1962 No. 326

FAMILY ALLOWANCES

NATIONAL INSURANCE

NATIONAL INSURANCE (INDUSTRIAL INJURIES)

The Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations, 1962

Made - - - -	*15th February*, 1962
Laid before Parliament	*22nd February*, 1962
Coming into Operation	*26th February*, 1962

The Minister of Pensions and National Insurance, in conjunction with the Treasury so far as relates to matters with regard to which the Treasury have so directed, in exercise of powers conferred by sections 43 and 47 of the National Insurance Act, 1946(a), sections 33, 52 (1) and (3) and 82 of the National Insurance (Industrial Injuries) Act, 1946(b), section 6 of the National Insurance (Industrial Injuries) Act, 1953(c), section 1 of the Family Allowances and National Insurance Act, 1959(d), and section 9 of, and paragraphs 1 (3) and 2 of the Second Schedule and paragraphs 4, 5 (2), 10 and 13 (2) of the Third Schedule to, the Family Allowances and National Insurance Act, 1961(e), and of all other powers enabling him in that behalf, hereby makes, in consequence of the said Act of 1961, the following regulations:—

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations, 1962, and shall come into operation on the 26th February, 1962.

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

" the Act " means the National Insurance Act, 1946 ;

" the Industrial Injuries Act " means the National Insurance (Industrial Injuries) Act, 1946 ;

" the Act of 1953 " means the National Insurance (Industrial Injuries) Act, 1953 ;

" the Act of 1961 " means the Family Allowances and National Insurance Act, 1961 ;

" the Family Allowances Regulations " means the Family Allowances (Determination of Claims and Questions) Regulations, 1959(f) ;

" the General Benefit Regulations " means the National Insurance (General Benefit) Regulations, 1948(g) ;

(a) 9 & 10 Geo. 6. c. 67.
(b) 9 & 10 Geo. 6. c. 62.
(c) 1 & 2 Eliz. 2. c. 43.
(d) 7 & 8 Eliz. 2. c. 18.
(e) 10 & 11 Eliz. 2. c. 6.
(f) S.I. 1959/1157 (1959 II, p. 1836).
(g) S.I. 1948/1278 (Rev. XVI, p. 179: 1948 I, p. 2626).

"the Industrial Injuries Benefit Regulations" means the National Insurance (Industrial Injuries) (Benefit) Regulations, 1948(a);

"the Claims and Payments Regulations" means the National Insurance (Industrial Injuries) (Claims and Payments) Regulations, 1948(b);

"the National Insurance Determination Regulations" means the National Insurance (Determination of Claims and Questions) Regulations, 1948(c);

"the Industrial Injuries Determination Regulations" means the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948(d);

and other expressions have the same meanings as in the Act or the Industrial Injuries Act, as the case may require.

(3) References in these regulations to any enactment or regulation shall, unless the context otherwise requires, include references to such enactment or regulation as amended or extended by or under any subsequent enactment, order or regulation.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act, 1889(e), shall apply for the purpose of the interpretation of these regulations as they apply for the purpose of the interpretation of an Act of Parliament, and as if the reference in subsection (2) of section 38 of that Act to the repeal of an enactment included a reference to the revocation of regulations.

PART II

SET-OFF OF BENEFIT

Set-off of benefit against earlier payment of dependency benefit

2.—(1) Where payment of benefit is made for any period to one person in respect of another as being a child of the family, or the wife or husband, or an adult dependant, of the first-mentioned person and under regulations made under section 30 of the Act or section 30 of the Industrial Injuries Act (which sections enable regulations to be made relating to overlapping benefits) that benefit is not payable, in whole or in part, for that period by reason of a decision, subsequent to the said payment, either—

(*a*) that the said other person is himself entitled to benefit for that period; or

(*b*) that a third person is entitled to benefit for that period in respect of the said other person in priority to the first mentioned person;

the benefit paid prior to the said decision shall be treated as properly paid for that period and any arrears of benefit payable for that period by reason of the said decision shall be reduced or withheld to the extent to which such whole or part of the benefit paid prior to the said decision is so treated as having been properly paid.

(2) For the purposes of the foregoing paragraph, "benefit" means both benefit under the Act and benefit under the Industrial Injuries Act.

