

## 1990 No. 398

**SOCIAL SECURITY; HOUSING; RATES****The Social Security (Miscellaneous Provisions)  
(Amendment) Regulations (Northern Ireland) 1990***Made . . . . . 15th November 1990**Coming into operation in accordance with regulation 1(1)*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 3(2), 35(6), 37A(2C) and (5A), 104(5), 114(2) and 154A of, and paragraph 6(1) (gg) and (m) of Schedule 1 to, the Social Security (Northern Ireland) Act 1975(a), Article 52(1) of the Social Security (Northern Ireland) Order 1986(b) and Article 31(3) of the Social Security (Northern Ireland) Order 1989(c) and of all other powers enabling it in that behalf, and after agreement by the Social Security Advisory Committee that proposals to make these regulations in so far as they are required to be referred to it should not be so referred(d), hereby makes the following regulations:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Social Security (Miscellaneous Provisions) (Amendment) Regulations (Northern Ireland) 1990 and shall come into operation as follows—

- (a) for the purposes of regulation 4(3) in relation to the calculation of a person's earnings from an employment, on the first day of the first assessment period to commence on or after 5th December 1990; and
- (b) for all other purposes on 5th December 1990.

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- (a) 1975 c. 15; section 37A was inserted by Article 24(1) of the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), subsection (2C) was inserted by Article 72(2) of the Social Security (Northern Ireland) Order 1986 (S.I. 1986/1888 (N.I. 18)), subsection (5A) was inserted by Article 4(3) of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)) and amended by Article 10(1) of the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)); section 104(5) was inserted by paragraph 9(d) of Schedule 5 to the Social Security (Northern Ireland) Order 1986 and amended by paragraph 11(3) and (4) of Schedule 3 to the Social Security (Northern Ireland) Order 1989; section 154A was inserted by Article 17 of the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16)), substituted by paragraph 56 of Schedule 9 to the Social Security (Northern Ireland) Order 1986 and extended by paragraph 32 of that Schedule, paragraphs (a) and (b) of subsection (1) were substituted by paragraph 8 of Schedule 8 to the Social Security (Northern Ireland) Order 1989 and subsections (1) and (2) were amended by Article 8(1) of the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15)); paragraph 6(1)(gg) of Schedule 1 was inserted by Article 4 of the Social Security (Northern Ireland) Order 1989. *See also* Article 53 of the Social Security (Northern Ireland) Order 1986
  - (b) S.I. 1986/1888 (N.I. 18)
  - (c) S.I. 1989/1342 (N.I. 13)
  - (d) *See* Article 62(1)(b) of the Social Security (Northern Ireland) Order 1986

(2) In this regulation “assessment period” has the same meaning as in regulation 5(4)(a) of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978(a).

(3) The Interpretation Act (Northern Ireland) 1954(b) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

*Amendment of the Social Security (Mobility Allowance) Regulations (Northern Ireland) 1975*

2. Regulation 4(2) of the Social Security (Mobility Allowance) Regulations (Northern Ireland) 1975(c) (entitlement to allowance in respect of weeks before that in which claim is received by the Department) for “by virtue of regulation 6” there shall be substituted “by virtue of regulation 39 of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(d)”.

*Amendment of the Social Security (Mobility Allowance) (Vehicle Scheme Beneficiaries) Regulations (Northern Ireland) 1977*

3. In regulation 6 of the Social Security (Mobility Allowance) (Vehicle Scheme Beneficiaries) Regulations (Northern Ireland) 1977(e) (application of the principal Act, the principal regulations and the Social Security (Adjudication) Regulations (Northern Ireland) 1984 in relation to vehicle scheme beneficiaries)—

(a) in paragraph (a) for “75” there shall be substituted “80”; and

(b) in paragraph (c)—

- (i) for “the Social Security (Adjudication) Regulations (Northern Ireland) 1984” there shall be substituted “the Social Security (Adjudication) Regulations (Northern Ireland) 1987(f)”,
- (ii) in sub-paragraph (i) for “regulation 54 after paragraph (1)(b)” there shall be substituted “regulation 56 after paragraph (2)(b)”, and
- (iii) for sub-paragraph (ii) there shall be substituted the following sub-paragraph—

