1976 No. 227

SOCIAL SECURITY

The Child Benefit (Residence and Persons Abroad) Regulations (Northern Ireland) 1976

Made . . . . . 3*rd August* 1976

Coming into operation . . . 8*th August* 1976

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SCHEDULE — Provisions of reciprocal agreements relating to family allowances under the Family Allowances Acts (Northern Ireland) 1966 to 1975 applied to benefit

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(3), 15(1) and 22(1) of the Child Benefit (Northern Ireland) Order 1975(**a**) and section 119(3)(*a*) of the Social Security (Northern Ireland) Act 1975(**b**) as that section has effect by virtue of Article 10(1) of the said Order, and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Child Benefit (Residence and Persons Abroad) Regulations (Northern Ireland) 1976 and shall come into operation on 8th August 1976.

(2) In these regulations—

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

"benefit" means child benefit under the Order.

(3) For the purposes of Article 15(2) and (3) of the Order and of these regulations, if a child or other person is present in or absent from Northern Ireland at the beginning of any day that state of affairs shall be treated as continuing throughout that day; and except in relation to the birth of a child, references in these regulations to any condition being satisfied or any facts existing in a week shall be construed as references to the condition being satisfied or the facts existing at the beginning of that week.

Circumstances in which benefit may be payable in respect of a child for a week in which that child is absent from Northern Ireland

2.—(1) Article 15(2)(*a*) of the Order (subject to regulations, benefit not to be payable in respect of a child for any week unless that child is in Northern Ireland in that week) shall have effect subject to the following provisions of this regulation and the provisions of Parts II and III of these regulations.

(2) The said Article 15(2)(*a*) shall not operate to make benefit not payable in respect of a child for any week in which that child is absent from Northern Ireland if—

(*a*) a person is entitled to benefit in respect of that child for the week immediately preceding the first week of the child's absence from Northern Ireland; and

(*b*) the child's absence was when it began intended to be temporary and has throughout continued to be so intended; and

(*c*) that week—

(i) falls within a period of twenty-six weeks beginning with the first week of the child's absence; or

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

(ii) being a week in which the child's absence is by reason only of his receiving full-time education by attendance at a recognised educational establishment but not falling within the period specified in sub-paragraph (*c*)(i), falls within a period of one hundred and fifty-six weeks beginning with the first week of the child's absence; or

(iii) being a week in which the child's absence is for the specific purpose of being treated for illness or disability of mind or body which commenced before his absence began but not falling within the period specified in sub-paragraph (*c*)(i), falls within such extended period of time (if any) as is determined by the Department in its discretion.

(3) Where a child leaves Northern Ireland in the week in which it was born or is born while its mother is absent from Northern Ireland, the said Article 15(2)(*a*) shall not operate to make benefit not payable in respect of that child for any week in which, by virtue of the provisions of regulation 4(3), Article 15(3)(*a*) of the Order does not operate to disentitle a person to benefit in respect of that child.

Circumstances in which benefit may be payable in respect of a child for a week where neither the child nor one of his parents has been in Northern Ireland for more than one hundred and eight-two days in the fifty-two weeks preceding that week

3.—(1) Article 15(2)(*b*) of the Order (subject to regulations, no benefit to be payable in respect of a child for any week unless that child or at least one of his parents has been in Northern Ireland for more than one hundred and eighty-two days in the fifty-two weeks preceding that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said Article 15(2)(*b*) shall not operate to make benefit not payable in respect of a child for any week if in that week—

(*a*) that child is in fact in Northern Ireland and at least one of his parents is to be regarded as satisfying the requirement in Article 15(3)(*b*) of the Order; or

(*b*) that child is in fact in Northern Ireland and is a child in respect of whom the conditions for entitlement to a guardian's allowance under section 38 of the Social Security Act could be satisfied by a person were that person entitled to benefit in respect of that child; or

(*c*) that child is in fact in Northern Ireland and—

(i) is not residing with any parent of his; and

(ii) is living with another person with whom he is likely to continue to live permanently, being a person who satisfies or is to be regarded as satisfying the requirement in Article 15(3)(*b*) of the Order.

(3) The modification of the said Article 15(2)(*b*) effected by paragraph (2)(*c*) shall apply only in relation to the person referred to in paragraph (2)(*c*)(ii); and for the purposes of paragraph (2)(*c*)(i) a child shall not be regarded as having ceased to reside with any parent of his by reason of any absence the one from the other which is likely to be temporary.

(4) For the purposes of the said Article 15(2)(*b*), a week in which under the provisions of regulation 2 a child is to be regarded as satisfying the requirement in Article 15(2)(*a*) and any week for which a person is entitled to benefit in respect of that child shall be treated as a week in which that child is in Northern Ireland.

