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STATUTORY RULES OF NORTHERN IRELAND

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**1994 No. 485**

**The Social Security (Incapacity Benefit — Increases for Dependants) Regulations (Northern Ireland) 1994**

**PART II**

**CHILD DEPENDANTS**

**Circumstances in which a person not entitled to child benefit is to be treated as if so entitled**

6.—(1) For the purposes of section 80 of the Contribution and Benefits Act<sup>(1)</sup>, in so far as they relate to incapacity benefited a person shall be treated as if he were entitled to child benefit in respect of a child for any period throughout which—

- (a) child benefit has been awarded to a parent of that child with whom that child is living and with whom that person is residing and either—
  - (i) the child is being wholly or mainly maintained by that person, or
  - (ii) that person is also a parent of the child; or
- (b) he, or his spouse with whom he is residing, would have been entitled to child benefit in respect of that child had the child been born at the end of the week immediately preceding the week in which the birth occurred.

(2) Where for any period a person who is in Northern Ireland could have been entitled to receive payment of an amount by way of an increase of incapacity benefit in respect of a child but for the fact that, in pursuance of any agreement with the government of a country outside the United Kingdom, he, or his spouse who is residing with him, is entitled in respect of the child in question to the family benefits of that country and is not entitled to child benefit, he shall for the purposes of entitlement to the said payment be treated as if he were entitled to child benefit for the period in question.

(3) For the purposes of paragraph (1)—

- (a) “week” means a period of 7 days beginning with a Monday; and
- (b) a child shall not be regarded as living with a person unless he can be so regarded for the purposes of section 139 of the Contributions and Benefits Act (meaning of “person responsible for child”).

**Circumstances in which a person entitled to child benefit is to be treated as if not so entitled**

7.—(1) For the purposes of section 80 of the Contributions and Benefits Act, in so far as they relate to incapacity, benefit, a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for—

- (a) any period throughout which—

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(1) Section 80(2) is amended by Article 4(3) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 with effect from 6th April 1995

- (i) that person, not being a parent of the child, does not fall to be treated as responsible for the child under section 139 of that Act, and
- (ii) a parent of that child falls to be treated as responsible for the child under that section;
- (b) any period throughout which—
  - (i) that person, not being a parent of the child, falls to be treated as responsible for the child under section 139 of that Act, and
  - (ii) a parent of that child also falls to be treated as responsible for the child under that section; or
- (c) any day following the day on which that child died.

(2) Paragraph (1)(b) shall not apply in the case of a person who is wholly or mainly maintaining the child referred to in that sub-paragraph.

(3) For the purposes of section 80 of the Contributions and Benefits Act a person who is entitled to child benefit in respect of a child shall be treated as not so entitled for any period for which that benefit is not payable by virtue of any of the provisions of regulations 7 (circumstances in which a person who has ceased to receive full-time education is to continue to be treated as a child), 8, (exclusion from benefit of children aged sixteen but, under the age of nineteen who are receiving advanced education), 9 (child receiving training under the youth training programme) or 9A (child receiving income support) of the Child Benefit (General) Regulations (Northern Ireland) 1979(2) or any provision contained in regulations made under section 140(1) of that Act (exclusions and priority) in so far as those regulations provide that child benefit is not to be payable by virtue of section 138(1)(b) of that Act (meaning of “child”) and regulations made under that paragraph.)

### **Contribution towards cost of providing for child**

**8.—**(1) Where, apart from section 81(1) of the Contributions and Benefits Act, a person is entitled to receive, in respect of a of a particular child, an increase of incapacity benefit under any of the provisions of section 80 of that Act for any period, and neither of the conditions set out in paragraph (2) is satisfied, that person shall, for the purposes of section 81(2) of that Act, be deemed as respects that period to be making the contributions so required at a weekly rate not less than that required by that section if—

- (a) he gives an undertaking in writing to make such contributions; and
- (b) on receiving the amount of the benefit or increase in question, he in fact makes such contributions.

(2) The conditions referred to in paragraph (1) are—

- (a) that the person would be treated for the purposes of Part IX of the Contributions and Benefits Act as having the child living with him; or
- (b) that contributions are being made to the cost of providing for the child at a rate equal to the amount of the relevant increase of benefit.

(3) Where, in respect of any period, a person fails to make contributions which he has undertaken to make in accordance with paragraph (1), the decision awarding the increase for that period in respect of the child shall be revised.

(4) Except in a case to which applies either—

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(2) S.R. 1979 No. 5; relevant amending regulations are S.R. 1980 No. 261, S.R. 1982 No. 114, S.R. 1987 No. 130 and S.R. 1988 Nos. 132 and 273

- (a) regulation 15 of the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978<sup>(3)</sup> (modification of the Act in relation to title to benefit for beneficiary's child dependents); or
- (b) any regulations made under Article 6(10) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994<sup>(4)</sup> (power to provide for the transition to incapacity benefit) which provides, subject to the regulations, for regulation 18 of the Social Security Benefit (Dependency) Regulations (Northern Ireland) 1977<sup>(5)</sup> (preservation of entitlement to benefit in payment before 4th April 1977 for a child dependent), to have effect,

section 81(2)(b) of the Contributions and Benefits Act shall not apply in a case where neither the beneficiary nor his spouse (if he has a spouse and she is residing with him) is in fact entitled to child benefit in respect of the child in question.

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<sup>(3)</sup> S.R. 1978 No. 114; relevant amending regulations are S.R. 1983 No. 36, S.R. 1984 No. 317, S.R. 1986 No. 303 and S.R. 1994 Nos. 45 and 269

<sup>(4)</sup> S.I.1994/1898 (N.I. 12)

<sup>(5)</sup> S.R. 1977 No. 74; relevant amending regulations are S.R. 1980 No. 216, S.R. 1983 Nos. 36 and 193, S.R. 1984 Nos. 373, 377 and 382, S.R. 1985 No. 229, S.R. 1987 No. 129, S.R. 1989 No. 373 and S.R. 1992 No. 521