

SCHEDULES

SCHEDULE 8

Article 31(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Earnings to include payments for restrictive undertakings

1. In section 3 of the principal Act (meaning of “earnings”), after subsection (1C) insert the following subsection—

“(1D) For the purposes of this section there shall be treated as remuneration derived from an employed earner’s employment any sum paid to or for the benefit of an employed earner which is chargeable to tax by virtue of section 313 of the Income and Corporation Taxes Act 1988 (taxation of consideration for certain restrictive undertakings) otherwise than by virtue of subsection (4) of that section.”.

Incapacity for work: work as councillor to be disregarded

2.—(1) In determining for the purposes of—

- (a) any provisions of the principal Act which relate to sickness benefit or invalidity benefit; or
- (b) Article 17 or 18 of the Pensions Order (invalidity pensions for widows and widowers),

whether any day is to be treated as a day of incapacity for work in relation to a person, there shall be disregarded any work which that person has undertaken, or is capable of undertaking, as a councillor.

(2) Where the amount of councillor’s allowance to which a person is entitled in respect of any week exceeds the permitted earnings limit, an amount equal to the excess shall be deducted from the amount of any incapacity benefit to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable.

(3) In determining whether a person satisfies the conditions of entitlement for an incapacity benefit, he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
- (b) would not have been so treated apart from this sub-paragraph.

(4) In determining whether a person satisfies the conditions specified in subsections (2)(b) and (3)(b) of section 36 of the principal Act (severe disablement allowance) he shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—

- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
- (b) would not have been so treated apart from this sub-paragraph.

(5) In subsection (7) of that section (regulations), after paragraph (c) insert the following paragraph—

- “(cc) may provide that, where the amount of councillor’s allowance (within the meaning of paragraph 2 of Schedule 8 to the Social Security (Northern Ireland) Order 1989) to

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which a person is entitled in respect of any week exceeds a prescribed sum, then, except in prescribed cases, an amount equal to the excess shall be deducted from the amount of any severe disablement allowance to which he is entitled in respect of that week, and only the balance remaining (if any) shall be payable; and”.

(6) In this paragraph—

“councillor” means a member of a district council;

“councillor’s allowance” means such payments for or in connection with the work which a person undertakes as a councillor as the Department may prescribe for the purposes of this paragraph; and where any such payments are made otherwise than weekly, an amount calculated or estimated in accordance with regulations shall be regarded as the weekly amount of the payments;

“incapacity benefit” means any of the following benefits—

- (a) sickness benefit;
- (b) invalidity benefit;
- (c) an invalidity pension under Article 17 or 18 of the Pensions Order;

“permitted earnings limit” means the amount specified in regulation 3(3) of the Social Security (Unemployment, Sickness and Invalidity Benefit) Regulations (Northern Ireland) 1984⁽¹⁾ (work of certain kinds to be disregarded where earnings do not exceed £28.50 per week);

“pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before the coming into operation of this paragraph.

(7) Any reference in this paragraph to the work which a person undertakes, or is capable of undertaking, as a councillor shall be taken to include a reference to any work which he undertakes, or is capable of undertaking, as a member of any body established under any statutory provision of which he is a member by virtue of his being a councillor.

Disallowance of days of unemployment by reference to termination payments

3. In section 17 of the principal Act (determination of days for which benefit is payable), after the subsection (2B) inserted by Article 12(4) insert the following subsections—

“(2C) If regulations under paragraph (a) of subsection (2) above provide that for the purposes of unemployment benefit days falling in a post-employment period are not to be treated in relation to a person as days of unemployment, then, for the purpose of determining that period, the regulations may, in particular, make provision—

- (a) for calculating or estimating the amount or value of any payment made, or goods or services provided, to or for that person by his employer;
- (b) for calculating or estimating that person’s level of earnings in the employment in question during any period or for treating him as having such a level of earnings as may be prescribed; and
- (c) for calculating or estimating the amount or value of any other sum which falls to be taken into account under the regulations.

(2D) In subsection (2C) above “post-employment period” means a period following the termination of a person’s employment and falling to be determined in accordance with the regulations by reference to the amount or value of payments made, or goods or services provided, to or for the person by his employer at the time of, or within a prescribed period before or after, the termination of the employment.”.

