1978 No. 371

SOCIAL SECURITY

The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978

Made . . . . . 13*th December* 1978

Coming into operation . . . 12*th February* 1979

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 3(2), 66(3), 82(4), 119(3) and 126 of the Social Security (Northern Ireland) Act 1975(**a**), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978 and shall come into operation on 12th February 1979.

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

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

"the Department" means the Department of Health and Social Services for Northern Ireland;

"earnings" means earnings derived from a gainful employment;

"employer" includes any person making a payment which is, or which falls to be, taken into account in the calculation or estimation of, another's earnings;

"the determining authority" means, as the case may require, a Commissioner, a local tribunal or an insurance officer;

"gainful employment" means employment as an employed earner or a self-employed earner and any employment which would be such employment if it were in Northern Ireland, and includes any such employment which, in accordance with the provisions of the Act and of any regulations made under the Act, is to be disregarded in relation to liability for contributions;

"regulation 10(4) of the Dependency Regulations" for the purposes of regulations 3(1)(*b*), 5(2) and 7 below means regulation 10(4) of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977(**b**) in so far as that regulation relates to a female person who is residing with a beneficiary entitled to unemployability supplement;

"specified benefit" for the purposes of regulations 5(1)(*a*), 6(1) and (2) and 7 below means invalidity pension, or non-contributory invalidity pension or, as the case may be, unemployability supplement;

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

(3) The regulations shall be construed and shall operate as they would fall to be construed and to operate by virtue of section 23(1) of the Interpretation Act 1978(**c**) if they were made after the commencement of that Act.

(**a**) 1975 c. 15
(**b**) S.R. 1977 No. 74 (I, p. 258)
(**c**) 1978 c. 30

Calculation and estimation of amount of earnings

2.—(1) For the purposes of any provision of the Act and of any regulations made thereunder which relates to benefit under the Act, the amount of a person's earnings for any period shall be calculated or estimated in the manner set out in these regulations.

(2) The amount of a person's earnings for any period to be taken into account shall be the whole of his earnings for that period except in so far as regulations 3 and 4 below provide that no account shall be taken of certain payments or perquisites and that certain payments shall be deducted.

(3) Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, if a person has earnings which do not consist of salary, wages, fees or other payments related to a fixed period or if his earnings from any employment for any period are not immediately ascertainable, the determining authority shall calculate or estimate the amount of those earnings, for any day or week on or in which that person is following the employment from which they are derived, as best it may having regard to the information (if any) available to it and to what appear to it to be the probabilities of the case.

Payments to be disregarded

3.—(1) Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, in calculating or estimating the amount of a person's earnings for any period no account shall be taken—

(*a*) for the purposes of any provision of the Act and of any regulations made under the Act which relates to benefit under the Act, of the value—

(i) up to 15 pence for each working day, of meal vouchers supplied to him which are not transferable and are valid only for meals;

(ii) of meals provided for him at the place of work;

(iii) of accommodation in which he is required to live as a condition of his employment; and

(iv) of food or produce provided for his personal needs and those of his household;

(*b*) for the purposes only of sections 27, 30, 37(1)(*b*), 44, 45 to 49 and 66(4) of the Act and regulation 10(4) of the Dependency Regulations, of any sums of money not exceeding £10 in the aggregate, or of the first £10 of any sums the aggregate of which exceeds that amount, and of any remuneration in kind, if those sums are or (as the case may be) that remuneration in kind is paid by the employer in December of any year by way of Christmas bonus.

(2) A sum shall not be treated as paid to a person by way of Christmas bonus within the meaning of paragraph (1)(*b*) of this regulation if—

(*a*) it is one of a series of sums paid to him at intervals of less than one year; or

(*b*) it is received by him by way of payment for work done and either accrues to him as overtime or incentive payment or is otherwise directly related to his hours of work or to the amount of work performed by him.

