1970. No. 23 **[C]**

FAMILY ALLOWANCES

Qualifications

REGULATIONS, DATED 10TH FEBRUARY 1970, MADE BY THE MINISTRY OF HEALTH AND SOCIAL SERVICES, IN CONJUNCTION WITH THE MINISTRY OF FINANCE, UNDER THE FAMILY ALLOWANCES ACT (NORTHERN IRELAND) 1966.

The Ministry of Health and Social Services, in conjunction with the Ministry of Finance so far as relates to matters with regard to which the Ministry of Finance has so directed, in exercise of powers conferred by sections 12(1), 16(8), 18 and 19(1) and (4) of the Family Allowances Act (Northern Ireland) 1966(a), and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Family Allowances (Qualifications) Regulations (Northern Ireland) 1970 and shall come into operation on 17th February 1970.

(2) In these regulations—

"the Act" means the Family Allowances Act (Northern Ireland) 1966;

"parent" means, in relation to any child, the person in whose family such child would, if living with such person, be treated as included for the purposes of the Act as being issue of that person or, in the case of a man and his wife living together, as being issue of either the man or his wife;

"a member of the forces" means any person who, being a member of the armed forces of the Crown raised in the United Kingdom or a member of any nursing or other auxiliary service similarly raised and forming part of or attached to those forces, is in receipt of service pay in respect of naval, military or air force service or is serving as a commissioned or enlisted member of the Royal Army Ordnance Corps/Expeditionary Force Institutes;

"a merchant seaman" means—

(*a*) any person employed under a contract of service as master or a member of the crew of any of Her Majesty's ships or of any other British ship, if either—

(i) the contract was entered into in Northern Ireland; or

(ii) it was entered into outside Northern Ireland, and he had set out from Northern Ireland for the purpose of entering into such contract:

Provided that any such person as is referred to in paragraph (*a*)(ii) shall be treated as a merchant seaman during the period between his setting out from Northern Ireland and his entering into such contract;

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

(*b*) any person who, having been a person referred to in paragraph (*a*), has not, since last being such a person, ceased to be employed under contracts of service as master or a member of the crew either of one of Her Majesty's ships or of some other British ship:

Provided that a person shall be deemed not to have ceased to be so employed during any period during which he is temporarily prevented from being so employed;

(*c*) any person who, having been a person referred to in paragraph (*a*) or (*b*) and having ceased so to be, is proceeding or intending to proceed to Northern Ireland:

Provided that if he fails to proceed to Northern Ireland as soon as reasonably practicable after such cessation he shall not, after such failure, be treated as a merchant seaman by virtue of this paragraph;

(*d*) any person who has set out from Northern Ireland for the purpose of entering into a contract of service as master or a member of the crew of any of Her Majesty's ships or of any other British ship or who, having so set out, has failed to enter into such contract and is proceeding or intending to proceed to Northern Ireland:

Provided that if, having so failed, he does not proceed to Northern Ireland as soon as reasonably practicable after such failure he shall no longer be treated as a merchant seaman by virtue of this paragraph;

"a British protected person" means a British protected person within the meaning of the British Nationality Act 1948(**b**);

"voluntary organisation" means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority;

the expression "a person under treatment" applies, in respect of such period as the Ministry may allow having regard to the circumstances of the particular case, to a person whose absence from Northern Ireland is temporary and for the specific purpose of being treated for incapacity which commenced before he left Northern Ireland.

PART II

REQUIREMENTS AS TO NATIONALITY, RESIDENCE, ETC.

Requirements for family of a man and his wife living together

2. It shall be a condition of the right to any allowance at any date for the family of a man and his wife living together, if the man is not a British subject whose place of birth is in the United Kingdom, that one of the following requirements is satisfied, namely:

(*a*) that the wife is at that date a British subject whose place of birth is in the United Kingdom; or

(*b*) that the man or the wife is a British subject or a British protected person who for at least 104 weeks in the aggregate out of the 3 years immediately preceding that date has either been present in Northern Ireland or, when not so present, been a member of the forces or a merchant seaman; or

(*c*) that for at least 156 weeks in the aggregate out of the 4 years immediately preceding that date the man or the wife has either been present in Northern Ireland or, when not so present, been a member of the forces or a merchant seaman.

