

1975 No. 103

SOCIAL SECURITY

The Social Security Benefit (Persons Abroad) Regulations
(Northern Ireland) 1975

Made 4th April 1975

Coming into operation 6th April 1975

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 21(3), 30(3), 32(5), 82(5), 114(1) and 126 of the Social Security (Northern Ireland) Act 1975(a) and section 2 of, and paragraph 3 of Schedule 3 to the Social Security (Consequential Provisions) Act 1975(b), and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1975 and shall come into operation on 6th April 1975.

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

“the Act” means the Social Security (Northern Ireland) Act 1975;

“the Contributions Regulations” means the Social Security (Contributions) Regulations 1975(c);

“the former principal Act” means the National Insurance Act (Northern Ireland) 1966(d);

“her husband” in the case of a woman who has been married more than once, refers to the husband by virtue of whose contributions she is entitled to the benefit in question;

“retired” means retired from regular employment;

“the Special Provisions Regulations” means the Social Security (Benefit) (Married Women and Widows Special Provisions) (Northern Ireland) Regulations 1975(e) as amended by the Social Security (Benefit) (Married Women and Widows) (Amendments and Transitional Provisions) Regulations (Northern Ireland) 1975(f);

“the Widow’s Benefit and Retirement Pensions Regulations” means the Social Security (Widow’s Benefit and Retirement Pensions) (Northern Ireland) Regulations 1975(g);

“widow’s benefit” and “widow’s pension” include benefit under section 39(4) of the Act corresponding to a widow’s pension or a widowed mother’s allowance;

and other expressions have the same meanings as in the Act.

(a) 1975 c. 15

(b) 1975 c. 18

(c) S.I. 1975/492

(d) 1966 c. 6 (N.I.)

(e) S.R. 1975 No. 19

(f) S.R. 1975 No. 93

(g) S.R. 1975 No. 12

(3) Any reference in these regulations to any provision made by or contained in any enactment or instrument shall, except in so far as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument, and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(h) shall apply for the purposes of the interpretation of this statutory rule as they apply for the purposes of the interpretation of an Act of Parliament.

Modifications of the Act in relation to sickness benefit, invalidity benefit, unemployment supplement and maternity allowance

2.—(1) A person shall not be disqualified for receiving sickness benefit, invalidity benefit, an unemployment supplement or a maternity allowance by reason of being temporarily absent from Northern Ireland for any day if—

- (a) it is reasonable in all the circumstances of the case, having regard in particular, but not exclusively, to the nature of the person's incapacity and to his location, that, subject to the satisfaction of one of the conditions in sub-paragraphs (b) and (c) below, the disqualification under section 82(5)(a) of the Act should not apply, and either—
- (b) the absence is for the specific purpose of being treated for incapacity which commenced before he left Northern Ireland, or
- (c) on the day on which the absence began he was, and had for the past 6 months continuously been, incapable of work and on the day for which benefit is claimed he has remained continuously so incapable since the absence began.

(2) Notwithstanding section 114(3) of the Act any question as to the satisfaction of the condition in paragraph (1)(a) of this regulation shall be determined by the Department.

(3) A person shall not be disqualified for receiving invalidity benefit by reason of being absent from Northern Ireland if by virtue of an Order in Council made under section 99 of the former principal Act he would not be disqualified for receiving sickness benefit.

(4) A person who is or has been outside Northern Ireland and who by virtue of an Order in Council made under section 134 of the Act or under section 99 of the former principal Act would, but for the provisions of section 15 of the Act, have been entitled to sickness benefit in respect of any period, shall be entitled to invalidity pension for that period.

