1976 No. 4

SOCIAL SECURITY

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

Made . . . . . *8th January* 1976

Coming into operation . . . . *31st January* 1976

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SCHEDULE

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 2(2), (3) and (5) and 18(6) of the Child Benefit (Northern Ireland) Order 1975(a), and by Articles 4(2) and (3) and 15(1) of that Order as those Articles have effect by virtue of Article 18(11) of the said Order, 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 Child Interim Benefit (General) Regulations (Northern Ireland) 1976 and shall come into operation on 31st January 1976.

(a) S.I. 1975 No. 1504 (N.I. 16)

(2) In these regulations—

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

"benefit" means benefit under Article 18 of the Order;

"determining authority" means, as the case may require, the Department, a tribunal constituted under powers conferred by Article 18(7) of the Order for the purpose of determining an appeal from any decision given by the Department under the said Article 18(7), or a person appointed by the Lord Chief Justice under that Article for the purpose of determining an appeal from any decision given by a tribunal.

Modification of Article 2(3) of the Order

2. In determining for the purposes of Article 18 of the Order whether a parent of a child has that child living with him in a week, Article 2(3) of the Order (subject to any provision made by regulations, references in the Order to any condition being satisfied or any facts existing in a week to be construed as references to the condition being satisfied or the facts existing at the beginning of that week) shall have effect as if for "at the beginning of that week" there were substituted "at any time in that week".

Circumstances in which a parent is to be or not to be treated as having a child living with him

3.—(1) A parent of a child shall, subject to the following provisions of this regulation, be treated as having that child living with him notwithstanding their absence from one another if that absence is temporary and—

(*a*) is due solely to the child's—

(i) receiving full-time education by attendance at a recognised educational establishment, or

(ii) undergoing medical or other treatment as an in-patient in a hospital or similar institution, or

(iii) being in residential accommodation pursuant to arrangements made under Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1972(**b**); or

(*b*) in a case where the child is staying with another parent, does not last for more than 28 days or such longer period, not exceeding 84 days, as the determining authority accepts as being reasonable in the circumstances of any particular case; or

(*c*) in any other case, for such period not exceeding 84 days as the determining authority accepts as being reasonable in the circumstances of any particular case.

(2) Sub-paragraph (*a*) of paragraph (1) shall not apply to a parent unless he is a parent—

(*a*) with whom, but for an absence such as is described in that sub-paragraph, the child would ordinarily be living; and

(*b*) who, within the period of 12 months ending with the date on which he makes a claim to benefit, has in fact had the child living with him for at least 28 days.

(3) If the determining authority is of the opinion that more than one parent of a child could be regarded as having that child living with him in any week, that one of them as they jointly agree shall be treated as having the child living with him or, in default of such agreement, that one of them as the determining authority decides.

(**b**) S.I. 1972 No. 1265 (N.I. 14)

(4) An agreement under paragraph (3) shall be in writing and signed by the parents concerned; and an agreement or a decision of the determining authority under that paragraph shall not be effective to confer entitlement to benefit on a person for any week earlier than that in which the agreement is received by the Department or the decision of the determining authority is given if such earlier week is one in respect of which benefit has been paid to another person which would not have been paid had the agreement or decision been effective and which has not been required to be repaid or voluntarily repaid or recovered.

(5) A parent of a child shall not be treated as having that child living with him unless in the week in which that parent claims benefit that child is either present or ordinarily resident in Northern Ireland.

Circumstances in which spouses are or are not to be regarded as residing together

4.—(1) Subject to paragraphs (2) to (4), where a claimant is married he and his spouse shall not be treated as having ceased to reside together for the purposes of Article 18 of the Order by reason of any absence the one from the other which is not likely to be permanent; and where an absence is likely to be permanent it must have lasted for at least 91 consecutive days immediately preceding the week in which benefit is claimed unless, when benefit is claimed, he and his spouse are then separated under an order of a court of competent jurisdiction or deed of separation or he has previously been entitled to benefit.

(2) Spouses shall not be treated as having ceased to reside together by reason only of the fact that either or both of them is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

(3) If one of two spouses has been continuously undergoing imprisonment or detention in legal custody for more than 91 days, he shall not thereafter be treated as residing with his spouse for any period throughout which he continues to undergo such imprisonment or detention.

(4) In determining under paragraph (1) whether spouses have been absent the one from the other for at least 91 consecutive days, a resumption of cohabitation with a view to effecting a reconciliation may be disregarded for a period not exceeding 7 consecutive days if it appears to the determining authority to be reasonable to do so in the circumstances of the particular case.

Circumstances in which a person is to be treated as receiving full-time education at a recognised educational establishment

5. A person shall be treated for the purposes of Article 18 of the Order as receiving full-time education by attendance at a recognised educational establishment 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(c).

Interruption of full-time education

6. In determining for the purposes of Article 18 of the Order whether a person is receiving full-time education as mentioned in Article 4(1)(*b*) of the Order (persons aged 16 but under 19 who are to be treated as children), no account shall be taken of a continuous period (whether beginning before or after the person concerned attains age 16) of up to 6 months of any interrup-

(c) S.I. 1972 No. 1263 (N.I. 12)

tion to the extent to which the determining authority accepts 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 6 months may be extended for such further period as the determining authority accepts as being reasonable in the particular circumstances of the case.

