

1984 No. 54

SOCIAL SECURITY

The Supplementary Benefit (Resources) Regulations
(Northern Ireland) 1984*Made* 29th February 1984*Coming into operation* 16th April 1984

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SCHEDULE — Revocations

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 2 of, and paragraph 1(2) and (3) of Schedule 1 to the Supplementary Benefits (Northern Ireland) Order 1977(a) and of all other powers

(a) S.I. 1977/2156 (N.I. 27); See definitions of "prescribed" and "regulations" in Article 2. Schedule 1 was substituted by Article 7(1) and (3) of, and paragraph 29 of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

enabling it in that behalf, and for the purpose only of consolidating regulations hereby revoked, and with the consent of the Department of Finance and Personnel(a), hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1. These regulations may be cited as the Supplementary Benefit (Resources) Regulations (Northern Ireland) 1984 and shall come into operation on 16th April 1984.

Interpretation

2.—(1) In these regulations—

“the Order” means the Supplementary Benefits (Northern Ireland) Order 1977;

“the Act” means the Social Security (Northern Ireland) Act 1975(b);

“the Taxes Act” means the Income and Corporation Taxes Act 1970(c);

“Aggregation Regulations” means the Supplementary Benefit (Aggregation) Regulations (Northern Ireland) 1981(d);

“allowance” means a supplementary allowance under Article 3(1)(b);

“assessment unit” means the claimant, and any partner and dependant of the claimant;

“benefit week” has the meaning assigned to it in regulation 7 of the Determination of Questions Regulations (date of commencement, change and termination of entitlement to pensions and allowances);

“boarder” has the meaning assigned to it in the Requirements Regulations;

“child benefit” means benefit under Part II of the Child Benefit (Northern Ireland) Order 1975(e);

“claimant” means a claimant for supplementary benefit and references to a claimant’s resources include, where under the provisions of the Order the requirements and resources of any person fall to be aggregated with and treated as those of the claimant, the resources of that person;

“the Department” means the Department of Health and Social Services;

“dependant” means a person whose requirements and resources are by virtue of paragraph 3(2) of Schedule 1 aggregated with and treated as those of the claimant;

“Determination of Questions Regulations” means the Supplementary Benefit (Determination of Questions) Regulations (Northern Ireland) 1980(f);

(a) Formerly the Department of Finance. See S.I. 1982/338 (N.I. 6), Article 3. See also Article 41(1) of the Supplementary Benefits (Northern Ireland) Order 1977 as amended by the Social Security (Northern Ireland) Order 1980

(b) 1975 c. 15

(c) 1970 c. 10

(d) S.R. 1981 No. 373; as amended by S.R. 1983 Nos. 191 and 322

(e) S.I. 1975/1504 (N.I. 16)

(f) S.R. 1980 No. 423; as amended by S.R. 1981 No. 215, 1982 Nos. 240 and 295 and 1983 Nos. 191 and 290

- “education authority” means a Northern Ireland department or a department of the Government of the United Kingdom, an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1972(a), a local education authority as defined in section 114(1) of the Education Act 1944(b), an education authority as defined in section 135(1) of the Education (Scotland) Act 1980(c) and any body which is a research council for the purposes of the Science and Technology Act 1965(d);
- “family income supplement” means any supplement under the Family Income Supplements Act (Northern Ireland) 1971(e);
- “home” means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises and land not so occupied which it would be impracticable or unreasonable to expect to be sold separately;
- “housing benefit” has the meaning assigned to it in regulation 2(3) of the Housing Benefits Regulations;
- “Housing Benefits Regulations” means the Housing Benefits Regulations (Northern Ireland) 1983(f);
- “liable relative” means a spouse or former spouse, or a parent of a dependant, including a person who has not been adjudged putative father of a child but by reason of payments which he is making to or in respect of that child may reasonably be treated as such a father, and includes a person liable to maintain a member of the assessment unit under Article 22(1)(c) (sponsored immigrants); and “payment made by or derived from a liable relative” shall be construed accordingly, except that a reference to such a payment shall not include a reference to a payment derived from the estate of a deceased liable relative or to a payment resulting from a disposition of property, whether voluntary or by order of the court as the case may be, made in or in connection with an agreement to separate or proceedings for a decree of divorce or judicial separation or for a decree of nullity;
- “life policy” means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life;
- “occupational pension scheme” means an occupational pension scheme within the meaning of the Social Security Pensions (Northern Ireland) Order 1975(g); and “occupational pension” means any pension or other periodical payment under such a scheme, except that any reference to an occupational pension shall not include a reference to—
- (a) any element of that pension payable by way of compensation for injury, disease, disablement or death suffered by a person by reason of the service or employment in which he was engaged; or
 - (b) any discretionary payment out of a fund established for relieving hardship in particular cases;
- “partner” means one of a married or unmarried couple;
- “pension” means a supplementary pension under Article 3(1)(a);

(a) S.I. 1972/1263 (N.I. 12)
 (b) 1944 c. 31
 (c) 1980 c. 44
 (d) 1965 c. 4
 (e) 1971 c. 8 (N.I.)
 (f) S.R. 1983 No. 292
 (g) S.I. 1975/1503 (N.I. 15)

“person affected by a trade dispute” means a person whose requirements fall to be disregarded to any extent by virtue of Article 12;

“Requirements Regulations” means the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983(a);

“single parent” means a person who has a dependant and is not a partner;

“student” means a person under pensionable age who has ceased relevant education and is attending a course of full-time education, and he shall be deemed to be a student during any period when he is not in attendance but in respect of which he receives a grant or award from a Minister of the Crown or an education authority; and “disabled student” means a person who by reason of a disability would, in comparison with other students, be unlikely to be able to obtain employment within a reasonable period of time;

“war disablement pension” means—

(a) a pension or other benefit awarded—

(i) in respect of disablement due to service in the armed forces of the Crown being a pension or other benefit within the meaning of section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(b); or, as the case may be,

(ii) under the Personal Injuries (Emergency Provisions) Act 1939(c), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(d) or the Polish Resettlement Act 1947(e);

(b) any retired pay or pension to which section 365(1) of the Taxes Act applies, not being retired pay, pension or allowance to which sub-paragraph (a) of this definition applies; or

(c) any payment which the Department accepts as being analogous to any such retired pay, pension or allowance as is referred to in the preceding sub-paragraphs of this definition.

