EXPLANATORY NOTE

(This note is not part of the Regulations, but is intended to indicate their general purport.)

In consequence of the transfer, pursuant to section 1 of the Family Allowances and National Insurance Act (Northern Ireland), 1959, of the functions of determining questions as to the right to allowances arising under the Family Allowances Act (Northern Ireland), 1945, from the Ministry of Labour and National Insurance with appeal to the Umpire appointed under that Act to insurance officers or local tribunals subject to appeal to the Umpire appointed under the National Insurance Act (Northern Ireland), 1946, certain provisions of the National Insurance (Determination of Claims and Questions) Regulations (Northern Ireland), 1948, have become inappropriate. Part II of these Regulations amends regulations 2, 6, 11 and 18 of those regulations so as to take account of the provisions of the Family Allowances (Determination of Claims and Questions) Regulations (Northern Ireland), 1959, whereby such transfer is effected.

By Part III of these Regulations the ordinary system of adjudication for matters arising under the National Insurance Act (Northern Ireland), 1946, is, with the necessary modifications, made applicable to transitional matters arising under that Act, in place of the special system prescribed by the National Insurance (Determination of Claims and Questions) (Transitional) Regulations (Northern Ireland), 1948, which are revoked.

1959. No. 139 **[C]**

FAMILY ALLOWANCES

Determination of Claims and Questions

REGULATIONS, DATED 24TH AUGUST, 1959, MADE BY THE MINISTRY OF LABOUR AND NATIONAL INSURANCE IN CONJUNCTION WITH THE MINISTRY OF FINANCE, UNDER THE NATIONAL INSURANCE ACT (NORTHERN IRELAND), 1946, AND THE FAMILY ALLOWANCES AND NATIONAL INSURANCE ACT (NORTHERN IRELAND), 1959.

The Ministry of Labour and National Insurance, in conjunction with the Ministry of Finance so far as relates to matters with regard to which the Ministry of Finance has so directed, in exercise of powers conferred by sections 40 and 45 of the National Insurance Act (Northern Ireland), 1946(a), and section 1 of the Family Allowances and National Insurance Act (Northern Ireland), 1959(b), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, interpretation and commencement

1.—(1) The regulations may be cited as the Family Allowances (Determination of Claims and Questions) Regulations (Northern Ireland), 1959, and shall come into operation on the 7th September, 1959.

(a) 1946. c. 23. (b) 1959. c. 7.

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

"the Family Allowances Act" means the Family Allowances Act (Northern Ireland), 1945(a);

"the National Insurance Act" means the National Insurance Act (Northern Ireland), 1946;

"the Act of 1959" means the Family Allowances and National Insurance Act (Northern Ireland), 1959;

"the Ministry" means the Ministry of Labour and National Insurance;

"the Umpire", "local tribunal" and "insurance officer" have the same meaning as in the National Insurance (Determination of Claims and Questions) Regulations (Northern Ireland), 1948(b);

"allowance" means an allowance under the Family Allowances Act;

"award" means an award of an allowance;

and other expressions have the same meaning as in the Family Allowances Act.

Application of provisions of the National Insurance (Determination of Claims and Questions) Regulations (Northern Ireland), 1948, to family allowances

2.—(1) Subject to the provisions of these regulations and in particular to the modifications in this regulation, the following provisions of the National Insurance (Determination of Claims and Questions) Regulations (Northern Ireland), 1948(c) (which provide for questions as to the right to benefit under the National Insurance Act to be determined by insurance officers or local tribunals, subject to appeal to the Umpire), that is to say, paragraphs (2) to (6) of regulation 1, regulations 8 to 17 and regulation 22 of those regulations (which regulations are set out in the Schedule), shall apply in relation to the determination for the purposes of the Family Allowances Act of any question as to the right to an allowance in respect of any person for any family as they apply in relation to the determination for the purposes of the National Insurance Act of any question as to the right to benefit under that Act; and references in those regulations to a question as to the right to benefit shall be treated as including references to a question as to the right to an allowance and references to a claim or to a claimant shall be construed accordingly.

