1976 No. 225

SOCIAL SECURITY

The Child Benefit (Determination of Claims and Questions) Regulations (Northern Ireland) 1976

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

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

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The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 9(1) and 22(1) of the Child Benefit (Northern Ireland) Order 1975(**a**), and of section 119 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 (Determination of Claims and Questions) 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;

"claim" means a claim to benefit;

"claimant" means a person who has claimed benefit and the expression includes, in relation to an award or decision, a person entitled to receive benefit under the award or directly affected by the decision;

"Commissioner" means a National Insurance Commissioner or a Tribunal of 2 or 3 Commissioners constituted in accordance with regulation 5(4);

"hearing" means an oral hearing;

"question" means any question as to the right to benefit other than a special question;

"special question" means any such question as is referred to in Article 9(2) of the Order or any question which by virtue of the provisions of regulation 5 of the Child Benefit (Residence and Persons Abroad) Regulations (Northern Ireland) 1976(**c**) falls to be determined by the Department in accordance with the provisions of the Social Security Act as if it were a question arising under that Act.

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(**a**) S.I. 1975/1504 (N.I. 16) (**b**) 1975 c. 15 (**c**) S.R. 1976 No. 227

PART II

ADJUDICATION BY INSURANCE OFFICERS, LOCAL TRIBUNALS AND COMMISSIONERS

Claims and questions to be submitted to insurance officer

2.—(1) There shall be submitted forthwith to an insurance officer for determination in accordance with the provisions of these regulations any claim or any question.

(2) Different aspects of the same claim or question may be submitted to different insurance officers and for that purpose the provisions of these regulations shall apply with any necessary modifications.

Decision of insurance officer

3.—(1) An insurance officer to whom a claim or question is submitted under regulation 2 shall take it into consideration and so far as practicable dispose of it in accordance with this regulation within fourteen days of its submission to him.

(2) Subject to regulation 7 (reference of a special question), the insurance officer may in the case of any claim or question so submitted to him—

(*a*) decide it in favour of the claimant; or

(*b*) decide it adversely to the claimant; or

(*c*) refer it to a local tribunal.

(3) Where an insurance officer refers a case to a local tribunal, notice in writing of the reference shall be given to the claimant.

Appeal to local tribunal

4.—(1) Subject to paragraphs (3) to (8), where the insurance officer has decided a claim or question adversely to the claimant, the claimant may appeal to a local tribunal.

(2) The claimant shall be notified in writing of the insurance officer's decision and the reasons for it, and of his right of appeal under this regulation.

(3) Where an insurance officer has decided any claim or question on an assumption of facts as to which there appeared to him to be no dispute, but concerning which, had a question arisen, that question would have fallen for determination by the Department in accordance with the provisions of the Social Security Act as if it were a question arising under that Act, it shall be deemed to be a sufficient compliance with the requirements of paragraph (2) as to notification to the claimant, to give him notice in writing informing him of the decision and of the reasons for it and that, if he is dissatisfied with the decision, he should reply to that effect, giving the reasons for his dissatisfaction.

(4) Where such a notice as is referred to in paragraph (3) is given, the decision of the insurance officer shall, for the purposes of paragraph (1), be treated as adverse to the extent only that the following provisions of this regulation so provide.

(5) If the claimant replies to the notice referred to in paragraph (3) and, after any appropriate investigations and explanations have been made, he remains dissatisfied, the decision of the insurance officer (if not reviewed) shall then, subject to the provisions of paragraph (6), be treated as adverse for the purposes of paragraph (1) and the claimant shall be notified of his right of appeal to a local tribunal, the time limit for such an appeal being measured from the date of that notification.

(6) If, where the provisions of paragraph (5) would otherwise apply, an insurance officer certifies that the sole ground of the claimant's dissatisfaction appears to him to be the assumption referred to in paragraph (3), those provisions shall not apply, but the claimant shall be notified in writing of his right to apply for the determination by the Department of the question arising on the assumption.

