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STATUTORY RULES OF NORTHERN IRELAND

2013 No. 67

HOUSING; RATES; SOCIAL SECURITY

**The Social Security (Miscellaneous Amendments)
Regulations (Northern Ireland) 2013**

Made - - - - 13th March 2013

Coming into operation 2nd April 2013

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 122(1)(a) and (d), 131(1), 132(1), 132A(3), 133(2)(h) and 171(1), (3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(1), Articles 6(5), 14(4), 15(2) and 36(1) and (2) of the Jobseekers (Northern Ireland) Order 1995(2), Articles 11(6) and 74(1) and (5) of the Social Security (Northern Ireland) Order 1998(3), and now vested in it(4), sections 2(3)(b), 15(3) and (6) and 19(1) to (3) of the State Pension Credit Act (Northern Ireland) 2002(5) and sections 17(1) and (3)(b) and 25(2) of the Welfare Reform Act (Northern Ireland) 2007(6).

Regulations 6 and 7 are made with the consent of the Department of Finance and Personnel(7).

The Social Security Advisory Committee has agreed that proposals in respect of regulations 6 and 7 should not be referred to it(8).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2013 and shall come into operation on 2nd April 2013.

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- (1) 1992 c. 7; section 132A was inserted by paragraph 3 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)) and section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002 (c. 21)
- (2) S.I. 1995/2705 (N.I. 15); Article 36(2) was amended by paragraph 55 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
- (3) S.I. 1998/1506 (N.I. 10); Article 74(1) was amended by paragraph 17(2) of Schedule 4 to the Tax Credits Act 2002
- (4) See Article 8(b) of S.R. 1999 No. 481
- (5) 2002 c. 14 (N.I.)
- (6) 2007 c. 2 (N.I.)
- (7) See section 171(6A) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 as inserted by Article 3(3) of the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 8)); see also Article 6(b) of S.R. 1999 No. 481
- (8) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992 (1992 c. 8)

(2) The Interpretation Act (Northern Ireland) 1954(9) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Income Support Regulations

2.—(1) The Income Support (General) Regulations (Northern Ireland) 1987(10) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 54 (interpretation) in paragraph (e)(ii)(11) of the definition of “payment”—

- (a) omit “the payment is”; and
- (b) for “rent or rates, housing costs” substitute “rent or rates for which housing benefit is payable, housing costs to the extent that they are met under regulation 17(1)(e) or 18(1)(f) (housing costs)”.

(3) In paragraph 18(7)(i)(12) of Schedule 3 (housing costs – non-dependant deductions) before “employment and support allowance” insert “income-related”.

Amendment of the Jobseeker’s Allowance Regulations

3.—(1) The Jobseeker’s Allowance Regulations (Northern Ireland) 1996(13) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 117 (interpretation) in paragraph (e)(ii)(14) of the definition of “payment”—

- (a) omit “the payment is”; and
- (b) for “rent or rates, housing costs” substitute “rent or rates for which housing benefit is payable, housing costs to the extent that they are met under regulation 83(f) or 84(1)(g) (housing costs)”.

(3) After regulation 140(5) (15) (meaning of “person in hardship”) add—

“(6) In paragraph (5)(b), “resources” does not include any sum, where applicable, specified in paragraph 6B(1) and (2)(16) of Schedule 6 (sums to be disregarded in the calculation of income other than earnings – child tax credit and child benefit).”.

(4) In paragraph 17(7)(i)(17) of Schedule 2 (housing costs – non-dependant deductions) before “employment and support allowance” insert “income-related”.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

4. In Schedule 2B of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(18) (date on which change of circumstances takes effect where a claimant is entitled to state pension credit)—

(9) 1954 c.33 (N.I.)

