1980 No. 396

SUPPLEMENTARY BENEFITS

The Supplementary Benefit (Duplication and Overpayment) Regulations (Northern Ireland) 1980

Made . . . . . 6th November 1980

Coming into operation . . . 24th November 1980

ARRANGEMENT OF REGULATIONS

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 16(1), (1A) and (2) and 25(4) of the Supplementary Benefits (Northern Ireland) Order 1977(**a**) and section 84 of the Social Security (Northern Ireland) Act 1975(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Supplementary Benefit (Duplication and Overpayment) Regulations (Northern Ireland) 1980 and shall come into operation on 24th November 1980.

Interpretation

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

"the Order" means the Supplementary Benefits (Northern Ireland) Order 1977;

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

"benefit week" has the meaning assigned to it in regulations made pursuant to Article 19(2)(*f*) of the Order (days on which entitlement to supplementary pension or allowance is to begin or end or the amount thereof is to change);

"child benefit" means benefit under Part II of the Child Benefit (Northern Ireland) Order 1975(**c**);

"Deductions Regulations" means the Supplementary Benefit (Deductions and Payments to Third Parties) Regulations (Northern Ireland) 1980(**d**);

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

(**a**) S.I. 1977/2156 (N.I. 27): provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), are set out in Part II of that Schedule

(**b**) 1975 c. 15

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

(**d**) S.R. 1980 No. 356

"the Taxes Act" means the Income and Corporation Taxes Act 1970(**e**);

"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(**f**); or, as the case may be,

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

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

(*c*) any payment which the Department accepts as analogous to any award mentioned in the preceding sub-paragraphs of this definition,

but in any case shall exclude any gratuity;

"war widow's pension" means a pension or other benefit awarded to a widow under—

(*a*) any of the powers referred to in section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977; or

(*b*) any of the enactments mentioned in sub-paragraph (*a*)(ii) of the definition of "war disablement pension";

(*c*) any scheme mentioned in section 365(2)(*e*) of the Taxes Act;

(*d*) any payment which the Department accepts as analogous to any award mentioned in the preceding sub-paragraphs of this definition,

but in any case shall exclude any gratuity.

(2) Unless the context otherwise requires, any reference in these regulations to a numbered regulation is a reference to the regulation bearing that number in these regulations and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(3) The Interpretation Act 1978(**j**) shall apply to these regulations.

Prevention of duplication of payments – abatement or receipt

3.—(1) A prescribed payment for the purposes of Article 16(1) of the Order (prevention of duplication of payments from public funds and under the law of another member State) is a payment of any of the following—

(*a*) any benefit under the Act(**k**) other than any grant or gratuity;

(*b*) any child benefit;

(*c*) any allowance under a scheme made under section 5 of the Industrial Injuries and Diseases (Old Cases) Act 1975(**l**);

(**e**) 1970 c. 10
(**f**) 1977 c. 5
(**g**) 1939 c. 82
(**h**) 1939 c. 83
(**i**) 1947 c. 19
(**j**) 1978 c. 30
(**k**) *See* also Article 2(3) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15))
(**l**) 1975 c. 16

(*d*) any allowance under regulations made under section 2 of the Industrial Injuries and Diseases (Northern Ireland Old Cases) Act 1975(**m**);

(*e*) any family income supplement under the Family Income Supplements Act (Northern Ireland) 1971(**n**);

(*f*) any war disablement pension or war widow's pension;

(*g*) any allowance paid under the Job Release Act 1977(**o**);

(*h*) any allowance payable by or on behalf of the Department of Manpower Services for Northern Ireland to or in respect of a person for his maintenance for any period during which he is following a course of training or instruction provided or approved by that Department;

(*i*) any payment of benefit under the legislation of any member State other than the United Kingdom concerning the branches of social security mentioned in Article 4(1) of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community(**p**), whether or not the benefit has been acquired by virtue of the provisions of that Regulation.

(2) The prescribed date, in relation to a payment of the kind mentioned in sub-paragraphs (*a*) to (*i*) of paragraph (1), is the date by which receipt of or entitlement to that payment would have to be notified to the Department if it were to be taken into account in determining, whether on review or otherwise, the amount of or entitlement to supplementary pension or allowance.

Prevention of duplication of payments – recovery

4.—(1) Prescribed income of a person for the purposes of Article 16(1A) of the Order (prevention of duplication of payments of prescribed income) consists of resources which fall to be taken into account in the calculation of his income resources in accordance with Part III of the Supplementary Benefit (Resources) Regulations (Northern Ireland) 1980(**q**).

(2) The prescribed date in relation to any payment of income prescribed by paragraph (1) is—

(*a*) where it is made in respect of a specific day or period, that day or the first day of that period;

(*b*) where it is not so made, the day or the first day of the period to which it is fairly attributable.

Prevention of duplication of payments – maintenance payments

5. The prescribed benefits for the purposes of Article 16(2) of the Order (prevention of duplication of maintenance payments) are—

(*a*) child benefit;

(*b*) increases for dependants of any benefit under the Act;

(*c*) child's special allowance under section 31 of the Act;

(*d*) guardian's allowance under section 38 of the Act; and

(*e*) death benefit by way of an allowance under section 70 of the Act.

Recovery in cases of misrepresentation or non-disclosure

6. The prescribed benefits for the purposes of Article 25(4) of the Order (recovery in cases of misrepresentation or non-disclosure) are—

(**m**) 1975 c. 17
(**n**) 1971 c. 8 (N.I.)
(**o**) 1977 c. 8
(**p**) O.J. No. L149, 5.7.1971; for a codified text *see* O.J. No. C. 138, 9.6.1980
(**q**) S.R. 1980 No. 348

(*a*) any benefit under the Act except maternity or death grant, but including any graduated retirement benefit;

(*b*) any other payment mentioned in sub-paragraphs (*c*), (*d*), (*e*) and (*i*) of regulation 3(1);

(*c*) subject to regulation 7, supplementary pension or allowance.

