

1988 No. 423

SOCIAL SECURITY

**The Family Credit (General) (Amendment No. 4)
Regulations (Northern Ireland) 1988**

Made 1st December 1988

Coming into operation 5th December 1988

The Department of Health and Social Services, in exercise of the powers conferred on it by Article 23(8) and (9) of the Social Security (Northern Ireland) Order 1986(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 Family Credit (General) (Amendment No. 4) Regulations (Northern Ireland) 1988 and shall come into operation on 5th December 1988.

(2) In these regulations “the principal regulations” means the Family Credit (General) Regulations (Northern Ireland) 1987(b).

Amendment of regulation 2 of the principal regulations

2. In regulation 2(1) of the principal regulations (interpretation) after the definition of “close relative” there shall be inserted the following definition—

“ “community charge rebate” means a rebate under the provisions of section 24(a) of the Abolition of Domestic Rates Etc. (Scotland) Act 1987(c);”.

Amendment of regulation 14 of the principal regulations

3. In regulation 14(1) of the principal regulations (normal weekly earnings of employed earners) for “the claim is received” wherever it occurs there shall be substituted “the date of claim falls”.

Amendment of regulation 15 of the principal regulations

4. In regulation 15 of the principal regulations (normal weekly earnings of self-employed earners)—

(a) in paragraph (1)—

(i) in sub-paragraph (a) at the beginning there shall be inserted “except where sub-paragraph (b) applies,”; and for “the claim is received” there shall be substituted “the date of claim falls”,

(a) S.I. 1986/1888 (N.I. 18)

(b) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 No. 131, 192, 205 and 303

(c) 1987 c. 47; section 24 was amended by paragraph 32 of Schedule 12 to the Local Government Finance Act 1988 (c. 41)

- (ii) for sub-paragraph (b) there shall be substituted the following sub-paragraph—
- “(b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a balance sheet or both, and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim, over that period; or”,
- (iii) in sub-paragraph (c) for “the claim is received” there shall be substituted “the date of claim falls”;
- (b) after paragraph (1) there shall be inserted the following paragraph—
- “(1A) in paragraph (1)(b)—
- (a) “balance sheet” means a statement of the financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;
- (b) “profit and loss account” means a financial statement showing the net profit or loss of the employment for the period in question; and
- (c) “trading account” means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question.”.

Amendment of regulation 16 of the principal regulations

5. In regulation 16 of the principal regulations (normal weekly income other than earnings)—

- (a) in paragraph (1) for “the date of claim” there shall be substituted “the week in which the date of claim falls”; and for “that date” there shall be substituted “that week”;
- (b) in paragraph (2)(b) for “the claim is received” there shall be substituted “the date of claim falls”.

Amendment of regulation 18 of the principal regulations

6. In regulation 18 of the principal regulations (calculation of weekly amount of income) for paragraph (2) there shall be substituted the following paragraph—

“(2) For the purposes of regulation 15 (normal weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined—

- (a) except where sub-paragraph (b) applies, by dividing his earnings received in the assessment period or, as the case may be, estimated for that period by the number equal to the number of weeks in that period;
- (b) in a case where regulation 15(1)(b) applies, by multiplying his earnings relevant to the assessment period (whether or not received in that period) by 7 and dividing the product by the number equal to the number of days in that period.”.

Amendment of regulation 22 of the principal regulations

7. In regulation 22 of the principal regulations (calculation of net profit of self-employed earners)—

- (a) in paragraph (3), after “except where paragraph” there shall be inserted “(3A),”; and for “over the assessment period” there shall be substituted “received in the assessment period”;
- (b) after paragraph (3) there shall be inserted the following paragraph—

“(3A) For the purposes of paragraph (1)(a), in a case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period), less—

 - (a) subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment;
 - (b) an amount in respect of—
 - (i) income tax, and
 - (ii) social security contributions payable under the Act, calculated in accordance with regulation 23; and
 - (c) one half of any qualifying premium payable.”;
- (c) in paragraph (4) after “except where paragraph” there shall be inserted “(4A), (9) or”; and for “over the assessment period” there shall be substituted “received in the assessment period”;
- (d) after paragraph (4) there shall be inserted the following paragraph—

“(4A) For the purposes of paragraph (1)(b), in a case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period) less, subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment.”;
- (e) in paragraphs (5), (6), (7) and (8) for “paragraph (3)(a) or (4)” there shall be substituted “paragraph (3)(a), (3A)(a), (4) or (4A), as the case may be,”;
- (f) for paragraph (10) there shall be substituted the following paragraph—

“(10) Where regulation 15(2) (normal weekly earnings of self-employed earners) applies—

 - (a) for the purposes of paragraph (1)(a), the net profit derived from the employment shall be calculated by taking into account the claimant’s estimated and, where appropriate, actual earnings from the employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) to (c) of paragraph (3);

- (b) for the purposes of paragraph (1)(b), his share of the net profit of the employment shall be calculated by taking into account the claimant's share of the estimated and, where appropriate, of the actual earnings from the employment less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under paragraph (4); or
- (c) in the case of employment as a child minder, the net profit of the employment shall be calculated by taking into account one third of the claimant's estimated and, where appropriate, actual earnings from that employment less the amount of the deductions likely to be made and, where appropriate, made under sub-paragraphs (a) and (b) of paragraph (9)."