(10) S.R. 1987 No. 459; relevant amending Regulations are S.R. 2008 Nos. 286, 406 and 413 and S.R. 2011 No. 135

(11) Paragraph (e) was substituted by regulation 2(6)(e)(ii) of S.R. 2008 No. 406 and sub-paragraph (ii) was amended by regulation 3(5) of S.R. 2011 No. 135

(12) Paragraph 18(7)(i) was added by regulation 12(11)(g) of S.R. 2008 No. 286 and amended by regulation 5(2)(b) of S.R. 2008 No. 413

(13) S.R. 1996 No. 198; relevant amending Regulations are S.R. 1997 No. 541, S.R. 2000 No. 350, S.R. 2003 No. 195, S.R. 2008 Nos. 112, 286, 406 and 413 and S.R. 2011 No. 135

(14) Paragraph (e) was substituted by regulation 3(6)(d)(ii) of S.R. 2008 No. 406 and sub-paragraph (ii) was amended by regulation 7(6) of S.R. 2011 No. 135

(15) Regulation 140 has amendments not relevant to these Regulations

(16) Paragraph 6B was inserted by regulation 3 and paragraph 23(b) of Schedule 2 to S.R. 2003 No. 195

(17) Head (i) was added by regulation 19(25)(f)(ii) of S.R. 2008 No. 286 and amended by regulation 5(4) of S.R. 2008 No. 413

(18) S.R. 1999 No. 162; Schedule 2B was inserted by regulation 22 of S.R. 2003 No. 191, relevant amending Regulations are S.R. 2003 No. 191 and S.R. 2011 No. 135

- (a) for paragraph 2(19) substitute—
- “2. Subject to paragraph 3, where the relevant change is that—
- (a) the claimant’s income or the income of the claimant’s partner (other than deemed income from capital) has changed;
 - (b) the claimant or the claimant’s partner becomes entitled to—
 - (i) disability living allowance (middle or higher rate care component), or
 - (ii) attendance allowance; or
 - (c) the claimant or their partner again receives either of those allowances mentioned in sub-paragraph (b) immediately after the end of the period specified in paragraph 2A,

the superseding decision shall take effect on the first day of the benefit week in which that change occurs or if that is not practicable in the circumstances of the case, on the first day of the next following benefit week.”; and

- (b) after paragraph 2 insert—
- “2A. A period specified for the purposes of paragraph 2 is a period when the claimant or the claimant’s partner is maintained free of charge while undergoing medical or other treatment as an in-patient in—
- (a) a hospital or a similar institution under the Health and Personal Social Services (Northern Ireland) Order 1972(20) or the Health and Personal Social Services (Northern Ireland) Order 1991(21); or
 - (b) a hospital or similar institution maintained or administered by the Defence Council.”.

Amendment of the State Pension Credit Regulations

5. In paragraph 14(7)(g)(22) of Schedule 2 of the State Pension Credit Regulations (Northern Ireland) 2003(23) (housing costs – persons residing with the claimant) before “employment and support allowance” insert “income-related”.

Amendment of the Housing Benefit Regulations

6.—(1) The Housing Benefit Regulations (Northern Ireland) 2006(24) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—

- (a) for paragraph (16)(c)(i) substitute—
- “(i) a person to whom paragraph (16A) applies;”; and
- (b) after paragraph (16) insert—

“(16A) This paragraph applies to a person (“P”) who is detained in custody on remand pending trial, detained pending sentence upon conviction, or as a condition of bail, required to reside in a dwelling, other than a dwelling P occupies as P’s home, and who is not also detained in custody following sentence upon conviction.”.

(19) Paragraph 2 was amended by regulation 8(b) of S.R. 2011 No. 135

(20) S.I. 1972/1265 (N.I. 14)

(21) S.I. 1991/194 (N.I. 1)

(22) Paragraph 14(7)(g) was added by regulation 30(8)(e) of S.R. 2008 No. 286

(23) S.R. 2003 No. 28; relevant amending Regulation is S.R. 2008 No. 286

(24) S.R. 2006 No. 405; relevant amending Regulations are S.R. 2008 No. 378 and S.R. 2010 No. 312

(3) In Schedule 4 (applicable amounts)—

(a) in Part V(25) (the components) for paragraph 21 substitute—

“**21.**—(1) Subject to paragraph 22, the claimant is entitled to one, but not both, of the components in paragraph 23 or 24 if—