(**b**) 11 & 12 Geo. 6. c. 56.

Requirements for family of a man not having a wife or not living together with his wife

3. It shall be a condition of the right to any allowance at any date for the family of a man not having a wife or not living together with his wife, if he is not a British subject whose place of birth is in the United Kingdom, that one of the following requirements is satisfied, namely:

(*a*) that he is at that date a British subject or a British protected person who for at least 104 weeks in the aggregate out of the 3 years immediately preceding that date has either been present in Northern Ireland or, when not so present, been a member of the forces or a merchant seaman; or

(*b*) that for at least 156 weeks in the aggregate out of the 4 years immediately preceding that date he has either been present in Northern Ireland or, when not so present, been a member of the forces or a merchant seaman.

Requirements for family of a woman not having a husband or not living together with her husband

4. It shall be a condition of the right to any allowance at any date for the family of a woman not having a husband or not living together with her husband, if she is not a British subject whose place of birth is in the United Kingdom, that one of the following requirements is satisfied, namely:

(*a*) that she is a British subject or a British protected person who for at least 104 weeks in the aggregate out of the 3 years immediately preceding that date has either been present in Northern Ireland or, when not so present, been a member of the forces or a merchant seaman; or

(*b*) that for at least 156 weeks in the aggregate out of the 4 years immediately preceding that date she has either been present in Northern Ireland or, when not so present, been a member of the forces or a merchant seaman.

Aggregation of periods

5. For the purposes of this Part periods during which a person is present in Northern Ireland and periods during which, when not so present, he is a member of the forces or a merchant seaman shall be aggregated.

Effect of once satisfying requirements

6. Notwithstanding anything contained in this Part, where a person has once been a member, otherwise than as a child, of a family for which the right to an allowance existed at any time while he was such a member, he shall thenceforth be treated as having satisfied the conditions of section 19(1) of the Act for the purposes of any allowances at any date for that family or for any other family of which he may subsequently become a member.

PART III

RULES FOR DETERMINING WHETHER PRESENCE IN OR ABSENCE FROM NORTHERN IRELAND IS OR IS NOT TO BE TREATED AS TEMPORARY

Interpretation

7. In this Part, "presence" and "absence" mean actual presence in and actual absence from Northern Ireland respectively.

An adult's presence in or absence from Northern Ireland

8.—(1) For the purposes of section 19(2) of the Act—

(*a*) the presence of a person at any date shall be treated as temporary except in the following circumstances:

(i) if for at least 26 weeks in the aggregate out of the 12 months immediately preceding that date he has either been present or, when not so present, been a member of the forces, a merchant seaman or a person under treatment; or

(ii) if the period of that presence has been immediately preceded by a period of absence throughout which there was a right to an allowance for his family;

(*b*) the absence of a person at any date shall be treated as temporary except in the following circumstances:

(i) if it is or was when it began for a purpose other than a temporary purpose; or

(ii) if it has lasted for a continuous period exceeding 6 months; or

(iii) if the person is a member of a family for which there was no right to an allowance in existence immediately prior to that date, and for more than 26 weeks in the aggregate out of the 12 months immediately preceding that date he has neither been present nor been a member of the forces, a merchant seaman or a person under treatment:

Provided that the absence of a person at any date while he is a member of the forces, a merchant seaman or a person under treatment shall always be treated as temporary if for at least 26 weeks in the aggregate out of the 12 months immediately preceding that date he has either been present or, when not so present, been a member of the forces, a merchant seaman or a person under treatment.

(2) Where at any date there is already in existence a right to one or more allowances for the family of a man and his wife, that family shall, for the purposes of this regulation, be treated as continuing in existence despite the death of either of them occurring whilst they are living together.

Aggregation of periods

9. For the purposes of regulation 8 periods during which a person is present and periods during which, when not so present, he is a member of the forces, a merchant seaman or a person under treatment, shall be aggregated.

