1976 No. 226

SOCIAL SECURITY

The Child Benefit (General) Regulations (Northern Ireland) 1976

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

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(2), (3), (5) and (6), 4(2), 5(3)(*c*), (4) and (5), 11(*a*), 19(5) and (6), 22(1) and (2)(*c*) of, and paragraphs 1 to 4 of Schedule 1 and paragraph 6 of Schedule 2 to, the Child Benefit (Northern Ireland) Order 1975(a), 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 (General) 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;

"the Taxes Act" means the Income and Corporation Taxes Act 1970(b);

"benefit" means child benefit under the Order;

"full-time education" means full-time education by attendance at a recognised educational establishment.

(3) References in these regulations to any condition being satisfied or any facts existing in a week shall, unless they relate to paragraph 1 of Schedule 1 to the Order (children in detention, care, etc.) be construed as references to the condition being satisfied or the facts existing at the beginning of that week.

Special provisions as to contributions and expenditure in respect of a child

2.—(1) Where two or more persons are contributing to the cost of providing for the same child and the aggregate weekly amount of their contributions is, but the weekly amount of each of their individual contributions is not, of an amount not less than the weekly rate of benefit which would be payable in respect of that child had the aggregate weekly amount of their contributions been contributed by one only of them, the aggregate weekly amount of their contributions shall be treated as having been made by that one of them as they shall by agreement nominate in writing or, in default of such agreement, by that one of them as the Department may, in its discretion, determine.

(2) Where pursuant to a nomination or determination under paragraph (1) a person is awarded benefit in respect of a child, the nomination or determination shall cease to have effect in the week following that in which benefit was awarded to that person; and accordingly that person shall himself be required to satisfy the requirement in Article 5(1)(*b*) of the Order, namely, that he is contributing to the cost of providing for the child at a weekly rate which is not less than the weekly rate of benefit payable in respect of the child.

(3) Where spouses are residing together a contribution made or expenditure incurred by one of them in respect of a child shall if they so agree, or in default of such agreement if the Department in its discretion so determines, be treated as made or incurred by the other.

(a) S.I. 1975/1504 (N.I. 16) (b) 1970 c. 10

Child in residential accommodation in prescribed circumstances

3. The prescribed circumstances for the purposes of Article 5(3)(*c*) of the Order (subject to Article 5(4) a day of absence of a child from a person to be disregarded for the purposes of Article 5(2) if it is due solely to the child's being, in prescribed circumstances, in residential accommodation pursuant to arrangements made under Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1972(c)) are any circumstances in which a child is in residential accommodation pursuant to arrangements made under the said Article 7.

Days of absence to be disregarded in determining whether a child is living with a person

4.—(1) The prescribed number of days under Article 5(4) of the Order (number of days that may be disregarded by virtue of Article 5(3)(*b*) or (*c*) in the case of any child not to exceed such number as may be prescribed unless the person claiming to be responsible for the child regularly incurs expenditure in respect of him) is eighty-four consecutive days calculated in accordance with paragraph (2).

(2) Two or more distinct relevant periods separated by one or more intervals each not exceeding twenty-eight days, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the latter or last of such periods.

(3) In paragraph (2) "relevant periods" means periods to which Article 5(3)(*b*) of the Order (day of absence of a child from a person due solely to the child's undergoing medical or other treatment as an in-patient in a hospital or similar institution to be disregarded in determining whether that child is living with that person) applies; also periods to which Article 5(3)(*c*) of the Order (subject to Article 5(4) a day of absence of a child from a person to be disregarded for the purposes of Article 5(2) if it is due solely to the child's being, in prescribed circumstances, in residential accommodation pursuant to arrangements made under Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1972) applies.

Circumstances in which a person is to be treated as receiving full-time education

5. A person shall be treated for the purposes of the Order as receiving full-time education if he is receiving primary or secondary education in Northern Ireland, otherwise than at school, under special arrangements made under Article 6(2) of the Education and Libraries (Northern Ireland) Order 1972(d).

Interruption of full-time education

6. In determining for the purposes of Article 4(1)(*b*) of the Order (persons aged sixteen but under nineteen who are to be treated as children) whether a person is receiving full-time education, no account shall be taken of a period (whether beginning before or after the person concerned attains age sixteen) of up to six months of any interruption to the extent to which it is accepted that the interruption is attributable to a cause which is reasonable in the particular circumstances of the case; and where the interruption or its continuance is attributable to the illness or disability of mind or body of the person concerned, the period of six months may be extended for such further period as is accepted as being reasonable in the particular circumstances of the case.

(c) S.I. 1972/1265 (N.I. 14) (d) S.I. 1972/1263 (N.I. 12)

Employed trainees

7.—(1) Where but for the provisions of paragraph 2(1) of Schedule 1 to the Order (a person not to be entitled to benefit by virtue of Article 4(1)(*b*) in respect of a child if the education in question is received by that child by virtue of his employment or of any office held by him) a person would be entitled to benefit in respect of a child, that child shall not for any week be treated as receiving education by virtue of his employment or of any office held by him if that week begins in what has been or is likely to be a continuous period of not less than six months in respect of which that child receives no financial support by virtue of his employment or any office held by him.