(1) S.R. 1984 No. 245

Certain benefits not payable for periods of entitlement before deemed date of entitlement

4.—(1) In section 25 of that Act (widowed mother’s allowance), for subsection (3) substitute the following subsections—

“(3) The widow shall not be entitled to the allowance for any period after she remarries, but, subject to that, she shall continue to be entitled to it for any period throughout which she satisfies the requirements of subsection (1)(a), (b) or (c) above.

(4) A widowed mother’s allowance shall not be payable—

- (a) for any period falling before the day on which the widow’s entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986; or
- (b) for any period during which she and a man to whom she is not married are living together as husband and wife.”.

(2) In section 26 of that Act (widow’s pension), for subsection (3) substitute the following subsections—

“(3) The widow shall not be entitled to the pension for any period after she remarries, but, subject to that, she shall continue to be entitled to it until she attains the age of 65.

(4) A widow’s pension shall not be payable—

- (a) for any period falling before the day on which the widow’s entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986;
- (b) for any period for which she is entitled to a widowed mother’s allowance; or
- (c) for any period during which she and a man to whom she is not married are living together as husband and wife.”.

(3) In section 28 of that Act (Category A retirement pension), in subsection (1) for the words following paragraph (b) substitute—

“and, subject to the provisions of this Act, he shall become so entitled on the date on which he attains pensionable age and his entitlement shall continue throughout his life”.

(4) After that subsection insert the following subsection—

“(1A) A Category A retirement pension shall not be payable in respect of any period falling before the day on which the pensioner’s entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986.”.

(5) In section 29 of that Act (Category B retirement pension), for subsection (9) substitute the following subsections—

“(9) Subject to the provisions of this Act, a woman’s entitlement to a Category B retirement pension shall commence on the day on which the conditions of entitlement become satisfied in her case and shall continue throughout her life.

(9A) A woman’s Category B retirement pension shall not be payable for any period falling before the day on which the pensioner’s entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986.”.

(6) In section 39 of that Act (Category C and D retirement pensions, etc.), for subsection (3) substitute the following subsections—

“(3) Entitlement to a Category C or Category D retirement pension shall continue throughout the pensioner’s life.

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(3A) A Category C or Category D retirement pension shall not be payable for any period falling before the day on which the pensioner's entitlement is to be regarded as commencing for that purpose by virtue of Article 52(1)(l) of the Social Security (Northern Ireland) Order 1986."

Entitlement to, and right to payment of, attendance allowance

5.—(1) Section 35 of that Act (attendance allowance) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (2), for "an attendance allowance is payable to any person" substitute "a person is entitled to an attendance allowance".

(3) In subsection (4)—

(a) for "An attendance allowance shall not be payable to a person" substitute "A person shall not be entitled to an attendance allowance"; and

(b) in paragraph (a)—

(i) for "the allowance is payable" substitute "the person to whom the claim relates is entitled to the allowance"; and

(ii) for "the person to whom the claim relates" substitute "that person".

(4) In subsection (4A), for "an attendance allowance to be paid to a person" substitute "a person to be entitled to an attendance allowance".

Severe disablement allowance: daily rates, and deduction of statutory maternity pay

6. In section 36 of that Act (severe disablement allowance), after subsection (6) (weekly rate of benefit) insert the following subsections—

"(6A) The amount of severe disablement allowance payable for any relevant day shall be 1/6th of the weekly rate referred to in subsection (6) above.

(6B) In any case where—

(a) a severe disablement allowance is payable to a woman in respect of one or more relevant days in a week; and

(b) an amount of statutory maternity pay becomes payable to her on any day in that week,

the amount of the severe disablement allowance (including any increase for a child or adult dependant under section 49(a) below) so payable shall be reduced by the amount of the statutory maternity pay, and only the balance (if any) shall be payable."

Dependency increases: fluctuating earnings

7.—(1) In section 47 of that Act (invalidity pension: dependant relative), for paragraph (a) of subsection (1) substitute the following paragraph—

"(a) for any period during which either—

(i) the pensioner and her husband are residing together and he does not have earnings at a weekly rate in excess of the amount specified in paragraph 1(a) of Part I of Schedule 4; or

(ii) they are not residing together, he does not have earnings at a weekly rate in excess of the amount specified in Schedule 4, Part IV, column (3) and she is contributing to his maintenance at a weekly rate not less than the amount so specified."