Amendment of regulation 23 of the principal regulations

8. In regulation 23 of the principal regulations (deduction of tax and contributions for self-employed earners)—

- (a) in paragraph (1) after "(3)(b)(i)" there shall be inserted ", (3A)(b)(i)";
- (b) in paragraph (2) after "(3)(b)(ii)" there shall be inserted ", (3A)(b)(ii)";
- (c) for paragraph (3) there shall be substituted the following paragraph—
 - "(3) In this regulation "chargeable income" means—
 - (a) except where sub-paragraph (b) or (c) applies, the earnings derived from the employment, less any expenses deducted under paragraph (3)(a), (3A)(a), (4) or (4A), as the case may be, of regulation 22;
 - (b) except where sub-paragraph (c)(iii) applies, in the case of employment as a child minder one third of the earnings of that employment; or
 - (c) where regulation 15(2) (normal weekly earnings of self-employed earners) applies—
 - (i) in the case of a self-employed earner who is engaged in employment on his own account, the claimant's estimated and, where appropriate, actual earnings from the employment less the amount of the deductions likely to be made and, where appropriate, made under regulation 22(3)(a),
 - (ii) in the case of a self-employed earner whose employment is carried on in partnership or is that of a share fisherman within the meaning of the Social Security (Mariners' Benefits) Regulations (Northern Ireland) 1975(a), the claimant's share of the estimated and, where appropriate, of the actual earnings from the employment less the amount of his share of the expenses likely to be deducted and, where appropriate, deducted under regulation 22(4),
 - (iii) in the case of employment as a child minder, one third of the claimant's estimated and, where appropriate, actual earnings from that employment."

(a) S.R. 1975 No. 108; to which there are amendments not relevant to these regulations

Amendment of regulation 26 of the principal regulations

9. In regulation 26(3)(a) of the principal regulations (notional income) for "a family" there shall be substituted "the family".

Amendment of regulation 31 of the principal regulations

10. In regulation 31(4) of the principal regulations (income treated as capital) for "or 13" there shall be substituted ", 13 or 26 to 30".

Amendment of regulation 34 of the principal regulations

11. In regulation 34 of the principal regulations (notional capital)—
- (a) in paragraph (1) at the end there shall be added "except where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the claimant";
 - (b) in paragraph (3)(a) for "a family" there shall be substituted "the family".

Amendment of Schedule 2 to the principal regulations

12. In Schedule 2 to the principal regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 18 for "member of his household" there shall be substituted "person who normally resides with the claimant";
- (b) after paragraph 36 there shall be added the following paragraphs—

"37. Any payment made by the Department to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with and including that day.

38. Any payment made under arrangements made by the Department to compensate for the loss of housing benefit supplement under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983(a).

39. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

40. Any housing benefit in the form of a community charge rebate."

Amendment of Schedule 3 to the principal regulations

13. In Schedule 3 to the principal regulations (capital to be disregarded)—

- (a) for paragraph 28 there shall be substituted the following paragraph—

"28. Any premises which the claimant intends to occupy as his home, and in respect of which he is taking steps to obtain possession and has sought legal advice, or has commenced legal proceedings,

(a) S.R. 1983 No. 61; relevant amending regulations are S.R. 1983 No. 291, S.R. 1984 No. 79 and S.R. 1986 No. 236

with a view to obtaining possession, for a period of 26 weeks from the date on which he first sought such advice or first commenced such proceedings, whichever is the earlier, or such longer period as is reasonable in the circumstances to enable him to obtain possession and commence occupation of those premises.”;

- (b) in paragraph 32 at the end there shall be added “but only for a period of 52 weeks from the date of the receipt of that payment”;
- (c) after paragraph 33 there shall be added the following paragraphs—

“34. Any payment made by the Department to compensate a person who was entitled to supplementary benefit in respect of a period ending immediately before 11th April 1988 but who did not become entitled to income support in respect of a period beginning with and including that day.

35. Any payment made under arrangements made by the Department to compensate for the loss of housing benefit supplement under regulation 19A of the Supplementary Benefit (Requirements) Regulations (Northern Ireland) 1983.

36. Any payment made to a juror or witness in respect of attendance at court other than compensation for loss of earnings or for the loss of a benefit payable under the benefit Acts.

37. Any housing benefit in the form of a community charge rebate.”.

Sealed with the Official Seal of the Department of Health and Social Services on 1st December 1988.

(L.S.)

C. Davie

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Family Credit (General) Regulations (Northern Ireland) 1987.

They remove the requirement, where a self-employed earner's assessment period is determined by reference to an accounting period, for audited accounts and provide for the acceptance of a profit and loss account and, where appropriate, a trading account and balance sheet (regulation 4); make provision in such cases for the net profit of the employment to be determined by reference to the earnings and expenses relating to the assessment period and for calculating the weekly amount of earnings in that period (regulations 6 and 7); and provide for a person's assessment period to terminate immediately before the week in which the date of claim falls (regulations 3 and 5).

They also provide, where earnings are estimated, for determining chargeable income for the purposes of assessing tax and social security contributions (regulation 8); disregard in the calculation of income and capital certain payments made to compensate for the loss of benefit on the introduction of income support, certain payments to jurors or witnesses and community charge rebates (regulations 12 and 13); and make provision for a claimant not to be treated as possessing capital paid to him in consequence of a personal injury and held on trust for his benefit (regulation 11(a)).

The other amendments are of a minor drafting nature (regulations 9, 10 and 11(b)).

The regulations correspond to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain and accordingly, by virtue of section 10(2) of, and paragraph 21 of Schedule 3 to, the Social Security Act 1980 (c.30), are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.