1978 No. 114

SOCIAL SECURITY

The Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978

Made . . . . . *25th April* 1978

Coming into operation . . . . *12th June* 1978

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 21(3), 30(3), 32(5), 82(5), 114(1) and 126 of the Social Security (Northern Ireland) Act 1975(**a**) and section 2 of, and paragraph 3 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, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978 and shall come into operation on 12th June 1978.

(2) 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 Contributions Regulations" means the Social Security (Contributions) Regulations 1975(**d**), as amended(**e**);

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

"entitled to child benefit" includes treated as so entitled;

"the former principal Act" means the National Insurance Act (Northern Ireland) 1966(**f**);

"her husband" in the case of a woman who has been married more than once, refers to the husband by virtue of whose contributions she is entitled to the benefit in question;

"retired" means retired from regular employment;

"the Special Provisions Regulations" means the Social Security (Benefit) (Married Women and Widows Special Provisions) (Northern Ireland) Regulations 1975(**g**), as amended(**h**);

"the Widow's Benefit and Retirement Pensions Regulations" means the Social Security (Widow's Benefit and Retirement Pensions) (Northern Ireland) Regulations 1975(**i**), as amended(**j**);

(**a**) 1975 c. 15
(**b**) 1975 c. 18
(**c**) S.I. 1975/1504 (N.I. 16)
(**d**) S.I. 1975/492 (1975 I, p. 1516)
(**e**) The relevant amending instrument is S.I. 1976/507
(**f**) 1966 c. 6 (N.I.)
(**g**) S.R. 1975 No. 19 (I, p. 98)
(**h**) S.R. 1975 No. 93 (I, p. 554); S.R. 1977 No. 74
(**i**) S.R. 1975 No. 12 (I, p. 47)
(**j**) S.R. 1977 No. 280

"widow's benefit" and "widow's pension" include benefit under section 39(4) of the Act corresponding to a widow's pension or a widowed mother's allowance;

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

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument, and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(k) shall apply in relation to this statutory rule and in relation to any revocation effected by it as if this statutory rule, the regulations revoked by it and any regulations revoked by the regulations so revoked were Acts of Parliament, and as if each revocation were a repeal.

Modifications of the Act in relation to sickness benefit, invalidity benefit, non-contributory invalidity pension, unemployability supplement and maternity allowance

2.—(1) A person shall not be disqualified for receiving sickness benefit, invalidity benefit, non-contributory invalidity pension, an unemployability supplement or a maternity allowance by reason of being temporarily absent from Northern Ireland for any day if—

(*a*) the Department has certified that it is consistent with the proper administration of the Act that, subject to the satisfaction of one of the conditions in sub-paragraphs (i) and (ii) below, the disqualification under section 82(5)(*a*) of the Act should not apply, and either—

(i) the absence is for the specific purpose of being treated for incapacity which commenced before he left Northern Ireland, or

(ii) on the day on which the absence began he was, and had for the past 6 months continuously been, incapable of work and on the day for which benefit is claimed he has remained continuously so incapable since the absence began.

(2) A person shall not be disqualified for receiving invalidity benefit by reason of being absent from Northern Ireland if by virtue of an Order in Council made under section 99 of the former principal Act he would not be disqualified for receiving sickness benefit.

(3) A person who is or has been outside Northern Ireland and who by virtue of an order or Order in Council made under section 134 of the Act(l) or an Order in Council made under section 99 of the former principal Act would, but for the provisions of section 15 of the Act, have been entitled to sickness benefit in respect of any period, shall be entitled to invalidity pension for that period.

Modifications of the Act in relation to title to maternity grant

3.—(1) Subject to the provisions of this regulation, a woman shall not be disentitled to a maternity grant by reason of the fact that on the date of the confinement she is outside Northern Ireland, if either—

(k) 1889 c. 63.
(l) As amended by section 20 of the Social Security (Miscellaneous Provisions) Act 1977 (1977 c. 5)

(*a*) in respect of the last complete tax year before the relevant time the relevant person has an earnings factor derived from contributions, either paid or credited, of a relevant class which is not less than that year's lower earnings limit multiplied by 50; or

(*b*) at the date of the confinement her husband is a serving member of the forces, as defined in regulation 1(2) of the Contributions Regulations, other than either—

(i) a member of any territorial or reserve force mentioned in Part I of Schedule 5 to those regulations who is not undergoing training or instruction as such a member for a continuous period exceeding 72 consecutive hours, or

(ii) a member of the Ulster Defence Regiment who is neither serving also as a member of any of the regular naval, military or air forces of the Crown, nor on the full-time permanent staff of that regiment, nor serving or undergoing training or instruction in that regiment for a continuous period exceeding 72 consecutive hours;

and any such woman shall, in addition, not be disqualified for receiving a maternity grant by reason of her being absent from Northern Ireland.

(2) For the purpose of paragraph (1)(*a*) the expression "relevant person" means the person by whom the contribution conditions are to be satisfied; and the expression "relevant time" means the date of the confinement, or where the relevant person is the husband and he was over pensionable age or dead on that date, the date of his attaining pensionable age or dying under that age.

(3) The provisions of paragraph (1)(*a*) shall not apply—

(*a*) to a maternity grant payable to a woman by virtue only of her husband's contributions unless at the time of the confinement she is residing with her husband, or, if he is dead, unless she was residing with him at the time of his death; or

(*b*) to a maternity grant in respect of expectation of a woman's confinement.

Modification of the Act in relation to widow's benefit, child's special allowance, guardian's allowance and retirement pension

4.—(1) Subject to the provisions of this regulation and of regulation 5 below, a person shall not be disqualified for receiving widow's benefit, a child's special allowance, a guardian's allowance or a retirement pension of any category by reason of being absent from Northern Ireland.