(7) If the question so arising is determined by the Department, then—

(*a*) the insurance officer's decision shall thereafter (if not reviewed) be treated as an adverse decision for the purposes of paragraph (1) and the claimant shall be notified of his right of appeal to a local tribunal, the time limit for such appeal being measured from the date of the Department's decision;

(*b*) where the Department's decision upholds the assumption, paragraph (8) shall apply as if the insurance officer had given the certificate therein referred to;

(*c*) where the Department's decision does not uphold the assumption, it may, at the discretion of the insurance officer, be treated as an application for the review of the insurance officer's decision, and for the purposes of regulation 18 the date of the claimant's application for the Department's decision shall be treated as the date of the application for review.

(8) Where in connection with the decision of the insurance officer there has arisen a special question and that question having been determined the insurance officer certifies that the decision on that question is the sole ground of his decision, no appeal lies under this regulation without leave of the chairman of the local tribunal.

(9) An appeal under this regulation shall be brought by giving notice of appeal to the Department within twenty-one days after the date of the decision or within such further time as the chairman of the local tribunal may for good cause allow.

(10) A notice of appeal under this regulation shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

Appeal from local tribunal to Commissioner

5.—(1) Subject to the provisions of this regulation, an appeal lies to a Commissioner from any decision of a local tribunal.

(2) The persons at whose instance an appeal lies under this regulation are—

(*a*) an insurance officer;

(*b*) the claimant.

(3) An appeal to a Commissioner must be brought within three months from the date of the decision of the local tribunal or within such further period as a Commissioner may in any case for good cause allow and such an appeal shall be brought by giving notice in writing in a form approved by the Department stating the grounds of the appeal—

(*a*) in the case of an appeal by an insurance officer, to the claimant; and

(*b*) in the case of an appeal by the claimant, to an insurance officer.

(4) If it appears to the Chief National Insurance Commissioner (or, in the case of his inability to act, to such other of the Commissioners as he may have nominated to act for the purpose) that an appeal falling to be heard by

one of the Commissioners involves a question of law of special difficulty, he may direct that the appeal be dealt with, not by that Commissioner alone, but by a Tribunal consisting of any 2 or 3 of the Commissioners.

(5) If the decision of the Tribunal is not unanimous, the decision of the majority, or, in the case of a Tribunal consisting of 2 Commissioners, the decision of the presiding member, shall be the decision of the Tribunal.

Questions first arising on appeal

6. Where a question first arises in the course of an appeal to a local tribunal or a Commissioner, the tribunal or Commissioner may, if they think fit, proceed to determine the question notwithstanding that it has not been considered by an insurance officer.

Reference of a special question

7.—(1) The following paragraphs apply if on consideration of any claim or question an insurance officer is of opinion that there arises a special question.

(2) Subject to paragraph (3), the insurance officer shall—

(*a*) refer the question so arising for determination by the Department; and

(*b*) deal with any other questions as if the question so referred had not arisen.

(3) The insurance officer may—

(*a*) postpone the reference of, or dealing with, any question until other questions have been determined;

(*b*) in cases where the determination of any question disposes of a claim, or any part of it, make an award or decide that an award cannot be made as to the claim, or that part of it, without referring or dealing with, or before the determination of, any other question.

(4) Paragraphs (2) and (3) apply to a local tribunal and a Commissioner as they apply to an insurance officer, except that a tribunal or Commissioner shall, instead of referring a question in accordance with paragraph (2)(*a*), direct it to be so referred by an insurance officer.

Review of decisions

8.—(1) Any decision under the Order of an insurance officer, a local tribunal or a Commissioner may be reviewed at any time by an insurance officer or, on a reference from an insurance officer, by a local tribunal if—

(*a*) the insurance officer or tribunal is satisfied and, in the case of a decision of a Commissioner, satisfied by fresh evidence, that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(*b*) there has been any relevant change of circumstances since the decision was given; or

(*c*) the decision was based on the decision of a special question and the decision of that question is revised under Article 9(3) of the Order or section 96 of the Social Security Act.

(2) Any decision by an insurance officer may be reviewed at any time by an insurance officer or, on a reference from an insurance officer, by a local tribunal on the ground that the decision was erroneous in point of law.