Modifications of the Act in relation to title to maternity grant

3.—(1) Subject to the provisions of this regulation, a woman shall not be disentitled to a maternity grant by reason of the fact that on the date of the confinement she is outside Northern Ireland, if either—

- (a) in respect of the last complete tax year before the relevant time the relevant person has an earnings factor derived from contributions, either paid or credited, of a relevant class which is not less than that year's lower earnings limit multiplied by 50; or
- (b) at the date of the confinement her husband is a serving member of the forces, as defined in regulation 1(2) of the Contributions Regulations, other than either—

- (i) a member of any territorial or reserve force mentioned in Part I of Schedule 5 to those regulations who is not undergoing training or instruction as such a member for a continuous period exceeding 72 consecutive hours, or
- (ii) a member of the Ulster Defence Regiment who is neither serving also as a member of any of the regular naval, military or air forces of the Crown, nor on the full-time permanent staff of that regiment, nor serving or undergoing training or instruction in that regiment for a continuous period exceeding 72 consecutive hours;

and any such woman shall, in addition, not be disqualified for receiving a maternity grant by reason of her being absent from Northern Ireland.

(2) For the purpose of paragraph (1)(a) the expression "relevant person" means the person by whom the contribution conditions are to be satisfied; and the expression "relevant time" means the date of the confinement, or where the relevant person is the husband and he was over pensionable age or dead on that date, the date of his attaining pensionable age or dying under that age.

(3) The provisions of paragraph (1)(a) shall not apply—

- (a) to a maternity grant payable to a woman by virtue only of her husband's contributions unless at the time of the confinement she is residing with her husband, or, if he is dead, unless she was residing with him at the time of his death; or
- (b) to a maternity grant in respect of expectation of a woman's confinement.

Modification of the Act in relation to widow's benefit, child's special allowance, guardian's allowance and retirement pension

4.—(1) Subject to the provisions of this regulation and of regulation 5 below, a person shall not be disqualified for receiving widow's benefit, a child's special allowance, a guardian's allowance or a retirement pension of any category by reason of being absent from Northern Ireland.

(2) In the case of a widow's allowance paragraph (1) above shall apply only where either—

- (a) the woman or her late husband was in Northern Ireland at the time of his death; or
- (b) the contribution conditions for widowed mother's allowance and widow's pension set out in paragraph 5 of Schedule 3 to the Act or in regulation 9 of the Special Provisions Regulations are satisfied in relation to the woman.

Application of disqualification in respect of up-rating of benefit

5.—(1) Where regulations made in consequence of an order under section 120 of the Act (up-rating of benefits) provide for the application of this regulation to any additional benefit becoming payable by virtue of that order, the following provisions of this regulation shall, subject to regulation 11 below and the provisions of those regulations, have effect in relation to the entitlement to that benefit of persons absent from Northern Ireland.

(2) In this regulation—

(a) references to additional benefit of any description are to be construed as referring to additional benefit of that description which is, or but for this regulation would be, payable by virtue (either directly or indirectly) of the said order; and

(b) “the appointed date” means the date appointed for the coming into force of the said order.

(3) Where a person is not ordinarily resident in Northern Ireland immediately before the appointed date the provisions of these regulations (except this regulation) shall not, unless and until he becomes ordinarily resident in Northern Ireland, affect his disqualification while he is absent from Northern Ireland for receiving—

(a) in the case of a woman who immediately before the appointed date was a married woman and had not retired, any additional Category B retirement pension, if immediately before that date her husband had retired and was not ordinarily resident in Northern Ireland;

(b) in the case of a woman who immediately before the appointed date is a widow, any additional Category B retirement pension, if her husband had died before the appointed date;

(c) in any other case, any additional retirement pension of any category, if that person had retired or had otherwise become entitled to a retirement pension before the appointed date;

(d) any additional widow’s benefit if her husband had retired or died before the appointed date;

(e) any additional child’s special allowance if her former husband had died before the appointed date.

(4) If immediately before the appointed date a person is not ordinarily resident in Northern Ireland but then has, or would, but for the absence of any child from Northern Ireland, have in his family a child in relation to whom the conditions for guardian’s allowance specified in section 38 of the Act are satisfied, the provisions of these regulations shall not affect the disqualification while absent from Northern Ireland of that person, or any other person for receiving any additional guardian’s allowance in respect of that child unless and until the child becomes (or is) included in the family of a person who is ordinarily resident in Northern Ireland.

