1980 No. 375

FAMILY INCOME SUPPLEMENTS

The Family Income Supplements (General) Regulations (Northern Ireland) 1980

Made . . . . . *24th October 1980*

Coming into operation . . . *24th November 1980*

ARRANGEMENT OF REGULATIONS

Regulations

1. Citation, commencement and interpretation
2. Computation of normal gross income of members of a family
3. Circumstances in which benefit may be made payable otherwise than for fifty-two weeks beginning with the date of the claim therefor and in which the rate of benefit payable may be increased
4. Circumstances in which payment of supplementary benefit is to make benefit under the Act not payable for a family or not receivable by a person
5. Circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work
6. Circumstances in which a person is to be treated as not providing in whole or in part for the requirements of a child
7. Claims for a child who could be included in more than one family for the purposes of the Act
8. Circumstances in which a family is to be treated as being or as not being in Northern Ireland
9. Circumstances in which a person of or over the age of sixteen is to be treated as a child
10. Recovery of overpayments of benefit
11. Determination of claims and questions
12. Review of determinations
13. Notifying persons of determinations
14. Revocations

SCHEDULE—Revocations

The Department(**a**) of Health and Social Services, in exercise of the powers conferred on it by sections 4, 5(2), 6, 8(2) and (3) and 10(2) of the Family Income Supplements Act (Northern Ireland) 1971(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

(**a**) Formerly Ministry: *see* 1973 c. 36 Sch. 5 para. 8(1)

(**b**) 1971 c. 8 (N.I.); section 6(1) was amended by Article 8(3) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)) and section 6(2) and (3) substituted by section 3 of the Pensioners and Family Income Supplement Payments Act 1972 (c. 75)

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Family Income Supplements (General) Regulations (Northern Ireland) 1980 and shall come into operation on 24th November 1980.

(2) In these regulations—

"the Act" means the Family Income Supplements Act (Northern Ireland) 1971;

"advanced education" means full-time education for the purposes of—

(*a*) a course in preparation for a Degree, a Diploma of Higher Education, a Higher National Diploma or a teaching qualification; or

(*b*) any other course which is certified by the Department as being a course of a standard above Ordinary National Diploma or General Certificate of Education (advanced level);

"Appeal Tribunal" has the same meaning as in section 7(3) of the Act;

"attendance allowance" means—

(*a*) an attendance allowance under section 35 of the Social Security (Northern Ireland) Act 1975(**c**);

(*b*) an increase of disablement pension under section 61 or 63 of that Act (increases in respect of the need for constant attendance);

(*c*) a payment under regulations made in exercise of the power in section 150(3)(*b*) of that Act (constant attendance allowance and an increase for exceptionally severe disablement for certain pre-1948 cases);

(*d*) an increase of allowance under Article 8 of the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966(**d**) (constant attendance allowance for certain persons to whom that Scheme applies) or under the corresponding provision of any Scheme which may replace the said Scheme of 1966;

(*e*) an allowance in respect of constant attendance on account of disablement for which a person is in receipt of a war disablement pension, including an allowance in respect of exceptionally severe disablement;

"benefit" means a family income supplement under the Act;

"beneficiary" means a person by whom benefit is or was receivable and any person authorised or appointed to act for such a person;

"claim" means a claim for benefit;

"determining authority" means, as the case may require, a supplement officer, the Appeal Tribunal as defined in section 7(3) of the Act or a Social Security Commissioner(**e**) within the meaning of the Social Security (Northern Ireland) Act 1975;

"the Department" means the Department of Health and Social Services;

"Education and Library Board" means a Board established under Article 3 of, and Part I of Schedule 2 to, the Education and Libraries (Northern Ireland) Order 1972(**f**);

"educational maintenance allowance" means the gross amount of any allowance paid by an Education and Library Board for the maintenance (in whole or in part) of a child aged not less than sixteen years undergoing a course of education other than a course of advanced education;

(**c**) 1975 c. 15
(**d**) S.I. 1966/164 (1966 I, p. 303)
(**e**) *See* section 12 of the Social Security Act 1980 (c. 30)
(**f**) S.I. 1972/1263 (N.I. 12)

"recognised educational establishment" means an establishment recognised by the Department as being, or as comparable to, a university, college or school;

"supplement officer" shall have the same meaning as in section 16(1) of the Act(**g**);

"war disablement pension" means—

(*a*) a pension or other benefit administered by the Secretary of State for Social Services and awarded in respect of disablement—

(i) due to service in the armed forces of the Crown; or, as the case may be,

(ii) under the Personal Injuries (Emergency Provisions) Act 1939(**h**), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**i**) or the Polish Resettlement Act 1947(**j**);

(*b*) any retired pay or pension to which section 365(1) of the Income and Corporation Taxes Act 1970(**k**) 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 sub-paragraphs (*a*) or (*b*) of this definition.

