1978 No. 371

SOCIAL SECURITY

The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978

Made . . . . . 13*th December* 1978

Coming into operation . . . 12*th February* 1979

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 3(2), 66(3), 82(4), 119(3) and 126 of 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 Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978 and shall come into operation on 12th 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;

"earnings" means earnings derived from a gainful employment;

"employer" includes any person making a payment which is, or which falls to be, taken into account in the calculation or estimation of, another's earnings;

"the determining authority" means, as the case may require, a Commissioner, a local tribunal or an insurance officer;

"gainful employment" means employment as an employed earner or a self-employed earner and any employment which would be such employment if it were in Northern Ireland, and includes any such employment which, in accordance with the provisions of the Act and of any regulations made under the Act, is to be disregarded in relation to liability for contributions;

"regulation 10(4) of the Dependency Regulations" for the purposes of regulations 3(1)(*b*), 5(2) and 7 below means regulation 10(4) of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977(**b**) in so far as that regulation relates to a female person who is residing with a beneficiary entitled to unemployability supplement;

"specified benefit" for the purposes of regulations 5(1)(*a*), 6(1) and (2) and 7 below means invalidity pension, or non-contributory invalidity pension or, as the case may be, unemployability supplement;

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

(3) The 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(**c**) if they were made after the commencement of that Act.

(**a**) 1975 c. 15
(**b**) S.R. 1977 No. 74 (I, p. 258)
(**c**) 1978 c. 30

Calculation and estimation of amount of earnings

2.—(1) For the purposes of any provision of the Act and of any regulations made thereunder which relates to benefit under the Act, the amount of a person's earnings for any period shall be calculated or estimated in the manner set out in these regulations.

(2) The amount of a person's earnings for any period to be taken into account shall be the whole of his earnings for that period except in so far as regulations 3 and 4 below provide that no account shall be taken of certain payments or perquisites and that certain payments shall be deducted.

(3) Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, if a person has earnings which do not consist of salary, wages, fees or other payments related to a fixed period or if his earnings from any employment for any period are not immediately ascertainable, the determining authority shall calculate or estimate the amount of those earnings, for any day or week on or in which that person is following the employment from which they are derived, as best it may having regard to the information (if any) available to it and to what appear to it to be the probabilities of the case.

Payments to be disregarded

3.—(1) Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, in calculating or estimating the amount of a person's earnings for any period no account shall be taken—

(*a*) for the purposes of any provision of the Act and of any regulations made under the Act which relates to benefit under the Act, of the value—

(i) up to 15 pence for each working day, of meal vouchers supplied to him which are not transferable and are valid only for meals;

(ii) of meals provided for him at the place of work;

(iii) of accommodation in which he is required to live as a condition of his employment; and

(iv) of food or produce provided for his personal needs and those of his household;

(*b*) for the purposes only of sections 27, 30, 37(1)(*b*), 44, 45 to 49 and 66(4) of the Act and regulation 10(4) of the Dependency Regulations, of any sums of money not exceeding £10 in the aggregate, or of the first £10 of any sums the aggregate of which exceeds that amount, and of any remuneration in kind, if those sums are or (as the case may be) that remuneration in kind is paid by the employer in December of any year by way of Christmas bonus.

(2) A sum shall not be treated as paid to a person by way of Christmas bonus within the meaning of paragraph (1)(*b*) of this regulation if—

(*a*) it is one of a series of sums paid to him at intervals of less than one year; or

(*b*) it is received by him by way of payment for work done and either accrues to him as overtime or incentive payment or is otherwise directly related to his hours of work or to the amount of work performed by him.

Deductions to be made

4. Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, in calculating or estimating for the purposes of any provision of the Act and of any regulations made under the Act which relates to benefit the amount of a person's earnings for any period, there shall be deducted from the earnings which he derives from employment in that period—

(*a*) any contribution payable under Part I of the Act—

(i) which his employer pays or is liable to pay on his behalf and the amount of which the employer deducts from a payment of his earnings from that employment; or

(ii) which is duly paid by him otherwise than as a secondary Class 1 contributor and which either is so paid in respect of any period falling wholly or partly within that period or is fairly attributable to that period or any part of it;

(*b*) expenses reasonably incurred by him without reimbursement in respect of—

(i) travel between his place of residence and his place of work and travel which he undertakes in connection with and for the purposes of that employment;

(ii) premises (other than premises in which he normally resides), tools and equipment reasonably required by him for the purposes of that employment;

(iii) protective clothing reasonably required by him for the purposes of that employment (including the laundering and cleaning of such clothing) and excessive wear and tear of his clothing attributable to the conditions and circumstances of that employment;

(iv) subscriptions paid by him to any association of employed persons or other association or body to which, having regard to the nature or objects of the association or body and the nature and circumstances of that employment, it is reasonable for him to subscribe;

(v) the making of reasonable provision for the care of another member of his household because of his own necessary absence from home to carry out his duties in connection with that employment; and

(vi) the cost, up to 15 pence, of each meal taken during the hours of that employment for which no meal voucher has been provided; and

(*c*) any other expenses (not being sums the deduction of which from wages or salary is authorised by or under any enactment) reasonably incurred by him without reimbursement in connection with and for the purposes of that employment.

Calculation of earnings of certain retirement pensioners and adult dependants of pensioners

5.—(1) This regulation applies only where—

(*a*) a person (being a person entitled to a retirement pension or an adult dependant of a person entitled to a retirement pension or a specified benefit) is in any week engaged in gainful employment in Northern Ireland;

(*b*) that employment is such that the earnings derived from it for that week are not immediately ascertainable; and