(5) The provisions of these regulations shall not affect the disqualification while absent from Northern Ireland of a widow who—

(a) is not ordinarily resident in Northern Ireland immediately before the appointed date, and was entitled to widow’s benefit immediately before attaining pensionable age, or would, but for any provision of the Act disqualifying her for the receipt of such benefit, have been so entitled; and

(b) is or becomes entitled to a Category A retirement pension the right to which is determined by taking into account under section 28(3) of the Act her husband’s contributions;

for receiving any additional Category A retirement pension the right to which is so determined unless and until she becomes ordinarily resident in Northern Ireland if—

(i) before the appointed date her husband had retired from regular employment and was not ordinarily resident in Northern Ireland; or

(ii) he died before the appointed date.

(6) Paragraph (3)(c) of this regulation shall not apply to a woman in relation to a Category B retirement pension if her husband had not retired before the appointed date and either—

- (i) he was her husband immediately before that date; or
- (ii) she married him on or after that date.

(7) Notwithstanding that in regulations made under section 33 of the Act (partial satisfaction of contribution conditions) the reduced rate of benefit is shown as a percentage of the standard rate, a person who immediately before the appointed date is not ordinarily resident in Northern Ireland shall, while absent from Northern Ireland, receive benefit at the same rate as previously, that is to say, the amount appropriate to that person when he was last ordinarily resident in Northern Ireland, or when he became entitled to the benefit in question, if later.

Modification of right to elect to be treated as not having retired

6. Notwithstanding the provisions of regulation 2 of the Widow's Benefit and Retirement Pensions Regulations (election to be treated as not having retired) a person who is not ordinarily resident in Northern Ireland shall not be entitled to elect that that regulation shall apply in his case.

Modification of the Act in relation to death grant

7.—(1) A person shall not be disqualified for receiving a death grant in respect of a death occurring outside Northern Ireland if the deceased—

- (a) immediately before death was, or but for any failure to make a claim would have been, entitled to any benefit under the Act; or
- (b) was a woman who died as a result of confinement and who would, if she had not died, have been entitled to maternity benefit in respect of that confinement; or
- (c) immediately before death would have been entitled to a retirement pension of any category had he then retired and made the necessary claim; or
- (d) immediately before death was a child in respect of whom a child's special allowance or a guardian's allowance was payable; or
- (e) was a widow who was, immediately before her death, entitled to any personal death benefit by way of pension or allowance in respect of the death of her husband under any Personal Injuries Scheme, any Service Pensions Instrument or any 1914-1918 War Injuries Scheme within the meaning of the Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1975(i); or
- (f) immediately before death was a serving member of the forces within the meaning of regulation 1(2) of the Contributions Regulations; or
- (g) was immediately before death employed either as an airman within the meaning of regulation 71 of the Social Security (Contributions) (Northern Ireland) Regulations 1974(j), as amended(k), or as a mariner within the meaning of regulation 75 of those regulations, other than an airman or a mariner by or in respect of whom no contributions under the Act were payable by virtue of the provisions of those regulations;

(i) S.R. 1975 No. 94

(j) S.R. 1974 No. 234

(k) The relevant amending regulation is S.R. 1975 No. 56

or

- (h) immediately before death was liable or, as the case may be, entitled to pay contributions under the Act and in either of the last two complete tax years before his death he had an earnings factor derived from contributions, either paid or credited, of a relevant class which was not less than 25 times the lower earnings limit; or
- (i) immediately before death was the husband, wife or child (to whom the provisions of section 32(2) of the Act are applicable) of a person who, had he then died, would have satisfied the conditions in any one of the foregoing paragraphs, and such husband or wife or child, as the case may be, was then resident with that person, and for this purpose the expression "child of the family" contained in the said section 32(2) shall be deemed to include a child who would be included in that expression but for the provisions of section 19(3) of the Family Allowances Act (Northern Ireland) 1966(1) (condition of a child's being included in a family that the child is in Northern Ireland); or
- (j) that the deceased immediately before death was ordinarily resident in Northern Ireland, and the death occurred within a period of 13 weeks from the date when he last left Northern Ireland.