Circumstances in which a person may be entitled to benefit in respect of a child for a week in which that person is absent from Northern Ireland

4.—(1) Article 15(3)(*a*) of the Order (subject to regulations, no person to be entitled to benefit in respect of a child for any week unless that person is in Northern Ireland in that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said Article 15(3)(*a*) shall not operate to disentitle a person to benefit in respect of a child for any week in which that person is absent from Northern Ireland if—

(*a*) that person is entitled to benefit in respect of that child for the week immediately preceding the first week of that person's absence from Northern Ireland; and

(*b*) that person's absence was when it began intended to be temporary and has throughout continued to be so intended; and

(*c*) that week falls within a period of twenty-six weeks beginning with the first week of that person's absence.

(3) If in the week in which a woman gives birth to a child in Northern Ireland she subsequently leaves Northern Ireland or if she gives birth to a child while she is absent from Northern Ireland, then if—

(*a*) her absence from Northern Ireland was when it began intended to be temporary and has throughout continued to be so intended; and

(*b*) that child (if born outside Northern Ireland) was born within the period of twenty-six weeks beginning with the first week of its mother's absence; and

(*c*) had that child been born at the beginning of the week immediately preceding that in which its mother's absence began, she could have satisfied the requirements for entitlement to benefit in respect of it,

the said Article 15(3)(*a*) shall not operate to disentitle a person to benefit in respect of that child for the period of twenty-six weeks beginning with the first week of its mother's absence.

Circumstances in which a person may be entitled to benefit in respect of a child for a week where that person has not been in Northern Ireland for more than one hundred and eighty-two days in the fifty-two weeks preceding that week

5.—(1) Article 15(3)(*b*) of the Order (subject to regulations, no person to be entitled to benefit in respect of a child for any week unless that person has been in Northern Ireland for more than one hundred and eighty-two days in the fifty-two weeks preceding that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said Article 15(3)(*b*) shall not operate to disentitle a person to benefit in respect of a child for any week if—

(*a*) in that week that person is in fact in Northern Ireland and responsible for a child within the meaning of Article 5(1) of the Order, being a child who satisfies or is to be regarded as satisfying the requirements of Article 15(2)(*a*) and (*b*) of the Order; or

(*b*) that week begins in a period of one hundred and eighty-three consecutive days throughout which (disregarding up to twenty-eight days of temporary absence from Northern Ireland, whether consecutive or not) that person is likely to be in Northern Ireland; and before that week but within that period that person, while in Northern Ireland, has been an employed earner (not being an employed earner in relation to whom primary Class 1 contributions are not payable by reason of regulation 105(2) or (3) of the Social Security (Contributions) Regulations (Northern Ireland) 1975(c) (primary and secondary Class 1 contributions not payable in relation to certain persons who are ordinarily neither resident nor employed in the United Kingdom)) or a self-employed earner (not being a self-employed earner who is not liable to pay Class 2 contributions by reason of regulation 105(1)(*d*) of those regulations (liability of a person to pay contributions as a self-employed earner related to that person's being ordinarily resident, or resident for a certain time, in Northern Ireland)); or

(*c*) in that week that person is in fact in Northern Ireland and residing with his spouse who satisfies or is to be regarded as satisfying the requirements in the said Article 15(3)(*b*); or

(*d*) in that week that person is in fact in Northern Ireland; and that week begins in a period of one hundred and eighty-three consecutive days throughout which (disregarding up to twenty-eight days of temporary absence from Northern Ireland whether consecutive or not) that person is likely to be in Northern Ireland; and for a week not more than one hundred and fifty-six weeks before that week—

(i) that person was entitled to benefit in respect of a child; or

(ii) that person's spouse (if any) was so entitled and when so entitled, or in that week, was residing with that person.

(3) The expressions "employed earner", "self-employed earner", "primary Class 1 contributions" and "Class 2 contributions" used in paragraph (2)(*b*) shall have the same meanings as the corresponding expressions in the Social Security Act; and if a question arises as to whether a person has been such an employed earner or such a self-employed earner as is referred to in that paragraph that question shall be determined by the Department as if it were a question arising under that Act.

(4) For the purposes of the said Article 15(3)(*b*) a week in which under the provisions of regulation 4 a person is to be regarded as satisfying the requirement in Article 15(3)(*a*) and any week for which a person is entitled to benefit in respect of a child shall be treated as a week in which that person is in Northern Ireland.

PART II

ADDITIONAL PROVISIONS APPLICABLE TO CERTAIN CATEGORIES OF PERSONS WHO ARE OR HAVE BEEN OUTSIDE NORTHERN IRELAND

Persons to whom this Part applies

6.—(1) The persons to whom this Part applies are—

(*a*) a civil servant, that is to say a person whose employment is by or under the Crown other than a person who is—

(c) S.R. 1975 No. 319