1975 No. 94

SOCIAL SECURITY

The Social Security (Overlapping Benefits) 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 powers conferred by sections 83(1) and 85 of the Social Security (Northern Ireland) Act 1975(a) and section 2 of, and paragraphs 3 and 9 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 and commencement

1. These regulations may be cited as the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1975 and shall come into operation on 6th April 1975.

Interpretation

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

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

"death benefit" means any benefit, pension or allowance, which apart from these regulations, is payable (whether under the Act, or otherwise) in respect of the death of any person;

"the deceased" means, in relation to any death benefit, the person in respect of whose death that benefit, apart from these regulations is payable;

"dependency benefit" means that benefit, pension or allowance which, apart from these regulations, is payable (whether under the Act or otherwise) to a person in respect of another person who is a child or an adult dependant; it includes child's special allowance and any personal benefit by way of pension payable to a child under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme but does not include benefit under section 73 of the Act (allowances to a woman who has care of children of a man who died as a result of an industrial accident);

"disablement pension" includes a disablement payment on a pension basis and retired pay or pension in respect of any disablement, wound, injury or disease;

"personal benefit" means any benefit, pension or allowance which is not a dependency benefit and which is payable to any person;

"Personal Injuries Scheme" means any scheme made under the Personal Injuries (Emergency Provisions) Act 1939(c) or under the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(d);

(a) 1975 c. 15
(b) 1975 c. 18
(c) 1939 c. 82
(d) 1939 c. 83

"Pneumoconiosis and Byssinosis Benefit Scheme" means any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(e);

"Service Pensions Instrument" means those provisions and only those provisions of any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a death or a disablement pension (not including a pension calculated or determined by reference to length of service) and allowances for dependants payable with either such pension may be paid out of public funds in respect of any death or disablement, wound, injury or disease due to service in the naval, military or air forces of the Crown or in any nursing service or other auxiliary service of any of the said forces or in the Home Guard or in any other organisation established under the control of the Defence Council or formerly established under the control of the Admiralty, the Army Council or the Air Council;

"training allowance" means an allowance (whether by way of periodical grants or otherwise) payable, out of public funds, by a Government department to a person for his maintenance, or in respect of any dependant of his, for the period, or part of the period, during which he is following a course of training or instruction provided by, or in pursuance of arrangements made with, that department or approved by that department in relation to him; but it does not include an allowance paid by any Government department to or in respect of a person by reason of the fact that he is following a course of full-time education or is training as a teacher;

"treatment allowance" means an allowance payable under a Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme only to a person undergoing a course of medical, surgical or rehabilitative treatment in consequence of a disablement in respect of which a pension may be or has been paid, or an allowance payable to any such person pending the determination of the question whether he is entitled to receive such a pension;

"unemployability supplement" includes an increase on account of unemployability under—

(*a*) any Pneumoconiosis and Byssinosis Benefit Scheme; and

(*b*) any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme;

"war pension death benefit" means a death benefit by way of pension or allowance, under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme, but does not include a rent allowance or a grant payable by reason of the beneficiary being in receipt of a pension and being a specific age which is not less than 65 or a pension or an allowance calculated by reference to the necessities of the beneficiary;

"1914-1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914(f) or under the Injuries in War Compensation Act 1914 (Session 2)(g) or any Government scheme for compensation in respect of persons injured in any merchant ship or fishing vessel as the result of hostilities during the 1914-1918 War;

and other expressions have the same meanings as in the Act.

(e) 1975 c. 16
(f) 1914 c. 30
(g) 1914 c. 18 (5 & 6 Geo. 5)

(2) Unless the context otherwise requires, any reference in these regulations to—

(*a*) a numbered section is to the section of the Act bearing that number;

(*b*) a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number;

(*c*) any provision made by or contained in an enactment or instrument shall 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.

(3) 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.

