
STATUTORY RULES OF NORTHERN IRELAND

1992 No. 78

**The Disability Working Allowance (General)
Regulations (Northern Ireland) 1992**

PART V

INCOME AND CAPITAL

CHAPTER III:

EMPLOYED EARNERS

Earnings of employed earners

21.—(1) Subject to paragraph (2), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any holiday pay except any payable more than 4 weeks after termination of the employment;
- (c) any payment by way of a retainer;
- (d) any payment made by the claimant’s employer in respect of any expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant’s employer in respect of—
 - (i) travelling expenses incurred by the claimant between his home and place of employment, or
 - (ii) expenses incurred by the claimant under arrangements made for the care of a member of his family owing to the claimant’s absence from home;
- (e) any award of compensation made under Article 32(2)(a) or (5) of the Industrial Relations (Northern Ireland) Order 1976(1) (enforcement of Article 31 order and compensation);
- (f) any such sum as is referred to in Article 14(2) of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(2) (certain sums to be earnings for social security purposes);
- (g) any statutory sick pay under Part II of the Social Security (Northern Ireland) Order 1982(3);

(1) *S.I. 1976/1043 (N.I. 16)*; Article 32(2)(a) and (5) was amended by paragraph 4(5) of Schedule 3 to the Industrial Relations (Northern Ireland) Order 1987 (*S.I. 1987/936 (N.I. 9)*)

(2) *S.I. 1977/610 (N.I. 11)*; Article 14(2) was amended by paragraph 49 of Schedule 9 to, and Schedule 10 to, the Social Security (Northern Ireland) Order 1986 (*S.I. 1986/1888 (N.I. 18)*)

(3) *S.I. 1982/1084 (N.I. 16)*

- (h) any statutory sick pay under Part I of the Social Security and Housing Benefits Act 1982(4);
 - (i) any payment made under the legislation of, or under any scheme operating in, the Republic of Ireland which is analogous to income to which sub-paragraphs (e) to (h) relate.
- (2) Earnings shall not include—
- (a) subject to paragraph (3) any payment in kind;
 - (b) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment; or
 - (c) any occupational pension.
- (3) Where living accommodation is provided for a claimant by reason of his employment, the claimant shall be treated as being in receipt of weekly earnings of an amount equal to—
- (a) where no charge is made in respect of the provision of that accommodation, £12; or
 - (b) where a charge is made and that weekly charge is less than £12, the amount of the difference,
- except that where the claimant satisfies the adjudication officer that the weekly value to him of the provision of that accommodation is an amount less than the amount in sub-paragraph (a) or (b), as the case may be, he shall be treated as being in receipt of that lesser value.

Calculation of net earnings of employed earners

22.—(1) For the purposes of regulation 16 (normal weekly earnings of employed earners), the earnings of a claimant derived or likely to be derived from employment as an employed earner to be taken into account shall, subject to paragraph (2), be his net earnings.

(2) There shall be disregarded from a claimant's net earnings, any sum, where applicable, specified in Schedule 2 (sums to be disregarded in the calculation of earnings).

(3) For the purposes of paragraph (1), net earnings shall, except where paragraph (4) applies, be calculated by taking into account the gross earnings of the claimant from that employment over the assessment period, less—

- (a) any amount deducted from those earnings by way of—
 - (i) income tax, and
 - (ii) primary Class 1 contributions under the principal Act(5); and
- (b) one half of any sum paid by the claimant by way of a contribution towards an occupational or personal pension scheme.

(4) Where the earnings of a claimant are estimated under regulation 16(8), his net earnings shall be calculated by taking into account those earnings over the assessment period, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to those earnings the basic rate of tax in the year of assessment in which the claim was made

(4) 1982 c. 24

(5) See sections 1 and 4 of the Social Security (Northern Ireland) Act 1975 (c. 15); section 1 was amended by Schedule 10 to the Social Security (Northern Ireland) Order 1986, Schedule 9 to the Social Security (Northern Ireland) Order 1989 (S.I. 1989/1342 (N.I. 13)), Article 18(1) and (2) of, and Schedule 7 to, the Social Security (Northern Ireland) Order 1990 (S.I. 1990/1511 (N.I. 15)), Schedule 2 to the Redundancy Fund (Abolition) (Northern Ireland) Order 1991 (S.I. 1991/196 (N.I. 2)) and Article 3(2) and (3) of the Social Security (Contributions) (Northern Ireland) Order 1991 (S.I. 1991/2294 (N.I. 22)); section 4 was amended by paragraph 18(a) of Schedule 5 to the Social Security Pensions (Northern Ireland) Order 1975 (S.I. 1975/1503 (N.I. 15)), Article 3(1) of the Social Security and Family Allowances (Northern Ireland) Order 1976 (S.I. 1976/427 (N.I. 9)), Article 11(2) of the Social Security (Northern Ireland) Order 1979 (S.I. 1979/396 (N.I. 5)), Schedule 5 to the Social Security (Northern Ireland) Order 1982, Articles 9(1) and (2) and 10 of the Social Security (Northern Ireland) Order 1985 (S.I. 1985/1209 (N.I. 16)), Article 3(1) of, and paragraph 1(1) and (2) of Schedule 7 to, the Social Security (Northern Ireland) Order 1989 and S.R. 1991 No. 542

less only the personal relief to which the claimant is entitled under sections 257(1), (6) and (7) and 259 of the Income and Corporation Taxes Act 1988(6) (personal relief) as is appropriate to his circumstances; but, if the assessment period is less than a year, the amount of the personal relief deductible under this sub-paragraph shall be calculated on a pro rata basis;

- (b) an amount in respect of primary Class 1 contributions under the principal Act equivalent to an amount calculated by applying to those earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one half of any sum payable by the claimant by way of a contribution towards an occupational or personal pension scheme.

(5) Where the claimant is an employed earner in the Republic of Ireland the amounts to be deducted for income tax and primary Class 1 contributions under this regulation shall be such amounts as, in the opinion of the adjudication officer, would have been deducted had the claimant been employed in Northern Ireland.

Calculation of bonus or commission

23. Where a claimant's earnings include a bonus or commission to which regulation 16(6) (normal weekly earnings of employed earners) applies that part of his earnings shall be calculated by aggregating any payments of bonus or commission and dividing that sum by 52, less—

- (a) an amount in respect of income tax equivalent to an amount calculated by applying to that part of the earnings the basic rate of tax in the year of assessment in which the claim is made;
- (b) an amount in respect of primary Class 1 contributions under the principal Act equivalent to an amount calculated by applying to that part of the earnings the appropriate primary percentage applicable at the date of claim; and
- (c) one half of any sum payable by the claimant in respect of that part of the earnings by way of a contribution towards an occupational or personal pension scheme.