Deductions to be made

4. Except in relation to earnings which fall to be calculated in accordance with regulation 5 or regulation 7 below, in calculating or estimating for the purposes of any provision of the Act and of any regulations made under the Act which relates to benefit the amount of a person's earnings for any period, there shall be deducted from the earnings which he derives from employment in that period—

(*a*) 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 and which either is so paid in respect of any period falling wholly or partly within that period or is fairly attributable to that period or any part of it;

(*b*) 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) premises (other than premises in which he normally resides), tools and equipment reasonably required by him for the purposes of that employment;

(iii) protective clothing reasonably required by him for the purposes of that employment (including the laundering and cleaning of such clothing) and excessive wear and tear of his clothing attributable to the conditions and circumstances of that employment;

(iv) subscriptions paid by him to any association of employed persons or other association or body to which, having regard to the nature or objects of the association or body and the nature and circumstances of that employment, it is reasonable for him to subscribe;

(v) the making of reasonable provision for the care of another member of his household because of his own necessary absence from home to carry out his duties in connection with that employment; and

(vi) the cost, up to 15 pence, of each meal taken during the hours of that employment for which no meal voucher has been provided; and

(*c*) any other expenses (not being sums the deduction of which from wages or salary is authorised by or under any enactment) reasonably incurred by him without reimbursement in connection with and for the purposes of that employment.

Calculation of earnings of certain retirement pensioners and adult dependants of pensioners

5.—(1) This regulation applies only where—

(*a*) a person (being a person entitled to a retirement pension or an adult dependant of a person entitled to a retirement pension or a specified benefit) is in any week engaged in gainful employment in Northern Ireland;

(*b*) that employment is such that the earnings derived from it for that week are not immediately ascertainable; and

(*c*) the determining authority is satisfied that a return or statement of the emoluments or the profits or gains from that employment for an assessment period in which that week ends has been or will be delivered to the Inland Revenue for tax purposes.

(2) For the purposes of sections 30(1), 45 to 49 (other than subsection (*b*) of section 49) and 66(4) of the Act and regulation 10(4) of the Dependency Regulations, the earnings of a person to whom paragraph (1) of this regulation refers, from the employment and for the week there specified, shall, subject to paragraph (3) of this regulation, be calculated by dividing the total amount of his emoluments, profits or gains from that employment for that assessment period, as determined or agreed as the basis for an assessment to income tax, by the number of weeks in that assessment period in which he has been engaged in that employment.

(3) In the calculation for the purposes of section 30(1) of the Act of the earnings of a person entitled to a retirement pension there shall be disregarded—

(*a*) any days before the date on which he becomes entitled to that pension; and

(*b*) any earnings derived from his employment on those days;

and the earnings so derived shall be calculated or estimated by the determining authority having regard to such information (if any) as may be available to it about the nature and circumstances of the employment and the nature and incidence of the earnings derived from the employment.

(4) In this regulation—

(*a*) "assessment period" means in the case of an employed earner a tax year and in the case of a self-employed earner his accounting period;

(*b*) the reference in paragraph (1)(*b*) to earnings which are not immediately ascertainable shall be construed as including a reference to earnings which are not immediately ascertainable otherwise than by the application of regulation 7 below; and

(*c*) "weeks" in paragraph (2) means successive periods of which the first begins with the first day of the assessment period and each of the subsequent ones begins with the seventh day after the beginning of the one which precedes it; but "week" is not to be construed accordingly.

Interim payments

6.—(1) Where the amount of a person's earnings for any week falls to be calculated in accordance with regulation 5 above and has not been determined, the Department may direct that, pending the determination of that amount, payment of so much of any benefit by way of retirement pension or increase of either a retirement pension or a specified benefit as may be affected by that determination shall be suspended.

(2) In any case in which the Department has given such a direction it may make such interim payments (not exceeding the amount of retirement pension or increase of either a retirement pension or a specified benefit which would be payable if there were no earnings) as it may think appropriate in the circumstances.

(3) After such interim payments have been made to a person for any period and the amount of the earnings in question has been determined—

(*a*) if the determining authority determines that for that period benefit, or (if some benefit has already been awarded and paid) additional benefit, is payable to him the determining authority shall direct that those interim payments shall, so far as they do not exceed that benefit or additional benefit, be treated as having been made on account of it;

(*b*) if the determining authority determines that for that period there is payable to him—

(i) no benefit, or (if some benefit has already been awarded and paid) no additional benefit, or

(ii) benefit, or (if some benefit has already been awarded and paid) additional benefit, which is less than the amount of those interim payments,

the determining authority shall require repayment of those interim payments or (as the case may be) of so much of those interim payments as exceeds that benefit or additional benefit.

