1982 No. 406

SOCIAL SECURITY

The Social Security (Forfeiture Order 1982) (Consequential) Regulations (Northern Ireland) 1982

Made . . . . . *6th December 1982*

Coming into operation . . . *31st December 1982*

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 6(2) of the Forfeiture (Northern Ireland) Order 1982(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Forfeiture Order 1982) (Consequential) Regulations (Northern Ireland) 1982 and shall come into operation on 31st December 1982.

(2) In these regulations—

"the Order" means the Forfeiture (Northern Ireland) Order 1982;

"determining authority" means any person or body, other than a Commissioner, responsible for determining any question under a relevant enactment;

"forfeiture rule question" means the question referred to in Article 6(1) of the Order;

"interested person" means a person in relation to whom a forfeiture rule question arises and, as appropriate, an insurance officer appointed under the Social Security (Northern Ireland) Act 1975(**b**), a benefit officer appointed under the Supplementary Benefits (Northern Ireland) Order 1977(**c**), a supplement officer appointed under the Family Income Supplements Act (Northern Ireland) 1971(**d**), the Department of Health and Social Services or the Secretary of State for Social Services; and

"relevant enactment" means, in addition to any provision or instrument referred to in the definition of relevant enactment in Article 6(5) of the Order, Article 25 of the Supplementary Benefits (Northern Ireland) Order 1977.

Reference of cases to Commissioner by determining authorities where forfeiture rule question arises

2. Where a forfeiture rule question arises in a case before a determining authority and that authority is not satisfied that the case can be disposed of without that question being determined, the determining authority shall—

(*a*) if not the Department of Health and Social Services, require the Department of Health and Social Services to arrange for the case to be referred to a Commissioner to determine the forfeiture rule question; and

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(**a**) S.I. 1982/1082 (N.I. 14)

(**b**) 1975 c. 15

(**c**) S.I. 1977/2156 (N.I. 27); provisions of the Supplementary Benefits (Northern Ireland) Order 1977, as amended by Article 7 of, and Part I of Schedule 2 to, the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8)), are set out in Part II of that Schedule

(**d**) 1971 c. 8 (N.I.), as amended by Article 8 of the Social Security (Northern Ireland) Order 1980 (S.I. 1980/870 (N.I. 8))

(*b*) if the Department of Health and Social Services, refer the case to a Commissioner to determine that question,

and shall inform the person in relation to whom the forfeiture rule question arises that his case is being referred to a Commissioner to determine that question.

Procedure before Commissioner on a forfeiture rule question reference

3.—(1) Where a reference to a Commissioner is made under regulation 2, if an interested person makes a request to the Commissioner for a hearing of the reference the Commissioner shall grant such request unless, after considering the record of the case and the reasons put forward in the request for the hearing, he is satisfied that the reference can properly be determined without a hearing, in which event he shall so inform the interested person in writing and may proceed to determine the reference without a hearing.

(2) If in accordance with the provisions of paragraph (1) a request for a hearing has been granted or if notwithstanding that no request has been made a Commissioner is otherwise satisfied that a hearing is desirable, reasonable notice of the time and place of the hearing shall be given to every interested person and, if the Commissioner thinks fit, to any other person.

(3) Any person to whom notice of the hearing has been given shall be entitled to be present and to be heard at the hearing.

(4) If any person to whom notice of the hearing has been duly given should fail to appear either in person or by representative at the hearing, the Commissioner may proceed to determine the reference notwithstanding the absence of any such person or representative or may give such directions with a view to the determination of the reference as he thinks proper.

(5) In any case in which a hearing of a reference is held it shall be in public except in so far as the Commissioner may otherwise direct if he is of the opinion that intimate personal or financial circumstances may have to be disclosed or that considerations of public security are involved.

(6) Subject to paragraph (7), the Commissioner, having determined the forfeiture rule question, shall remit the case to the determining authority who caused it to be referred to him together with a copy of his decision on that question and that authority shall then dispose of the case in the light of the Commissioner's decision on the forfeiture rule question.

