

1976 No. 227

SOCIAL SECURITY**The Child Benefit (Residence and Persons Abroad) Regulations
(Northern Ireland) 1976***Made* 3rd August 1976*Coming into operation* 8th August 1976**ARRANGEMENT OF REGULATIONS****PART I****GENERAL***Regulation*

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SCHEDULE — Provisions of reciprocal agreements relating to family allowances under the Family Allowances Acts (Northern Ireland) 1966 to 1975 applied to benefit

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 2(3), 15(1) and 22(1) of the Child Benefit (Northern Ireland) Order 1975(a) and section 119(3)(a) of the Social Security (Northern Ireland) Act 1975(b) as that section has effect by virtue of Article 10(1) of the said Order, 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 Child Benefit (Residence and Persons Abroad) Regulations (Northern Ireland) 1976 and shall come into operation on 8th August 1976.

(2) In these regulations—

“the Order” means the Child Benefit (Northern Ireland) Order 1975;

“benefit” means child benefit under the Order.

(3) For the purposes of Article 15(2) and (3) of the Order and of these regulations, if a child or other person is present in or absent from Northern Ireland at the beginning of any day that state of affairs shall be treated as continuing throughout that day; and except in relation to the birth of a child, references in these regulations to any condition being satisfied or any facts existing in a week shall be construed as references to the condition being satisfied or the facts existing at the beginning of that week.

Circumstances in which benefit may be payable in respect of a child for a week in which that child is absent from Northern Ireland

2.—(1) Article 15(2)(a) of the Order (subject to regulations, benefit not to be payable in respect of a child for any week unless that child is in Northern Ireland in that week) shall have effect subject to the following provisions of this regulation and the provisions of Parts II and III of these regulations.

(2) The said Article 15(2)(a) shall not operate to make benefit not payable in respect of a child for any week in which that child is absent from Northern Ireland if—

(a) a person is entitled to benefit in respect of that child for the week immediately preceding the first week of the child's absence from Northern Ireland; and

(b) the child's absence was when it began intended to be temporary and has throughout continued to be so intended; and

(c) that week—

(i) falls within a period of twenty-six weeks beginning with the first week of the child's absence; or

- (ii) being a week in which the child's absence is by reason only of his receiving full-time education by attendance at a recognised educational establishment but not falling within the period specified in sub-paragraph (c)(i), falls within a period of one hundred and fifty-six weeks beginning with the first week of the child's absence; or
- (iii) being a week in which the child's absence is for the specific purpose of being treated for illness or disability of mind or body which commenced before his absence began but not falling within the period specified in sub-paragraph (c)(i), falls within such extended period of time (if any) as is determined by the Department in its discretion.

(3) Where a child leaves Northern Ireland in the week in which it was born or is born while its mother is absent from Northern Ireland, the said Article 15(2)(a) shall not operate to make benefit not payable in respect of that child for any week in which, by virtue of the provisions of regulation 4(3), Article 15(3)(a) of the Order does not operate to disentitle a person to benefit in respect of that child.

Circumstances in which benefit may be payable in respect of a child for a week where neither the child nor one of his parents has been in Northern Ireland for more than one hundred and eight-two days in the fifty-two weeks preceding that week

3.—(1) Article 15(2)(b) of the Order (subject to regulations, no benefit to be payable in respect of a child for any week unless that child or at least one of his parents has been in Northern Ireland for more than one hundred and eighty-two days in the fifty-two weeks preceding that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said Article 15(2)(b) shall not operate to make benefit not payable in respect of a child for any week if in that week—

- (a) that child is in fact in Northern Ireland and at least one of his parents is to be regarded as satisfying the requirement in Article 15(3)(b) of the Order; or
- (b) that child is in fact in Northern Ireland and is a child in respect of whom the conditions for entitlement to a guardian's allowance under section 38 of the Social Security Act could be satisfied by a person were that person entitled to benefit in respect of that child; or
- (c) that child is in fact in Northern Ireland and—
 - (i) is not residing with any parent of his; and
 - (ii) is living with another person with whom he is likely to continue to live permanently, being a person who satisfies or is to be regarded as satisfying the requirement in Article 15(3)(b) of the Order.

(3) The modification of the said Article 15(2)(b) effected by paragraph (2)(c) shall apply only in relation to the person referred to in paragraph (2)(c)(ii); and for the purposes of paragraph (2)(c)(i) a child shall not be regarded as having ceased to reside with any parent of his by reason of any absence the one from the other which is likely to be temporary.

(4) For the purposes of the said Article 15(2)(b), a week in which under the provisions of regulation 2 a child is to be regarded as satisfying the requirement in Article 15(2)(a) and any week for which a person is entitled to benefit in respect of that child shall be treated as a week in which that child is in Northern Ireland.