(2) For the purposes of paragraph (1), any reimbursement of the cost of books, equipment, tuition, examination fees, travelling expenses and contributions under the Social Security Act is not to be treated as the receipt by the child of financial support.

Persons exempt from tax

8.—(1) For the purposes of paragraph 4 of Schedule 1 to the Order (except where regulations otherwise provide no person to be entitled to benefit in respect of a child if either that person or such other person as may be prescribed is exempt from tax under such provisions as may be prescribed) a person and, if that person is residing with his spouse, his spouse, shall not be entitled to benefit in respect of a child for any week in respect of which he or, where they are residing together, his spouse receives earnings or other emoluments which are exempted from United Kingdom income tax under—

(*a*) section 367 or sections 372 to 374 of the Taxes Act (exemption from income tax, etc. of visiting forces, staffs of allied headquarters and of Commonwealth and foreign representatives);

(*b*) section 2 of, and Article 34 or 37 of Schedule 1 to, the Diplomatic Privileges Act 1964(**e**), or section 1 of, and Article 49 or 66 of Schedule 1 to, the Consular Relations Act 1968(**f**) (exemption from income tax, etc. of members of diplomatic missions and their staffs etc. and of certain consular officers, etc.);

(*c*) section 4 of the Arbitration (International Investment Disputes) Act 1966(**g**) (status, immunities and privileges conferred by the Convention on the settlement of investment disputes between States and nationals of other States);

(*d*) an Order in Council, statutory notice, or regulations, made or given under, or continuing to have effect by virtue of, any of the following enactments—

(i) the Bretton Woods Agreements Act 1945(**h**), section 3 (status, immunities and privileges of the International Monetary Fund, the International Bank for Reconstruction and Development and governors, executive directors, alternates, officers and employees of the Fund and Bank);

(ii) the Taxes Act, section 497 (relief from double taxation);

(iii) the Consular Relations Act 1968, section 3(1) (additional privileges and immunities accorded as a result of agreement) and section 12 (privileges and immunities in connection with Commonwealth and Irish establishments);

(**e**) 1964 c. 81
(**f**) 1968 c. 18
(**g**) 1966 c. 41
(**h**) 1945 c. 19

(iv) the International Finance Corporation Act 1955(i), section 3 (status, immunities and privileges of the International Finance Corporation, its governors, directors, alternates, officers and employees);

(v) the International Development Association Act 1960(j), section 3 (status, immunities and privileges of the Association, its governors, directors, alternates, officers and employees);

(vi) the Diplomatic Privileges Act 1964, section 2(6) (certain privileges and immunities admitted by, or certain additional privileges and immunities granted by, the receiving State);

(vii) the International Organisations Act 1968(k), sections 1, 2, 5, 6 and 12(5) and paragraphs 9, 15, 21 and 23 of Schedule 1 (privileges and immunities of certain international organisations and their officers, etc.);

(viii) the European Communities Act 1972(l), section 2(2) (giving effect to, inter alia, the Protocol on the Privileges and Immunities of the European Communities—Articles 12 to 15, 20 and 21).

(2) A person shall not be disentitled to benefit by virtue of the provisions of paragraph (1) for any week beginning within a tax year if in relation to the immediately preceding tax year that person proves that the amount of his earnings or other emoluments exempted from United Kingdom income tax under any of the provisions referred to in paragraph (1) was less than his total income as defined in section 528 of the Taxes Act; and where in the said immediately preceding tax year that person was married to and residing with the spouse (if any) referred to in paragraph (1), this paragraph shall have effect as if for references to that person's earnings or other emoluments and total income there were substituted references to the aggregate of the earnings or other emoluments and total income of that person and his said spouse.

(3) For the purposes of this regulation "tax year" means the twelve months beginning with 6th April in any year.

Married child

9. A person shall not be disentitled to benefit in respect of a married child by virtue of paragraph 3 of Schedule 1 to the Order (unless regulations otherwise provide, no person to be entitled to benefit in respect of a married child) if—

(*a*) that person is not the spouse of that child; and

(*b*) that child either is not residing with his spouse or, if he is, the spouse is receiving full-time education.

Circumstances in which persons are not to be treated as having ceased to reside together

10.—(1) Subject to paragraph (2) and regulation 20, where a person is married he and his spouse shall not be treated as having ceased to reside together by reason of any absence from one another which is not likely to be permanent; and if in the week in which benefit is claimed spouses—

(*a*) are not separated under an order of a court of competent jurisdiction or deed of separation; or

(i) 1955 c. 5
(j) 1960 c. 35
(k) 1968 c. 48
(l) 1972 c. 68