(2) Except in so far as the context otherwise requires any reference in these regulations to a numbered Article or Schedule is to the Article or Schedule to the Order bearing that number.

(3) These regulations shall be subject to Article 6 of the Social Security (No. 2) (Northern Ireland) Order 1980(f) (supplementary benefit in cases affected by trade disputes).

Calculation of resources

3.—(1) For the purposes of Schedule 1 resources for any period shall be calculated in the manner set out in these regulations.

(2) For the purposes of these regulations resources shall consist of capital resources and income resources, and in particular—

(a) any grant or gratuity paid under the Act shall be treated as a capital resource;

(b) any payment, including any instalment of a capital payment which falls to be paid by instalments, made, whether in pursuance of a court order or otherwise, by or derived from a liable relative, shall be treated in accordance with the provisions of regulation 13;

(a) S.R. 1983 No. 61, as amended by S.R. 1983 Nos. 115, 215, 247 and 291

(b) 1977 c. 5

(c) 1939 c. 82

(d) 1939 c. 83

(e) 1947 c. 19

(f) S.I. 1980/1087 (N.I. 13)

- (c) any instalment of a capital payment (other than a payment to which sub-paragraph (b) applies) which falls to be paid by instalments shall be treated—
- (i) in a case where, if the instalment were treated as a capital resource, the amount of the claimant's capital resources would not exceed the amount mentioned in regulation 7 unless the amount of the outstanding instalments were also treated as a capital resource, as an income resource,
 - (ii) in any other case, as a capital resource;
- (d) any amount which becomes available to any member of the assessment unit by way of repayment of income tax which has been deducted from his emoluments in pursuance of section 204 of the Taxes Act (pay as you earn) shall be treated—
- (i) where that member is not in receipt of regular earnings from employment because either he is a person affected by a trade dispute or to whom Article 13 (return to full-time employment following a trade dispute) applies or his employment has been temporarily suspended but not terminated, as an income resource only in the week in which it is received,
 - (ii) in any other case, as a capital resource;
- (e) any other repayment of income tax shall be treated as an income resource (for the period to which regulation 9(2)(a) applies);
- (f) any payment by way of an annual bounty to a member of any territorial or reserve force mentioned in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(a) shall be treated as a capital resource;
- (g) any arrears of housing benefit shall be treated as a capital resource, but any other payment in respect of housing benefit shall not be treated as a resource.
- (3) Where a resource which falls to be taken into account in accordance with these regulations would otherwise include a fraction of a penny that fraction shall be disregarded.

Notional resources

4.—(1) Any resource of which a member of the assessment unit has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if it were still possessed by him.

(2) Any resource which either—

(a) would become available to a member of the assessment unit upon application duly being made, but which has not been acquired by him; or

(b) is due to be paid to a member of the assessment unit but—

(i) has not been paid to him, and

(ii) is not a payment prescribed in regulation 3 or 5 of the Supplementary Benefit (Duplication and Overpayment) Regulations (Northern Ireland) 1980(b) (payments prescribed pursuant to paragraphs (1) and (2) of Article 16 — prevention of duplication of payments) and not made on or before the date prescribed in relation to it pursuant to paragraph (1) or (2) of Article 16,

(a) S.I. 1979/591; Part I of Schedule 3 substituted by S.I. 1980/1975

(b) S.R. 1980 No. 396 to which there are amendments not relevant to the subject matter of these regulations

may, if in the opinion of the benefit officer it is reasonable in the circumstances to do so, be treated as if it were possessed by him.

(3) Where a member of the assessment unit performs for another person a service for which that person makes either no payment or a payment less than that paid for comparable employment, an amount of earnings calculated by reference to such employment and the means of that person may be treated as if it were actually paid to and possessed by the member of the assessment unit.

(4) Notwithstanding that it is not actually made, a student shall be treated as possessing any contribution in respect of the income of any other person which a Minister of the Crown or an education authority takes into account in assessing the amount of the student's grant or award unless the student is—

(a) a single parent;

(b) a partner; or

(c) a disabled student.

(5) Any payment made—

(a) by a person in respect of a member of the assessment unit (but not to another member) shall be treated as possessed by that member notwithstanding that it is made to a third party;

(b) to a member of the assessment unit in respect of a third party (but not in respect of another member) shall be treated as possessed by that third party notwithstanding that it is made to that member,

unless, having regard to the purpose of the payment, the terms under which it is made and its amount, it is unreasonable to do so.

(6) A member of the assessment unit shall be treated as possessing the whole or any appropriate share calculated in accordance with paragraph (8) of any resources held under a trust, whether created by virtue of a statutory provision or otherwise, under which the trustees have any express or implied discretion to pay him, or apply for his benefit, any income or capital.

(7) A member of the assessment unit shall not be treated as possessing a resource pursuant to paragraph (6) if the trust funds are derived from a payment, whether in pursuance of a court order or otherwise, in consequence of a personal or criminal injury to him, except that if he is the claimant or the partner of the claimant this paragraph shall apply only for the period, not normally exceeding 12 months from the date on which the payment would, but for this paragraph, fall to be taken into account for the purposes of a claim for pension or allowance or a review of a determination pursuant to regulation 4 of the Determination of Questions Regulations (review of determinations), for which, having regard to the intentions of the trustees, it is reasonable that he shall not be treated as so possessing a resource.

(8) A member of the assessment unit to whom paragraph (6) applies shall be treated as possessing a resource either in whole or in part having regard to—

(a) the number of beneficiaries under the trust; and

(b) the terms of the trust, either express or implied,

but no resource shall be treated as possessed by virtue of these paragraphs for such period, not exceeding 3 months from the date on which it would otherwise have been so treated, as is necessary to enable the trustees to make arrangements for payments to be made to that person.

