

1988 No. 424

HOUSING; RATES**The Housing Benefit (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 Articles 21(8) and (12)(g), 23(1), (8) and (9), 30(7) and 52(1)(b) of the Social Security (Northern Ireland) Order 1986(a) and of all other powers enabling it in that behalf, and with the consent of the Department of the Environment(b), so far as relates to matters with regard to which such consent is required, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Housing Benefit (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 Housing Benefit (General) Regulations (Northern Ireland) 1987(c).

Amendment of regulation 2 of the principal regulations

2. In regulation 2(1) of the principal regulations (interpretation)—

(a) 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(d);”;

(b) for the definition of “polygamous marriage” there shall be substituted the following definition—

“ “polygamous marriage” means any marriage during the subsistence of which a party to it is married to more than one person and the ceremony of marriage took place under the law of a country which permits polygamy;”.

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- (a) S.I. 1986/1888 (N.I. 18); Article 81(1) provides for section 155(1) to (3A) of the Social Security (Northern Ireland) Act 1975 (c.15) (extent of powers) to apply to the enabling provisions under which these regulations are made; section 155(3A) was inserted by Article 63(1)
- (b) See Article 81(5) of the Social Security (Northern Ireland) Order 1986
- (c) S.R. 1987 No. 461; the relevant amending regulations are S.R. 1988 Nos. 117, 186 and 314
- (d) 1987 c. 47; section 24 was amended by paragraph 32 of Schedule 12 to the Local Government Finance Act 1988 (c. 41)

Amendment of regulation 5 of the principal regulations

3. In regulation 5(9) of the principal regulations (circumstances in which a person is or is not to be treated as occupying a dwelling as his home) in the definition of “residential accommodation” at the end of paragraph (b) there shall be added “where board is available to the claimant”.

Amendment of regulation 8 of the principal regulations

4. In regulation 8(2)(b)(ii) of the principal regulations (eligible housing costs) at the end there shall be added “where board is available to the claimant”.

Amendment of regulation 10 of the principal regulations

5. In regulation 10(1)(h) of the principal regulations (rent) after “a dwelling” there shall be inserted “which is a building or part of one”.

Amendment of regulation 21 of the principal regulations

6. In regulation 21(2) of the principal regulations (calculation of income on a weekly basis) for the words from “regulations 27(3)” to the end of that regulation there shall be substituted “regulations 34 and 35 (capital treated as income and notional income)”.

Omission of regulation 27 of the principal regulations

7. Regulation 27 of the principal regulations (treatment of charitable or voluntary payments) shall be omitted.

Amendment of regulation 33 of the principal regulations

8. In regulation 33(1) of the principal regulations (calculation of income other than earnings) for “regulations 27(3) and 34 (treatment of charitable or voluntary payments and capital treated as income)” there shall be substituted “regulation 34 (capital treated as income)”.

Amendment of regulation 35 of the principal regulations

9. In regulation 35 of the principal regulations (notional income)—

(a) for paragraph (3) there shall be substituted the following paragraph—

“(3) Any payment of income, other than a payment of income made under the Macfarlane Trust or the Independent Living Fund, made—

(a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party’s family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rent or rates or both, of that single claimant or, as the case may be, of any member of that family;

(b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.”;

- (b) after paragraph (8) there shall be added the following paragraph—
 “(9) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.”.

Amendment of regulation 38 of the principal regulations

10. In regulation 38(1) of the principal regulations (calculation of capital) for “regulations 27(2) and 40 (treatment of charitable or voluntary payments and income treated as capital)” there shall be substituted “regulation 40 (income treated as capital)”.

Amendment of regulation 40 of the principal regulations

11. In regulation 40 of the principal regulations (income treated as capital)—

- (a) in paragraph (1) “annual” shall be omitted; and after “applies” there shall be inserted “and paid at intervals of at least one year”;
- (b) in paragraph (4) for “or 13” there shall be substituted “, 13 or 24 to 27”.