Computation of normal gross income of members of a family

2.—(1) For the purposes of the Act, a person's normal gross income and the weekly amount thereof shall be calculated or estimated in the manner provided in paragraphs (2) to (6).

(2) In so far as a person's normal gross income consists of earnings from a gainful occupation, the weekly amount of that person's normal gross income therefrom shall be calculated or estimated by reference to the average of his earnings from that occupation over the period of the five weeks (being pay-weeks if in respect of that occupation he is paid weekly) or the two pay-months (if in respect of that occupation he is paid monthly) immediately preceding the date on which the claim is made, save, however, that in any case, and in particular in a case where a person has been working abnormally long or short hours in a gainful occupation, or has commenced working in a gainful occupation shortly before the claim is made, or is following a gainful occupation from which his earnings normally fluctuate at approximately the same time or times each year, or is following a gainful occupation otherwise than under a contract of service, the determining authority may have regard to the average of a person's earnings from a gainful occupation over such other period or periods as may appear to it to be appropriate in order properly to determine what is that person's normal weekly income therefrom.

(3) In so far as a person's earnings from any gainful occupation comprise salary, wages or fees related to a fixed period, the gross amount thereof shall be taken into account; and in so far as a person's earnings from any gainful occupation do not comprise salary, wages or fees related to a fixed period, the net profit derived from that occupation shall be taken into account.

(4) In so far as a person's normal gross income does not consist of earnings from a gainful occupation, the weekly amount thereof shall be calculated or estimated on such basis as appears to the determining authority to be appropriate in the circumstances of the particular case.

(**g**) Section 16(1) was amended by Article 8(6) of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

(**h**) 1939 c. 82

(**i**) 1939 c. 83

(**j**) 1947 c. 19

(**k**) 1970 c. 10

(5) In calculating or estimating a person's normal gross income and the weekly amount thereof, there shall be deducted—

(*a*) the whole of any sums by way of attendance allowance;

(*b*) the whole of any payments made in respect of a child who is boarded-out for the purposes of the Children and Young Persons (Boarding-Out) Regulations (Northern Ireland) 1976(**l**);

(*c*) the whole of any sums by way of benefit under the Act;

(*d*) the whole of any sums by way of benefit under the Supplementary Benefits (Northern Ireland) Order 1977(**m**);

(*e*) up to £4·00 a week of any sums (other than sums payable by way of attendance allowance) payable by way of a war disablement pension;

(*f*) the whole of any sums by way of a rent allowance under Part X of the Rent (Northern Ireland) Order 1978(**n**);

(*g*) the whole of any sums by way of benefit under the Child Benefit (Northern Ireland) Order 1975(**o**);

(*h*) the whole of any sums by way of mobility allowance under section 37A of the Social Security (Northern Ireland) Act 1975(**p**); and

(*i*) the whole of any award of educational maintenance allowance.

(6) The normal gross income of a family shall include the income of a child of that family derived from—

(*a*) the mother or father of that child, or any other person under a legally enforceable obligation to maintain that child;

(*b*) any fund to which the mother or father of that child, or any other person under a legally enforceable obligation to maintain that child, has contributed.

Circumstances in which benefit may be made payable otherwise than for fifty-two weeks beginning with the date of the claim therefor and in which the rate of benefit payable may be increased

3.—(1) Where the available evidence leaves the determining authority in doubt as to the rate at which benefit should be payable, but satisfies it that benefit should be payable at not less than a certain weekly rate, it may determine that benefit shall be payable at the latter rate for a period of less than fifty-two weeks, but not less than four weeks.

(2) Where a beneficiary makes a claim not more than four weeks before or after the expiration of a period for which benefit is payable (hereinafter in this paragraph referred to as a "renewal claim"), any benefit payable on the basis of the renewal claim shall be payable for a period commencing immediately after the expiration of the period for which benefit was previously payable.

(3) Subject to the provisions of paragraph (4), where a regulation has been made in exercise of powers conferred by the Act and a claim is made on or after the date on which the statutory rule containing that regulation has been made but before the date on which that regulation comes into operation, benefit shall be payable on that claim from and including the date on which that regulation comes into operation if—

(**l**) S.R. 1976 No. 19 (I, p. 53)

(**m**) S.I. 1977/2156 (N.I. 27); this Order as amended (except Articles 1, 42 and Schedules 4 to 7) is set out in Part II of Sch. 2 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

(**n**) S.I. 1978/1050 (N.I. 20)

(**o**) S.I. 1975/1504 (N.I. 16)

(**p**) Section 37A was inserted by Article 24 of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))

(*a*) at the time of the claim, benefit is not payable for the family in respect of whom the claim is made but would have been payable in accordance with the provisions of that regulation, had that regulation been in operation on the date on which the claim was made; and

(*b*) the period beginning with the date on which the claim is made and ending immediately before that regulation comes into operation does not exceed fifty-six days.