(9) Where a claimant, or his partner, is a seasonal worker and—

(a) a claim for pension or allowance is made in respect of any day in his off-season; and

(b) his total net earnings from his last period of normal employment exceed either two and a half times the total normal and additional requirements which

would, during that period, have been applicable to him, or three times the total of normal requirements which would, during that period, have been applicable to a person to whom paragraph 4 of the Table in paragraph 2(3) of Schedule 1 (ordinary rate for householders) applies, whichever is the greater, the amount of the excess mentioned in sub-paragraph (b) shall be divided by the number of weeks in his off-season and the result treated as earnings for those weeks; and in this paragraph "normal employment", "off-season" and "seasonal worker" have the meanings assigned to them in regulation 16 of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1979(a) (additional conditions with respect to the receipt of unemployment benefit by seasonal workers) but as if the definition of employment in that regulation included a reference to employment as a self-employed earner.

(10) Where a claimant or his partner is not a person to whom paragraph (9) applies and—

- (a) he engages in employment which by its nature provides only intermittent employment; and
- (b) the aggregate gross earnings payable to him in respect of the 13 weeks immediately preceding the claim for a pension or allowance exceed the product of—
 - (i) the figure derived by multiplying by 10 the weekly amount of normal requirements applicable at the date of the claim to a person to whom paragraph 4 of the Table in paragraph 2(3) of Schedule 1 applies, and
 - (ii) the number of weeks, if any, during those 13 weeks in respect of which he was not in receipt of a pension or allowance,

he shall be treated as having earnings at the rate of the figure derived in accordance with sub-paragraph (b)(i) for the number of weeks, beginning with the date of the claim, equal to the result (any fraction being disregarded) of dividing that excess by that figure.

(11) Where a person has an estate in any land, which falls to be disregarded by virtue of regulation 6(1)(a), a letting income, not exceeding the current market rate, may be treated as if it were actually paid to and possessed by that person, if, and for as long as, in the opinion of the benefit officer, it is reasonable in the circumstances to do so.

(12) In the case of a person to whom Article 13 (return to full-time employment following a trade dispute) applies any sum mentioned in regulation 10(1)(c) which is offered to him shall be treated as if it were possessed by him.

(13) Where the claimant is a student in receipt of a full-value grant or award by an education authority he shall, for the duration of the Christmas and Easter vacations, be treated as being in receipt of an income resource at a weekly rate equal to the aggregate of the ordinary rate specified in column (2) of paragraph 1 of Schedule 1 to the Requirements Regulations and the sum specified in regulation 23(1) of those regulations.

(14) In paragraph (13) "full-value grant or award" means a grant or award, made by an education authority, which includes an element for maintenance during the Christmas and Easter vacations.

PART II CAPITAL RESOURCES

Calculation of capital resources

5. Except in so far as regulation 6 provides that certain resources shall be disregarded, the amount of a claimant's capital resources to be taken into account

shall be the whole of his capital resources assessed where applicable—

- (a) at their current market or surrender value less—
 - (i) in the case of land, 10 per cent., and in any other case, any sum which would be attributable to expenses of sale, and
 - (ii) any outstanding debt or mortgage secured on them;
- (b) in the case of an Ulster or a National Savings Certificate—
 - (i) if purchased from an issue the sale of which ceased before the 1st July preceding the date of assessment, at the value which it would have had on that 1st July had it been purchased on the last day of that issue,
 - (ii) in any other case, at its purchase price.

Capital resources to be disregarded

6.—(1) In calculating a claimant's capital resources the following shall be disregarded—

- (a) the value of—
 - (i) the home,
 - (ii) any premises which have been acquired and not yet occupied by the assessment unit but which it is intended will be the home within 6 months of the date of acquisition or such longer period as is reasonable in the circumstances,
 - (iii) any premises or land which are for sale and the value of which it would be reasonable in all the circumstances to disregard for such period as the benefit officer may estimate as that during which the sale will be completed,
 - (iv) any premises of which the whole or part is occupied by an aged or incapacitated relative of any member of the assessment unit or by the spouse of a claimant who, by virtue only of paragraph (3)(a) or (b) of regulation 2 of the Aggregation Regulations (one member of a married couple in residential accommodation or in hospital) is not to be treated as being a member of the same household as that spouse,
 - (v) the assets of any business which is owned, in whole or in part, by a member of the assessment unit, for such period as, in the opinion of the benefit officer, it would be reasonable to disregard them,
 - (vi) any premises or land not wholly owned by the assessment unit for such period as is reasonable in the circumstances,
 - (vii) any reversionary interest,

except in relation to any part of premises which, having regard to all the circumstances, it would be practicable and reasonable to regard as a property which could be realised separately;
- (b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within 6 months of the date of sale or such longer period as is reasonable in the circumstances;
- (c) the value of any personal possessions except any which—
 - (i) are in the nature of an investment,
 - (ii) have been acquired by converting, for the purpose of acquiring a right to or increasing the amount of supplementary benefit, capital resources which would not have fallen to be disregarded under this paragraph, or
 - (iii) having regard to their nature, use, likely value and the standard of living of other persons in similar circumstances, it would be unreasonable to disregard;