(a) S.I. 1948/1372 (Rev. XVI, p. 441: 1948 I, p. 2918).
(b) S.I. 1948/1362 (Rev. XVI, p. 505: 1948 I, p. 2942).
(c) S.I. 1948/1144 (Rev. XVI, p. 331: 1948 I, p. 2720).
(d) S.I. 1948/1299 (Rev. XVI, p. 524: 1948 I, p. 2971).
(e) 52 & 53 Vict. c. 63.

PART III

FAMILY ALLOWANCES

Amendment of the Family Allowances Regulations

3.—(1) In paragraph (3) of regulation 1 of the Family Allowances Regulations there shall be inserted immediately after the definition of " the Act of 1959 " the following definition:—

" ' the Act of 1961 ' means the Family Allowances and National Insurance Act, 1961 ; ".

(2) Paragraph (1) of regulation 6 of the Family Allowances Regulations is hereby revoked.

(3) In paragraph (2) of the said regulation 6 there shall be substituted—

(*a*) for the words " under the provisions of this regulation " the words " would have been receivable (if properly paid) by either the man or the wife and which under section 9 of the Act of 1961 (which provides for the recovery of sums found by a decision on review or appeal to have been wrongly paid) " ;

(*b*) in sub-paragraph (*a*) for all the words following " repayment " the words " from the man if it is shown to the satisfaction of the insurance officer, the local tribunal or the Commissioner, as the case may be, that in relation to the obtaining and receipt of the sum in question he, or any person acting for him, did not throughout use due care and diligence to avoid overpayment " ;

and that paragraph shall accordingly have effect as set out in the First Schedule to these regulations.

(4) In paragraphs (3) and (4) of the said regulation 6 there shall be inserted immediately after the words " of this regulation " the words " or under section 9 of the Act of 1961 ".

(5) In paragraph (1) of regulation 7 of the Family Allowances Regulations there shall be inserted immediately after the words " Subject to the provisions of these regulations " the words " and of section 9 of the Act of 1961 ".

PART IV

NATIONAL INSURANCE

Amendment of the General Benefit Regulations

4.—(1) After paragraph (7) of regulation 8 of the General Benefit Regulations (which regulation provides for interim payments, arrears and repayments of benefit), there shall be inserted the following paragraph:—

" (7A) Where—

(*a*) by virtue of section 9 of the Family Allowances and National Insurance Act, 1961, (which section makes provision for the recovery and repayment of benefit wrongly paid) a decision given on appeal or review requires repayment of unemployment benefit to the National Insurance Fund and

(*b*) such benefit had been received from a local education authority administering unemployment benefit by virtue of section 11 of the Employment and Training Act, 1948(a)

that requirement shall have effect as if it were a requirement to repay such benefit to the National Insurance Fund or to the local education authority.".

(a) 11 & 12 Geo. 6. c. 46.

(2) In the proviso to paragraph (8) of regulation 8 of the General Benefit Regulations—

(*a*) immediately after the words " shall apply ", there shall be inserted the words " without prejudice to the operation of regulation 2 of the Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations, 1962, (which provides for the set-off of benefit against earlier payment of dependency benefit) and " ;

(*b*) immediately after the words " were not fulfilled ", there shall be inserted the words " and in so far as set-off under the said regulation 2 against payment of such benefit is not made " ; and

(*c*) in paragraph (*a*) for the words " any person to whom such a payment has been made has not acted in good faith in all respects as to the obtaining and receipt thereof ", there shall be substituted the words " in the obtaining and receipt of such a payment the person to whom it has been made, or any person acting for him, has not throughout used due care and diligence to avoid overpayment " ;

and the said paragraph (8) shall accordingly have effect as set out in the Second Schedule to these regulations.

Revocation of regulations

5. Paragraph (2) of regulation 20, and regulation 21 as amended(a), of the National Insurance Determination Regulations and the National Insurance (Determination of Claims and Questions) Amendment Regulations, 1952(a), are hereby revoked.

PART V

INDUSTRIAL INJURIES

Provisions applicable when disqualification for benefit by reason of cohabitation comes to an end

6.—(1) The following regulation shall be inserted in the Industrial Injuries Benefit Regulations after regulation 12 thereof:—

" *Widows to be treated as entitled to a pension for the purposes of right to a remarriage gratuity*

12A. A widow who would be entitled to a pension under section 19 of the Act immediately before her remarriage but for the operation of subsection (2) of section 4 of the Family Allowances and National Insurance Act, 1961 (which subsection provides among other things that a pension under section 19 of the Act shall not be payable to a woman while she is cohabiting with a man not her husband) shall be treated as if she were entitled thereto for the purposes of a right to a gratuity under the said section 19 on her remarriage.".