Circumstances in which a person may be entitled to benefit in respect of a child for a week in which that person is absent from Northern Ireland

4.—(1) Article 15(3)(a) of the Order (subject to regulations, no person to be entitled to benefit in respect of a child for any week unless that person is in Northern Ireland in that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said Article 15(3)(a) shall not operate to disentitle a person to benefit in respect of a child for any week in which that person is absent from Northern Ireland if—

- (a) that person is entitled to benefit in respect of that child for the week immediately preceding the first week of that person's absence from Northern Ireland; and
- (b) that person's absence was when it began intended to be temporary and has throughout continued to be so intended; and
- (c) that week falls within a period of twenty-six weeks beginning with the first week of that person's absence.

(3) If in the week in which a woman gives birth to a child in Northern Ireland she subsequently leaves Northern Ireland or if she gives birth to a child while she is absent from Northern Ireland, then if—

- (a) her absence from Northern Ireland was when it began intended to be temporary and has throughout continued to be so intended; and
- (b) that child (if born outside Northern Ireland) was born within the period of twenty-six weeks beginning with the first week of its mother's absence; and
- (c) had that child been born at the beginning of the week immediately preceding that in which its mother's absence began, she could have satisfied the requirements for entitlement to benefit in respect of it,

the said Article 15(3)(a) shall not operate to disentitle a person to benefit in respect of that child for the period of twenty-six weeks beginning with the first week of its mother's absence.

Circumstances in which a person may be entitled to benefit in respect of a child for a week where that person has not been in Northern Ireland for more than one hundred and eighty-two days in the fifty-two weeks preceding that week

5.—(1) Article 15(3)(b) of the Order (subject to regulations, no person to be entitled to benefit in respect of a child for any week unless that person has been in Northern Ireland for more than one hundred and eighty-two days in the fifty-two weeks preceding that week) shall have effect subject to the following provisions of this regulation and to the provisions of Parts II and III of these regulations.

(2) The said Article 15(3)(b) shall not operate to disentitle a person to benefit in respect of a child for any week if—

- (a) in that week that person is in fact in Northern Ireland and responsible for a child within the meaning of Article 5(1) of the Order, being a child who satisfies or is to be regarded as satisfying the requirements of Article 15(2)(a) and (b) of the Order; or

(b) that week begins in a period of one hundred and eighty-three consecutive days throughout which (disregarding up to twenty-eight days of temporary absence from Northern Ireland, whether consecutive or not) that person is likely to be in Northern Ireland; and before that week but within that period that person, while in Northern Ireland, has been an employed earner (not being an employed earner in relation to whom primary Class 1 contributions are not payable by reason of regulation 105(2) or (3) of the Social Security (Contributions) Regulations (Northern Ireland) 1975(c) (primary and secondary Class 1 contributions not payable in relation to certain persons who are ordinarily neither resident nor employed in the United Kingdom)) or a self-employed earner (not being a self-employed earner who is not liable to pay Class 2 contributions by reason of regulation 105(1)(d) of those regulations (liability of a person to pay contributions as a self-employed earner related to that person's being ordinarily resident, or resident for a certain time, in Northern Ireland));

or

(c) in that week that person is in fact in Northern Ireland and residing with his spouse who satisfies or is to be regarded as satisfying the requirements in the said Article 15(3)(b); or

(d) in that week that person is in fact in Northern Ireland; and that week begins in a period of one hundred and eighty-three consecutive days throughout which (disregarding up to twenty-eight days of temporary absence from Northern Ireland whether consecutive or not) that person is likely to be in Northern Ireland; and for a week not more than one hundred and fifty-six weeks before that week—

(i) that person was entitled to benefit in respect of a child; or

(ii) that person's spouse (if any) was so entitled and when so entitled, or in that week, was residing with that person.

(3) The expressions "employed earner", "self-employed earner", "primary Class 1 contributions" and "Class 2 contributions" used in paragraph (2)(b) shall have the same meanings as the corresponding expressions in the Social Security Act; and if a question arises as to whether a person has been such an employed earner or such a self-employed earner as is referred to in that paragraph that question shall be determined by the Department as if it were a question arising under that Act.

(4) For the purposes of the said Article 15(3)(b) a week in which under the provisions of regulation 4 a person is to be regarded as satisfying the requirement in Article 15(3)(a) and any week for which a person is entitled to benefit in respect of a child shall be treated as a week in which that person is in Northern Ireland.