- (d) any savings of mobility allowance paid under the Act which the recipient intends to use in connection with mobility;
- (e) for a period not exceeding 12 months from the date of receipt, any arrears of—
 - (i) attendance or mobility allowance paid under the Act,
 - (ii) supplementary benefit,
 - (iii) housing benefit;
- (f) any sum which is deposited with a housing association as defined in Article 114 of the Housing (Northern Ireland) Order 1981(a), as a condition of occupying the home;
- (g) for a period not normally exceeding 6 months from the date of receipt, any sum which—
 - (i) has been paid to the claimant or his partner in consequence of damage to, or the loss of, the home or any personal possession and which is to be used for its repair or replacement, or
 - (ii) has been given or loaned to the claimant or his partner on the condition that it is to be used for effecting essential repairs or improvements to the home and which is to be used for that purpose,
 and which, in the opinion of the benefit officer, it is reasonable in all the circumstances to disregard;
- (h) in a case where a capital payment falls to be paid by instalments, the value of any outstanding instalments;
- (i) any sum attributable to savings made out of income for the purpose of meeting any periodically recurring liability in respect of such personal living expenses and expenses of the home as are reasonable in the opinion of the benefit officer, including in particular charges for—
 - (i) rent
 - (ii) rates
 - (iii) fuel
 - (iv) telephone rental or calls
 for such a period and up to such an amount as are reasonable in the opinion of the benefit officer, having regard respectively to the time when the liability falls to be met and its expected amount;
- (j) the first £1,500 of the surrender value of any life policy or, in any case where there are two or more such policies, of their combined surrender value;
- (k) a sum representing the market value of the equitable interest of a member of the assessment unit in trust funds—
 - (i) which are derived from a payment, whether in pursuance of a court order or otherwise, in consequence of a personal or criminal injury to him, and
 - (ii) to which as sole beneficiary under the trust he is entitled absolutely,
 so however that where that member is the claimant or his partner that sum shall only be disregarded for such a period, not normally exceeding 12 months from the date on which the payment would, but for this sub-paragraph, fall to be taken into account for the purposes of a claim for pension or allowance or a review of a determination pursuant to regulation 4 of the Determination of Questions Regulations, as is reasonable in the circumstances in the opinion of the benefit officer.

(2) Where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with these regulations is £3,000 or less, those resources shall, except in so far as any provision of the Order or regulations made pursuant to it provides otherwise, be disregarded.

Maximum capital resources for entitlement to pension or allowance

7. Subject to regulation 8, where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with these regulations exceeds £3,000, the claimant shall not be entitled to pension or allowance.

Effect of capital resources of dependants

8.—(1) Where a claimant's capital resources as calculated in accordance with these regulations—

- (a) exceed the sum specified in regulation 7; but
- (b) would be reduced to or below that sum if the capital resources of a dependant were disregarded,

the capital resources of that dependant shall be disregarded as a capital resource, but shall be treated as producing a weekly income resource equal to the weekly requirements which would be applicable to that dependant under Parts II and III of the Requirements Regulations (normal and additional requirements).

(2) Where a claimant has more than one dependant who has capital resources, paragraph (1) shall apply only to that dependant or those dependants to whom the application of that paragraph in the determination of the claimant's title to pension or allowance would produce the result most favourable to the claimant.

PART III

INCOME RESOURCES

Calculation of income resources

9.—(1) Except in so far as regulations 10, 11 and 12 provide that certain payments shall be deducted and that certain payments shall be disregarded, the amount of a claimant's income resources to be taken into account shall be—

- (a) the whole of his earnings and the earnings of any partner of his, the earnings of any dependant being disregarded, calculated in accordance with regulation 10;
- (b) the whole of any other income of the assessment unit, calculated in accordance with regulations 11, 12 and 13.

(2) Earnings and other income shall be calculated on a weekly basis and, except in so far as regulations 3(2)(d)(i) and 13 provide otherwise, payment shall be attributable as follows—

- (a) subject to the following sub-paragraphs, a payment of income shall be taken into account—
 - (i) where it is payable in respect of a period, for a period equal to the length of that period or in the case of income from any conacre or agistment letting, for such period as is reasonable in the circumstances, and
 - (ii) in any other case, for the period to which it is fairly attributable;
- (b) a payment of income shall be attributed to—
 - (i) in the case of a payment which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable,

- (ii) in any other case, the first day of the benefit week in which it is payable or the earliest succeeding benefit week in which, having regard to the method by which pension or allowance is payable in the particular case, it would be practicable to take it into account;

so however that in either case where the payment in question is the last of two or more consecutive payments of any benefit to which regulation 15 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1977(a) applies (unemployment, sickness and certain other benefits under the Act) it shall be treated as paid on the date immediately following the last day of the period to which the payment immediately preceding it is attributable in accordance with the provisions of this paragraph;

- (c) where a payment of income is payable in respect of a period which exceeds one week, it shall be attributable at a weekly rate, calculated in the case of a monthly payment in accordance with sub-paragraph (f), beginning with the appropriate date ascertained in accordance with sub-paragraph (b);
- (d) where any payment of income from a particular source, whether payable weekly or attributable at a weekly rate in accordance with sub-paragraph (c), is paid regularly, the amount of that income attributable to any one benefit week shall not exceed the amount of or, as the case may be, the weekly rate of one such payment;
- (e) where the amount of a person's earnings fluctuates, or a person's regular pattern of work is such that he does not work every week, the preceding sub-paragraphs may be modified so that his earnings are averaged over such period as the benefit officer considers reasonable in the circumstances of the case;
- (f) a monthly payment shall be treated as a payment—
- (i) in respect of a calendar month,
 - (ii) at a weekly rate determined by multiplying the payment by 12 and dividing the result by 52.