(4) On any claim such as is specified in paragraph (3), the period for which benefit is payable on the claim shall expire on the date on which it would have expired had benefit been payable for a period beginning with the date on which the claim was made.

(5) Where during a period during which benefit is payable for a family—

(*a*) a regulation made in exercise of powers conferred by section 2(1), 3(1), 3(1A) or 3(4) of the Act has or will come into operation; and

(*b*) that regulation, had it been in operation on the date on which the claim was made in respect of which benefit is payable for that family, would have entitled that family to benefit at a higher rate than the rate at which it is payable,

the rate at which benefit is payable for that family shall be, with effect from and including the date on which the regulation has or will come into operation, the said higher rate.

Circumstances in which payment of supplementary benefit is to make benefit under the Act not payable for a family or not receivable by a person

4.—(1) Subject to the provisions of paragraph (2) no benefit shall be paid for any family during any period during which, due to the refusal or neglect of a person by whom the benefit is receivable to maintain any other person included in the family, the requirements of that other person are taken into account for the purposes of any benefit under the Supplementary Benefits (Northern Ireland) Order 1977.

(2) Where a family includes both a man and a woman and benefit is receivable by either of them, paragraph (1) shall not apply if it is due to the refusal or neglect of one only of them to maintain any other person included in the family that the requirements of that other person have been taken into account for the purposes of any benefit under the said Order of 1977, but benefit shall cease to be receivable by that one of them due to whose refusal or neglect to maintain any other person included in the family the requirements of that other person are taken into account for the purposes of any benefit under the said Order of 1977.

Circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work

5.—(1) A person shall be treated as being engaged in remunerative full-time work only if he undertakes activities in the course of remunerative work for not less than the minimum weekly hours during—

(*a*) the week of claim, or

(*b*) either of the two weeks immediately preceding the week of claim, or

(*c*) the week immediately following the week of claim.

(2) A person shall be treated as being normally engaged in remunerative full-time work if he is normally engaged in such work for not less than the minimum weekly hours but not otherwise.

(3) For the purposes of this regulation—

"minimum weekly hours" shall mean thirty hours a week, except that where no person is included in a family by virtue of section 1(1)(*b*) of the Act it shall

mean twenty-four hours a week, and in either case it shall include meal times only if remuneration is received therefor;

"week" shall mean a period of seven days beginning with midnight between Saturday and Sunday;

"week of claim" shall mean the week which includes the date on which a claim is made.

Circumstances in which a person is to be treated as not providing in whole or in part for the requirements of a child

6. A person shall be treated as not providing in whole or in part for the requirements of any child who is boarded-out for the purposes of the Children and Young Persons (Boarding-Out) Regulations (Northern Ireland) 1976.

Claims for a child who could be included in more than one family for the purposes of the Act

7. Where, apart from the provisions of this regulation, a child could be included in more than one family for the purposes of the Act, that child shall be included in such family as the persons claiming benefit agree, or, in default of agreement, in such family as the determining authority shall, in its discretion, determine.

Circumstances in which a family is to be treated as being or as not being in Northern Ireland

8. A family shall be treated as being in Northern Ireland if, and shall be treated as not being in Northern Ireland unless, at the date when benefit is claimed it is ordinarily resident in the United Kingdom and at least one member of the family who is not a child is resident in Northern Ireland, so however that a family shall in any event be treated as not being in Northern Ireland where that date falls within a period during which any member of it is a member of a family for which a benefit in respect of that period is payable or has been paid under the Family Income Supplements Act 1970(**q**).

Circumstances in which a person of or over the age of sixteen is to be treated as a child

9.—(1) For the purposes of the Act a person of or over the age of sixteen shall be treated as a child if at the date when benefit is claimed he is under the age of nineteen and receives full-time education not being advanced education by attendance at a recognised educational establishment.

(2) A person shall be treated for the purposes of paragraph (1) as receiving full-time education if he is receiving primary or secondary education in Northern Ireland otherwise than at school under special arrangements made under Article 6(2) of the Education and Libraries (Northern Ireland) Order 1972.