A child's presence in or absence from Northern Ireland

10. For the purposes of section 19(3) of the Act, the presence or absence of a child at any date shall not be treated as temporary except in the following circumstances:

(*a*) the presence at any date of a child whose place of birth is not in the United Kingdom and who would, if his presence were treated as other than temporary, be included in the family of any person other than a parent, shall be treated as temporary unless—

(i) he has been present for the whole period of 6 months immediately preceding that date; or

(ii) the period of that presence has been immediately preceded by a period of temporary absence;

(*b*) the absence of a child who is ordinarily resident in Northern Ireland shall be treated as temporary—

(i) if and so long as it is not intended to exceed and has not exceeded 6 months, for the period of such absence; or

(ii) in any other case if it is for a temporary purpose, for such period or periods, if at all, as the Ministry in its discretion may from time to time determine having regard to all the circumstances of the particular case:

Subject to the qualification that a child born during the absence from Northern Ireland of his mother shall not be treated as ordinarily resident in Northern Ireland during any period before he first becomes present in Northern Ireland unless at the date of his birth the absence of his mother was temporary in accordance with the provisions of regulation 8(1)(*b*).

PART IV

RULES FOR DETERMINING WHETHER THE ABSENCE OF A CHILD FROM A PERSON OR THE INTERRUPTION OR REDUCTION OF A PERSON'S CONTRIBUTION IS OR IS NOT TO BE TREATED AS TEMPORARY

Interpretation

11.—(1) In this Part "hospital" means any premises used for the reception and treatment of persons suffering from any illness, including any mental disorder within the meaning of the Mental Health Act (Northern Ireland) 1961(**c**), or of persons suffering from physical disability, and any premises used for providing treatment during convalescence or for medical rehabilitation.

(2) For the purposes of this Part a man and his wife living together shall be treated as one person and references to a person (other than a fit person) shall be construed as references to such persons as are mentioned in paragraphs (*a*), (*b*) and (*c*) respectively of section 3(1) of the Act, that is to say, a man and his wife living together, such a man as is mentioned in the said paragraph (*b*) and such a woman as is mentioned in the said paragraph (*c*).

Absence from a parent and interruption or reduction of a parent's contribution

12.—(1) Subject to the provisions of regulation 14, in determining whether any absence (other than at a school) of a child from a parent or any interruption or reduction of a parent's contribution to the cost of providing for a child is or is not to be treated as temporary for the purposes of section 16(8) of the Act the following rules shall apply:

(*a*) any such absence, interruption or reduction due to the child undergoing treatment as an in-patient at a hospital shall be treated as temporary while the child is undergoing such treatment;

(*b*) any such interruption or reduction due to the child being at a school shall be treated as temporary while the child is at that school;

(*c*) any such absence which does not fall within sub-paragraph (*a*) shall be treated as temporary for a period of 12 weeks and no longer, and any such interruption or reduction which does not fall within sub-paragraph (*a*) or (*b*) shall be treated as temporary for a period of 4 weeks and no longer:

Provided that if the absence, interruption or reduction has been immediately preceded by an absence, interruption or reduction falling within sub-paragraph (*a*) or (*b*), or by absence at a school, the said period of 12 weeks or 4 weeks shall not begin to run until after the termination of that immediately preceding absence, interruption or reduction as the case may be.

(**c**) 1961, c. 15.

(2) Notwithstanding the provisions of paragraph (1)(*c*) of this regulation, a child's absence from a parent (other than absence at a school or while undergoing treatment as an in-patient at a hospital) shall cease to be treated as temporary if for a period of 4 weeks the child, whether residing in a residential establishment or boarded out under the Children and Young Persons Act (Northern Ireland) 1968(**d**) or otherwise, has been—

(*a*) kept in the care of a welfare authority under the said Act; or

(*b*) in the care of a voluntary organisation.

Absence from a person other than a parent and interruption or reduction of such person's contributions

13. Subject to the provisions of regulation 14, any absence (other than at a school) of a child from a person other than a parent and any interruption or reduction of the contribution of a person other than a parent to the cost of providing for a child shall, for the purposes of section 16(8) of the Act, be treated as temporary for the first 4 weeks thereof and no longer.

Further provisions relating to absence and to interruption or reduction of contributions

14. Notwithstanding anything contained in regulations 12 and 13, no absence (other than at a school) of a child from any person, and no interruption or reduction of the contribution made by any person to the cost of providing for a child, shall be treated as temporary for the purposes of section 16(8) of the Act in the following circumstances:

(*a*) if there is in force an order under the Children and Young Persons Act (Northern Ireland) 1968 committing the child to the care of a fit person:

Provided that this shall not apply to any absence from, or to any interruption or reduction of the contribution made by, such fit person; or

(*b*) if the absence, interruption or reduction is or is intended to be other than temporary.