(2) A person shall not be disqualified for receiving death grant by reason of being absent from Northern Ireland.

Modification of the Act in relation to age addition

8.—(1) A person shall not be disqualified for receiving age addition by reason of being absent from Northern Ireland if—

- (a) he is ordinarily resident in Northern Ireland; or
- (b) he was ordinarily resident in Northern Ireland and was entitled to age addition before he ceased to be ordinarily so resident; or
- (c) in the case of a person who ceased to be ordinarily resident in Northern Ireland before 20th September 1971, he is entitled to a retirement pension of any category and, by virtue of an Order in Council made under section 134 of the Act or under section 99 of the former principal Act, he is not disqualified for receiving that pension at a higher rate than was applicable in his case when he was last ordinarily resident in Northern Ireland; or
- (d) in the case of a person who ceased to be ordinarily resident in Northern Ireland on or after 20th September 1971, he is entitled to a retirement pension of any category, and had he ceased to be ordinarily resident in Northern Ireland before that date, by virtue of an Order in Council made under section 134 of the Act or under section 99 of the former principal Act, he would not have been disqualified for receiving that pension at a higher rate after that date than before it.

(2) Where a person is entitled to a retirement pension of any category at a rate which is calculated by reference to any period completed by that person in some territory outside Northern Ireland, any age addition to which he may be entitled shall be calculated as if it were an increase in that pension.

Modification of the Act in relation to title to injury benefit and disablement benefit and industrial death benefit

9.—(1) A person shall not be disqualified for receiving injury benefit by reason of being temporarily absent from Northern Ireland for any day if—

(1) 1966 c. 8 (N.I.)

- (a) it is reasonable in all the circumstances of the case, having regard in particular, but not exclusively, to the nature of the injury and to the person's location, that, subject to the satisfaction of the condition in sub-paragraph (b) below, the disqualification under section 82(5)(a) of the Act should not apply, and
- (b) the absence is for the specific purpose of receiving treatment which is appropriate to the relevant injury.

(2) Notwithstanding section 114(3) of the Act any question as to the satisfaction of the condition in paragraph (1)(a) of this regulation shall be determined by the Department.

(3) A person shall not be disqualified for receiving disablement benefit (other than any increase thereof under sections 58 to 63 or 66 of the Act) by reason of being absent from Northern Ireland.

(4) A person shall not be disqualified for receiving an increase of disablement pension in respect of the need for constant attendance under section 61, or under regulations made under section 150(3), or in respect of exceptionally severe disablement under section 63, of the Act, by reason of being temporarily absent from Northern Ireland during the period of 6 months from the date on which such absence commences or during such longer period as the Department may, having regard to the purpose of the absence and any other factors which appear to it to be relevant, allow.

(5) A person shall not be disqualified for receiving an increase of disablement pension in respect of special hardship under section 60 of the Act by reason of being temporarily absent from Northern Ireland during the period of 3 months from the date on which such absence commences or during such longer period as the Department may, having regard to the purpose of the absence and any other factors which appear to it to be relevant, allow, so however that—

- (a) such absence or any part thereof is not for the purpose of or in connection with any employment, trade or business;
- (b) a claim as a result of which a decision is given awarding such increase in respect of such period of absence or part thereof was made before the commencement of such absence; and
- (c) the period taken into account by the award of such increase to that person either includes the day of commencement of such absence or follows a period so taken into account which includes that day without there being a break in entitlement by that person to such increase from that day.

(6) A person shall not be disqualified for receiving industrial death benefit by reason of being absent from Northern Ireland.

Modification of the Act in relation to attendance allowance

10. A person shall not be disqualified for receiving attendance allowance by reason of being absent from Northern Ireland.