(2) In the case of a widow's allowance paragraph (1) above shall apply only where either—

(*a*) the woman or her late husband was in Northern Ireland at the time of his death; or

(*b*) the contribution conditions for widowed mother's allowance and widow's pension set out in paragraph 5 of Schedule 3 to the Act or in regulation 9 of the Special Provisions Regulations are satisfied in relation to the woman.

Application of disqualification in respect of up-rating of benefit

5.—(1) Where regulations made in consequence of an order under section 120 of the Act (up-rating of benefits) provide for the application of this regulation to any additional benefit becoming payable by virtue of that order, the following provisions of this regulation shall, subject to regulation 13 below and the provisions of those regulations, have effect in relation to the entitlement to that benefit of persons absent from Northern Ireland.

(2) In this regulation—

(*a*) references to additional benefit of any description are to be construed as referring to additional benefit of that description which is, or but for this regulation would be, payable by virtue (either directly or indirectly) of the said order; and

(*b*) "the appointed date" means the date appointed for the coming into force of the said order.

(3) Where a person is not ordinarily resident in Northern Ireland immediately before the appointed date the provisions of these regulations (except this regulation) shall not, unless and until he becomes ordinarily resident in Northern Ireland, affect his disqualification while he is absent from Northern Ireland for receiving—

(*a*) in the case of a woman who immediately before the appointed date was a married woman and had not retired, any additional Category B retirement pension, if immediately before that date her husband had retired and was not ordinarily resident in Northern Ireland;

(*b*) in the case of a woman who immediately before the appointed date is a widow, any additional Category B retirement pension, if her husband had died before the appointed date;

(*c*) in any other case, any additional retirement pension of any category, if that person had retired or had otherwise become entitled to a retirement pension before the appointed date;

(*d*) any additional widow's benefit if her husband had retired or died before the appointed date;

(*e*) any additional child's special allowance if her former husband had died before the appointed date;

(*f*) any additional guardian's allowance in respect of a child if he were entitled to that allowance in respect of that child before the appointed date.

(4) The provisions of these regulations shall not affect the disqualification while absent from Northern Ireland of a widow who—

(*a*) is not ordinarily resident in Northern Ireland immediately before the appointed date, and was entitled to widow's benefit immediately before attaining pensionable age, or would, but for any provision of the Act disqualifying her for the receipt of such benefit, have been so entitled; and

(*b*) is or becomes entitled to a Category A retirement pension the right to which is determined by taking into account under section 28(3) of the Act her husband's contributions;

for receiving any additional Category A retirement pension the right to which is so determined unless and until she becomes ordinarily resident in Northern Ireland if—

(i) before the appointed date her husband had retired from regular employment and was not ordinarily resident in Northern Ireland; or

(ii) he died before the appointed date.

(5) Paragraph (3)(*c*) of this regulation shall not apply to a woman in relation to a Category B retirement pension if her husband had not retired before the appointed date and either—

(i) he was her husband immediately before that date; or

(ii) she married him on or after that date.

(6) Notwithstanding that in regulations made under section 33 of the Act (partial satisfaction of contribution conditions) the reduced rate of benefit is shown as a percentage of the standard rate, a person who immediately before the appointed date is not ordinarily resident in Northern Ireland shall, while absent from Northern Ireland, receive benefit at the same rate as previously, that is to say, the amount appropriate to that person when he was last ordinarily resident in Northern Ireland, or when he became entitled to the benefit in question, if later.

Modification of right to elect to be treated as not having retired

6. Notwithstanding the provisions of regulation 2 of the Widow's Benefit and Retirement Pensions Regulations (election to be treated as not having retired) a person who is not ordinarily resident in Northern Ireland shall not be entitled to elect that that regulation shall apply in his case.

Modification of the Act in relation to death grant

7.—(1) A person shall not be disqualified for receiving a death grant in respect of a death occurring outside Northern Ireland if the deceased—

(*a*) immediately before death was, or but for any failure to make a claim would have been, entitled to any benefit under the Act; or

(*b*) was a woman who died as a result of confinement and who would, if she had not died, have been entitled to maternity benefit in respect of that confinement; or

(*c*) immediately before death would have been entitled to a retirement pension of any category had he then retired and made the necessary claim; or

(*d*) immediately before death was a child in respect of whom a child's special allowance or a guardian's allowance was payable; or

(*e*) was a widow who was, immediately before her death, entitled to any personal death benefit by way of pension or allowance in respect of the death of her husband under any Personal Injuries Scheme, any Service Pensions Instrument or any 1914-1918 War Injuries Scheme within the meaning of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1975(**m**), as amended(**n**); or

(*f*) immediately before death was a serving member of the forces within the meaning of regulation 1(2) of the Contributions Regulations; or

(*g*) was immediately before death employed either as an airman within the meaning of regulation 71 of the Social Security (Contributions) Regulations (Northern Ireland) 1975(**o**), as amended(**n**), or as a mariner within the meaning of regulation 75 of those regulations, other than an airman or a mariner by or in respect of whom no contributions under the Act were payable by virtue of the provisions of those regulations; or

(*h*) immediately before death was liable or, as the case may be, entitled to pay contributions under the Act and in either of the last two complete tax years before his death he had an earnings factor derived from contributions, either paid or credited, of a relevant class which was not less than 25 times the lower earnings limit; or

(**m**) S.R. 1975 No. 94 (I, p. 561)
(**n**) There are no relevant amending regulations
(**o**) S.R. 1975 No. 319 (II, p. 1492)