(2) After section 84 of that Act (persons maintaining dependants, etc.) insert the following section—

“Dependency increases: continuation of awards in cases of fluctuating earnings.

84A.—(1) Where a beneficiary—

- (a) has been awarded a dependency increase; but
- (b) ceases to be entitled to the increase by reason only that the weekly earnings of some other person (“the relevant earner”) exceed the amount of the increase or, as the case may be, some specified amount,

then, if and so long as the beneficiary would have continued to be entitled to the increase, disregarding any such excess of earnings, the award shall continue in force but the increase shall not be payable for any week if the earnings relevant to that week exceed the amount of the increase or, as the case may be, the specified amount.

(2) In this section—

- (a) “dependency increase” means any of the increases in benefit provided for under Chapter III of Part II of this Act or section 64 or 66 above; and
- (b) the earnings which are relevant to any week are those earnings of the relevant earner which, apart from this section, would be taken into account in determining whether the beneficiary is entitled to the increase in question for that week.”.

Necessity for claim

8. In section 154A(1) of the principal Act (claim necessary for entitlement to benefit), for paragraphs (a) and (b) substitute the following paragraphs—

- “(a) he makes a claim for it in the manner, and within the time, prescribed in relation to that benefit by regulations under Article 52 of the Social Security (Northern Ireland) Order 1986; or
- (b) he is treated, by virtue of regulations under that Article, as making a claim for it.”.

Transitional and consequential provision in regulations

9.—(1) Section 155(3) of the principal Act and section 4(1) of the Old Cases Act (both of which contain general provisions about orders and regulations) shall have effect, and be taken always to have had effect, with the substitution for the words “or supplementary” of the words “, supplementary, consequential or transitional”.

(2) In Article 84 of the 1986 Order (transitional regulations in connection with coming into operation of provisions of that Order), after paragraph (1) insert the following paragraphs—

- “(1A) Without prejudice to any other powers conferred on it, the Department—
- (a) may, for the purpose of making provision with respect to persons falling within paragraph (1B), modify or revoke any regulations made under this Article if the Department considers it necessary or expedient to do so in consequence of, or otherwise in connection with, any statutory provisions or provisions of schemes, arrangements or other instruments coming into operation after the making of this Order; and
- (b) may, for the purpose of consolidation, revoke and re-enact, with any modifications which the Department considers necessary or desirable, any regulations under this Article.

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- (1B) The persons referred to in paragraph (1A)(a) are any persons—
- (a) to whom regulations under paragraph (1) apply; or
 - (b) to whom regulations made under Part III relating to income support applied at any time before the making of the Social Security (Northern Ireland) Order 1989.”.

Restriction on first up-rating of additional pension

10. In Article 11 of the Pensions Order (increase of additional pension in Category A retirement pension), at the end add the following paragraph—

“(3A) Where a person is entitled to a Category A retirement pension with an increase under paragraph (3) in the additional pension and the circumstances are such that—

- (a) the deceased spouse to whose contributions that increase is referable died during that part of the tax year which precedes the date on which the order under Article 64 of the Social Security (Northern Ireland) Order 1986 comes into operation (“the initial up-rating order”), and
- (b) the deceased spouse’s final relevant year for the purposes of Article 8 is the tax year immediately preceding that in which the death occurred,

then, in determining the amount of the additional pension which falls to be increased by the initial up-rating order, so much of that pension as is attributable to the increase under paragraph (3) shall be disregarded.”.

Consultations about subordinate legislation

11.—(1) In section 9 of the Social Security Act 1980⁽²⁾ (the Social Security Advisory Committee), in subsection (7) (meaning of “the relevant Northern Ireland enactments”, etc.), at the end of paragraph (c) add “and Part II of the Social Security (Northern Ireland) Order 1986 and Schedule 5 to the Social Security (Northern Ireland) Order 1989”.

