1979 No. 242

SOCIAL SECURITY

The Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979

Made . . . . . *3rd July* 1979

Coming into operation . . . *3rd September* 1979

The Department of Health and Social Services for Northern Ireland, in exercise of powers conferred by sections 83(1) and 85 of the Social Security (Northern Ireland) Act 1975(**a**), and paragraphs 3 and 9 of Schedule 3 to the Social Security (Consequential) Provisions Act 1975(**b**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1979 and shall come into operation on 3rd September 1979.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

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

"the Child Benefit Order" means the Child Benefit (Northern Ireland) Order 1975(**c**);

"the Pensions Order" means the Social Security Pensions (Northern Ireland) Order 1975(**d**);

"benefit under Chapters I and II of Part II of the Act" includes benefit treated as included in Chapter I of Part II of the Act by virtue of Article 2(3)(*b*) of the Pensions Order;

"child benefit" means benefit under Part II of the Child Benefit Order;

"death benefit" means any benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) in respect of the death of any person;

"the deceased" means, in relation to any death benefit, the person in respect of whose death that benefit, apart from these regulations, is payable;

"dependency benefit" means that benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) to a person in respect of another person who is a child or an adult dependant; it includes child's special allowance and any personal benefit by way of pension payable to a child under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme but does not include benefit under section 73 (allowances to a woman who has care of children of a person who died as a result of an industrial accident);

(a) 1975 c. 15
(b) 1975 c. 18
(c) S.I. 1975/1504 (N.I. 16)
(d) S.I. 1975/1503 (N.I. 15)

"disablement pension" includes a disablement payment on a pension basis and retired pay or pension in respect of any disablement, wound, injury or disease;

"personal benefit" means any benefit, pension or allowance which is not a dependency benefit and which is payable to any person;

"Personal Injuries Scheme" means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939(**e**) or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**f**);

"Pneumoconiosis and Byssinosis Benefit Scheme" means any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(**g**);

"Service Pensions Instrument" means those provisions and only those provisions of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a death or a disablement pension (not including a pension calculated or determined by reference to length of service) and allowances for dependants payable with either such pension may be paid out of public funds in respect of any death or disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council;

"training allowance" means an allowance (whether by way of periodical grants or otherwise) payable out of public funds by a Government department to a person for his maintenance, or in respect of any dependant of his, for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him; but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education or is training as a teacher;

"treatment allowance" means an allowance payable under a Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme only to a person undergoing a course of medical, surgical or rehabilitative treatment in consequence of a disablement in respect of which a pension may be or has been paid, or an allowance payable to any such person pending the determination of the question whether he is entitled to receive such a pension;

"unemployability supplement" includes an increase on account of unemployability under—

(*a*) any Pneumoconiosis and Byssinosis Benefit Scheme; and

(*b*) any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme;

"war pension death benefit" means a death benefit by way of pension or allowance under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme, but does not include a rent allowance or a grant payable by reason of the beneficiary being in receipt of a pension and being a specific age which is not less than 65 or a pension or an allowance calculated by reference to the necessities of the beneficiary;

(**e**) 1939 c. 82
(**f**) 1939 c. 83
(**g**) 1975 c. 16

"1914-1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914(**h**) or under the Injuries in War Compensation Act 1914 (Session 2)(**i**) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 War.

(2) Unless the context otherwise requires, any reference in these regulations to—

(*a*) a numbered section is to the section of the Act bearing that number;

(*b*) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(3) For the purposes of these regulations, unless otherwise specified, additional component payable by virtue of the Act and the Pensions Order shall be deemed to include any increase so far as attributable to any additional component or to any increase by virtue of an order under section 120(**j**) providing for the up-rating of increments in guaranteed minimum pensions or paragraph 4A(**k**) of Schedule 1 to the Pensions Order or to any increase of graduated retirement benefit, and shall be treated as a separate personal benefit included in Chapter I of Part II of the Act.

Special provisions for widow's benefit and invalidity pension

3.—(1) This regulation applies where, apart from these regulations, there is payable for the same period to a person under pensionable age both—

(*a*) an invalidity pension; and

(*b*) a widowed mother's allowance or widow's pension (hereafter referred to in this regulation as "the widow's benefit").

(2) The total amount payable in respect of these benefits under this regulation shall be—

(*a*) the sum of the two basic components up to and not exceeding the rate specified in Article 8(1)(*a*) of the Pensions Order; and

(*b*) the sum of the two additional components up to and not exceeding the maximum for the time being prescribed under Article 11(3) of the Pensions Order.

(3) Subject to paragraph (4)—

(*a*) where the beneficiary has made application, before the payment is made, that the total amount payable should be treated as being made up of the rate of the invalidity pension, any balance being the widow's benefit, it shall be so treated;

(*b*) in any other case, that amount shall be treated as being made up of the rate of the widow's benefit, any balance being the invalidity pension.

(4) For the purposes of the remainder of these regulations (other than regulation 6(5)), which shall apply after adjustment has been made under this regulation, the total amount payable under this regulation shall be treated as a single long-term benefit payable on a weekly basis.