Calculation of earnings

10.—(1) Subject to regulation 3(2)(f) and the following paragraphs, for the purposes of these regulations a person's earnings shall consist of all remuneration or profit derived from any employment and shall include—

- (a) any remuneration in kind;
- (b) any bonus or commission;
- (c) any advance of earnings or loan or in the case only of a person to whom Article 12 or 13 (persons affected by, or returning to full-time employment following a trade dispute) applies, any ex-gratia payment;
- (d) any payment in lieu of notice or remuneration;
- (e) any holiday pay other than any received more than 4 weeks after termination of employment;
- (f) any retainer;
- (g) any such sum as is referred to in Article 14(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(b) (certain sums payable under the Industrial Relations (Northern Ireland) Order 1976(c) and the Industrial Relations (No. 2) (Northern Ireland) Order 1976(d) to be earnings for social security purposes);

(a) S.R. 1977 No. 351; the relevant amending regulations are S.R. 1983 No. 36

(b) S.I. 1977/610 (N.I. 11)

(c) S.I. 1976/1043 (N.I. 16)

(d) S.I. 1976/2147 (N.I.28)

- (h) any sum paid for the purpose of retaining any accommodation in the home as a boarder.
- (2) Paragraph (1) shall be subject to the following provisions—
- (a) where the actual earnings of a person are not immediately ascertainable, the benefit officer shall calculate or estimate the amount of those earnings as best he may having regard to the information (if any) available to him and to what appear to him to be the probabilities of the case;
- (b) where accommodation for which a charge for board and lodging is payable is made available in the home, income consisting of payments of such a charge shall be treated as earnings only where such accommodation is made available in the home for three or more persons (whether or not at any time such accommodation is occupied by three or more persons);
- (c) where any income is derived from minding any child in the home, an amount equal to one third of all payments received shall be treated as earnings and any other such income disregarded;
- (d) where there are living in the home 4 or more children or other young persons to whom and in circumstances to which regulation 4(2)(e) or (f) of the Aggregation Regulations (child or pupil or person in relevant education boarded out by a Health and Social Services Board(a) or voluntary organisation or in care and possession of prospective adoptive parent) applies, there shall be treated as earnings an amount equal to one half the balance of any payment received in respect of such children or young persons after the deduction for each such child or young person of a sum equal to twice the amount applicable for the normal requirements of a dependant aged less than 18 but not less than 16, and the remainder disregarded;
- (e) where a person affected by a trade dispute—
- (i) receives earnings to which regulation 9(1)(b) of the Supplementary Benefit (Conditions of Entitlement) Regulations (Northern Ireland) 1981(b) (effect of last earnings from remunerative full-time work) applies, and
- (ii) the amount of those earnings for the last complete week in which, pursuant to that regulation, he is treated as being in remunerative full-time work is more than the amount equal to two and a half times the normal requirements which would, if he were not affected by a trade dispute, be applicable to the assessment unit in the first week in which, pursuant to that regulation, he is not treated as being in such work, the difference between those amounts shall be treated as earnings for that first week and shall not be subject to paragraph (5).
- (3) In calculating the amount of a person's earnings the following shall be disregarded—
- (a) the value of one daily meal provided free for him at his place of work;
- (b) any sums of money not exceeding £10 in the aggregate, or the first £10 of any sums the aggregate of which exceeds that amount, paid by the employer in December of any year by way of Christmas bonus;
- (c) any earnings which are received by a person entitled to a retirement pension under the Act, or who would be so entitled if he satisfied the contribution conditions, and which relate to a period of employment before he retired;

(a) See Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14))

(b) S.R. 1981 No. 371, to which there are amendments not relevant to the subject matter of these regulations

- (d) any payments derived from employment as—
- (i) an auxiliary coastguard other than in respect of watch duties,
 - (ii) a part-time fireman in a fire brigade maintained in pursuance of the Fire Services Act (Northern Ireland) 1969(a),
 - (iii) a person engaged in the manning or launching of a life-boat,
 - (iv) a member of any territorial or reserve force mentioned in Part I of Schedule 3 to the Social Security (Contributions) Regulations 1979(b) in respect of training expenses;
- (e) any payment of bonus or commission which under regulation 9(1)(b) of the Supplementary Benefit (Conditions of Entitlement) Regulations (Northern Ireland) 1981 has been taken into account for the purposes of that regulation (claimants treated as engaged in remunerative full-time work for the purposes of Article 9(1) of the Order) as a claimant's earnings for a period subsequent to the termination of his employment or during which he was a person affected by a trade dispute;
- (f) in relation to any income which falls to be treated as earnings under paragraph (2)(b),—
- (i) two thirds of that income, and
 - (ii) an amount equal to any deductions made, in respect of the persons from whom the income is derived, under regulation 18 of the Housing Benefits Regulations in the calculation of any housing benefit of the claimant or his partner;

except that any sum or payment mentioned in sub-paragraphs (b) and (d) paid or made to a person affected by a trade dispute shall not be disregarded by virtue of this paragraph.

(4) In calculating the amount of a person's earnings, there shall be deducted from the earnings which he derives from any employment—

- (a) any amounts which he pays or which are deducted by the employer from a payment of his earnings from that employment in respect of—
- (i) income tax,
 - (ii) an occupational pension scheme;
- (b) any contribution payable under Part I of the Act—
- (i) which his employer pays or is liable to pay on his behalf and the amount of which the employer deducts from a payment of his earnings from that employment, or
 - (ii) which is duly paid by him otherwise than as a secondary Class 1 contributor under that Act and which either is so paid in respect of any period falling wholly or partly within the period to which his earnings from that employment relate or is fairly attributable to that period or any part of it;
- (c) expenses reasonably incurred by him without reimbursement in respect of—
- (i) travel between his place of residence and his place of work, and travel which he undertakes in connection with and for the purposes of that employment,
 - (ii) the making of reasonable provision for the care of another member of the assessment unit because of his own necessary absence from home to carry out his duties in connection with that employment,

(a) 1969 c. 13 (N.I.)

(b) S.I. 1979/591; the relevant amending instrument is S.I. 1980/1975

(iii) the cost, up to 15 pence, of each meal taken during the hours of that employment;

(d) any other expenses reasonably incurred by him without reimbursement in connection with or for the purposes of that employment.

(5) The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2) less—

(a) in respect of any member of the assessment unit whose earnings fall to be taken into account, the first £4; and

(b) in respect of a single parent, an additional amount equal to one half of the amount by which any earnings exceed £4 but do not exceed £20:

(6) In the case of a person to whom Article 13 (return to full-time employment following a trade dispute) applies, no reduction shall be made under paragraph (5) in respect of any earnings of his derived from his full-time employment or of any sum treated as possessed by him in accordance with regulation 4(12).