“(ii) in regulation 62 after paragraph (4) there were added—

“(5) Where the grounds of an application under paragraph (2) are that a certificate issued for the purposes of Article 10 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(g) has been cancelled, the adjudication officer may himself determine

(a) S.R. 1978 No. 371; relevant amending regulations are S.R. 1979 No. 97 and S.R. 1989 Nos. 373 and 438

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

(c) S.R. 1975 No. 280; relevant amending regulations are S.R. 1986 No. 341

(d) S.R. 1987 No. 465; relevant amending regulations are S.R. 1988 Nos. 67, 141 and 369, S.R. 1989 Nos. 40 and 398 and S.R. 1990 No. 137

(e) S.R. 1977 No. 242; relevant amending provisions are paragraph 30 of Schedule 3 to the Social Security (Northern Ireland) Order 1979 and S.R. 1984 No. 174

(f) S.R. 1987 No. 82

(g) S.I. 1977/610 (N.I. 11); Article 10 was amended by paragraph 28(c) of Schedule 3 to the Social Security (Northern Ireland) Order 1979

any medical question arising on review adversely to the person in question without referring it to a medical board and the provisions of regulations 57(3) and 58 to 61 shall apply to that determination as if it were an adverse determination under regulation 57(2).”.

*Amendment of the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978*

4.—(1) The Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978 shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 3(1)(b) (payments to be disregarded)—

(a) after “37(1)(b),” there shall be inserted “41(2A)(a),”; and

(b) after “49” there shall be inserted “, 64(1A)(b)”.

(3) In regulation 5 (calculation of earnings of certain retirement pensioners and adult dependants of pensioners)—

(a) in paragraph (1)(a) after “specified benefit” there shall be inserted “or section 41(2A) or 64(1A) of the Act applies and the beneficiary is entitled to a specified benefit or retirement pension”; and

(b) in paragraph (2) for “sections 45 to 49 (other than subsection (b) of section 49) and 66(4) of the Act” there shall be substituted “sections 41, 45 to 49 (other than subsection (b) of section 49), 64 and 66(4) of the Act”.

*Amendment of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987*

5.—(1) The Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987(c) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 5(1) (exception from regulations 3 and 4) for “4 weeks” there shall be substituted “28 days”.

(3) In regulation 11(4) (children in hospital and certain other accommodation) for “4 weeks” there shall be substituted “28 days”.

*Amendment of the Housing Benefit (General) Regulations (Northern Ireland) 1987*

6. In regulation 72(15) of the Housing Benefit (General) Regulations (Northern Ireland) 1987(d) (time and manner in which claims are to be made) after “on the date” there shall be inserted “not later than 5th December 1990”.

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- (a) Section 41(2A) was inserted by paragraph 2(c) of Schedule 3 to the Health and Social Security (Northern Ireland) Order 1984 (S.I. 1984/1158 (N.I. 8))
- (b) Section 64(1A) was inserted by paragraph 3 of Schedule 3 to the Health and Social Security (Northern Ireland) Order 1984. Section 64 ceased to have effect except for existing beneficiaries from 6th April 1987 by virtue of paragraph 4 of Schedule 3 to the Social Security (Northern Ireland) Order 1986
- (c) S.R. 1987 No. 413, to which there are amendments not relevant to these regulations
- (d) S.R. 1987 No. 461; relevant amending regulations are S.R. 1990 No. 137

*Amendment of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987*

7.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 shall be amended in accordance with paragraphs (2) to (10).

(2) In regulation 3 (claims not required for entitlement to benefit in certain cases) after paragraph (e) there shall be added the following paragraph—

“(f) in the case of an invalidity pension, where in any period of interruption of employment the evidence of incapacity required for determining the beneficiary’s entitlement to sickness benefit in that same period of interruption of employment shows that his incapacity will continue until or beyond the first day on which there could be entitlement to an invalidity pension.”.

