1973. No. 10 **[C]**

NATIONAL INSURANCE

Overlapping Benefits

REGULATIONS, DATED 18TH JANUARY 1973, MADE BY THE NATIONAL INSURANCE JOINT AUTHORITY AND THE MINISTRY OF HEALTH AND SOCIAL SERVICES, IN CONJUNCTION WITH THE MINISTRY OF FINANCE, UNDER THE NATIONAL INSURANCE ACTS (NORTHERN IRELAND) 1966 TO 1969.

The National Insurance Joint Authority, in exercise of powers conferred by sections 49 and 50 of the National Insurance Act (Northern Ireland) 1966(a) and the Ministry of Health and Social Services on behalf of the Secretary of State, in exercise of powers conferred by section 8 of the National Insurance &c. (No. 2) Act (Northern Ireland) 1969(b), in each case in conjunction with the Ministry of Finance on behalf of the Secretary of State so far as relates to matters with regard to which the Ministry of Finance has so directed, and in exercise of all other powers enabling them in that behalf, hereby make the following regulations being regulations subject to negative resolution in accordance with sections 101(3) and 8(5) respectively of those Acts:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Overlapping Benefits) Regulations (Northern Ireland) 1973 and shall come into operation on 19th February 1973.

(2) In these regulations—

"the Act" means the National Insurance Act (Northern Ireland) 1966;

"the Industrial Injuries Act" means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(c);

"the Act of 1966" means the National Insurance (No. 2) Act (Northern Ireland) 1966(d);

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

"beneficiary" means the person to whom any benefit, pension or allowance is payable;

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

"dependency benefit" means that benefit, pension or allowance (whether under the Act or otherwise) which, apart from these regulations, is payable to a person in respect of another person who is a child or an adult dependant, and includes child's special allowance;

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

(a) 1966. c. 6 (N.I.).
(b) 1969. c. 19 (N.I.).
(c) 1966. c. 9 (N.I.).
(d) 1966. c. 16 (N.I.).

"personal benefit" means that benefit, pension or allowance (whether under the Act or otherwise) which, apart from these regulations, is payable to a person otherwise than in respect of another person who is a child or an adult dependant;

"personal death benefit" means any personal benefit by way of death benefit;

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

"Pneumoconiosis and Byssinosis Benefit Scheme" means any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1967(g);

"Service Pensions Instrument" means any Royal Warrant, Order in Council or other instrument (not being a 1914-1918 War Injuries Scheme) under which a disablement pension may be paid out of public funds in respect of any disablement, wound, injury or disease attributable to or aggravated by 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 under which any pension or allowance may be paid out of public funds to any person after the death of some other person in continuation of any payments made during the lifetime of that person in respect of his service in any of the said forces, services and organisations;

"supplement on account of unemployability" includes an increase, on account of unemployability, of an allowance under any Pneumoconiosis and Byssinosis Benefit Scheme;

"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;

"training scheme" means a scheme or arrangement under which a training allowance may be paid, not being a scheme or arrangement under which a training allowance is 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;

"widow's basic pension" and "contributory old age pension" have the same meanings as in the National Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) Regulations (Northern Ireland) 1948(h);

"1914-1918 War Injuries Scheme" means any scheme made under the Injuries in War (Compensation) Act 1914(i) or under the Injuries in War Compensation Act 1914 (Session 2)(j) or under the Injuries in War (Compensation) Act 1915(k) 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.

(e) 2 & 3 Geo. 6. c. 82.
(f) 2 & 3 Geo. 6. c. 83.
(g) 1967. c. 34.
(h) S.R. & O. (N.I.) 1948, No. 39.
(i) 4 & 5 Geo. 5. c. 30.
(j) 5 & 6 Geo. 5. c. 18.
(k) 5 & 6 Geo. 5. c. 24.

(3) Where under section 24 of the Industrial Injuries Act (payment in certain cases of an allowance to a woman having the care of a child or children of the family of a person who dies as a result of an industrial accident) there is payable any death benefit, that death benefit shall, for the purposes of these regulations and notwithstanding the provisions of section 30(*c*) of that Act (death benefit under the said section 24 payable in respect of a child), be treated as personal benefit.

(4) Where under any Personal Injuries Scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme there is payable to a child any personal benefit by way of a pension, that personal benefit shall, for the purposes of these regulations, be treated as dependency benefit payable to another person in respect of that child.

(5) For the purposes of these regulations, a supplement on account of unemployability shall, notwithstanding that it is payable by way of an increase of a disablement pension or disablement allowance, be treated as a separate benefit, pension or allowance.

PART II

ADJUSTMENT OF BENEFIT WHERE A PENSION OR AN ALLOWANCE IS PAYABLE OUT OF PUBLIC FUNDS

Adjustment of personal benefit under the Act where other personal benefit (whether under the Act or otherwise) is payable

2.—(1) Where, for any period, any personal benefit under the Act and one or more of the personal benefits specified in paragraph (5) (hereafter in this regulation and in regulation 3 referred to as "the specified benefits") or where more than one personal benefit (whether of the same or a different description) under the Act are, or but for this regulation would be, payable to any person, then for that period—

(*a*) every personal benefit under the Act which is or would be so payable shall, subject to the provisions of regulation 3(1) and to the provisions of regulation 4, be adjusted in accordance with the provisions of paragraphs (2) and (4) of this regulation by reference to each of the specified benefits (if any) payable for that period; and

(*b*) where (after such adjustment, if any) more than one personal benefit under the Act would be payable for that period, an adjustment between those personal benefits shall, subject to the provisions of regulation 3(2) and (3), be made in accordance with the provisions of paragraphs (3) and (4) of this regulation.