Calculation of other income

11.—(1) For the purposes of the calculation of the income resources of the claimant, all income other than that to which regulation 10 applies shall be taken into account and calculated on a weekly basis in accordance with the following paragraphs and regulation 9(2).

(2) There shall be treated as income and taken into account in full—

(a) except in so far as regulation 3(2)(a) and the following paragraphs provide otherwise, any benefit under the Act(a) (including any graduated retirement benefit);

(b) any child benefit;

(c) any family income supplement;

(d) any occupational pension;

(e) any retirement annuity payable by virtue of a contract or trust scheme approved under section 226 of the Taxes Act;

(f) any remuneration paid by or on behalf of an employer to an employee who is for the time being unable to work owing to sickness;

(g) any payment made under section 41 of the Prison Act (Northern Ireland) 1953(b) (payments for discharged prisoners);

(h) any allowance payable by or on behalf of the Department of Economic Development(c) to or in respect of a member of the assessment unit for his maintenance for any period during which a course of training or instruction provided or approved by that Department is being undertaken;

(i) any allowance payable pursuant to arrangements made by the Department of Economic Development under section 1(1) of the Employment and Training Act (Northern Ireland) 1950(d) and paid by or on behalf of that Department to or in respect of any member of the assessment unit for the purpose of assisting him in the carrying on of a business;

(j) any periodic sum paid to a person on account of the termination of his employment by reason of his redundancy;

(a) See also Article 2(3) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))

(b) 1953 c. 18 (N.I.), as amended by section 27 of the Treatment of Offenders Act (Northern Ireland) 1968 (1968 c. 29 (N.I.))

(c) Formerly the Department of Manpower Services. See S.I. 1982/846 (N.I. 11) Article 3

(d) 1950 c. 29 (N.I.)

- (k) any allowance paid under the Job Release Act 1977(a);
- (l) any payment in respect of an industrial injury made in the first 6 months after such an injury to a person who was not, for the purposes of the Act, in employed earner's employment;
- (m) subject to paragraph (4)(d), any income of a student which consists of a grant or award by an education authority, including any part which is paid in respect of a partner or a dependant, pursuant to Articles 39 and 40 of the Education and Libraries (Northern Ireland) Order 1972(b), and any contribution mentioned in regulation 4(4), so however that if the student is—
 - (i) a single parent,
 - (ii) a partner with a dependant, or
 - (iii) a disabled student,
 such income shall, subject to that regulation 4(4), be taken into account only in so far as it exceeds the sum of £2;
- (n) any payment made under the legislation of, or under any scheme operating in, any country outside Northern Ireland which is analogous to any income to which the preceding sub-paragraphs relate;
- (o) any income from capital which falls to be disregarded by virtue of regulation 6(1)(a)(iii) or (iv) or (f) except where such capital, if it were not so disregarded, would fall to be disregarded under regulation 6(2), paragraph (4)(l) shall apply to any such income and this sub-paragraph shall not apply;
- (p) any income falling to be taken into account by virtue of—
 - (i) regulation 8,
 - (ii) regulation 13;
- (q) any payment made otherwise than in accordance with the Order under arrangements made by the Department with the consent of the Department of Finance and Personnel(c) pending the making or, as the case may be, determination of a claim for supplementary benefit, any benefit under the Act, child benefit or war disablement pension, or pending the payment of any sum pursuant to such a determination;
- (r) any payment of pension or allowance under the Order.

(3) In a case to which regulation 7 of the Aggregation Regulations (circumstances in which 2 persons, in that and this regulation referred to as A and B, are not to be treated as an unmarried couple) applies, in the calculation of resources for the purpose of determining A's entitlement to pension or allowance during the period of adjustment this regulation shall apply to the extent that there shall be taken into account only—

- (a) any child benefit in respect of any dependant of A of whom B is not a parent;
- (b) any family income supplement, but only to the extent that it would be payable if any dependant of B were disregarded;
- (c) any payment to which regulation 13 applies made to or in respect of any dependant of A of whom B is not a parent; and
- (d) any income of any dependant of A of whom B is not a parent, but only to the extent that it falls to be taken into account under this regulation or regulation 12.

(a) 1977 c. 8

(b) S.I. 1972/1263 (N.I. 12); Articles 39 and 40 as substituted by Article 6(1) of the Education (Northern Ireland) Order 1978 (S.I. 1978/1040 (N.I. 10)) and amended by Article 7 of the Education (Northern Ireland) Order 1980 (S.I. 1980/1958 (N.I. 16))

(c) Formerly the Department of Finance: See S.I. 1982/338 (N.I. 6) Article 3

- (4) The following income resources shall be disregarded—
- (a) mobility allowance paid under the Act or payments made for purposes analogous to those of mobility allowance;
 - (b) attendance allowance paid under the Act or any payment based on need for attendance which is—
 - (i) payable under section 61 of the Act,
 - (ii) payable by virtue of any scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(a), or
 - (iii) paid as part of a war disablement pension;
 - (c) any resettlement benefit within the meaning of regulation 15 of the Social Security (Hospital In-Patients) Regulations (Northern Ireland) 1975(b);
 - (d) that part of any grant or award paid by an education authority which is paid—
 - (i) to a disabled student in respect of his additional expenditure by reason of his disability,
 - (ii) to a student in respect of any child or spouse outside the United Kingdom and dependent upon him pursuant to Articles 39 and 40 of the Education and Libraries (Northern Ireland) Order 1972,
 - (iii) to or in respect of a student or person receiving relevant education or person to whom regulation 3(5) of the Aggregation Regulations (person aged 19 treated as receiving relevant education) applies, and which is intended and used for meeting expenses reasonably incurred by him while living in accommodation away from the home for the purpose of attending a course at an educational establishment;
 - (e) any payment made in respect of a person in relevant education under section 81(c) of the Education Act 1944(c), or section 2(1) of the Education Act 1962(d), or section 49 of the Education (Scotland) Act 1980, or Article 39(1) or 43 of the Education and Libraries (Northern Ireland) Order 1972 (payment by education authorities to persons over compulsory school age) to the extent that it does not exceed, in the case of a person attending a school, £7.50 weekly, and in any other case £9.50 weekly, the amount of any excess being taken into account in full;
 - (f) the value of any benefit in kind in the form of a concession;
 - (g) any payment received in respect of any child or young person living in the home to whom regulation 4(2)(e) or (f) of the Aggregation Regulations applies, but this sub-paragraph shall not apply where there are 4 or more such children or young persons living in the home (in which cases regulation 10(2)(d) of these regulations shall apply);
 - (h) any sum payable to any person as holder of the Victoria Cross or of the George Cross or any analogous payment;
 - (i) any occasional payment by way of a gift (for example for Christmas or a birthday) including any such payment to which regulation 13 would otherwise apply except that, if such payment exceeds £100 the amount of the excess shall—
 - (i) where the payment has been made by or derived from a liable relative, be treated in accordance with the provisions of regulation 13,
 - (ii) in any other case, be taken into account in full;