(2) In Article 62 of the 1986 Order (consultations about subordinate legislation), for paragraphs (5) and (6) substitute the following paragraphs—

“(5) Except to the extent that this paragraph is excluded by any statutory provision passed or made after this Order, nothing in any statutory provision shall require the reference to the Committee of any regulations contained in either—

- (a) a statutory rule made before the end of the period of 6 months beginning with the coming into operation of the statutory provision under which those regulations are made; or
- (b) a statutory rule—
 - (i) which states that it contains only regulations made by virtue of, or consequential upon, a specified statutory provision; and
 - (ii) which is made before the end of the period of 6 months beginning with the coming into operation of that specified statutory provision.

(6) In this Article “regulations” means regulations under this Order or under any other statutory provision, whenever passed or made.”.

(3) In Schedule 3 to the Social Security Act 1980, in Part II (regulations not requiring prior submission to the committee), in paragraph 15AA, for the words from “and corresponding” to the end of the paragraph substitute “or under paragraphs 1 to 5 of Schedule 4 to the Social Security (Northern Ireland) Order 1986”.

(2) 1980 c. 30

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Regulations relating to home responsibilities

12. Head (i) of Article 71(1)(a) of the Pensions Order (confirmatory, instead of negative, procedure for regulations under paragraph 5(6) of Schedule 3 to the principal Act relating to contributors who were precluded from regular employment by responsibilities at home) shall cease to have effect.

Statutory sick pay: trade disputes

13. In paragraph 7 of Schedule 1 to the 1982 Order (no disqualification for statutory sick pay by virtue of stoppage of work where employee shows he did not participate in, or have a direct interest in, the trade dispute), the words “participate in, or” shall cease to have effect.

Family credit: up-rating

14. In Article 21 of the 1986 Order (income-related benefits), in paragraph (6) (awards of family credit not to be affected by changes of circumstances), at the end add “or by any order under Article 64”.

Income support: return to work after trade dispute

15. In Article 24A of the 1986 Order (effect of person’s return to work after trade dispute), in paragraph (c) (certain sums paid by way of income support to be recoverable in the prescribed manner) for “in the prescribed manner” substitute “in accordance with the regulations”.

Personal representatives to give information about estate

16. After Article 28 of the 1986 Order insert the following Article—

“Personal representatives to give information about the estate of a deceased beneficiary

28A.—(1) The personal representatives of a person who was in receipt of income support or supplementary benefit at any time before his death shall provide the Department with such information as it may require relating to the assets and liabilities of that person’s estate.

(2) If the personal representatives fail to supply any information within 28 days of being required to do so under paragraph (1), then—

- (a) the county court may, on the application of the Department, make an order directing them to supply that information within such time as may be specified in the order; and
- (b) any such order may provide that all costs of and incidental to the application shall be borne personally by any of the personal representatives.”.

Statutory maternity pay: employers to provide information relating to claims for certain other benefits

17. In Schedule 4 to the 1986 Order (supplementary provisions relating to statutory maternity pay), after paragraph 8 insert the following paragraph—

“8A.—(1) Regulations may make provision requiring an employer in prescribed circumstances to furnish information in connection with the making of a claim by a woman who is or has been his employee for—

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- (a) a maternity allowance;
 - (b) sickness benefit;
 - (c) an invalidity pension; or
 - (d) severe disablement allowance.
- (2) Regulations under this paragraph shall prescribe—
- (a) the kind of information to be furnished in accordance with the regulations;
 - (b) the person to whom information of the prescribed kind is to be furnished; and
 - (c) the manner in which, and period within which, it is to be furnished.”.

Joint citations

18. In the following statutory provisions, for “Social Security (Northern Ireland) Acts 1975 to 1986” in each place where they occur substitute “the Social Security (Northern Ireland) Acts 1975 to 1989”—

- (a) section 5(1) of the National Insurance Measure (Northern Ireland) 1974⁽³⁾;
- (b) section 9(7) of the Social Security Act 1980⁽⁴⁾;
- (c) Article 6(5) of the Forfeiture (Northern Ireland) Order 1982⁽⁵⁾;
- (d) Article 7(1)(a) of the Social Security (Northern Ireland) Order 1985;
- (e) paragraph (b) of the definition of “the benefit Acts” in Article 2(2) of the 1986 Order.

⁽³⁾ 1974 c. 4 (N.I.)
⁽⁴⁾ 1980 c. 30
⁽⁵⁾ 1982 NI 14