1978 No. 401

SOCIAL SECURITY

The Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978

Made . . . . . 21*st December* 1978

Coming into operation . . . 13*th February* 1979

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 2(2), 4(4) and (5) of, and paragraph 6(1)(*k*) of Schedule 1 to, the Social Security (Northern Ireland) Act 1975(**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 Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 and shall come into operation on 13th February 1979.

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

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

"the Department" means the Department of Health and Social Services for Northern Ireland;

"educational establishment" includes—

(*a*) a place where instruction is provided in any course or part of a course designed to lead to a certificate, diploma, degree or professional qualification; or

(*b*) a place where instruction is provided in any course or part of a course being the same as, or substantially similar to, any such course or part of a course as is referred to in (*a*) above, but which is not designed to lead to a certificate, diploma, degree or professional qualification;

"remuneration" in paragraph 6 of Schedule 3 to these regulations includes any payment in respect of stipend or salary and excludes—

(*a*) any payment disregarded or, as the case may be, deducted from the amount of a person's earnings by virtue of regulations made under section 3(3) of the Act; or

(*b*) any specific and distinct payment made towards the maintenance or education of a dependant of the person receiving the payment;

and other expressions have the same meanings as in the Act.

(3) These regulations shall be construed and shall operate as they would fall to be construed and to operate by virtue of section 23(1) of the Interpretation Act 1978(**b**) if they were made after the commencement of that Act.

(a) 1975 c. 15
(b) 1978 c. 30

Treatment of earners in one category of earners as falling within another category and disregard of employments

2.—(1) For the purposes of the Act an earner in one category of earners shall be treated as falling within another category in accordance with the following provisions of this regulation.

(2) Subject to the provisions of paragraph (4) of this regulation, every earner shall, in respect of any employment described in any paragraph in column (A) of Part I of Schedule 1 to these regulations, be treated as falling within the category of an employed earner in so far as he is gainfully employed in such employment and is not a person specified in the corresponding paragraph in column (B) of that Part, notwithstanding that the employment is not under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E.

(3) Subject to the provisions of paragraph (4) of this regulation, every earner shall, in respect of any employment described in paragraph 6 in column (A) of Part II of the said Schedule 1, be treated as falling within the category of a self-employed earner in so far as he is gainfully employed in such employment and is not a person specified in the corresponding paragraph in column (B) of that Part, notwithstanding that the employment is under a contract of service, or in an office (including elective office) with emoluments chargeable to income tax under Schedule E.

(4) Every employment described in any paragraph in column (A) of Part III of the said Schedule 1 shall, in relation to liability for contributions otherwise arising from employment of that description, be disregarded, except in so far as it is employment of a person specified in the corresponding paragraph in column (B) of that Part.

Employments treated as continuing

3. For the purposes of the Act with respect to the computation, collection and recovery of, and otherwise with respect to, contributions (other than Class 4 contributions which under section 9 of the Act are to be recovered by the Inland Revenue), the employment of a person shall be treated as continuing in the circumstances specified in Schedule 2 to these regulations.

Special provisions with respect to persons declared by the Court of Appeal to be persons falling within a particular category of earners

4.—(1) Where, under the provisions of the Act relating to references and appeals to the Court of Appeal in Northern Ireland(**c**), the Court of Appeal in Northern Ireland decides any question whether in respect of any employment a person is an earner and, if so, as to the category of earners in which he is to be included, and that decision is inconsistent with some previous determination of a question by the Department(**d**), then, if the Department is satisfied that contributions appropriate to another category of earners have been paid by or in respect of any person by reason of that determination or in the reasonable belief that that determination was applicable, it may, if it appears to it that it would be in the interests of the person by or in respect of whom such contributions have been paid, or of any claimant or beneficiary by virtue of that person's contributions, so to do, direct that that person shall be treated as though he had been included in the category of earners corresponding to the

(**c**) *See* section 94 of the Social Security (Northern Ireland) Act 1975
(**d**) *See* section 93 of the Social Security (Northern Ireland) Act 1975

contributions paid during the period for which contributions appropriate to that other category were so paid before the date on which the decision of the Court of Appeal in Northern Ireland was given, and, if such a direction is given, that person shall be deemed to have been included in that category accordingly for such period.

