

1983 No. 322

SOCIAL SECURITY

**The Supplementary Benefit (Equal Treatment) Regulations
(Northern Ireland) 1983**

Made 18th October 1983

Coming into operation 21st November 1983

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 3(1A), 4, 5 and 19(1) and (2) of, and paragraph 3(1) of Schedule 1 to, the Supplementary Benefits (Northern Ireland) Order 1977(a) and Article 9(1) of the Social Security (Northern Ireland) Order 1980(b) and of all other powers enabling it in that behalf, hereby makes the following regulations which correspond to provision contained in regulations made by the Secretary of State for Social Services in relation to Great Britain and which accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980(c) are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Supplementary Benefit (Equal Treatment) Regulations (Northern Ireland) 1983 and shall come into operation on 21st November 1983.

(2) In these regulations—

“the Order” means the Supplementary Benefits (Northern Ireland) Order 1977;

“Aggregation Regulations” means the Supplementary Benefit (Aggregation) Regulations (Northern Ireland) 1981(d);

“Claims and Payments Regulations” means the Supplementary Benefit (Claims and Payments) Regulations (Northern Ireland) 1981(e);

“allowance” means an allowance under Article 3(1)(b) of the Order;

“pension” means a pension under Article 3(1)(a) of the Order;

Date on which the amended versions of Article 3(1A) of, and paragraph 3(1) of Schedule 1 to, the Order are to take effect

2. The prescribed date for the purposes of Article 3(1A) of, and paragraph 3(1) of Schedule 1 to, the Order shall be 21st November 1983.

(a) S.I. 1977/2156 (N.I. 27), (other than Articles 1, 42 and Schedules 4 to 7) with certain amendments is set out in Part II of Schedule 2 to the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)); the Order is further amended by Article 6(5) of the Social Security (No. 2) (Northern Ireland) Order 1980 (S.I. 1980/1087 (N.I. 13)), Articles 4 and 5 of, and paragraphs 5 to 9 of the Schedule to, the Social Security (Northern Ireland) Order 1981 (S.I. 1981/1118 (N.I. 25)) and Articles 31 and 38 of, and paragraphs 14 to 16 in Part I of Schedule 4 to, the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16))

(b) S.I. 1980/870 (N.I. 8)

(c) 1980 c. 30

(d) S.R. 1981 No. 373 to which there is an amendment not relevant to the subject matter of these regulations

(e) S.R. 1981 No. 368; the relevant amending regulations are S.R. 1982 No. 240 and S.R. 1983 No. 290

Amendment of the Aggregation Regulations

3.—(1) The Aggregation Regulations shall be amended in accordance with the provisions of this regulation.

(2) In regulation 1(2) (interpretation) there shall be inserted in the appropriate places the following definitions—

“ “assessment unit” means the claimant and any partner and dependant of the claimant;

“dependant” means a person whose requirements and resources are by virtue of paragraph 3(2) of Schedule 1 to the Order aggregated with and treated as those of the claimant;

“partner” means one of a married or unmarried couple;

“relevant person” means a person whose requirements and resources include those of another person by virtue of paragraph 3(1) of Schedule 1 to the Order;

“social security office” includes any office or place appointed by the Department for the purpose of claiming unemployment benefit;

“unemployment benefit” means unemployment benefit under the Social Security (Northern Ireland) Act 1975(a);”.