PART II

ADDITIONAL PROVISIONS APPLICABLE TO CERTAIN CATEGORIES OF PERSONS WHO ARE OR HAVE BEEN OUTSIDE NORTHERN IRELAND

Persons to whom this Part applies

6.—(1) The persons to whom this Part applies are—

(a) a civil servant, that is to say a person whose employment is by or under the Crown other than a person who is—

(c) S.R. 1975 No. 319

- (i) a serving member of the forces; or
- (ii) a person who entered or was recruited for such employment outside the United Kingdom for service outside the United Kingdom, unless he entered or was recruited for such service immediately following a period during which he was a serving member of the forces;
- (b) a serving member of the forces within the meaning of the definition of "serving member of the forces" in regulation 1(2) of the Social Security (Contributions) Regulations 1975(d);
- (c) a person who on any day falling within or week beginning in a tax year is temporarily absent from Northern Ireland by reason only of the fact that he is in employment (whether under a contract of service or not) outside Northern Ireland, being a tax year in relation to which that person proves that at least half of his earnings or other emoluments from that employment are liable to United Kingdom income tax;
- (d) a spouse of a person mentioned in sub-paragraphs (a) to (c) who is residing with that person;
- (e) a person living with such a person as is mentioned in sub-paragraphs (a) to (c) as if he were the spouse of the last mentioned person and who was so living when both of them were last in Northern Ireland.

(2) In paragraph (1)(c), "tax year" means the twelve months beginning with 6th April in any year.

Modification of certain provisions of Part II of the Order in relation to persons absent from Northern Ireland to whom regulation 6 applies

7.—(1) Any day on which or week in which such a person as is mentioned in regulation 6 is absent from Northern Ireland by reason only of his being such a person as is mentioned in that regulation shall in relation to benefit be treated for the purposes of Article 15(2)(b) and (3) of the Order as a day on which or week in which he is present in Northern Ireland.

(2) Any week in which or day on which a child is absent from Northern Ireland shall in relation to benefit be treated for the purposes of Article 15(2) of the Order as a week in which or day on which that child is in Northern Ireland if in that week or on that day that child is living with a person in relation to whom paragraph (1) applies and that person is—

- (a) a parent of that child; or
- (b) a person who before that week was entitled to benefit in respect of that child.

(3) Unless in its discretion the Department otherwise determines in any case or class of cases, any day of absence from one another of a child and a person, being a day on which paragraph (1) applies to that person, shall, if that absence is due solely to that person being one to whom that paragraph applies, be a day which shall be disregarded under the provisions of Article 5(2) of the Order (circumstances in which a person who has had a child living with him at some time before a particular week is to be treated for the purposes of Article 5 of the Order as having that child living with him in that week notwithstanding their absence from one another).

Interim payments to persons to whom regulation 6 applies who are absent from Northern Ireland

8.—(1) Where a person to whom regulation 6 applies and who is in fact absent from Northern Ireland makes a claim to benefit in respect of a child, the Department may make arrangements whereby pending the determination of that claim interim payments on account of benefit are made pursuant to it in respect of that child.

(2) Interim payments made under paragraph (1) shall be deemed to be payments of benefit for the purposes of the Order and regulations made under it or provisions applied to it; and if in determining a claim pending the determination of which interim payments have been made the determining authority decides that those payments were not properly payable—

(a) section 119(1) and (2) of the Social Security Act as modified by regulation 20 of the Child Benefit (Determination of Claims and Questions) Regulations (Northern Ireland) 1976(e) shall apply as it applies to a decision which is reversed or varied on appeal or is revised on a review; and

(b) repayment of an overpayment shall not be required from any person unless the determining authority is satisfied that that person has not throughout used due care and diligence to avoid overpayment.

(3) In paragraph (2) “determining authority” means, as the case may require, an insurance officer, a local tribunal, a National Insurance Commissioner or a Tribunal of 2 or 3 National Insurance Commissioners constituted in accordance with regulation 5(4) of the Child Benefit (Determination of Claims and Questions) Regulations (Northern Ireland) 1976.

PART III

TRANSITIONAL PROVISIONS

Modification of the Order to take account of reciprocal agreements relating to family allowances under the Family Allowances Acts (Northern Ireland) 1966 to 1975

9. Without prejudice to any other provision of these regulations, Part II of the Order shall have effect as if the provisions relating to family allowances under the Family Allowances Acts (Northern Ireland) 1966 to 1975 contained in agreements set out in the Schedules to the Orders in Council or orders specified in the Schedule to these regulations applied (with the necessary modifications) to benefit.

Transitional provision relating to the operation of regulations 2 to 5 and 7(2)(b)

10. Where under the provisions of regulations 2 to 5 and 7(2)(b) the question whether a requirement in Article 15(2) or (3) of the Order is to be regarded as satisfied in any week is dependent upon an earlier week requirement, that is to say a requirement that a person was entitled to benefit or could have satisfied the requirements for entitlement to benefit in a week earlier than that week, then if that person could have satisfied the earlier week requirement had the relevant provisions of the Order and of regulations been in force during the period within which that requirement has to be satisfied, it shall be deemed to have been satisfied.