- (a) the claimant or the claimant’s partner has made a claim for employment and support allowance;
- (b) the Department has determined that the claimant or the claimant’s partner—
 - (i) has limited capability for work or limited capability for work-related activity, or
 - (ii) is to be treated as having limited capability for work other than by virtue of regulation 30 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made); and
- (c) one of the following applies—
 - (i) the assessment phase as defined in section 24(2) of the Welfare Reform Act (interpretation) has ended;
 - (ii) regulation 7 of the Employment and Support Allowance Regulations (circumstances where the condition that the assessment phase has ended before entitlement to the support component or the work-related activity component arises does not apply) applies, or
 - (iii) the conditions in sub-paragraph (2) apply.

(2) The conditions referred to in sub-paragraph (1)(c)(iii) are—

- (a) neither the claimant nor the claimant’s partner is entitled to an employment and support allowance;
- (b) either is or both are entitled to be credited with earnings equal to the lower earnings limit then in operation under regulation 8B(2)(a)(iv) of the Social Security (Credits) Regulations (Northern Ireland) 1975(26) (credits for incapacity for work or limited capability for work); and
- (c) sub-paragraph (1)(c)(i) or (ii) would have applied to the claimant or the claimant’s partner (or both) had they been entitled to an employment and support allowance.”; and

(b) in Part VII(27) (transitional addition) in paragraph 28—

- (i) in sub-paragraph (1)(c) after “the relevant person” insert “satisfies the requirements of paragraph 27(1) or”, and
- (ii) in sub-paragraph (3)(c) after “the relevant person” insert “no longer satisfying the requirements of paragraph 27(1)(a) or”.

(25) Part V was added by regulation 3(17)(d) of S.R. 2008 No. 378

(26) S.R. 1975 No. 113; regulation 8B was inserted by regulation 2(6) of S.R. 1996 No. 430. Paragraph (2)(a) was substituted by regulation 2(2)(a) of S.R. 2010 No. 109

(27) Part VII was added by paragraph 1(5)(c) of Schedule 4 to S.R. 2010 No. 312

Amendment of the Housing Benefit Regulations (Persons who have attained the qualifying age for state pension credit) Regulations

7.—(1) The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006(**28**) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 7 (circumstances in which a person is or is not to be treated as occupying a dwelling as his home)—

(a) for paragraph (16)(c)(i) substitute—

“(i) a person to whom paragraph (16A) applies;” and

(b) after paragraph (16) insert—

“(16A) This paragraph applies to a person (“P”) who is detained in custody on remand pending trial, detained pending sentence upon conviction, or as a condition of bail, required to reside in a dwelling, other than a dwelling P occupies as P’s home, and who is not also detained in custody following sentence upon conviction.”.

(3) In paragraph 21(2) of Schedule 7 (capital to be disregarded)—

(a) omit “or” at the end of head (k); and

(b) after head (l) (**29**) add—

“or

(m) social fund payments.”.

Amendment of the Employment and Support Allowance Regulations

8. In regulation 119 of the Employment and Support Allowance Regulations (Northern Ireland) 2008(**30**) (interpretation) in paragraph (d)(ii)(**31**) of the definition of “payment”—

(a) omit “the payment is”; and

(b) for “rent or rates, housing costs” substitute “rent or rates for which housing benefit is payable, housing costs to the extent that they are met under regulation 67(1)(c) or 68(1)(d) (housing costs)”.

Revocations

9. Regulations 7(6) and 8(b) of the Social Security (Miscellaneous Amendments) Regulations (Northern Ireland) 2011(**32**) are revoked.

(28) S.R. 2006 No. 406; relevant amending Regulation is S.R. 2008 No. 378

(29) Head (l) was added by regulation 4(13)(a)(ii) of S.R. 2008 No. 378

(30) S.R. 2008 No. 280; relevant amending Regulations are; S.R. 2008 No. 413 and S.R. 2009 No. 338

(31) Paragraph (d) was substituted by regulation 3(17)(d)(ii) of S.R. 2008 No. 413 and amended by regulation 8(11)(b)(i) of S.R. 2009 No. 338

(32) S.R. 2011 No. 135

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Sealed with the Official Seal of the Department for Social Development on 13th March 2013

(L.S.)