Modification of the Act in relation to the Channel Islands

11.—(1) Notwithstanding any provision of the Act or of these regulations a person shall not—

- (a) be disqualified for receiving any benefit under the Act by reason of absence from Northern Ireland (other than unemployment benefit);

(b) be disentitled to a maternity grant in respect of a confinement outside Northern Ireland; or

(c) be disqualified for receiving a death grant in respect of a death occurring outside Northern Ireland,

if that person is, or, as the case may be, that confinement or that death occurred, in any part of the Channel Islands which is not subject to an order made under section 134 of the Act or section 99 of the former principal Act.

(2) A person who—

(a)(i) is in any part of the Channel Islands which is not the subject of an order made under section 134 of the Act or section 79 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(m), or

(ii) is going from (or to) Northern Ireland to (or from) such a part of the Channel Islands; and who—

(b) suffers an industrial accident in the course of his employment (being employed earner's employment by virtue of regulation 89 of the Social Security (Contributions) (Northern Ireland) Regulations 1974 as amended),

shall, subject to the provisions of section 51 of the Act, be treated as if the employment were employed earner's employment for the purposes of industrial injuries and as if the accident occurred in Northern Ireland.

Modification of the Act in relation to a dependant

12. A husband or wife shall not be disqualified for receiving any increase (where payable) of benefit in respect of his or her spouse by reason of the spouse being absent from Northern Ireland, provided that the spouse is residing with the husband or wife, as the case may be.

Administrative arrangements about payment of benefits

13. Where the right to benefit arises by virtue of these regulations the benefit shall be payable subject to the furnishing of such information and evidence as the Department may from time to time require; and the Department shall make arrangements as to the time and manner of payment which shall have effect in place of the provisions as to time and manner of payment which would have been applicable by virtue of other regulations made under the Act if the person concerned had not been absent from Northern Ireland.

Transitional provisions

14.—(1) If, on 5th April 1975, a person, by virtue of any regulation having comparable effect to any provision of these regulations, and which ceases to be in force on 6th April 1975, is not disentitled to or not disqualified for receiving any benefit by reason of being absent from Northern Ireland, or by reason of some event occurring outside Northern Ireland, that person shall continue to be not disentitled or not disqualified, as the case may be, if—

(a) he satisfies the relevant provision of these regulations; or

(b) he would, had the relevant regulation in force on 5th April 1975 continued in force after that date, have satisfied the provisions of that regulation.

(2) In any case to which these regulations apply, the contribution conditions for the receipt of benefit shall be modified as follows:

- (a) for maternity grant in respect of a confinement occurring before 6th April 1976 the condition shall be that not less than 45 contributions under the former principal Act have been paid by or credited to the contributor concerned in the period of 12 months immediately preceding 6th April 1975;
- (b) for death grant in respect of a death occurring before 6th April 1977 the condition shall be either that specified in regulation 7(1)(h) of these regulations or that specified in regulation 6(1)(e) of the National Insurance (Death Grant) Regulations (Northern Ireland) 1973(n) so however that for the figure of 45 specified in the last mentioned regulation there shall be substituted the figure of 25.
- (3) Subject to the provisions of regulation 5, where a person was not ordinarily resident in Northern Ireland on 5th April 1975 and the rate of benefit under the former principal Act which was applicable in his case or would have been applicable had he been absent from Northern Ireland was, or if he had been entitled to such benefit would have been, reduced by virtue of the provisions of subsection (1) of section 48 of that Act or of regulations under that subsection, the rate of benefit to which he is or may be entitled under the Act shall, unless and until he becomes ordinarily resident in Northern Ireland and except during any period when he is in Northern Ireland, be reduced by the same amount.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 4th April 1975.

(L.S.)

C. G. Oakes
Assistant Secretary

EXPLANATORY NOTE

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

These regulations set out the circumstances in which the disqualification for the receipt of benefit during periods of absence from Northern Ireland may be removed. They also contain provisions relating to entitlement to benefit for a death or confinement abroad and other matters of a minor nature relative to the payment of benefit abroad.