(3) Subject to regulation 5 of these regulations, the following regulation shall be inserted in the Aggregation Regulations after regulation 1—

“Circumstances in which the requirements and resources of one partner of a married or an unmarried couple are to be aggregated with and treated as those of the other

1A.—(1) Where two persons are a married or an unmarried couple their requirements and resources shall be aggregated and treated—

- (a) if they are in receipt of benefit under the provisions of the Family Income Supplements Act (Northern Ireland) 1971(b) and only one of them was at the commencement of the award of family income supplement engaged and normally engaged in remunerative full-time work, as those of that partner;
- (b) where sub-paragraph (a) does not apply to a couple, as those of whichever of them is over pensionable age and either—
 - (i) is in receipt of a Category A retirement pension under section 28 of the Social Security (Northern Ireland) Act 1975, or
 - (ii) has retired from full-time employment on or after reaching pensionable age or within 5 years before that age,
 - or as those of whichever of them has been, except for any periods not in aggregate exceeding 3 weeks, throughout the period of 6 months immediately preceding the claim—
 - (iii) engaged in remunerative employment for at least 8 hours a week,
 - (iv) available for employment within the meaning of section 17 of the Social Security (Northern Ireland) Act 1975 and either attending at a social security office to sign a declaration as to his unemployment and availability for employment or registered for employment by virtue of registering with the Department of Economic Development,
 - (v) without employment by reason of a stoppage of work which is due to a trade dispute at his place of employment,

(a) 1975 c. 15

(b) 1971 c. 8 (N.I.)

- (vi) found to have been incapable of work for the purposes of one or more of the provisions of the Social Security (Northern Ireland) Act 1975 and the Social Security (Northern Ireland) Order 1982(a),
 - (vii) entitled to supplementary benefit but not required to be available for work by virtue only of regulation 6(c) of the Conditions of Entitlement Regulations,
 - (viii) entitled to supplementary benefit but not required to be available for work by virtue of one or more of the following provisions—
 - regulation 6(a), (b), (h) or (hh)(b) of the Conditions of Entitlement Regulations (person caring for a child, foster child, severely disabled person or others),
 - (ix) in receipt of invalid care allowance by virtue of section 37 of the Social Security (Northern Ireland) Act 1975,
 - (x) not entitled to benefit by virtue of Article 9(2) of the Order (person receiving relevant education) or regulation 8(1)(a) of the Conditions of Entitlement Regulations (person being a student except in certain cases),
 - (xi) in receipt of a training allowance within the meaning of regulation 2 of the Conditions of Entitlement Regulations or attending a course of training or instruction analogous to a course for which a training allowance would be payable,
 - (xii) a person whose requirements under the Order were nil by virtue of paragraph 6 of Schedule 2 to the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983(c) (person who is a prisoner),
 - (xiii) absent from the United Kingdom, or
 - (xiv) a person to whom any combination of the preceding conditions applied for that period.
- (2) If, in any case where sub-paragraph (a) of paragraph (1) does not apply to a couple, sub-paragraph (b) of that paragraph applies to both partners or to neither partner, their requirements and resources shall be aggregated and treated—
- (a) as those of whichever partner has been jointly nominated in writing as claimant; or
 - (b) where one partner has not been jointly nominated in accordance with sub-paragraph (a), as those of whichever partner the Department may in its discretion determine.
- (3) Where a person's requirements and resources include those of his partner by virtue of paragraph (1)(a), or would do so if a claim for a pension or an allowance were made, and his partner satisfies any of the conditions of paragraph (1)(b), the couple may jointly elect in writing to have their requirements and resources aggregated and treated as those of that partner when the receipt of family income supplement comes to an end or, if the partner who is engaged and normally engaged in remunerative full-time work leaves or intends to leave that work on account of pregnancy, at any time not more than 15 weeks before the expected week of confinement.
- (4) Where a person's requirements and resources include those of his partner other than by virtue of paragraph (1)(a) and either they are both aged not less than 60

(a) S.I. 1982/1084 (N.I. 16)

(b) This paragraph was inserted by the Supplementary Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1983 (S.R. 1983 No. 191)

(c) S.R. 1983 No. 61 to which there are amendments not relevant to the subject matter of these regulations

or the non-claiming partner satisfies any of the conditions of paragraph (1)(b), the couple may jointly elect in writing to have their requirements and resources aggregated and treated as those of the non-claiming partner—