Transitional provision relating to certain persons to whom regulation 6 applies

11.—(1) If in the transitional period, that is to say the period beginning with 8th August 1976 and ending immediately before the appointed day—

(a) an allowance in respect of a child is payable to a civil servant as defined in regulation 6(1)(a) by his employing department or to a serving member of the forces as defined in regulation 6(1)(b) by the Ministry of Defence; and

(b) the Department of Health and Social Services is satisfied that that allowance is likely to be payable to the said civil servant or serving member of the forces immediately before the appointed day,

then if the Department in its discretion so determines, the said civil servant or serving member of the forces, or if he has residing with him such a person as is described in regulation 6(1)(d) or living with him such a person as is described in regulation 6(1)(e) that person, shall be treated as having made a claim to benefit in respect of that child.

(2) Where under paragraph (1) a person is treated as having claimed benefit in respect of a child, then unless before the appointed day the Department in accordance with Article 9(3) of the Order reconsiders the exercise of its discretion and decides that that person shall not be treated as having claimed benefit in respect of that child, that person shall be treated as having been awarded benefit in respect of that child for a period beginning with the appointed day by a decision given on the date on which the Department determines that that person is to be treated as having claimed benefit in respect of that child.

(3) A decision under paragraph (2) awarding a person benefit shall be subject to the condition that the requirements for entitlement to benefit are satisfied on the appointed day and if those requirements are not so satisfied that decision may be reviewed.

(4) This regulation shall not apply to an increase as defined in regulation 1(2) of the Child Benefit (Claims and Payments) Regulations (Northern Ireland) 1976(f).

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 3rd August 1976.

(L.S.)

C. G. Oakes

Senior Assistant Secretary

SCHEDULE

Regulation 9

Provisions of reciprocal agreements relating to family allowances under the Family Allowances Acts (Northern Ireland) 1966 to 1975 applied to benefit

The Family Allowances and National Insurance (Reciprocal Agreement with Australia) Order (Northern Ireland) 1962, S.R. & O. (N.I.) 1962 No. 218 (p. 908)

The Family Allowances, National Insurance and Industrial Injuries (Austria) Order (Northern Ireland) 1972, S.R. & O. (N.I.) 1972 No. 321 (p. 1606)

The Family Allowances, National Insurance and Industrial Injuries (Reciprocal Agreement with Belgium) Order (Northern Ireland) 1958, S.R. & O. (N.I.) 1958 No. 93 (p. 217)

The Family Allowances and National Insurance (Canada) Order (Northern Ireland) 1960, S.R. & O. (N.I.) 1960 No. 15 (p. 40)

The Family Allowances, National Insurance and Industrial Injuries (Reciprocal Agreement with Germany) Order (Northern Ireland) 1961, S.R. & O. (N.I.) 1961 No. 148 (p. 567)

The Family Allowances, National Insurance and Industrial Injuries (Gibraltar) Order (Northern Ireland) 1974, S.R. 1974 No. 153

The Family Allowances and National Insurance (New Zealand) Order (Northern Ireland) 1970, S.R. & O. (N.I.) 1970 No. 21 (p. 143)

The Family Allowances, National Insurance and Industrial Injuries (Spain) Order (Northern Ireland) 1975, S.R. 1975 No. 77

The Family Allowances, National Insurance and Industrial Injuries (Switzerland) Order (Northern Ireland) 1969, S.R. & O. (N.I.) 1969 No. 143 (p. 517)

The Family Allowances, National Insurance and Industrial Injuries (Reciprocal Agreement with Yugoslavia) Order (Northern Ireland) 1958, S.R. & O. (N.I.) 1958 No. 151 (p. 259)

EXPLANATORY NOTE

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

These regulations contain provisions relating to child benefit under the Child Benefit (Northern Ireland) Order 1975 in the case of persons who are or have been outside Northern Ireland.

Part I of the regulations contains general provisions relaxing the requirements as to presence in Northern Ireland set out in Article 15(2) and (3) of the Order; Part II contains additional relaxing provisions applicable to certain specified categories of persons; and Part III contains transitional provisions one of which (regulation 9) applies to child benefit the provisions of reciprocal agreements relating to the Family Allowances Acts (Northern Ireland) 1966 to 1975 set out in the Schedule to the regulations.

The appointed day, the day on which child benefit first becomes payable, is Monday 4th April 1977 (see the Child Benefit (1975 Order) (Commencement No. 2) Order (Northern Ireland) 1976 (S.R. 1976 No. 221 (C. 12))).