(3) In regulation 6(6) (date of claim) after “on the date” there shall be inserted “not later than 5th December 1990”.

(4) In regulation 24(3) (unemployment benefit, sickness or invalidity benefit, severe disablement allowance and maternity allowance) after “sickness or invalidity benefit” there shall be inserted “or severe disablement allowance”.

(5) In regulation 30 (payments on death)—

(a) in paragraph (5) after “the Order” there shall be inserted “, or reduced earnings allowance or disablement benefit”; and

(b) after paragraph (6) there shall be inserted the following paragraphs—

“(6A) Where the conditions specified in paragraph (6B) are satisfied, a person may make a claim for reduced earnings allowance or disablement benefit, including any increase under sections 61(a) or 63 of the Act, in the name of a person who has died.

(6B) The conditions specified for the purposes of paragraph (6A) are—

(a) that the person who has died would have been entitled to the benefit claimed if he had made a claim for it in the prescribed manner and within the prescribed time;

(b) that within 6 months of a death certificate being issued in respect of the person who has died, the person making the claim has applied to the Department to be made an appointee of the person who has died and the Department has appointed him; and

(c) the claim is made within 6 months of the appointment.”; and

(c) in paragraph (7) after “with paragraph (5)” there shall be inserted “or (6A)”.

(6) In regulation 39 (claim received within 6 months after the end of a period for which mobility allowance is awarded) for “75” there shall be substituted “80”.

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(a) Subsections (3) and (4) of section 61 were inserted by paragraph 6 of Schedule 3 to the Social Security (Northern Ireland) Order 1986

(7) In regulation 43 (payment of mobility allowance on behalf of a beneficiary) for paragraph (5) there shall be substituted the following paragraph—

“(5) In this regulation “Motability” means the company, set up under that name as a charity and originally incorporated under the Companies Act 1985(a) and subsequently incorporated by Royal Charter.”.

(8) In Part I of Schedule 1 (benefit claimed and other benefit which may be treated as if claimed in addition or in the alternative)—

(a) in column (1) (benefit claimed) at the end there shall be added “Widow’s benefit”; and

(b) in column (2) (alternative benefit or benefit treated as if also claimed) opposite the entry for “Widow’s benefit” there shall be added “A retirement pension of any category or graduated retirement benefit”.

(9) For paragraph 7 of Schedule 7 (manner and time of payment, effective date of change of circumstances and commencement of entitlement in income support cases) there shall be substituted the following paragraph—

“7.—(1) Subject to the following sub-paragraphs where the amount of income support payable under an award is changed because of a change of circumstances that change of circumstances shall have effect—

(a) where income support is paid in arrears, from the first day of the benefit week in which the relevant change of circumstances occurs or is expected to occur; or

(b) where income support is paid in advance, from the date of the relevant change of circumstances, or the day on which the relevant change of circumstances is expected to occur, if that day is the first day of the benefit week and otherwise from the next following such day, and

for the purposes of this paragraph any period of residence in temporary accommodation under arrangements for training made under sections 2 and 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(b) or section 1(1) of the Employment and Training Act (Northern Ireland) 1950(c) for a period which is expected to last for 7 days or less shall not be regarded as a change of circumstances.

(2) In the cases set out in sub-paragraph (3), the decision given on review shall have effect on the day on which the relevant change of circumstances occurs or is expected to occur.

