1975 No. 103

SOCIAL SECURITY

The Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1975

Made . . . . . *4th April* 1975

Coming into operation . . . . *6th April* 1975

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) 1975 and shall come into operation on 6th April 1975.

(2) In these regulations, unless the context otherwise requires—

"the Act" means the Social Security (Northern Ireland) Act 1975;

"the Contributions Regulations" means the Social Security (Contributions) Regulations 1975(**c**);

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

"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(**e**) as amended by the Social Security (Benefit) (Married Women and Widows) (Amendments and Transitional Provisions) Regulations (Northern Ireland) 1975(**f**);

"the Widow's Benefit and Retirement Pensions Regulations" means the Social Security (Widow's Benefit and Retirement Pensions) (Northern Ireland) Regulations 1975(**g**);

"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.

(**a**) 1975 c. 15
(**b**) 1975 c. 18
(**c**) S.I. 1975/492
(**d**) 1966 c. 6 (N.I.)
(**e**) S.R. 1975 No. 19
(**f**) S.R. 1975 No. 93
(**g**) S.R. 1975 No. 12

(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(**h**) shall apply for the purposes of the interpretation of this statutory rule as they apply for the purposes of the interpretation of an Act of Parliament.

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

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

(*a*) it is reasonable in all the circumstances of the case, having regard in particular, but not exclusively, to the nature of the person's incapacity and to his location, that, subject to the satisfaction of one of the conditions in sub-paragraphs (*b*) and (*c*) below, the disqualification under section 82(5)(*a*) of the Act should not apply, and either—

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

(*c*) 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) Notwithstanding section 114(3) of the Act any question as to the satisfaction of the condition in paragraph (1)(*a*) of this regulation shall be determined by the Department.

(3) 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.

(4) A person who is or has been outside Northern Ireland and who by virtue of an Order in Council made under section 134 of the Act or 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—

(*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—

(**h**) 1889 c. 63

(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 11 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.

(4) If immediately before the appointed date a person is not ordinarily resident in Northern Ireland but then has, or would, but for the absence of any child from Northern Ireland, have in his family a child in relation to whom the conditions for guardian's allowance specified in section 38 of the Act are satisfied, the provisions of these regulations shall not affect the disqualification while absent from Northern Ireland of that person, or any other person for receiving any additional guardian's allowance in respect of that child unless and until the child becomes (or is) included in the family of a person who is ordinarily resident in Northern Ireland.

(5) 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.