(2) Where on an application for review it is decided that a woman is no longer disqualified for the receipt of death benefit by reason of her cohabiting with a man not her husband, that benefit shall, notwithstanding anything in the Claims and Payments Regulations, be payable as from the date on which the application was made or from such earlier date (not being earlier than six months before the application was made) as the person or tribunal determining the review may consider reasonable in the circumstances:

Provided that no benefit shall be payable for any period before the date of the coming into force of subsection (2) of section 4 of the Act of 1961, or the date on which the cohabitation ceased, whichever is the later.

(a) S.I. 1952/1310 (1952 II, p. 2145).

Amendment of regulation 33A *of the Industrial Injuries Benefit Regulations*

7. In the proviso to paragraph (2) of regulation 33A of the Industrial Injuries Benefit Regulations, as amended(**a**), (which paragraph relates to payment by way of unemployability supplement to certain former constables and firemen) for the words " thirty-seven shillings and sixpence " there shall be substituted the words " fifty-two shillings and sixpence ".

Amendment of regulation 12A *of the Claims and Payments Regulations*

8. For the proviso to paragraph (3) of regulation 12A of the Claims and Payments Regulations as amended(**b**) (which regulation contains special provisions for injury benefit) there shall be substituted the following proviso:—

" Provided that—

(i) this paragraph shall apply without prejudice to the operation of regulation 2 of the Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations, 1962 (which regulation provides for the set-off of benefit against earlier payment of dependency benefit); and

(ii) in any case in which the conditions for the receipt of the benefit were not fulfilled, and in so far as set-off under the said regulation 2 against payment of such benefit is not made, the person to whom any sum by way of such benefit has been paid shall be liable to repay that sum to the Industrial Injuries Fund if it is shown to the satisfaction of an insurance officer, a local appeal tribunal or the Commissioner, as the case may be, that in the obtaining and receipt of that sum that person, or any person acting for him, has not throughout used due care and diligence to avoid overpayment.".

Provision added to the Claims and Payments Regulations

9.—(1) The following regulation shall be inserted in the Claims and Payments Regulations after regulation 16 thereof:—

" *Suspension of payment of benefit pending appeals or references*

16A.—(1) So much of a pension or of an allowance (other than injury benefit) or of an increase of disablement benefit as is awarded in respect of a period before the date of the award shall not be payable until after the expiration of a period of twenty-one days from that date, and if before the expiration of that period an appeal from the award or from a decision on which the award was based is brought, until after the decision on that appeal is given; and a gratuity or any part thereof shall not be payable until after the expiration of the time limited for an appeal from the award thereof or from a decision on which the award was based, and where any such appeal is brought, until after the decision on that appeal is given:

Provided that—

(i) this paragraph shall not apply to an award made by an insurance officer of disablement benefit (including any increase thereof) based upon the decision of a medical appeal tribunal or of death benefit (other than a gratuity), or to any award of benefit made by the Commissioner;

(**a**) S.I. 1955/48, 1956/1188, 1957/2074, 1960/2430 (1955 I, p. 1668; 1956 I, p. 1690; 1957 II, p. 1730; 1960 II, p. 2370).
(**b**) S.I. 1952/1208 (1952 II, p. 2216).

(ii) during the period intervening between the award of a gratuity under section 22 or 23 of the Act or under the Fourth Schedule to the Act and the date when in accordance with the foregoing provisions of this paragraph such gratuity becomes payable, there shall be paid to the beneficiary on account of such gratuity weekly payments at a rate not exceeding the weekly rate of the contribution which the deceased at his death was, or would but for the relevant accident have been, making towards the maintenance of the beneficiary;

(iii) payment of benefit shall not be suspended under the provisions of this paragraph if in any case or class of cases the Minister so directs.

(2) For the purposes of paragraph (1) of this regulation, the expression 'appeal' shall be construed as including a reference of the decision of a medical board to a medical appeal tribunal.".

(2) Paragraph (5) of regulation 16 of the Claims and Payments Regulations (which paragraph relates to the suspension of payment of gratuities pending appeal) is hereby revoked.