(3) The cases referred to in sub-paragraph (2) are where—

(a) income support is paid in arrears and entitlement ends, or is expected to end, for a reason other than that the claimant no longer satisfies the provisions of Article 21(3)(b) of the Order;

(a) 1985 c. 6

(b) 1945 c. 6(N.I.); sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3))

(c) 1950 c. 29 (N.I.); section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10))

- (b) a child or young person referred to in regulation 16(6) of the Income Support Regulations(a) (child in care of the Department, detained in custody or in a training school) lives or is expected to live, with the claimant for part only of the benefit week;
- (c) a claimant or his partner (as defined in regulation 2(1) of those regulations) enters, or is expected to enter, a home for persons in need or a nursing home (as defined in regulation 19(2) of those regulations), or residential accommodation (as defined in regulation 21(3) of those regulations) for a period of not more than 8 weeks;
- (d) a person referred to in paragraphs 1, 2, 3 or 16 of Schedule 7 to those regulations (applicable amounts in special cases) either—
  - (i) ceases, or is expected to cease, to be a patient, or
  - (ii) a member of his family ceases, or is expected to cease, to be a patient,
 in either case for a period of less than a week;
- (e) a person to whom Article 24 of the Order (trade disputes)(b) applies either—
  - (i) becomes incapable of work by reason of disease or bodily or mental disablement, or
  - (ii) enters the maternity period (as defined in Article 24(2) of the Order) or the day is known on which that person is expected to enter the maternity period;
- (f) during the currency of the claim, a claimant makes a claim for a relevant social security benefit—
  - (i) the result of which is that his benefit week changes, or
  - (ii) an award of that benefit on the relevant day for the purposes of regulation 13 means that his benefit week is expected to change.

(4) Where income is treated as paid on a particular day under regulation 31(1)(b) or (2) of the Income Support Regulations (date on which income is treated as paid) any relevant change of circumstances which occurs, or which is expected to occur, resulting from that payment shall have effect on the day on which it is treated as paid.

(5) Where the relevant change of circumstances requires, or is expected to require, a reduction in the amount of income support then, if the Department certifies that it will be impracticable to give effect to that reduction from the day prescribed in the preceding sub-paragraphs, except where sub-paragraph (3)(f) or (4) applies, the change shall have effect from the first day of the following benefit week.

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(a) S.R. 1987 No. 459; relevant amending provisions are S.R. 1988 Nos. 146 and 318, S.R. 1989 No. 139 and S.R. 1990 Nos. 70, 131 and 387

(b) Article 24 was amended by paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988 (c. 1), paragraph 17 of Schedule 4 to, and Schedule 5 to, the Social Security (Northern Ireland) Order 1988 (S.I. 1988/594 (N.I. 2)) and paragraph 12 of Schedule 6 to the Social Security (Northern Ireland) Order 1990

(6) Where in the cases set out in sub-paragraph (3)(b), (c), (d), (e) and (f) the review has been carried out under section 104(1)(b) of the Act(a) and the circumstances which have caused the award to be revised cease to apply and the award is reviewed and revised again that second change of circumstances shall take effect from the date of the second change.”.

(10) In Schedule 8A (deductions from benefits and direct payment to third parties)—

(a) in paragraph 6(1) (fuel costs) after “any item of mains gas or mains electricity” there shall be inserted “, including any charges for reconnection of gas or electricity,”; and

(b) in paragraph 8(3) (aggregate amounts and maximum amount of payments to third parties) for “Where the aggregate of the amount” there shall be substituted “Where the maximum aggregate amount”.

*Amendment of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations (Northern Ireland) 1990*

8. In regulation 3 of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations (Northern Ireland) 1990(b) (refund of part of contributions) for “the amount” there shall be substituted “that amount”.

*Revocations*

9. Regulation 10(d) of the Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 1988(c) and regulation 5(3) of the Social Security (Claims and Payments) (Amendment) Regulations (Northern Ireland) 1989(d) are hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 15th November 1990.

(L.S.)

A. N. Burns

Assistant Secretary

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(a) Section 104(1)(b) was substituted by paragraph 9(a) of Schedule 5 to the Social Security (Northern Ireland) Order 1986. See also Article 53 of that Order

(b) S.R. 1990 No. 90

(c) S.R. 1988 No. 141

(d) S.R. 1989 No. 40

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations, in so far as they are required, for the purposes of regulation 6 to be referred to the Social Security Advisory Committee under section 10(1) of the Social Security Act 1980 (c. 30) ("the 1980 Act"), have not been so referred by virtue of Article 62(1)(b) of the Social Security (Northern Ireland) Order 1986. Otherwise they 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 of, and paragraph 21 of Schedule 3 to the 1980 Act, are not subject to the requirement of section 10(1) of that Act for prior reference to the Social Security Advisory Committee.