(a) 1975 c. 16

(b) S.R. 1975 No. 109; the relevant amending regulations are S.R. 1977 No. 316 and S.R. 1979 No. 68

(c) 1944 c. 31

(d) 1962 c. 12

- (j) any payment, other than one to which regulation 13 applies, which is intended and used for—
- (i) the provision of a leisure or amenity item, or
 - (ii) the provision of an item for which provision is not made in the amount applicable for normal requirements, for which housing benefit is not payable to the claimant or his partner and in respect of which, in the determination of the claimant's additional or housing requirements either no amount is applicable or an amount is applicable but the payment is for an item of which the cost is in excess of that amount, so however that in the latter case only the amount of the difference between the amount applicable and the cost shall be disregarded under this sub-paragraph, and head (ii) shall apply in respect of a payment used to meet any amount regarded as excessive under regulation 21 of the Requirements Regulations or regulation 17 of the Housing Benefits Regulations;
- (k) any contribution in respect of housing made by a person who is a non-dependant within the meaning of the Requirements Regulations or the Housing Benefits Regulations, and any payment of a charge for board and lodging from a boarder in the home, other than any such payment which falls to be treated as earnings under regulation 10(2)(b);
- (l) any current income from any capital resources which fall to be disregarded by virtue of regulation 6(1)(b), (d), (e), (g) or (i) or (2).
- (5) There shall be taken into account—
- (a) a repayment of income tax to which regulation 3(2)(d)(i) applies;
 - (b) any disablement or industrial death benefit payable under the Act if paid periodically or any analogous payment;
 - (c) any income from capital which falls to be disregarded by virtue of regulation 6(1)(a)(ii);
 - (d) the amount, if any, by which the amount receivable from letting part of the home, calculated on a weekly basis, exceeds—
 - (i) in a case to which regulation 21(2) of the Housing Benefits Regulations applies, housing benefit as assessed under regulation 21(1) of those regulations,
 - (ii) in a case to which regulation 21(3) of those regulations applies, the aggregate of the amount of housing benefit as assessed under regulation 21(1) of those regulations and any amount applicable under regulation 22(2)(c) of the Requirements Regulations and the amount applicable under regulations 16 to 19 of those regulations,
 - (iii) in a case where the letting is land, the aggregate amount applicable under regulations 16 to 19 of the Requirements Regulations less, where applicable, any amounts calculated in accordance with regulation 22(2) of those regulations;
 - (e) any other income not mentioned in the preceding paragraphs, only to the extent that the aggregate of any income to which the preceding sub-paragraphs apply exceeds in any week the sum of £4.
- (6) In this regulation—
- (a) a reference to any payment in respect of which income tax or any contribution to which regulation 10(4)(b)(i) applies is or may be payable—
 - (i) where that tax or contribution is deducted before payment is made, is a reference to the net payment,
 - (ii) where that tax or contribution is not so deducted, is a reference to the gross payment, save that, at such time as that tax or contribution is paid

on it, the payment shall be treated for the purposes of review pursuant to regulation 4 of the Determination of Questions Regulations as a net payment;

- (b) where the payment of any benefit to which this regulation applies is subject to any deduction by way of recovery the amount to be taken into account shall be the gross amount payable;
- (c) "income" includes any income in kind;
- (d) where income is from conacre or agistment letting there shall be deducted from the gross amount payable any expenses reasonably incurred thereon.

Effect of income resources of dependants

12.—(1) Where—

- (a) any income resource to which regulation 11 applies, but to which regulation 13 does not apply, is payable to a dependant; and
- (b) after the application of regulation 11(4) and (5) that resource, or if more than one is payable the aggregate of those income resources, exceeds the aggregate of the weekly requirements applicable to that dependant under Parts II and III of the Requirements Regulations (normal and additional requirements),

the amount of the excess mentioned in sub-paragraph (b) shall be disregarded.

(2) Where regulation 11(5) is applicable to more than one income resource it shall, for the purpose of this regulation, be applied to those income resources in such manner as to produce the result most favourable to the claimant.

Payments made by or derived from liable relatives

13.—(1) Any periodical payment, including any arrears paid periodically, and, subject to paragraph (4)(a), any lump sum payment, including any arrears paid by way of a lump sum, made, whether in pursuance of a court order or otherwise, to a member of the assessment unit, by or derived from a liable relative shall be taken into account in full as income.

(2) The amount of any lump sum payment to be taken into account under this regulation shall, in any week in which the assessment is made, be whichever is the lesser of—

- (a) the amount received, less, where an assessment is made on review or on a repeat claim, the aggregate amount of income assumed from it by virtue of a previous determination;
- (b) such part of the amount as may at that time reasonably be considered to form part of the resources of the assessment unit.