(**h**) 1914 c. 30
(**i**) 1914 c. 18 (5 & 6 Geo. 5)
(**j**) As amended by paragraph 9 of Schedule 3 to the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5))
(**k**) As inserted by paragraph 7 of Schedule 1 to the Social Security (Northern Ireland) Order 1979

Adjustment of personal benefit under Chapters I and II of Part II of the Act where other personal benefit under those Chapters is payable

4.—(1) Subject to paragraphs (2), (3) and (4) and regulation 12, where 2 or more personal benefits (whether of the same or a different description) are, or but for this regulation would be, payable under Chapters I and II of Part II of the Act (which relate to benefits other than industrial injuries benefits) for any period, an adjustment shall be made in accordance with paragraph (5).

(2) Paragraph (1) shall not require the adjustment of, or by reference to,

(*a*) a death grant;

(*b*) a maternity grant;

(*c*) any other sum paid otherwise than in respect of a period;

(*d*) an earnings-related supplement or earnings-related addition to any benefit (except as provided by regulation 5 and in the case of non-contributory invalidity pension or invalid care allowance);

(*e*) an attendance allowance;

(*f*) additional component or graduated retirement benefit (except as provided by paragraph (4));

(*g*) mobility allowance.

(3) Paragraph (1) shall require an adjustment of age addition only by reference to another age addition.

(4) Where there are payable 2 or more personal benefits to which this regulation applies with which additional component or graduated retirement benefit is payable as part of the rate of benefit or as an increase of benefit, or, in a case where the person entitled to receive the benefits is over pensionable age and one or more of the benefits includes either additional component or graduated retirement benefit while another of the benefits is payable at the rate referred to in section 14(6) or 15(4), then the following provisions shall apply—

(*a*) for the purposes of adjustment falling to be made under paragraph (5) that additional component or graduated retirement benefit shall be treated as part of the personal benefit with which it is so payable;

(*b*) the provisions of sub-paragraph (*a*) above shall apply before any further adjustment under these regulations; and

(*c*) for the purpose of any such further adjustment, the beneficiary shall be treated as having a single long-term benefit inclusive of whichever before adjustment under sub-paragraph (*a*) above is the highest of the following amounts—

(i) the highest additional component payable, or

(ii) the highest graduated retirement benefit payable, or

(iii) the highest total of additional component and graduated retirement benefit payable together as part of the rate of and as an increase of any of those personal benefits.

(5) Where an adjustment falls to be made in accordance with this paragraph and—

(*a*) one of the benefits is a contributory benefit and one is a non-contributory benefit, the non-contributory benefit shall be adjusted by deducting from it the amount of the contributory benefit and only the balance, if any, shall be payable;

(*b*) sub-paragraph (*a*) above does not apply, if one of the benefits is payable on a weekly basis—

(i) where the beneficiary has made application, before the payment is made, to have the benefit payable on a weekly basis adjusted, it shall be adjusted by deducting from it the amount of the other benefit and only the balance of it, if any, shall be payable,

(ii) in any other case, the benefit not payable on a weekly basis shall be adjusted by deducting from it the amount of the other benefit and only the balance of it, if any, shall be payable;

(*c*) sub-paragraphs (*a*) and (*b*) above do not apply, the amount payable in respect of the benefits in question shall be an amount equal to that which would but for this provision be payable in respect of—

(i) one of them, if they would have been payable at the same rate, or

(ii) the higher or highest of them, if they would have been payable at different rates,

so however that in a case where more than 2 benefits would be payable then the total amount payable shall not exceed the amount which would be ascertained under sub-paragraph (*c*) above.

Special provisions for earnings-related supplements and earnings-related addition to widow's allowance

5.—(1) Where 2 or more earnings-related supplements to any benefits under the Act would apart from this regulation be payable for the same period, for the purposes of regulation 4(1) each such supplement shall be treated as part of the benefit it supplements.

(2) Where an earnings-related addition to widow's allowance would apart from this regulation be payable for the same period as any other benefit under the Act which is calculated whether wholly or in part by reference to the contributions of a husband who has died, that other benefit shall be adjusted by deducting from it the amount of the earnings-related addition, provided that where the widow is also entitled for the same period to graduated retirement benefit or additional component, or both of them, by virtue of her own contributions and the contributions of the husband who has died, the graduated retirement benefit or additional component to be adjusted shall be only that part which is payable by virtue of the contributions of the husband who has died.

(3) Paragraph (1) shall not apply where apart from this regulation a widow's allowance would be payable for the same period as 2 or more other benefits under the Act; in such a case the earnings-related supplement to any of those other benefits shall be adjusted so that only the higher or highest of them is payable.

(4) For the purposes of paragraph (2), additional component or graduated retirement benefit, where it is, or but for this regulation would be, payable as part of the rate of or as an increase of another personal benefit, shall be treated as part of the personal benefit with which it is so payable.

Adjustments of personal benefit under Chapters I and II of Part II of the Act by reference to industrial injuries benefits and benefits not under the Act, and adjustments of industral injuries benefits

6.—(1) Subject to paragraph (5) and regulation 12, where a personal benefit which is specified in column (1) of Schedule 1 to these regulations ("the column (1) benefit") is, or but for this regulation would be, payable to a person for the same period as a personal benefit which is specified in the