(2) Where any question arises which in accordance with the Schedule to the Family Allowances Act is to be decided in the Ministry's discretion (that is to say, any question as to which of two or more persons is to be treated as maintaining a child or in which of two families a child is to be treated as included) that question shall be determined by the Ministry; and the Ministry may at any time and from time to time reconsider the exercise of its discretion and decide that question again with such other effect as may seem to it to be proper in the circumstances of the case.

(a) 1945, c. 19. (b) S.R. & O. (N.I.) 1948, No. 185.

(c) S.R. & O. (N.I.) 1948, No. 185 as amended by reg. 13 of, and Third Schedule to, National Insurance (Death Grant) Regulations (Northern Ireland), 1949 (S.R. & O. (N.I.) 1949, No. 142); S.R. & O. (N.I.) 1951, No. 157; reg. 21 of, and Second Schedule to, National Insurance (Maternity Benefit and Miscellaneous Provisions) Regulations (Northern Ireland), 1953 (S.R. & O. (N.I.) 1953, No. 123); S.R. & O. (N.I.) 1956, No. 8; S.R. & O. (N.I.) 1957, No. 169; S.R. & O. (N.I.) 1958, No. 159; S.R. & O. (N.I.) 1959, No. 108 and S.R. & O. (N.I.) 1959, No. 138.

Review of decisions of insurance officers, local tribunals or Umpire

3.—(1) Any decision under these regulations given by an insurance officer, a local tribunal or the Umpire may be reviewed at any time by an insurance officer or, on a reference from an insurance officer, by a local tribunal if—

(*a*) he or they is or are satisfied, but not without fresh evidence in the case of a decision of the Umpire, 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 a decision of the Ministry given in the exercise of its discretion under the Schedule to the Family Allowances Act and a different decision has subsequently been given by the Ministry in accordance with the provisions of these regulations.

(2) Any decision under these regulations given 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.

(3) A question may be raised with a view to review in accordance with the foregoing paragraphs by means of an application in writing to an insurance officer, stating the grounds of the application.

(4) On receipt of any such application, the insurance officer shall proceed to deal with or refer any question arising thereon in accordance with these regulations.

(5) Any decision given on a review under this regulation, and any refusal to review a decision under this regulation, shall be subject to appeal in like manner as an original decision and the provisions of these regulations shall, subject to the necessary modifications, apply in relation to any decision given on a review as they apply to the original decision of a question.

Review of decisions involving payment of allowances

4.—(1) Where on review a decision is revised so as to make sums on account of an allowance payable the decision given on the review shall have effect as if a claim to the allowance had been made on the date of the application for the review and accordingly no sum on account of the allowance shall be payable in respect of any period earlier than six months before the date on which such application was made.

(2) For the purpose of this regulation, where a decision is reviewed at the instance of an insurance officer under the last foregoing regulation, the date on which it was first decided by the insurance officer that the decision should be reviewed shall be deemed to be the date of the application for the review.

Adjustment of sums paid on account of allowances

5.—(1) In any case in which—

(*a*) by virtue of an award sums have been paid on account of an allowance by reason of the inclusion of a child in one family (in this regulation referred to as "the first family"); and

(*b*) by a subsequent decision the child is found to be included in another family (in this regulation referred to as "the second family") during a period for which the sums were paid, and an award is made for the second family by reason of the inclusion of the child in that family; and

(*c*) either—

(i) during that period the conditions of the Family Allowances Act and regulations for the inclusion of the child in the first family would have been satisfied but for the inclusion of that child in the second family by virtue of the provisions of paragraphs 1, 2 or 3 of the Schedule to that Act; or

(ii) the sums paid for that period were paid to the person to whom arrears have become payable by reason of the inclusion of the child in the second family or, where that family is the family of a man and his wife living together, were paid to the man on account of an allowance for the family of that man as not having a wife or not living together with his wife;

the subsequent decision shall direct that the sums so paid shall be treated, in accordance with the next following paragraph, as having been properly paid for that period and that any arrears payable for that period or any part thereof by virtue of the award to the second family shall be reduced to the extent to which the sums so paid for that period or any part thereof for which the arrears are payable are directed to be treated as having been properly paid.