(2) Where in accordance with paragraph (1) any personal benefit under the Act is required to be adjusted for any period by reference to any specified benefit or benefits, then the amount which, but for this regulation, would be payable for that period in respect of that personal benefit under the Act shall be reduced or extinguished by the deduction therefrom of the amount payable for that period in respect of that specified benefit or those specified benefits and, subject to any further adjustment to be made in accordance with paragraph (3), only the balance (if any) shall be payable for that period in respect of that personal benefit under the Act.

(3) Where in accordance with paragraph (1) an adjustment between any personal benefits under the Act is required to be made for any period, then the amount payable for that period in respect of those personal benefits shall be the amount which, but for this provision, would be payable for that period in respect of one of those personal benefits (if they would be so payable at equal rates) or that one of them which would be so payable for that period at the higher or highest rate.

(4) Where an adjustment falls to be made in accordance with the provisions of paragraph (2) or (3) and either—

(*a*) one of the benefits in question is widow's basic pension payable to a widow by virtue of the insurance of her husband who died before 5th July 1951, and the other is unemployment benefit, sickness benefit, invalidity benefit or maternity benefit or a specified benefit other than a personal death benefit; or

(*b*) one of the benefits in question is a widow's basic pension or a contributory old age pension and the other is a supplement on account of unemployability payable under the Industrial Injuries Act, any Personal Injuries Scheme, any Service Pensions Instrument or any 1914-1918 War Injuries Scheme, or any Pneumoconiosis and Byssinosis Benefit Scheme,

any such adjustment shall not reduce the aggregate amount payable in respect of the benefits in question to less than the aggregate amount of any invalidity allowance to which the beneficiary may be entitled and the sums which would have been payable in respect of the other benefits had they been calculated at the respective rates appropriate to the period immediately before 20th September 1971 (or, in the case of invalidity pension, had it been calculated at the rate appropriate to sickness benefit for that period) and had no adjustment fallen to be made under this regulation.

(5) The personal benefits referred to in this regulation and in regulation 3 as "the specified benefits" are—

(*a*) any personal benefit by way of injury benefit or a supplement on account of unemployability, or any personal death benefit, under the Industrial Injuries Act;

(*b*) any personal benefit by way of a supplement on account of unemployability under any Pneumoconiosis and Byssinosis Benefit Scheme;

(*c*) any personal benefit by way of a supplement on account of unemployability, or any personal death benefit by way of pension or allowance (not being a grant payable by reason of the beneficiary being in receipt of a pension and being over 65 years of age or a pension or allowance calculated by reference to the necessities of the beneficiary), under any Personal Injuries Scheme or Service Pensions Instrument or any 1914-1918 War Injuries Scheme;

(*d*) any personal benefit under any Personal Injuries Scheme or Service Pensions Instrument or any 1914-1918 War Injuries Scheme, being an additional allowance payable only to a beneficiary who is entitled to a supplement on account of unemployability; and

(*e*) any personal benefit by way of training allowance under any training scheme.

Exceptions to regulation 2

3.—(1) Any personal benefit under the Act which is specified in any paragraph of the first column of Schedule 1 shall not be adjusted by reference to any specified benefit in the corresponding paragraph of the second column of that Schedule.

(2) An adjustment shall not be made between any two personal benefits under the Act of which one is specified in any paragraph of the first column of the said Schedule and the other is specified in the corresponding paragraph of the second column of the said Schedule.

(3) Where, for any period, personal benefits under the Act are, or but for these regulations would be, payable to a widow by way of widow's allowance and retirement pension by virtue of the widow's own insurance, and the widow's allowance, apart from any increase thereof by way of widow's supplementary allowance under section 4(1) of the Act of 1966 is, or but for these regulations would be, payable at a lower weekly rate than the retirement pension, apart from any addition thereto under section 33(1) or 36(1) of the Act, then the widow's allowance, in so far as it consists of widow's supplementary allowance under the said section 4(1), and the retirement pension, except in so far as it includes any addition under the said section 33(1) or 36(1), shall not be adjusted by reference to each other.

Further exception to regulation 2

4.—(1) Where, for any period, any personal benefit under the Act by way of retirement pension is, or but for these regulations would be, payable by virtue of her deceased husband's insurance to a widow aged 70 or over who, on 5th July 1948, either—

(*a*) had attained the age of 70 and, immediately before that day, was entitled to an old age pension under the Old Age Pensions Act (Northern Ireland) 1936(**l**), payable by virtue of the Widows', Orphans' and Old Age Contributory Pensions Act (Northern Ireland) 1936(**m**), to her by virtue of her deceased husband's insurance; or

(*b*) attained or had attained the age of 60 and, on her attaining the age of 70, would, but for the repeal of the said Contributory Pensions Act 1936, have been entitled to such an old age pension,

and to whom personal benefit by way of dependants war pension (as defined in paragraph (4)) is payable in respect of the death of her deceased husband and was so payable immediately before 5th July 1948, then the amount payable to her for that period in respect of that personal benefit by way of retirement pension shall not, as the result of any adjustment thereof made in accordance with the provisions of regulation 2, be reduced by reference only to that personal benefit by way of dependants war pension below the amount which, but for the said repeal, would have been payable to her for that period in respect of that old age pension.

(2) The foregoing provisions of this regulation shall not apply in relation to any personal benefit under the Act by way of retirement pension payable to a widow in respect of any period before she attained the age of 70.

(3) Where, for any period, the foregoing provisions of this regulation apply in relation to any personal benefit under the Act by way of retirement pension which, in accordance with the provisions of regulation 2, is required to be adjusted by reference to one or more of the personal benefits specified in

(**l**) 26 Geo. 5 & 1 Edw. 8. c. 31 (N.I.). (**m**) 26 Geo. 5 & 1 Edw. 8. c. 32 (N.I.).