1987 No. 142

SOCIAL SECURITY

The Social Security (Industrial Injuries) (Reduced Earnings Allowance and Transitional) Regulations (Northern Ireland) 1987

Made . . . . . *26th March 1987*

Coming into operation . . *6th April 1987*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by section 59A(10) of the Social Security (Northern Ireland) Act 1975(**a**) and Article 84(1) of the Social Security (Northern Ireland) Order 1986(**b**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Industrial Injuries) (Reduced Earnings Allowance and Transitional) Regulations (Northern Ireland) 1987 and shall come into operation on 6th April 1987.

(2) In these regulations—

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

"the Order" means the Social Security (Northern Ireland) Order 1986.

(3) 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.

(4) The Interpretation Act 1978(**c**) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

PART II

REDUCED EARNINGS ALLOWANCE

Determination of the probable standard of remuneration

2.—(1) On any award of reduced earnings allowance except the first award made in respect of a relevant accident or a disease prescribed in

(a) 1975 c. 15; section 59A was inserted by paragraph 5(1) of Schedule 3 to the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18))
(b) S.I. 1986/1888 (N.I. 18)
(c) 1978 c. 30

accordance with Chapter V of Part II of the Act, a person's probable standard of remuneration shall be determined in accordance with paragraphs (2) to (8) or, if applicable, regulation 3.

(2) On the second award made in respect of an accident or disease, a person's probable standard of remuneration in any employment shall be determined in the same manner as on the first award.

(3) On a third or subsequent award made in respect of an accident or disease, a person's probable standard of remuneration in any employment shall be determined—

(*a*) if applicable, in accordance with paragraphs (4) to (8) or with regulation 3; or

(*b*) otherwise in the same manner as on the first award.

(4) Where at the time of the award a person's regular occupation has ceased to exist, his probable standard of remuneration in the regular occupation shall be determined in accordance with paragraph (6).

(5) Where at the time of the award either—

(*a*) a person is not employed; or

(*b*) he is employed but the employment is not suitable in his case; and

(*c*) there has been no relevant change of circumstances since the last previous award,

the probable standard of remuneration in any employed earner's employment which is suitable in his case and which he is likely to be capable of following shall be determined in accordance with paragraph (6).

(6) For the purposes of paragraphs (4) and (5) a person's probable standard of remuneration shall be determined by reference to the standard determined for the purposes of the last previous award of reduced earnings allowance increased by a percentage equal to any percentage increase in the level of earnings for the relevant occupational groups.

(7) For the purposes of paragraph (6) and regulation 3(1)—

(*a*) the relevant occupational group is the numbered group specified in data relating to earnings published from time to time by the Department of Economic Development which is the nearest to, respectively,

(i) the person's regular occupation,

(ii) any employed earner's employments which are suitable in his case and which he is likely to be capable of following; and

(*b*) the percentage increase in the level of earnings shall be determined by reference to the movement in average gross weekly earnings of full-time employees on adult rates in the relevant occupational group where pay was not affected by absence; and

(*c*) a percentage increase for any year shall be applied to a determination of the probable standard of remuneration on an award made for a period commencing on or after the first Wednesday in the February of the year following the year to which the increase relates.

(8) For the purposes of paragraph (4), a person's regular occupation has ceased to exist where—

(*a*) his former employer has ceased to trade in the locality; or

(*b*) the work the person did at his former place of employment no longer exists or has changed to such a degree that the work amounts to a different occupation,

and there is in the person's locality no employer providing work similar to that in which he was engaged.

Awards at the maximum rate

3.—(1) Where on the second or subsequent award of reduced earnings allowance in respect of an accident or disease the award—

(*a*) is made at the maximum rate payable under section 59A(8) of the Act; or

(*b*) would have been made at that rate but for paragraph 5(3) of Schedule 3 to the Order or regulation 8,

then, but subject to paragraph (2), on any award thereafter the probable standard of a person's remuneration in any employment shall be determined as being the same standard as that determined for the purpose of the last previous award of reduced earnings allowance increased by a percentage equal to any percentage increase in the level of earnings for the relevant occupational groups.

(2) This regulation does not apply where—

(*a*) on an award, reduced earnings allowance would be payable at a rate below the maximum rate payable under section 59A(8) of the Act otherwise than by virtue of paragraph 5(3) of Schedule 3 to the Order or regulation 8; or

(*b*) there has been a relevant change in the person's circumstances since the last previous award.

Awards following relevant change of circumstances

4. An award of reduced earnings allowance following a relevant change of circumstances shall be treated for the purpose of this Part of these regulations as the first such award.