(2) Where the Department, on review under section 96(1) of the Act, has revised a determination of a question previously given by it, the provisions of this regulation shall apply with the necessary modifications in the same manner as they apply where the Court of Appeal in Northern Ireland has given a decision inconsistent with a determination previously given by the Department.

Persons to be treated as secondary contributors

5. For the purposes of section 4 of the Act (Class 1 contributions), in relation to any payment of earnings to or for the benefit of an employed earner in any employment described in any paragraph in column (A) of Schedule 3 to these regulations, the persons specified in the corresponding paragraph in column (B) of that Schedule shall be treated as the secondary Class 1 contributor in relation to that employed earner.

Revocations and general savings

6.—(1) The regulations specified in column 1 of Schedule 4 to these regulations are hereby revoked to the extent mentioned in column 3 of that Schedule.

(2) Anything whatsoever done under or by virtue of any regulation revoked by these regulations shall be deemed to have been done under or by virtue of the corresponding provision of these regulations, and anything whatsoever begun under any such regulation may be continued under these regulations as if begun thereunder.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 21st December 1978.

(L.S.)

W. J. Sloane
Senior Assistant Secretary

SCHEDULE 1 Regulation 2

PART I

Column (A) *Employments in respect of which, subject to the provisions of regulation 2 and to the exceptions in column (B) of this Part, earners are treated as falling within the category of employed earner*	Column (B) *Persons excepted from the operation of column (A)*
1. Employment as an office cleaner or in any similar capacity in any premises other than those used as a private dwelling-house.	1. None.
2. Employment (not being employment in respect of which a person is, under the provisions of paragraph 1, 3 or 5 of this Schedule, treated as falling within the category of an employed earner) in which the person employed renders, or is under obligation to render, personal service and is subject to supervision, direction or control, or to the right of supervision, direction or control, as to the manner of the rendering of such service and where the person employed is supplied by or through some third person (including, in the case of a body of persons unincorporate, a body of which the person employed is a member) and— (*a*) where earnings for such service are paid by or through, or on the basis of accounts submitted by, that third person or in accordance with arrangements made with that third person; or (*b*) where payments, other than to the person employed, are made by way of fees, commission or other payments of like nature which relate to the continued employment in that employment of the person employed.	2. Any person in employment described in paragraph 2 in column (A)— (*a*) where the service of the person employed is rendered in his own home or on other premises not under the control or management of the person to whom the person employed is supplied (except where such other premises are premises at which the person employed is required, by reason of the nature of the service, to render service); or (*b*) who is employed as an actor, singer, musician or other entertainer or as a fashion, photographic or artist's model; or (*c*) in a case where earnings are not paid by or through, or on the basis of accounts submitted by, that third person— (i) where the person employed has obtained that employment through a third person as part of that third person's activities in which persons seeking employment are introduced to persons requiring their services; and (ii) where as a result of such an introduction the person employed and the person to whom he has been introduced have entered into a contract with each other for the rendering of such service; and

Column (A) *Employments in respect of which, subject to the provisions of regulation 2 and to the exceptions in column (B) of this Part, earners are treated as falling within the category of employed earner*	Column (B) *Persons excepted from the operation of column (A)*
	(iii) where only the person employed and the person to whom he has been introduced have a direct financial interest in the continued employment in that employment of the person employed.
3. Employment of a person by his or her spouse for the purposes of the spouse's employment.	3. None.
4. Employment (not being employment described in paragraph 2 in column (A) of this Schedule) as a lecturer, teacher, instructor or in any similar capacity in an educational establishment by any person providing education being employment in which— (*a*) the person employed has agreed, prior to giving the instruction, to give it on at least four days in three consecutive months; and (*b*) the person employed gives the instruction in the presence of the persons to whom the instruction is given except where the employment is in the Open University; and (*c*) the earnings in respect of the employment are paid by, or on behalf of, the person providing the education.	4. Any person in employment described in paragraph 4 in column (A) where the instruction is given as public lectures.
5. Employment as a minister of religion, not being employment under a contract of service or in an office with emoluments chargeable to income tax under Schedule E.	5. Any person in employment described in paragraph 5 in column (A) whose remuneration in respect of that employment (disregarding any payment in kind) does not consist wholly or mainly of stipend or salary.