Application of regulation 6 to supplementary pension or allowance

7.—(1) Regulation 6 shall apply to supplementary pension or allowance only to the extent that there may, subject to regulation 3 of the Deductions Regulations (regular payments to third parties for housing and fuel requirements), be recovered in respect of any one benefit week—

(*a*) in a case to which paragraph (2) applies, not more than the amount there specified; and

(*b*) in any other case, the amount mentioned in regulation 3(4)(*d*) of the Deductions Regulations (maximum weekly amount payable to third parties).

(2) Where—

(*a*) the person to whom the supplementary pension or allowance is payable is a person to whom—

(i) paragraph 1(*a*) of the Table in paragraph 2(3) of Schedule 1 to the Order (normal requirements of person mentioned in Article 3(1)(*a*) of the Order) applies,

(ii) paragraph 3(*a*) of that Table (normal requirements for householders over pensionable age) applies,

(iii) regulation 7 of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1980(**r**) (long-term rates for normal requirements in prescribed cases) applies,

(iv) paragraph 1(*a*) of Schedule 1 to those regulations (normal requirements of person aged not less than 18 other than relevant person or householder) applies, or

(v) regulation 9(8)(*a*)(i) or (*b*)(i) of those regulations (long-term rates for normal requirements of boarders) applies; or

(*b*) the person responsible for the misrepresentation of or failure to disclose a material fact has, by reason thereof, been found guilty of an offence under Article 27 of the Order or under any other enactment, or has made a written statement after caution in accordance with the Judges' Rules in admission of deception or fraud for the purpose of obtaining supplementary benefit,

the amount mentioned in paragraph (1)(*a*) shall be one-sixth of the sum specified for the time being in Article 8(1)(*a*) of the Social Security Pensions (Northern Ireland) Order 1975 (that one-sixth being, where it is not a multiple of 10 pence, rounded to the nearest such multiple or, if it is a multiple of 5 pence but not of 10 pence, the next higher multiple of 10 pence).

(3) Where in the calculation of the resources of the person to whom the supplementary pension or allowance is payable the amount of earnings or other income falling to be taken into account is reduced by regulation 10(5) or 11(5) of the Supplementary Benefit (Resources) Regulations (Northern Ireland) 1980 (partial disregard of earnings or other income respectively) the weekly amount applicable under paragraph (1) may be increased by not more than half the amount of the reduction, and any increase under this paragraph has priority over any increase which would, but for this paragraph, be made under regulation 3(4)(*b*) of the Deductions Regulations (increase of maximum amount of payment to third parties).

(**r**) S.R. 1980 No. 347

(4) Regulation 6 shall not be applied to supplementary pension or allowance so as to reduce that pension or allowance in any one week—

(*a*) in a case in which the person to whom that pension or allowance is payable is also entitled to payment of any benefit under the Act together with which, under arrangements made by the Department, supplementary pension or allowance is paid, to less than 5 pence;

(*b*) in any other case, to less than 10 pence.

Amendment of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977

8. For regulation 4 of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977(**s**) there shall be substituted the following regulation—

"*Deeming benefit under the Act abated under Article 16(2) of the Supplementary Benefits (Northern Ireland) Order 1977 to be a contribution for the maintenance of children or adult dependants.*

4. Where for any period a person (in this regulation referred to as A) is entitled to, or to an increase in the amount of, any benefit prescribed pursuant to Article 16(2) of the Supplementary Benefits (Northern Ireland) Order 1977(**t**) in respect of another person (in this regulation referred to as B) and the amount of, or of the increase in, any such benefit is abated under the provisions of the said Article 16(2), then in determining for the purposes of the Act whether A is wholly or mainly maintaining or is contributing at any weekly rate to the maintenance of, or is or has been contributing at any weekly rate to the cost of providing for, B, the amount by which such benefit for any week has been so abated shall be deemed to be a contribution of that amount for that week made by A for the maintenance of B.".

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 6th November 1980.

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

(**s**) S.R. 1977 No. 74 (I, p. 258)
(**t**) S.I. 1977/2156 (N.I. 27); provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), are set out in Part II of that Schedule

EXPLANATORY NOTE

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

These regulations contain provisions relating to the prevention of duplication of payments under Article 16 of the Supplementary Benefits (Northern Ireland) Order 1977 ("the Order") and recovery in cases of misrepresentation or non-disclosure under Article 25 of that Order. Article 16(1), (1A) and (2) of the Order provides that a prescribed payment, income or benefit may be abated or, as the case may be, recovered where because it is paid late supplementary benefit has been overpaid. Article 25(4) of the Order provides that recovery may be made by deduction from prescribed benefits.

Regulation 3 prescribes for the purposes of Article 16(1) the payments of income made from public funds in the United Kingdom and under the law of any other member State, and prescribes the date in relation to those payments. Regulation 4 prescribes the payments of income for the purposes of Article 16(1A) and prescribes the date in relation to those payments. Regulation 5 prescribes the benefits for the purposes of Article 16.

Regulation 6 prescribes the benefits for the purposes of Article 25(4), and regulation 7 provides the circumstances in which that paragraph can apply to supplementary pension or allowance, including the maximum amount deductible and the minimum amount to be left in payment.

Regulation 8 substitutes a new regulation 4 into the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977 in consequence of the amendments to Article 16(2) by the Social Security (Northern Ireland) Order 1980.