Anne McCleary
A senior officer of the Department for Social
Development

The Department of Finance and Personnel consents to regulations 6 and 7.
Sealed with the Official Seal of the Department of Finance and Personnel on 13th March 2013

(L.S.)

John McKibbin
A senior officer of the Department of Finance
and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend a number of different regulations relating to social security.

Regulations 2(3), 3(4) and 5 amend the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”), the Jobseeker’s Allowance Regulations (Northern Ireland) 1996 (“the Jobseeker’s Allowance Regulations”) and the State Pension Credit Regulations (Northern Ireland) 2003. In specified circumstances a deduction will be made to the amount of housing costs payable to a claimant where a non-dependant person is living in their home. At present, income-related employment and support allowance at the assessment phase rate paid to a non-dependant person aged under 25 living in the claimant’s home is taken into account when calculating the claimant’s entitlement to housing costs for income support, jobseeker’s allowance and state pension credit, but not for employment and support allowance or housing benefit. This amendment ensures that this type of payment will not be taken into account when calculating housing costs for all income-related benefits.

Regulations 2(2), 3(2) and 8 amend the Income Support Regulations, the Jobseeker’s Allowance Regulations, and the Employment and Support Allowance Regulations (Northern Ireland) 2008 (“the Employment and Support Allowance Regulations”). In general any payment by a relevant member of the claimant’s family (“a Liable Relative Payment”) to a third party will be taken into account when calculating the claimant’s eligibility for an income-related benefit. In other provisions in the Income Support Regulations, Jobseeker’s Allowance Regulations and Employment and Support Allowance Regulations payments made to third parties for rent or rates for which housing benefit is payable is disregarded where it is not a Liable Relative Payment. The amendments provide for the disregard of a Liable Relative Payment for rent or rates in respect of a claimant’s dwelling made directly to a third party and for which housing benefit is payable to ensure consistency with the other provisions in the relevant Regulations.

Regulation 3(3) also provides for amendments to the Jobseeker’s Allowance Regulations to exclude certain resources available in respect of children or young persons in the claimant’s family or household from being required to be taken into account in determining whether that person will suffer hardship.

Regulation 4 amends the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999. The provision being amended relates to when changes of circumstances relating to income take effect in relation to awards of state pension credit. The first amendment ensures that the change in circumstances takes effect from the first day of the benefit week in which the change occurs (or if not practicable, from the first day of the next following benefit week) where the change relates to the income of the claimant’s partner as well as the claimant’s income. The second amendment ensures that where a claimant or their partner receives a disability living allowance (middle or higher rate care component) or attendance allowance again after a period in a NHS hospital or a hospital run by the Defence Council, that change also takes effect from that day.

Regulation 6(3)(a) amends the Housing Benefit Regulations (Northern Ireland) 2006 (“the Housing Benefit Regulations”) to provide that people who are entitled to employment and support allowance credits only can also in certain circumstances be entitled to Housing Benefits.

Regulations 6(2) and 7(2) amend the Housing Benefit Regulations and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations (Northern Ireland) 2006 (“the Housing Benefit (State Pension Credit) Regulations”) to make provision for certain prisoners who are required to live away from their home as a condition of their bail and

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prisoners who have not been sentenced but have been detained, to continue to receive Housing Benefit.

Regulation 7(3) amends the Housing Benefit (State Pension Credit) Regulations to provide that payments of arrears of Social Fund as capital are disregarded.

Regulation 9 makes consequential revocations.

In so far as these Regulations are required, for the purposes of regulations 6 and 7, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992, after agreement by the Social Security Advisory Committee, they have not been so referred by virtue of section 150(1)(b) of that Act. Otherwise they make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, that Act, are not subject to the requirement of section 149(2) or, as the case may be, (2A) of that section for prior reference to the Social Security Advisory Committee or the Industrial Injuries Advisory Council.