Amendment of regulation 43 of the principal regulations

12. In regulation 43 of the principal regulations (notional capital)—

- (a) for paragraph (3) there shall be substituted the following paragraph—
 “(3) Any payment of capital, other than a payment of capital made under the Macfarlane Trust or the Independent Living Fund, made—

(a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party’s family) shall be treated as possessed by that single claimant or by that member to the extent that it is used for the food, ordinary clothing or footwear, household fuel, eligible rent or rates or both, of that single claimant or, as the case may be, of any member of that family;

(b) to a single claimant or a member of the family in respect of a third party (but not in respect of another member of that family) shall be treated as possessed by that single claimant or, as the case may be, that member of the family to the extent that it is kept or used by him or used by or on behalf of any member of the family.”;

- (b) after paragraph (6) there shall be added the following paragraph—

“ (7) In paragraph (3) the expression “ordinary clothing or footwear” means clothing or footwear for normal daily use, but does not include school uniforms, or clothing or footwear used solely for sporting activities.”.

Amendment of regulation 44 of the principal regulations

13. In regulation 44(1) of the principal regulations (capital jointly held) at the end there shall be added “and the foregoing provisions of this Chapter

shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess”.

Amendment of regulation 45 of the principal regulations

14. In regulation 45(3) of the principal regulations (calculation of tariff income from capital) for “regulations 27(2) and 40 (treatment of charitable or voluntary payments and income treated as capital)” there shall be substituted “regulation 40 (income treated as capital)”.

Amendment of regulation 72 of the principal regulations

15. In regulation 72(14) of the principal regulations (time and manner in which claims are to be made) for “approves” there shall be substituted “proves”.

Amendment of regulation 105 of the principal regulations

16. In regulation 105(1) of the principal regulations (recovery of overpayments from prescribed benefits) sub-paragraph (d) shall be omitted.

Amendment of Schedule 2 to the principal regulations

17. In Schedule 2 to the principal regulations (applicable amounts)—

(a) in paragraph 12—

- (i) in sub-paragraph (1)(a)(i) at the end there shall be added “but, in the case of invalidity pension or severe disablement allowance only where it is paid in respect of him”;
- (ii) in sub-paragraph (1)(b) for “a period” there shall be substituted “a continuous period”;
- (iii) after sub-paragraph (4) there shall be added the following sub-paragraph—

“(5) For the purposes of sub-paragraph (1)(b), once the disability premium is applicable to a claimant by virtue of his satisfying the additional condition specified in that provision, he shall continue to be treated as satisfying that condition for any period spent by him in undertaking a course of training provided under section 3 of the Employment and Training Act (Northern Ireland) 1950(a);

(b) after paragraph 14 there shall be inserted the following paragraph—

“Persons in receipt of concessionary payments

14A. For the purpose of determining whether a premium is applicable to a person under paragraphs 12 to 14, any concessionary payment made to compensate that person for the non-payment of any benefit mentioned in those paragraphs shall be treated as if it were a payment of that benefit.”.

Amendment of Schedule 3 to the principal regulations

18. In Schedule 3 to the principal regulations (sums to be disregarded in the calculation of earnings)—

(a) 1950 c. 29 (N.I.)

- (a) for paragraphs 1 and 2 there shall be substituted the following paragraphs—

“1. In the case of a claimant who has been engaged in remunerative work as an employed earner or, had the employment been in Northern Ireland, would have been so engaged—

- (a) any earnings paid or due to be paid in respect of that employment which has been terminated—
- (i) by way of retirement but only if on retirement he is entitled to a retirement pension under the principal Act, or would be so entitled if he satisfied the contribution conditions,
 - (ii) otherwise than by retirement, except earnings to which regulation 28(1)(b) to (e) and (g) to (j) (earnings of employed earners) applies;
- (b) any earnings paid or due to be paid in respect of that employment which has been interrupted except earnings to which regulation 28(1)(d) and (e) applies.