Recovery of overpayments of benefit

10. Where it is found by the determining authority that sums paid by way of benefit were not due and the persons by whom the sums were receivable cannot satisfy that authority that they had disclosed all material facts, the Department shall be entitled to recover the sums from the persons by whom they were receivable.

Determination of claims and questions

11.—(1) Different aspects of the same question may be dealt with by different supplement officers.

(**q**) 1970 c. 55

(2) A supplement officer to whom any claim for benefit, or to whom any question as to the right to or amount of benefit, is referred shall take it into consideration and shall, so far as practicable, within fourteen days of the referral to him—

(*a*) decide it in favour of the claimant; or

(*b*) decide it adversely to the claimant.

Review of determinations

12.—(1) Subject to the provisions of paragraph (2) a determination made by a supplement officer may be reviewed by any supplement officer who is satisfied that the determination was based on a mistake as to the law; and a determination made by any determining authority may be reviewed by any supplement officer who—

(*a*) is satisfied, and in the case of a decision of a Social Security Commissioner satisfied by fresh evidence, that the determination was made in ignorance of, or was based on a mistake as to, some material fact; or

(*b*) is satisfied that benefit should not be paid for any family or should not be receivable by any person by reason of the provisions of regulation 4.

(2) Where a review under paragraph 1(*a*) arises from a disclosure of a material fact of which a person who claimed benefit was, or could reasonably have been expected to be, aware but of which he previously failed to furnish information to the Department, then if that review would result in either a new award of benefit or in an increase in the amount of benefit payable, such benefit or increase of benefit shall not be payable in respect of any period earlier than twelve months before the date on which that person first furnished that information.

Notifying persons of determinations

13. A person whose right to benefit is affected by a determination made by a supplement officer shall be given notice in writing of that determination, of the reasons therefor and of his right of appeal therefrom; and where such a person is a member of a family which includes both a man and a woman the foregoing requirement as to the giving of notice shall, unless in any case or class of cases the Department otherwise directs, be deemed to have been complied with in relation to both that man and that woman if one of them is given notice as aforesaid.

Revocations

14. The regulations specified in the Schedule hereto are hereby revoked to the extent specified in the third column of that Schedule.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 24th October 1980.

(L.S.) *T. S. Martin*

Assistant Secretary

SCHEDULE Regulation 14

Revocations

Column 1 *Regulations revoked*	*Column 2* *References*	*Column 3* *Extent of revocation*
The Family Income Supplements (General) Regulations (Northern Ireland) 1971	S.R. & O. (N.I.) 1971 No. 122 (p. 605)	The whole regulations
The Family Income Supplements (General) Amendment Regulations (Northern Ireland) 1972	S.R. & O. (N.I.) 1972 No. 22 (p. 85)	The whole regulations
The Family Income Supplements (Miscellaneous Amendments) Regulations (Northern Ireland) 1972	S.R. & O. (N.I.) 1972 No. 223 (p. 1211)	Regulation 2
The Family Income Supplements (Increase of Family Allowances) (Consequential) Regulations (Northern Ireland) 1975	S.R. 1975 No. 151 (I, p. 882)	The whole regulations
The Family Income Supplements (General) (Amendment) Regulations (Northern Ireland) 1975	S.R. 1975 No. 249 (II, p. 1186)	The whole regulations
The Family Income Supplements (Child Interim Benefit) (Consequential) Regulations (Northern Ireland) 1976	S.R. 1976 No. 90 (I, p. 398)	The whole regulations
The Family Income Supplements (General) (Amendment) Regulations (Northern Ireland) 1977	S.R. 1977 No. 60 (I, p. 189)	The whole regulations
The Family Income Supplements (General) (Amendment) Regulations (Northern Ireland) 1978	S.R. 1978 No. 293 (II, p. 1018)	The whole regulations
The Family Income Supplements (General) (Amendment) Regulations (Northern Ireland) 1979	S.R. 1979 No. 45 (I, p. 140)	The whole regulations
The Family Income Supplements (General) (Amendment No. 2) Regulations (Northern Ireland) 1979	S.R. 1979 No. 426 (II, p. 1808)	The whole regulations

EXPLANATORY NOTE

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

These regulations, made under the Family Income Supplements Act (Northern Ireland) 1971, consolidate, with amendments, miscellaneous provisions relating to entitlement to family income supplement. The principal amendments relate to functions conferred on supplement officers and Social Security Commissioners by the Social Security (Northern Ireland) Order 1980 and the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) respectively; the circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work (regulation 5), and the determination of claims and questions (regulation 11). There are other amendments of a minor or technical nature and various obsolete regulations (including those consolidated by these regulations) are revoked.