PART V

FULL-TIME INSTRUCTION IN A SCHOOL

Circumstances in which a person is to be treated as undergoing full-time instruction

15.—(1) Subject to the provisions of paragraph (2) a person shall be treated as undergoing full-time instruction in a school in any of the following circumstances:

(*a*) if he is undergoing full-time instruction—

(i) in Northern Ireland, at any university or at any school as defined by the Education Act (Northern Ireland) 1947(**e**), or establishment for further education; or

(ii) at any educational, instructional, training or other establishment or institution, whether in Northern Ireland or elsewhere, accepted by the Ministry as being one which, having regard to the purposes for which it is established and the manner in which it is organised and conducted, should be treated for the purposes of the Act as an establishment similar to any one of those referred to in (i);

and for the purposes of this sub-paragraph any instruction received after the hour of 5 p.m. shall be disregarded; or

(**d**) 1968. c. 34 (N.I.). (**e**) 1947. c. 3.

(*b*) if he is receiving primary or secondary education in Northern Ireland otherwise than at school, under special arrangements made under section 52 of the Education Act (Northern Ireland) 1947.

(2) A person shall not cease to be treated as undergoing full-time instruction during any period during which he would have been undergoing instruction or receiving education in accordance with the provisions of paragraph (1) but for the occurrence of any of the following events or, for the purposes of paragraph (1)(*b*), any event which is analogous to any of the following events:

(*a*) holidays of that person which are recognised by the responsible school authority;

(*b*) the temporary closure by the responsible school authority during a school term of the school which that person normally attends;

(*c*) absence from school of that person authorised by the responsible school authority by reason of contact with infectious disease;

(*d*) illness or disability of mind or body of that person;

(*e*) absence from school on not more than 2 occasions in any calendar year owing to illness (other than illness of that person) occurring at, or any absence from school owing to death at, the home of that person, so however that any such absence after the first 2 weeks shall not be treated as a period of full-time instruction;

(*f*) the temporary suspension of the ordinary means of transport of that person to school where alternative means of reaching school are not reasonably available; and

(*g*) absence from school owing to the removal of that person from one school to another (hereafter in this paragraph referred to as "such absence"):

Provided that—

(i) any such absence after the first 4 weeks shall not be treated as a period of full-time instruction;

(ii) in computing the said 4 weeks any period or periods of holiday recognised by the responsible authority of either school shall, up to a maximum of 16 weeks in all, be disregarded; and

(iii) any such period of holiday during which that person is absent from school for a time which immediately precedes or immediately follows a period of such absence shall be treated for the purposes of this paragraph as forming part of that period of such absence, and accordingly head (ii) of this proviso shall apply to it and sub-paragraph (*a*) shall not.

(3) For the purposes of paragraph (2) "school" includes any such university, establishment or institution as is specified in paragraph (1)(*a*).

PART VI

RULES FOR DETERMINING WHETHER A PERSON IS AN APPRENTICE

Interruption of training

16. A person who is not in receipt of earnings which exceed 2 pounds a week shall be treated as undergoing full-time training during any period in which he is undergoing such training and any period in which such training would have continued but for—

(*a*) interruption due to holidays; or

(*b*) interruption due to illness or disability of mind or body of that person; or

(*c*) interruption due to change of employment by that person (where the change is from an employment in which he was undergoing full-time training to another such employment in which his earnings do not exceed 2 pounds a week), except during any period in which he is gainfully occupied; or

(*d*) any other interruption of that person's full-time training which is of a temporary nature and which it is reasonable to disregard in the circumstances of his case:

Provided that after the first 4 weeks of any such interruption as is specified in paragraph (*c*) or (*d*) a person shall not be treated by virtue of either of those paragraphs as undergoing full-time training during any further period for which that interruption continues.

Computation of earnings

17.—(1) For the purposes of the definition of "apprentice" in section 18 of the Act, the amount of a person's earnings shall be calculated or estimated at a weekly figure in the manner and on the basis set out in the following provisions of this regulation.