2. In the case of a claimant who has been engaged in part-time employment as an employed earner or, had the employment been in Northern Ireland, would have been so engaged before he made a claim for housing benefit, any earnings paid or due to be paid in respect of that employment which has been terminated or interrupted before the claim is made except earnings to which regulation 28(1)(e) applies.”;

- (b) in paragraph 3—

- (i) in sub-paragraph (1)(b)(ii) for “he has attained the age of 60 and immediately before attaining that age” there shall be substituted “he or his partner has attained the age of 60 and immediately before attaining that age either”,
- (ii) in sub-paragraph (1)(b)(iii) for “he has” there shall be substituted “either he or his partner has”.

Amendment of Schedule 4 to the principal regulations

19. In Schedule 4 to the principal regulations (sums to be disregarded in the calculation of income other than earnings)—

- (a) in paragraph 17—

- (i) in sub-paragraph (1) for “or 13” there shall be substituted “, 13 or 24 to 27”,
- (ii) in sub-paragraph (2) for “or 4” there shall be substituted “, 4 or 24 to 27”;

- (b) after paragraph 38 there shall be added the following paragraphs—

“39. 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).

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

40. Any resettlement benefit which is paid to the claimant by virtue of regulation 3 of the Social Security (Hospital In-Patients) (Amendment No. 2) Regulations (Northern Ireland) 1987(a).

41. Any payment 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.

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

Amendment of Schedule 5 to the principal regulations

20. In Schedule 5 to the principal regulations (capital to be disregarded)—

(a) for paragraph 4 there shall be substituted the following paragraph—

“4. Any premises occupied in whole or in part as his home by—

(a) a partner or relative of any member of the family where that person is aged 60 or over or is incapacitated;

(b) the former partner of the claimant; but this provision shall not apply where the former partner is a person from whom the claimant is estranged or divorced.”;

(b) for paragraph 26 there shall be substituted the following paragraph—

“26. 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, 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.”;

(c) after paragraph 28 there shall be added the following paragraphs—

“29. 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.

30. The value of the right to receive an occupational pension.

31. The value of the right to receive any rent.

32. Any payment in kind made by a charity.

33. Any payment not exceeding £200 made under section 1 of the Employment and Training Act (Northern Ireland) 1950(b) (general functions of Department of Economic Development as to employment and training for employment) as a training bonus to a person participating in an arrangement for training made under that section, but only for a period of 52 weeks from the date of the receipt of that payment.

(a) S.R. 1987 No. 391

(b) Section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

34. 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

The Department of the Environment hereby consents to the foregoing Regulations.

Sealed with the Official Seal of the Department of the Environment on 1st December 1988.

(L.S.)

W. N. Campbell

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Housing Benefit (General) Regulations (Northern Ireland) 1987.

They terminate the arrangements for treating charitable and voluntary payments in excess of £250 as income; and make a number of other miscellaneous amendments to the rules for calculating income and capital, including provision for the disregard of payments made under arrangements made by the Department to compensate for the loss of housing benefit supplement under the reformed scheme, for the disregard of community charge rebates, any training bonus not exceeding £200 paid under the Employment Training scheme and certain other specified payments (regulations 6 to 14 and 18 to 20).

The regulations also restrict payments under a rental purchase agreement which constitute eligible rent to payments made in respect of a dwelling which forms part of a building (regulation 5); treat a concessionary payment as if it were a payment of benefit for the purpose of determining entitlement to the higher pensioner and disability premiums and provide for a person entitled to a disability premium to be treated as satisfying the incapacity condition when undertaking a period of approved training (regulation 17).

In addition, they delete the provision for the recovery of overpayments from benefit in Great Britain as a result of the corresponding provision to that effect made by Article 30(8) of the Social Security (Northern Ireland) Order 1986 inserted by the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) (regulation 16); amend the definition of a polygamous marriage (regulation 2) and make certain other minor amendments (regulations 3, 4 and 15).

These 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.