PART III

TRANSITIONAL

Claims before 6th April 1987

5. Regulations 2 and 3 shall not apply to any award of reduced earnings allowance where the claim which resulted in that award was made before 6th April 1987.

Awards for special hardship made before 19th November 1986

6. Any award made before 19th November 1986 of an increase in disablement pension under section 60 of the Act (increase of disablement pension for special hardship) shall be treated for the purposes of regulations 2 and 3 as an award of reduced earnings allowance.

Abatement of reduced earnings allowance

7.—(1) For the purposes of paragraph 5(3) of Schedule 3 to the Order, paragraph 5 of that Schedule shall be treated as having come into operation on 6th April 1987.

(2) Paragraph 5(3) of Schedule 3 to the Order shall be modified by the substitution, in head (*c*), of "a reduced earnings allowance under section 59A" for "an increase under section 60" and by the substitution of "allowance was payable" for "increase was payable".

Modification of the Act

8.—(1) Section 59A(8) of the Act shall be modified in the case of a person who for the purposes of the Act is treated as having retired from regular employment before 6th April 1987 by the substitution for "140 per cent." of "100 per cent.".

(2) This regulation shall not apply after 5th April 1989.

Offsetting prior payment of gratuity against subsequent award

9. For the purpose of offsetting any amount paid by way of gratuity(**a**) on an award which is subsequently varied on appeal or revised on review, regulation 84 of the Social Security (Adjudication) Regulations (Northern Ireland) 1984(**b**) shall have effect after 5th April 1987 as if made under Article 54(5)(*b*) of the Order.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 26th March 1987.

(L.S.) *A. N. Burns*
Assistant Secretary

(**a**) The gratuities with which regulation 84 is concerned are those in respect of industrial injury, disease or death under sections 57, 67, 71 and 72 of the Social Security (Northern Ireland) Act 1975
(**b**) S.R. 1984 No. 144

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations come into operation on 6th April 1987 and provide in Part II for the determination of the probable standard of remuneration on any award of reduced earnings allowance except the first award.

On the second award the probable standard of remuneration is determined in the same manner as the first award, but on the third or subsequent award, the probable standard of remuneration may be determined as on the first award, or, according to the circumstances, by reference to movements in indices of earnings in the occupational group in which the employment belongs. Those circumstances are where the claimant's regular occupation has ceased to exist or at the time of the award he is either not employed or employed in employment which is not suitable in his case (regulation 2).

Where the second or subsequent award of reduced earnings allowance is at the maximum rate of payment, regulation 3 enables subsequent awards to be based upon the standards of remuneration established for the previous award increased by a percentage equivalent to the percentage increase in the earnings of the occupational group in which the employment belongs. This regulation does not apply where its effect would be to reduce the amount payable below the maximum or where a relevant change in the person's circumstances has occurred.

Regulation 4 provides that an award of reduced earnings allowance following a change of circumstances is to be treated for the purpose of Part II of these regulations as the first such award.

Part III of these regulations contains transitional provisions relating to reduced earnings allowance. Regulation 5 excludes from the scope of regulations 2 and 3 claims made before 6th April 1987 and regulation 6 enables awards of an increase in disablement pension under section 60 of the Social Security (Northern Ireland) Act 1975 (''the Act'') (special hardship allowance) made before 19th November 1986 to be treated as awards of reduced earnings allowance for the purposes of regulations 2 and 3.

Paragraph 5(3) of Schedule 3 to the Social Security (Northern Ireland) Order 1986 (''the Order'') comes into operation on 6th April 1987 and regulation 7 modifies the paragraph in recognition of the fact that reduced earnings allowance replaced increase in disablement pension under section 60 of the Act on 19th November 1986.

Regulation 8 modifies the Act so that those who have retired before 6th April 1987 have the aggregate amount of their disablement pension and reduced earnings allowance limited to 100 per cent. of the disablement pension rate until 6th April 1989.

Regulation 9 provides for the continuance in force of regulation 84 of the Social Security (Adjudication) Regulations (Northern Ireland) 1984, which

relates to the offsetting of prior payments of gratuity against subsequent awards.

Section 59A(10) of the Act is one of the enabling provisions under which these regulations are made. It is inserted by paragraph 5(1) of Schedule 3 to the Order and is brought into operation on 6th April 1987 by virtue of Schedule 1 to the Social Security (1986 Order) (Commencement No. 4) Order (Northern Ireland) 1987 (S.R. 1987 No. 121 (C. 4)).

The data referred to in regulation 2(7)(*a*) for main occupational groups are contained in the New Earnings Survey for Northern Ireland and may be obtained, free of charge, from the Department of Economic Development, Statistics Branch, Room 122, Netherleigh, Massey Avenue, Belfast BT4 2JP.