Regulation substituted for regulation 28 *of the Industrial Injuries Determination Regulations*

10. For regulation 28 of the Industrial Injuries Determination Regulations (which regulation relates to set-off of payment on account of one benefit against other benefit awarded on review or appeal) there shall be substituted the following regulation:—

"*Adjustment of Benefit*

28.—(1) Subject to the provisions of paragraph (4) of this regulation, any sum on account of benefit which has been paid to any person in pursuance of a decision which is afterwards revised on a review or reversed or varied on an appeal shall be treated as paid on account of any benefit which it is decided is or was payable to him in respect of the same accident or disease and, except as is provided in paragraph (3), in respect of the same period (hereinafter referred to as 'the common period').

(2) For the purposes of paragraph (1) of this regulation—

(*a*) a gratuity under section 12 of the Act shall be treated as a periodical payment payable in respect of the period (hereinafter referred to as 'the gratuity period') taken into account by the relevant assessment of the degree of disablement (that period, where it is more than seven years or is not limited by reference to a definite date, being deemed to be one of seven years); and

(i) to the extent to which a gratuity falls to be treated as paid on account of a pension or allowance (or a pension or allowance falls to be treated as paid on account of a gratuity), the gratuity shall be treated as payable at a weekly rate calculated by dividing by 364 an amount equal to the amount of the gratuity payable for a period limited by reference to the beneficiary's life in respect of the said assessment of the degree of disablement, fractions of a penny being disregarded; and

(ii) to the extent to which a gratuity falls to be treated as paid on account of another gratuity, so much of the first mentioned gratuity shall be so treated as bears the same ratio to its total amount as does the common period to the gratuity period, fractions of a shilling being disregarded.

(*b*) a gratuity under section 22 or 23 of, or the Fourth Schedule to, the Act, shall be treated as a periodical payment payable in respect of the period of two years from the date of the deceased's death and at a weekly rate calculated by dividing the amount of the gratuity by 104.

(3) Where on a review a decision awarding a woman a gratuity under section 19 of the Act as on the termination of her widow's pension is reversed, any sum paid on account of that gratuity shall be treated as having been paid on account of any further benefit awarded to her under that section in respect of the same death.

(4) The foregoing provisions of this regulation shall not operate—

(*a*) so as to make a pension or allowance (other than arrears thereof) payable at less than half the appropriate weekly rate unless the person or tribunal awarding the pension or allowance is not satisfied that the beneficiary, and any person acting for him, has throughout used due care and diligence to avoid overpayment of the benefit which is to be treated as paid on account of such pension or allowance;

(*b*) so as to require any sum paid on account of benefit to be treated as paid on account of other benefit to the extent to which that sum exceeds the amount which is payable or treated as payable in respect of the common period, of the other benefit."

PART VI

TRANSITIONAL PROVISIONS

Transitional provision for section 3 (3) *and* (4) *of the Act of* 1961

11.—(1) Where before the coming into force of subsection (3) of section 3 of the Act of 1961 (which subsection relates to increases of benefit for married women in respect of children), a married woman has been awarded in respect of a child a payment to which this regulation applies, then, for any period during which she would have continued without a break to be entitled to receive such a payment in respect of that child if the said subsection had not come into force, she shall be treated as so entitled.

(2) This regulation applies to an increase of benefit in respect of a child under section 17 of the Industrial Injuries Act, and to a corresponding payment under regulations made under section 82 of that Act as extended by section 6 of the Act of 1953, or under a Scheme made under the Industrial Diseases (Benefit) Acts, 1951 and 1954.

Transitional provision for section 4 (2) *and* (3) *of the Act of* 1961

12. Where on a claim it is decided that a pension or allowance is payable to a woman by virtue of sub-paragraph (1) of paragraph 5 of the Third Schedule to the Act of 1961, that pension or allowance shall, notwithstanding anything in the Claims and Payments Regulations, be payable as from the date on which the claim was made or from such earlier date (not being earlier than six months before the claim was made) as the person or tribunal determining the claim may consider reasonable in the circumstances:

Provided that no such pension or allowance shall be payable for any period before the date of the coming into force of subsection (2) of section 4 of the Act of 1961, or the date on which the cohabitation ceased, whichever is the later.