(4) Where the amount of a person's earnings from any employment has been determined in accordance with regulation 5 above and subsequently the amount of his emoluments, profits or gains from it for any relevant period as determined or agreed as the basis for an assessment to income tax is varied, the determining authority may review its determination; and if, as a result of such a review, that determination is revised the provisions of paragraph (3) of this regulation shall apply in respect and in consequence of the revised determination as they apply in respect and in consequence of an original determination.

(5) The provisions of the Act and of the regulations made under the Act shall apply to any interim payment required to be repaid by virtue of paragraph (3) or paragraph (4) of this regulation as if it had been a payment of benefit required to be repaid.

(6) The provisions of the Act and of the regulations made under the Act relating to—

(*a*) the time and manner of payment of benefit,

(*b*) the extinguishment of the right to sums payable by way of benefit which are not obtained within the prescribed time, and

(*c*) the information to be given when obtaining payment of benefit,

shall apply to and in respect of any interim payment by virtue of this regulation as if it were a payment of the appropriate pension or increase of pension.

Calculation of earnings from boarders or lodgers of certain retirement pensioners and adult dependants of pensioners

7. The amount of the earnings for any week derived from the taking in of boarders or lodgers by a person who is entitled to a retirement pension or is an adult dependant of a person entitled to a retirement pension or a specified benefit shall, for the purposes of sections 30(1), 45 to 49 (other than subsection (*b*) of section 49) and 66(4) of the Act and regulation 10(4) of the Dependency Regulations, if it does not fall to be calculated in accordance with regulation 5 above, be taken to be—

(*a*) in respect of each boarder or lodger who is receiving full board and lodging and for whom no reduction of charges is made on account of his youth, half the amount paid by or in respect of him in excess of £6 a week; and

(*b*) in respect of any other boarder or lodger, half the amount paid by or in respect of him in excess of such sum less than £6 a week as the determining authority considers to be reasonable in the circumstances having regard, in particular but not exclusively, to what is provided for him by way of board and lodging.

Revocations and general savings

8.—(1) 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.

(2) Anything whatsoever done under or by virtue of the regulations revoked as aforesaid shall be deemed to have been done under or by virtue of the corresponding provision of these regulations and anything whatsoever begun under any such regulation may be continued under these regulations as if begun thereunder.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 13th December 1978.

(L.S.) *W. J. Sloane*
Senior Assistant Secretary

SCHEDULE Regulation 8(1)

Revocations

Regulations revoked (1)	*Reference* (2)	*Extent of revocation* (3)
The Social Security Benefit (Computation of Earnings) (Northern Ireland) Regulations 1975	S.R. 1975 No. 15 (I, p. 70)	The whole of the regulations
The Social Security (Non-Contributory Invalidity Pension) Regulations (Northern Ireland) 1975	S.R. 1975 No. 202 (II, p. 1036)	Regulation 11
The Social Security (Invalid Care Allowance) Regulations (Northern Ireland) 1976	S.R. 1976 No. 99 (I, p. 415)	Regulation 8(3)
The Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977	S.R. 1977 No. 74 (I, p. 258)	Regulations 8(2) and 10(5)
The Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 1978	S.R. 1978 No. 90	Regulation 2

EXPLANATORY NOTE

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

These regulations are made for the purpose only of consolidating the regulations hereby revoked, and contain amendments of a minor or consequential nature.

The regulations provide for the way in which the earnings of a person to whom benefit is or may be payable or of such a person's dependant are to be calculated or estimated for the purposes of those provisions of the Social Security (Northern Ireland) Act 1975, and the regulations made under that Act, by which the right to or the amount of benefit depends on the amount of those earnings. Regulation 2 provides, in particular, for the method of calculation or estimation where a person's earnings are not immediately ascertainable. Regulations 3 and 4 provide for certain payments and perquisites to be disregarded or deducted. Regulations 5 and 6 provide for cases where the earnings of a pensioner or a pensioner's dependant are not immediately ascertainable and he makes a return for tax purposes; for the suspension of benefit in such cases until the amount of the earnings is established; and for the making of interim payments. Regulation 7 provides for the calculation of earnings from taking in boarders and lodgers.