- (a) not less than 52 weeks after the couple's requirements and resources were first aggregated for the purposes of the current claim to supplementary benefit or not less than a similar period after the last change of claimant under this paragraph, or under paragraph (3) or (5), or under regulation 5 of the Supplementary Benefit (Equal Treatment) Regulations (Northern Ireland) 1983 whichever is the later; or
- (b) where the non-claiming partner was unable to satisfy any of the conditions of paragraph (1)(b) at the date of claim but satisfies any of those conditions at the date of election; or
- (c) when there is a change in the circumstances of the assessment unit which affects the ability of either partner to satisfy the availability for work requirement under Article 7 of the Order and, in the opinion of the benefit officer, it is reasonable to allow a change of claimant to take place; or
- (d) where the claimant is subject to the availability for work requirement under Article 7 of the Order and the non-claiming partner would be, if he claimed, eligible for an allowance not subject to that requirement; or
- (e) where neither partner is or would be, if the claimant, subject to the availability for work requirement under Article 7 of the Order and there is a change in the circumstances of the assessment unit which, in the opinion of the benefit officer, makes it reasonable to allow a change of claimant to take place.

(5) Where a couple's requirements and resources are aggregated for the purposes of paragraph 3(1) of Schedule 1 to the Order and either they are both aged not less than 60 or the non-claiming partner satisfies any of the conditions of paragraph (1)(b); if there is a disagreement between them over the question in whose favour their requirements and resources should be aggregated, the Department shall in its discretion determine the question and, if it determines that their requirements and resources should be aggregated and treated as those of the non-claiming partner, a change of claimant shall take place.

(6) Where a couple make an election for a change of claimant in respect of a past period, if—

- (a) they satisfied the conditions of paragraph (3) or (4) on a date earlier than the date on which the election for a change was made, and
 - (b) throughout the period between the earlier date and the date on which the election was made, there was good cause for delay in making the election,
- it shall be treated as having been made on that earlier date."

Amendment of the Claims and Payments Regulations

4.—(1) The Claims and Payments Regulations shall be amended in accordance with the provisions of this regulation.

(2) In regulation 2(1) (interpretation) after the definition of "normal requirements", "additional requirements", and "housing requirements" there shall be inserted the following definition—

“ “partner” means one of a married or an unmarried couple;”.

(3) In regulation 4 (information to be given in connection with claims) after “of determining the claim” there shall be inserted “or of determining the question which partner of a married or an unmarried couple satisfies the conditions of regulation 1A of the Supplementary Benefit (Aggregation) Regulations (Northern Ireland) 1981”.

(4) In regulation 5(2) (time for claiming pension or allowance), the following sub-paragraph shall be inserted after sub-paragraph (a)—

“(aa) where—

- (i) the claimant is one partner of a married or an unmarried couple whose requirements and resources fall to be aggregated and treated as those of the claimant, and
- (ii) the claimant's partner had previously made an unsuccessful claim on behalf of the married or unmarried couple in respect of that period, and
- (iii) the claim by the claimant is made as soon as reasonably practicable after the decision in respect of the claim by his partner has been given, on the day on which the claim by his partner was made;”.

Transitional Provision

5.—(1) Where a couple were entitled to a pension or an allowance immediately before the coming into operation of these regulations and remain continuously so entitled, their requirements and resources shall continue to be aggregated and treated as those of the man until either the woman becomes the relevant person in relation to that couple under paragraph (2) of this regulation or regulation 1A(3), (4) or (5) of the Aggregation Regulations or the couple cease to be so entitled.

(2) In the case of a couple whose requirements and resources would, but for the fact that paragraph (1) applies to them, have been aggregated by virtue of some provision other than regulation 1A(1)(a) of the Aggregation Regulations, they may, where they are both aged not less than 60 or the non-claiming partner now satisfies any of the conditions of regulation 1A(1)(b) of those regulations, once only at any time within 6 months from the coming into operation of these regulations jointly elect to have their requirements and resources aggregated and treated as those of the non-claiming partner.