(2) In relation to any person undergoing full-time training, the earnings to be taken into account shall be limited to the net remuneration or profit of that person derived by him from that full-time training ascertained in accordance with the following provisions of this regulation.

(3) For the purposes of paragraph (2), the following expenses shall be deducted from a person's remuneration or profit:

(*a*) any contribution payable and duly paid in respect of the full-time training by the person concerned as an employed or self-employed person under the National Insurance Act (Northern Ireland) 1966(**f**), or as a person employed in insurable employment under the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(**g**);

(*b*) the expenses, if any, reasonably incurred by the person concerned in connection with and for the purposes of undergoing the said full-time training including, in particular—

(i) the cost to him of books, instruments, tools and equipment required by him for the purpose of that full-time training and of any fees for instruction needed and provided for that purpose;

(ii) the cost to him of protective clothing obtained and required by him for the purpose of that full-time training and of laundering and cleaning such clothing and the cost to him of excessive wear and tear of his clothing attributable to the conditions and circumstances of that full-time training;

(iii) customary subscriptions paid by him to any association of employed persons or other association or body in connection with that full-time training;

(iv) expenses reasonably incurred by him in respect of travel between his place of residence and his place of work and to and from any place of instruction which he attends in connection with and for the purpose of that full-time training;

(**f**) 1966, c. 6 (N.I.). (**g**) 1966, c. 9 (N.I.).

(*c*) if the circumstances of the full-time training make it necessary or desirable for him to be accommodated in a place other than his normal home, which would otherwise be available for him, the expenses reasonably incurred by him in respect of board and lodging in that place so far as such expenses exceed one pound a week, and in respect of travel on visits made by him to his normal home.

(4) In the application of the provisions of paragraph (3)(*c*)—

(*a*) where the expenses of providing board and lodging for a person are in fact incurred by another, they shall be considered as incurred by the person for whom the board and lodging are provided in so far as they fall to be taken into account in the determination of his earnings; and

(*b*) expenditure on food or accommodation in the course of travel shall be included in the expenses incurred in respect of that travel.

(5) The provisions of this paragraph shall apply to any case in which there is a variation in the amount of a person's weekly earnings:

(*a*) where by reason of such variation the person's weekly earnings exceed or (as the case may be) do not exceed 2 pounds for occasional weeks only, the earnings of that person for any such week shall not be treated as exceeding or (as the case may be) as not exceeding 2 pounds a week by reason only of that variation; and

(*b*) in any other case the weekly earnings shall be estimated at such figure, having regard to the normal or anticipated incidence of payments and expenses or to any other material considerations, as may be reasonable and appropriate in all the circumstances of the case.

PART VII

REGULATIONS REVOKED

18. The Family Allowances (Qualifications) Regulations (Northern Ireland) 1961(**h**) and the Family Allowances (Qualifications) Amendment Regulations (Northern Ireland) 1962(**i**) are hereby revoked.

Sealed with the Official Seal of the Ministry of Health and Social Services for Northern Ireland this 10th day of February 1970.

(L.S.) *D. W. Lowry,*
Assistant Secretary.

Sealed with the Official Seal of the Ministry of Finance for Northern Ireland this 10th day of February 1970.

(L.S.) *C. F. Darling,*
Assistant Secretary.

(**h**) S.R. & O. (N.I.) 1961, No. 223. (**i**) S.R. & O. (N.I.) 1962, No. 21.

EXPLANATORY NOTE

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

These regulations revoke and consolidate with amendments the Family Allowances (Qualifications) Regulations (Northern Ireland) 1961 and the Amendment Regulations of 1962 referred to in regulation 18.

Regulations 12(2) and 15(2) incorporate amendments of substance. Regulation 12(2) adopts a uniform limit of 4 weeks for the period during which a child's absence from his parents may be treated as temporary, if the child is not at a school or in hospital and is in the care of a welfare authority or voluntary organisation. The previous regulations allowed a maximum period of 12 weeks in some circumstances. Regulation 15(2) extends (by a maximum of 16 weeks) the period of 4 weeks during which a child removed from one school for transfer to another may be treated as continuing to receive instruction in a school, in cases where school holidays occur during the transfer period.

The other amendments are of a formal nature or made for the purposes of clarification.