioned in sub-paragraph (*b*) shall be divided by the number of weeks in his off-season and the result treated as earnings for those weeks; and in this paragraph "normal employment", "off-season" and "seasonal worker" have the meanings assigned to them in regulation 16 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1979(**o**) (additional conditions with respect to the receipt of unemployment benefit by seasonal workers).

(10) Where—

(*a*) a claimant, or his partner, other than a person to whom paragraph (9) applies, engages in employment which by its nature provides only intermittent employment; and

(*b*) his average weekly earnings during his last period of that employment exceed twice the national average weekly earnings for male manual workers determined in accordance with indices of earnings published by the Department of Employment,

the amount by which his total earnings during that last period of employment exceed either the total requirements or total of normal requirements mentioned in paragraph (9)(*b*), whichever is the greater, may be treated as earnings if, and for as long as, in the opinion of the benefit officer, it is reasonable in the circumstances to do so.

(**o**) S.R. 1979 No. 211 (II, p. 1008)