(3) Except in a case to which paragraph (4) applies, a lump sum payment to which this regulation applies shall be attributable as income as follows—

- (a) where it is payable for the claimant or the claimant and any dependant, the number of weeks to which it shall be attributable shall be the whole number obtained by dividing its amount by—
 - (i) the aggregate of £2 and the amount of pension or allowance which would, if the sum were disregarded, be payable to the claimant in the week in which the assessment is made, or
 - (ii) where the sum is paid in pursuance of a court order for periodical payments, the amount of those payments expressed as a weekly rate, if that amount is higher than the aggregate in head (i),

and the divisor applied shall be the weekly rate at which the sum shall be attributable;

(b) where it is payable for any dependant, the number of weeks to which it shall be attributable shall be the whole number obtained by dividing its amount by—

- (i) the aggregate of the weekly requirements applicable to that dependant in the week in which the assessment is made under Parts II and III of the Requirements Regulations (normal and additional requirements), or
- (ii) where the sum is paid in pursuance of a court order for periodical payments, the amount of those payments expressed as a weekly rate, if that amount is higher than the aggregate in head (i),

and the divisor applied shall be the weekly rate at which the sum shall be attributable.

(4) Where a lump sum payment to which this regulation applies is made to or in respect of a member of the assessment unit to or in respect of whom the liable relative is making periodical payments—

- (a) at a rate equal to or exceeding that specified in paragraph (3)(a), but excluding for this purpose the sum of £2 there mentioned, or paragraph (3)(b), as appropriate, paragraph (3) shall not apply and the lump sum payment shall, notwithstanding regulation 3(2)(b), be treated as a capital resource;
- (b) at a rate lower than that mentioned in sub-paragraph (a), whether initially, or because that rate has increased and the periodical payments have not correspondingly increased, or because the periodical payments have been reduced, the lump sum payment shall be attributable as income at a weekly rate equal to the difference between the rate specified in paragraph (3)(a) or (b) as appropriate and the amount of the periodical payments,

but if in any case the liable relative ceases to make such periodical payments paragraph (3) shall apply to the lump sum payment.

(5) In this regulation "lump sum" means any sum which is not—

- (a) paid periodically; or
- (b) an instalment of a capital payment which falls to be paid by instalments.

Revocations

14. The regulations specified in column (1) of the Schedule to these regulations are hereby revoked to the extent mentioned in column (3) of that Schedule.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 29th February 1984.

(L.S.)

A. N. Burns

Assistant Secretary

The Department of Finance and Personnel for Northern Ireland hereby consents to the foregoing regulations.

Sealed with the Official Seal of the Department of Finance and Personnel for Northern Ireland on 29th February 1984.

(L.S.)

N. R. Cowling

Assistant Secretary

SCHEDULE

Regulation 14

Revocations

<i>Regulations revoked</i> (1)	<i>Reference</i> (2)	<i>Extent of revocation</i> (3)
The Supplementary Benefit (Resources) Regulations (Northern Ireland) 1981	S.R. 1981 No. 370	The whole of the regulations
The Supplementary Benefit (Requirements and Resources) (Amendment) Regulations (Northern Ireland) 1982	S.R. 1982 No. 239	Regulation 3
The Supplementary Benefit Up-rating Regulations (Northern Ireland) 1982	S.R. 1982 No. 242	Regulation 4
The Supplementary Benefit (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1982	S.R. 1982 No. 295	Regulation 6
The Supplementary Benefit (Requirements, Resources and Single Payments) (Amendment) Regulations (Northern Ireland) 1983	S.R. 1983 No. 215	Regulation 3
The Supplementary Benefit Up-rating Regulations (Northern Ireland) 1983	S.R. 1983 No. 247	Regulation 3
The Supplementary Benefit (Housing Benefits) (Requirements and Resources) (Consequential Amendments) Regulations (Northern Ireland) 1983	S.R. 1983 No. 291	Regulation 3

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations are made for the purpose only of consolidating the Supplementary Benefit (Resources) Regulations (Northern Ireland) 1981 with subsequent amending regulations. They provide for the calculation of resources and determination of maximum capital resources for the purpose of determining the right to and amount of supplementary benefit under the Supplementary Benefits (Northern Ireland) Order 1977 ("the 1977 Order") as amended by the Social Security (Northern Ireland) Order 1980.

Part I contains general provisions affecting the interpretation of Parts II and III. Regulations 1 and 2 relate to citation, commencement and interpretation. Regulation 3 provides that for the purposes of Schedule 1 to the 1977 Order resources shall be calculated in accordance with these regulations and that they shall consist of capital resources and income resources. Regulation 4 sets out the circumstances in which persons may be treated as possessing resources which they do not in fact possess.

Part II contains provisions for the calculation of capital resources and specifies the maximum for entitlement to benefit. Regulation 5 provides for the manner in which capital resources are to be taken into account and assessed. Regulation 6 provides which capital resources shall be disregarded in the calculation, and that if, after the calculation, the claimant's capital resources in aggregate are less than the maximum for entitlement to pension or allowance (specified in regulation 7) then they shall be disregarded. Regulation 8 provides for disregard of a dependant's capital resources where the claimant's capital resources exceed the maximum.

Part III contains provisions for the calculation of income resources. Regulation 9 provides for earnings and any other income to be taken into account on a weekly basis. Regulation 10 provides for the calculation of earnings. It makes provision as to which payments are to be treated as earnings, which are to be disregarded and which are to be deducted, and as to the amount of the weekly earnings as so calculated which is to be disregarded. Regulation 11 provides for the calculation of any income other than earnings and income from persons who for the purposes of the regulations are regarded as liable to maintain the claimant or his dependants ("liable relatives"). It makes provision as to which payments are to be treated as income and taken into account in full, which are to be completely disregarded and which are to be disregarded in part. Regulation 12 contains provisions relating to the partial disregard of income resources of dependants. Regulation 13 relates to payments by liable relatives which are to be treated as income and taken into account in full; in particular provision is made for the calculation of lump sum payments on a weekly basis.

Part IV (regulation 14), with the Schedule, specifies provisions which are revoked.