(3) Paragraph (6) of regulation 1A of the Aggregation Regulations (backdating elections for change of claimant on account of good cause) shall apply to this regulation as if, for the references to paragraph (3) or (4) of that regulation, there were substituted a reference to paragraph (2) of this regulation.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 18th October 1983.

(L.S.)

C. Davie

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

The purpose of these regulations is to implement the principle of equal treatment for men and women in the Supplementary Benefit scheme in compliance with European Community Directive 79/7/EEC (O. J. No. L6, 10.1.1979, p.24).

The regulations specify the prescribed date for the coming into operation of amendments made by the Social Security (Northern Ireland) Order 1980 to Article 3 of, and paragraph 3 of Schedule 1 to, the Supplementary Benefits (Northern Ireland) Order 1977 ("the Order") and also make certain consequential amendments to regulations made under that Order.

Regulation 2 prescribes the date from which, by virtue of Article 3 of the Order as amended, a married or an unmarried couple will be entitled to a supplementary pension when either partner reaches the age of 65. Paragraph 3 of Schedule 1 to the Order will from the prescribed date provide that a couple's requirements and resources are to be aggregated and treated as those of whichever of them satisfies prescribed conditions.

Regulation 3 amends the Supplementary Benefit (Aggregation) Regulations (Northern Ireland) 1981 ("the Aggregation Regulations") by inserting a new regulation (regulation 1A) which prescribes the conditions for aggregation. That new regulation makes the following provisions—

—if a couple are in receipt of benefit under the Family Income Supplements Act (Northern Ireland) 1971 their requirements and resources are to be treated as those of whichever of them qualified them for that benefit; if not, as those of which of them satisfies conditions set out in the regulations. These require either that a person be over pensionable age and retired with a pension or recent work record or that he or she has been able over the previous six months to show contact with the employment field or absence from it for a substantial reason—sickness, being a lone parent, looking after a sick relative, receiving education or training, being in prison, or absence from the United Kingdom (paragraph (1));

—if those conditions apply to both of the couple or neither of them, then they may make a joint decision in writing as to who is to claim and, failing such a decision, the Department may decide (paragraph (2));

—if a couple's requirements and resources are aggregated in favour of the partner who qualified them for an award of family income supplement, then application for a change of claimant may be made either when the award comes to an end or if that partner becomes pregnant (paragraph (3));

—in any other case, a couple may apply to change claimant: 52 weeks after commencement of entitlement or last change of claimant, when the non-claiming partner becomes eligible to claim, when there is a change of circumstances and the benefit officer thinks it reasonable, or when the non-claiming partner would become entitled to the long-term scale rate by virtue of regulation 7 of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983 if he or she claimed benefit (paragraph (4));

—if the couple disagree about who should be the claimant during a claim the Department may decide the question (paragraph (5));

—if there is good cause for a couple not having made an application for a change of claimant on a date earlier than it was actually made, the application may be backdated (paragraph (6)).

As a consequence of the amendment made by regulation 3, regulation 4 makes two amendments to the Supplementary Benefit (Claims and Payments) Regulations (Northern Ireland) 1981: to regulation 4 so that the Department may require information relating to the question which partner of a couple satisfies the conditions

of aggregation; and, secondly, to regulation 5 to enable a claim for benefit by one of a couple to be backdated when it is made as soon as practicable after an unsuccessful claim by the other partner.

Finally, a transitional provision is made by regulation 5 of these regulations. This enables a couple's requirements and resources to continue to be aggregated as they were before these regulations came into operation unless and until an application for change of claimant is made or they cease to be entitled. It also permits couples in receipt of benefit when the regulations come into operation to make one application to change claimant for whatever reason within six months of the coming into operation of these regulations and applies paragraph (6) (good cause for backdating) of regulation 1A of the Aggregation Regulations to the transitional provision.