Regulation 6 of the Social Security (Mobility Allowance) (Vehicle Scheme Beneficiaries) Regulations (Northern Ireland) 1977 is amended to take account of the increase of the age limit for mobility allowance from 75 to 80, provided for by Article 10(1) of the Social Security (Northern Ireland) Order 1989, and the reference in that regulation to the Social Security (Adjudication) Regulations (Northern Ireland) 1984 is updated to refer to the Social Security (Adjudication) Regulations (Northern Ireland) 1987 (regulation 3).

In the Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1978—

- (a) regulation 3(1)(b) is amended to provide for the disregard for the purposes of child dependency increase earnings rules, of the first £10 of a Christmas bonus paid by an employer (regulation 4(2)); and
- (b) regulation 5 is amended to provide that those earnings of a spouse or partner of a beneficiary, which are not immediately ascertainable, are to be calculated in accordance with that regulation for the purposes of determining a person's earnings under child dependency increase rules (regulation 4(3)).

Regulations 5 and 11 of the Social Security (Attendance Allowance) Regulations (Northern Ireland) 1987 are amended to make it clear that attendance allowance is payable in respect of the first 28 days of free hospital in-patient treatment or in certain other accommodation as specified in the Regulations (regulation 5).

Regulation 72(15) of the Housing Benefit (General) Regulations (Northern Ireland) 1987 and regulation 6(6) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 ("the Claims and Payments Regulations") are amended to provide that where a person has made a claim for benefit because of changes in the capital limit for income support and housing benefit, any claim made before 27th May 1990 shall be treated as made on a date not later than 5th December 1990 (regulations 6 and 7(3)).



Also in the Claims and Payments Regulations—

- (a) regulation 3 is amended to provide that where a person has been entitled to sickness benefit and medical evidence shows that his incapacity will continue beyond 168 days no claim for an invalidity pension is required (regulation 7(2));
- (b) regulation 24(3) is amended to include severe disablement allowance with those benefits which may be paid in arrears at intervals of 4 weeks where the weekly amount of benefit is less than £1 (regulation 7(4));
- (c) regulation 30 is amended to provide that where a person has died, and that person would have been entitled to reduced earnings allowance or disablement benefit before his death, the time limit for application to the Department for an appointment to make a claim on behalf of the deceased is extended to a period of 6 months beginning with the issue of the death certificate (regulation 7(5));
- (d) regulation 39 is amended to take account of the increase of the age limit for mobility allowance from 75 to 80 (regulation 7(6));
- (e) regulation 43 is amended to take account of the change in status of the Motability organisation from public company to an incorporated society by Royal Charter (regulation 7(7));
- (f) Schedule 1 is amended to enable a claim for widow's benefit to be treated in the alternative as a claim for a retirement pension of any category or graduated retirement benefit (regulation 7(8));
- (g) Schedule 7 is amended to make it clear that when a person returns to hospital and that change constitutes a change of circumstances, the change in circumstances affecting his benefit is treated as having taken place from the day after his return and further provision is made for anticipated changes of circumstances following a review under section 104(1)(bb) of the Social Security (Northern Ireland) Act 1975 (regulation 7(9)); and
- (h) Schedule 8A is amended to provide for the inclusion of reconnection charges in fuel costs (regulation 7(10)).

Regulation 3 of the Social Security (Refunds) (Repayment of Contractual Maternity Pay) Regulations (Northern Ireland) 1990 is amended to make it clear that the deduction from the amount of contributions refundable is limited to deductions of amounts paid by way of contributory benefit which would not have been paid had any of the refundable contributions not been originally paid (regulation 8).

A number of other amendments of a minor drafting nature are also made.

Regulation 9 contains some consequential revocations.