Transitional provision for regulations 4 (2) *and* 8 *of these regulations*

13. Where a decision that a person was or was not liable to repay a payment by way of benefit which had been made by virtue of regulation 12A of the Claims and Payments Regulations or paragraph (8) of regulation 8 of the General Benefit Regulations (which regulation and paragraph provide for advance payment by way of benefit) was given before the date of the coming into force of these regulations, any appeal from or review of that decision determined on or after that date shall be determined in accordance with the provisions in force immediately before that date.

Transitional provision for regulation 10 *of these regulations*

14. Where before the date of the coming into force of these regulations a decision was given directing that any sum paid by way of benefit should be treated as paid on account of the benefit awarded by that decision, any appeal from that decision determined on or after that date shall be determined in accordance with the provisions in force immediately before that date.

Dated this Fourteenth day of February, 1962.

John Boyd-Carpenter,
Minister of Pensions and
National Insurance.

Dated this Fifteenth day of February, 1962.

Michael Hughes-Young,
John Peel,
Two of the Lords Commissioners of
Her Majesty's Treasury.

FIRST SCHEDULE

Regulation 3

PARAGRAPH (2) OF REGULATION 6 OF THE FAMILY ALLOWANCE REGULATIONS AS AMENDED BY THESE REGULATIONS*

(2) In the case of any sum paid as on account of an allowance for the family of a man and his wife living together which *would have been receivable (if properly paid) by either the man or the wife and which under section* 9 *of the Act of* 1961 *(which provides for the recovery of sums found by a decision on review or appeal to have been wrongly paid)*—

(*a*) the wife is not required to repay, the decision on review or appeal shall require repayment from the man if it is shown to the satisfaction of the insurance officer, the local tribunal or the Commissioner, as the case may be, that *in relation* to the obtaining and receipt of the sum in question *he, or any person acting for him, did not throughout use due care and diligence to avoid overpayment;*

(*b*) the wife is required to repay, the man shall be liable to repay it as well as his wife.

* The words substituted by these regulations are shown in italics.

Regulation 4

SECOND SCHEDULE

PARAGRAPH (8) OF REGULATION 8 OF THE GENERAL BENEFIT REGULATIONS AS AMENDED BY THESE REGULATIONS*

(8) Where, under arrangements made by the Minister with the consent of the Treasury for the purpose of dealing with any emergency, payment by way of unemployment benefit or, as the case may be, sickness benefit or maternity benefit has been made to any person pending the determination of a claim therefor, without due proof of the fulfilment of the relevant conditions or otherwise than in accordance with the provisions of the Act and the orders and regulations made thereunder, the payment so made shall, for the purposes of the said provisions, be deemed to be a payment of such benefit duly made:

Provided that this paragraph shall apply *without prejudice to the operation of regulation* 2 *of the Family Allowances, National Insurance and Industrial Injuries (Consequential) Regulations,* 1962, *(which provides for the set-off of benefit against earlier payment of dependency benefit) and* in a case in which the conditions for the receipt of any such benefit were not fulfilled *and in so far as set-off under the said regulation* 2 *against payment of such benefit is not made,* subject to the following provisions:—

(*a*) If it is shown at any time to the satisfaction of the determining authority that *in the obtaining and receipt of such a payment the person to whom it has been made, or any person acting for him, has not throughout used due care and diligence to avoid overpayment,* he shall be liable to repay to the National Insurance Fund any sum so paid; and

(*b*) if it is so shown that any such person was entitled to some benefit other than unemployment benefit or, as the case may be, sickness benefit or maternity benefit for the period in respect of which the payment was made, such payment (in so far as it does not exceed the amount of such other benefit) shall not be deemed to be a payment of the benefit in question, but a payment of such other benefit duly made.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations, which are made in consequence of the Family Allowances and National Insurance Act, 1961, give effect to and supplement changes made by that Act concerning the circumstances in which sums, paid on account of benefit under the National Insurance Acts, 1946, or allowances under the Family Allowances Act, 1945, and afterwards found not to have been payable, may be recovered or treated as paid on account of benefit or allowances properly payable.

The Regulations also contain amendments which provide for a widow disqualified for a pension under the National Insurance (Industrial Injuries) Act, 1946, to be treated as entitled thereto for the purpose of her right to a remarriage gratuity, make provision for the suspension of benefit under that Act in certain circumstances pending appeal or reference and increase the amount payable by way of unemployability supplement to certain former constables and firemen.

* The words added or substituted by these regulations are shown in italics.