(2) For the purposes of ascertaining in any case the sums to be treated under this regulation as having been properly paid to the first family, that family shall be treated as including only any child in whose case during the said period the foregoing paragraph applies or the conditions for inclusion in that family were satisfied.

Repayment of sums paid as on account of allowances

6.—(1) Where on review or appeal a decision is revised or is reversed or varied so as to make sums on account of an allowance not properly payable, the decision given on the review or appeal shall require repayment of any sum paid as on account of an allowance in pursuance of the original decision from the person who was entitled to receive that sum in his or her own right to the extent to which such sum—

(*a*) would not have been payable if the decision on the review or appeal had been given in the first instance; and

(*b*) is not directed to be treated as properly paid under the provisions of regulation 5 by the decision on review or appeal:

Provided that repayment shall not be required from any person who is shown to the satisfaction of the insurance officer, the local tribunal or the Umpire, as the case may be, to have acted in good faith in all respects as to the obtaining and receipt of the sum in question.

(2) In the case of any sum paid as on account of an allowance for the family of a man and his wife living together which, under the provisions of this regulation,—

(*a*) the wife is not required to repay, the decision on review or appeal shall require repayment under the preceding paragraph from the man if it is shown to the satisfaction of the insurance officer, the local tribunal or the Umpire, as the case may be, that he has not acted in good faith in all respects as to the obtaining and receipt of the sum in question;

(*b*) the wife is required to repay, the man shall be liable to repay it as well as his wife.

(3) Any sum which a person is required under the foregoing paragraphs to repay may, without prejudice to any other remedy, be recovered by means of deductions from any other sum receivable on account of any allowance by that person.

(4) In the case of any sum paid as on account of an allowance for the family of a man and his wife living together, for the purposes of regulations 8 to 17 and regulation 22 of the National Insurance (Determination of Claims and Questions) Regulations (Northern Ireland), 1948 (which regulations as modified by these regulations relate to the determination of any question as to the right to an allowance), in their application to the question whether repayment shall be required from the man under the provisions of this regulation, the man as well as the wife shall have all the rights and powers of a claimant.

Payment of sums on account of allowances where appeal is pending

7.—(1) Subject to the provisions of these regulations, sums on account of an allowance awarded shall be payable notwithstanding that an appeal against the award is pending and, subject as aforesaid, shall be treated as having been properly paid and shall not be recoverable under the provisions of the Family Allowances Act or otherwise.

(2) Where an appeal to the Umpire from an award of a local tribunal is made within twenty-one days of the date on which the award was given, payment of sums on account of the allowance to which the appeal relates shall be suspended until the appeal has been determined.

(3) Where it appears to the Ministry that a question has arisen whether—

(*a*) the requirements for the existence of a right to an allowance awarded in respect of any person for any family are or were fulfilled; or

(*b*) an award of an allowance ought to be revised in accordance with these regulations;

it may direct that payment of sums on account of the allowance shall be suspended until the question has been determined.

Transitional provisions

8.—(1) The foregoing provisions shall have effect subject to the transitional provisions hereinafter contained.

(2) Subject to the next following paragraph any decision of the Ministry or any decision of the Umpire appointed under section 5 of the Family Allowances Act, whether given before the date on which these regulations come into force or after that date in accordance with this regulation, shall have effect for the purposes of the Family Allowances Act and shall be subject to review in accordance with the provisions of regulation 3 as if, in the case of a decision of the Ministry not being a decision on a question to be decided by it in its discretion under the Schedule to the Family Allowances Act, it were a decision of an insurance officer, and, in the case of a decision of the Umpire appointed under the said section 5, it were a decision of the Umpire.

(3) Where a person is dissatisfied by an award or decision of the Ministry in respect of an allowance (including a revised award or decision) being an award or decision made or given before the date on which these regulations come into operation, the question, if it is a question which would have been determined before that date in accordance with the provisions of section 5