Adjustment of personal benefit under Chapters I and II of Part II of the Act where other personal benefit under those Chapters is payable

3.—(1) Subject to paragraphs (2) and (3) where 2 or more personal benefits (whether of the same or a different description) are, or but for this regulation would be, payable under Chapters I and II of Part II of the Act (which relate to benefits other than industrial injuries benefits) for any period, an adjustment shall be made in accordance with paragraph (4).

(2) Paragraph (1) shall not require the adjustment of, or by reference to,

(*a*) a death grant;

(*b*) a maternity grant;

(*c*) any other sum paid otherwise than in respect of a period;

(*d*) an earnings-related supplement or earnings-related addition to any benefit (except as provided by regulation 4);

(*e*) an attendance allowance;

(*f*) graduated retirement benefit (except as provided by paragraph (5)).

(3) Paragraph (1) shall require an adjustment of—

(*a*) age addition only by reference to another age addition;

(*b*) invalidity allowance only by reference to an increase, under section 28(7), of a Category A retirement pension.

(4) Where an adjustment falls to be made in accordance with this paragraph and—

(*a*) one of the benefits is a contributory benefit and one is a non-contributory benefit, the non-contributory benefit shall be adjusted by deducting from it the amount of the contributory benefit and only the balance, if any, shall be payable;

(*b*) sub-paragraph (*a*) above does not apply, if one of the benefits is payable on a weekly basis—

(i) where the beneficiary has made application, before the payment is made, to have the benefit payable on a weekly basis adjusted, it shall be adjusted by deducting from it the amount of the other benefit and only the balance of it, if any, shall be payable,

(h) 1889 c. 63

(ii) in any other case, the benefit not payable on a weekly basis shall be adjusted by deducting from it the amount of the other benefit and only the balance of it, if any, shall be payable;

(*c*) sub-paragraphs (*a*) and (*b*) above do not apply, the amount payable in respect of the benefits in question shall be an amount equal to that which would but for this provision be payable in respect of—

(i) one of them, if they would have been payable at the same rate, or

(ii) the higher or highest of them if they would have been payable at different rates,

so however that in a case where more than 2 benefits would be payable then the total amount payable shall not exceed the amount which would be ascertained under sub-paragraph (*c*).

(5) Where a person is entitled to a graduated retirement benefit and a Category D retirement pension, the latter shall be adjusted in accordance with paragraph (4)(*a*).

Special provisions for earnings-related supplements and earnings-related addition to widow's allowance

4.—(1) Where 2 or more earnings-related supplements to any benefits under the Act would apart from this regulation be payable for the same period, for the purposes of regulation 3(1) each such supplement shall be treated as part of the benefit it supplements.

(2) Where an earnings-related addition to widow's allowance would apart from this regulation be payable for the same period as any other benefit under the Act which is calculated by reference to the contributions of the deceased, that other benefit shall be adjusted by deducting from it the amount of the earnings-related addition.

(3) Paragraph (1) shall not apply where apart from this regulation a widow's allowance would be payable for the same period as 2 or more other benefits under the Act; in such a case the earnings-related supplement to any of those other benefits shall be adjusted so that only the higher or highest of them is payable.

Adjustments of personal benefit under Chapters I and II of Part II of the Act by reference to industrial injuries benefits and benefits not under the Act, and adjustments of industrial injuries benefits

5.—(1) Where a personal benefit which is specified in column 1 of the Schedule to these regulations ("the column 1 benefit") is, or but for this regulation would be, payable to a person for the same period as a personal benefit which is specified in the corresponding paragraph of column 2 of that Schedule ("the column 2 benefit") the column 1 benefit shall be adjusted by deducting from it the amount of the column 2 benefit and, subject to any further adjustment under regulation 3, only the balance, if any, shall be payable.

(2) Any reference in paragraph (1), or in the Schedule to these regulations, to a benefit, other than a training allowance, does not include an earnings-related supplement or earnings-related addition to it.

(3) Paragraph (1) and the Schedule to these regulations shall have effect in relation to an attendance allowance, and to any benefit by reference to which it is to be adjusted, as requiring adjustment where both that allowance and the benefit are payable in respect of the same person (whether or not one or both of them are payable to him).