(7) Where, disregarding the forfeiture rule question, the case referred to a Commissioner under regulation 2 is one where a local tribunal constituted under the Social Security (Northern Ireland) Act 1975 has, or in the event of an appeal from the decision of an insurance officer appointed under that Act would have, jurisdiction to dispose of the case, the Commissioner may, with the consent of the interested persons, dispose of the case as if it were an appeal to him from a local tribunal as well as determining the forfeiture rule question.

(8) The decision of a Commissioner shall be in writing and signed by him and he shall record the reasons for his decision; and a copy of the decision and reasons shall be sent as soon as may be practicable to all interested persons.

(9) Subject to the provisions of these regulations—

(*a*) the procedure in connection with the consideration and determination of any reference to which these regulations relate shall be such as a Commissioner shall determine;

(*b*) any person who by virtue of the provisions of these regulations has the right to be heard at a hearing may be represented by another person whether having professional qualifications or not and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under these regulations.

(10) Any person having the right to be heard who appears at a hearing before a Commissioner may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the Commissioner.

Miscellaneous provisions relating to references under regulation 2

4.—(1) The provisions of section 116 of the Social Security (Northern Ireland) Act 1975 (tribunal of 2 or 3 Commissioners dealing with cases involving questions of law of special difficulty) shall apply in relation to these regulations as they apply in relation to that Act.

(2) Any decision under these regulations of a forfeiture rule question by a Commissioner may be reviewed at any time by a Commissioner if—

(*a*) he is satisfied by fresh evidence that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(*b*) there has been any relevant change of circumstances since the decision was given.

(3) In section 14 of the Social Security Act 1980(**a**) (appeal from Commissioners etc., on point of law) subsection (3)(*a*) shall have effect as if an interested person within the meaning of these regulations is a person to whom that subsection applies.

(4) Section 5(1) of the National Insurance Measure (Northern Ireland) 1974(**b**) (power to make regulations with respect to the correction of accidental errors in decisions and, in certain circumstances, to set aside decisions) shall have effect as if these regulations were a relevant enactment within the meaning of that section; and accordingly the National Insurance (Correction and Setting Aside of Decisions) Regulations (Northern Ireland) 1975(**c**) shall apply to any decision of a Commissioner under these regulations.

(5) Subject to the provisions of these regulations and section 14 of the Social Security Act 1980, the decision of a Commissioner on any reference under regulation 2 shall be final, but shall not make any finding of fact or other determination embodied in or necessary to the decision, or on which it is based, conclusive for the purposes of any further decision.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 6th December 1982.

(L.S.) *I. M. S. Jordan* (Miss)
Assistant Secretary

(**a**) 1980 c. 30
(**b**) 1974 c. 4 (N.I.)
(**c**) S.R. 1975 No. 129

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations are made consequent upon the provisions of Article 6 of the Forfeiture (Northern Ireland) Order 1982 which provides that where a question arises as to whether a person is precluded by virtue of the forfeiture rule (*defined in Article 3(1) of that Order as the rule of public policy which in certain circumstances precludes a person who has unlawfully killed another from acquiring a benefit in consequence of the killing*) from receiving any benefit or advantage under a relevant enactment (*"relevant enactment" is defined in Article 6(5) of the Order*) that question shall be determined by a Social Security Commissioner (*defined in Schedule 17 to the Social Security (Northern Ireland) Act 1975 as "Commissioner"*).

Regulation 1 contains definitions relevant for the purposes of the provisions of regulations 2 to 4; regulation 2 relates to references of cases to a Commissioner where a forfeiture rule question arises; and regulation 3 relates to procedure before a Commissioner where a forfeiture rule question is referred to him. Regulation 4 contains provisions relating to the determination of forfeiture rule questions by a Tribunal of 2 or 3 Commissioners instead of by a single Commissioner; the review of decisions of Commissioners on forfeiture rule questions; appeals to the Courts from decisions of Commissioners on forfeiture rule questions; the correction of accidental errors in, and the setting aside of, decisions of Commissioners on such questions; and the finality of decisions of Commissioners on such questions.