Circumstances in which a person who has attained age 16 and who has ceased to receive full-time education by attendance at a recognised educational establishment is to be treated as a child

7. Where a person who has attained age 16 on or after 1st February 1976 and before 31st July 1976 ceases to receive full-time education by attendance at a recognised educational establishment in Northern Ireland not earlier than a day in the week containing 28th May 1976 but before 31st July 1976, he shall be treated as continuing to fall within Article 4(1) of the Order (person to be treated as a child for any week in which he is under the age of 16 or under the age of 19 and receiving full-time education by attendance at a recognised educational establishment) up to and including 31st July 1976.

Exclusion from entitlement to benefit by reason of entitlement to other benefits out of public funds

8.—(1) A person shall not be entitled to benefit in any week throughout which he is entitled, in respect of a child living with him of whom he is a parent for the purposes of the Order, to a benefit or an allowance, or to an increase of a benefit or of an allowance, at the rate appropriate to an only, elder or eldest qualifying child, such as is referred to in paragraph (2) (hereafter in this regulation and in regulation 9 referred to as "specified benefit").

(2) A specified benefit is—

(*a*) under the Social Security Act—

(i) child's special allowance under section 31, guardian's allowance under section 38 (but in the case of guardian's allowance only where the person entitled to that allowance is so entitled in respect of every child living with him of whom he is a parent for the purposes of the Order) or an allowance under section 70 in respect of children of deceased's family;

(ii) widow's allowance, widowed mother's allowance or Category A, B or C retirement pension under section 41, invalid care allowance under section 49, benefit corresponding to widowed mother's allowance provided for by regulations made under section 39(4), or an increase of disablement pension under section 64(1)(*b*);

(*b*) an allowance for a child granted in respect of the death of a person due to service or war injury—

(i) under powers conferred by or under the Ministry of Pensions Act 1916(**d**), the Air Force (Constitution) Act 1917(**e**), the Personal Injuries (Emergency Provisions) Act 1939(**f**), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**g**), the Polish Resettlement Act 1947(**h**), the Home Guard Act 1951(**i**) or the Ulster Defence Regiment Act 1969(**j**);

(**d**) 1916 c. 65
(**e**) 1917 c. 51
(**f**) 1939 c. 82
(**g**) 1939 c. 83
(**h**) 1947 c. 19
(**i**) 1951 c. 8 (15 & 16 Geo. 6 & 1 Eliz. 2)
(**j**) 1969 c. 65

(ii) under any scheme made under the Injuries in War (Compensation) Act 1914(k), or the Injuries in War Compensation Act 1914 (Session 2)(l) or any War Risk Compensation Scheme for the Mercantile Marine; or

(iii) which the Department accepts as being analogous to an allowance for a child granted in respect of death of a person due to service or war injury under any of the provisions referred to in (i) or (ii) above.

(3) Where a person has been paid benefit for any week for which he subsequently becomes entitled to a specified benefit, the specified benefit shall be reduced by the amount that has been paid by way of benefit for that week.

(4) A person shall not be entitled to benefit for any week in respect of which the Department certifies that there is payable to such person under the Family Allowances Act, in respect of children included in his family for the purposes of that Act, an amount not less than the amount arrived at by multiplying the weekly rate of benefit by the number of children living with him, being children of that person for the purposes of Article 18(1) of the Order.

(5) A certificate by the Department under paragraph (4) may be revoked at any time and with effect from a date before that on which it was revoked.

Reduction of payment out of public funds on account of entitlement to benefit

9.—(1) Subject to paragraph (2), for any period for which a person is entitled to benefit and for which, in respect of a child living with him of whom he is a parent for the purposes of the Order—

(*a*) he is entitled to an increase of benefit (not being a specified benefit) under the Social Security Act in respect of that child at the rate appropriate to an only, elder or eldest qualifying child; or

(*b*) some other person is entitled to any benefit or allowance in respect of that child under the Social Security Act or the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975(m) or to any increase of a benefit or an allowance in respect of that child at the rate appropriate to an only, elder or eldest qualifying child under either of those Acts,

the weekly rate of such benefit or allowance or of such increase of benefit or allowance shall be reduced by the amount of benefit.

(2) In a case where paragraph (1)(*a*) does not apply, paragraph (1)(*b*) shall not apply if regulation 8(2) of the Social Security (General Benefit) (Northern Ireland) Regulations 1975(n) or regulation 14(2) of the National Insurance (Industrial Injuries) (Benefit) Regulations (Northern Ireland) 1969(o) (circumstances in which a person is entitled in respect of a child not living with him to an increase of benefit at the weekly rate appropriate to an only, elder or eldest qualifying child notwithstanding that he is not contributing to the cost of providing for that child at a weekly rate not less than that of the increase of benefit) applies to the other person referred to in the said paragraph (1)(*b*).

(k) 1914 c. 30
(l) 1914 c. 18 (5 & 6 Geo. 5)
(m) 1975 c. 17
(n) S.R. 1975 No. 26
(o) S.R. & O. (N.I.) 1969 No. 8 (p. 38)