

1995 No. 367

HOUSING; RATES; SOCIAL SECURITY**The Income-Related Benefits and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995***Made 20th September 1995**Coming into operation in accordance with regulation 1*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 122(1), 123(1)(d)(i), 128(3), 131(1), 132(1), (3) and (4)(a) and (b), 133(2)(b) and (d)(ii) and 171(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and sections 5(1)(h) and (j) of the Social Security Administration (Northern Ireland) Act 1992(b) and of all other powers enabling it in that behalf, with the consent of the Department of the Environment for Northern Ireland(c) in so far as its consent is required in relation to regulations 3 and 8 of these Regulations, and after agreement by the Social Security Advisory Committee that proposals to make these Regulations should not be referred to it(d), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Income-Related Benefits and Social Security (Claims and Payments) (Miscellaneous Amendments) Regulations (Northern Ireland) 1995 and shall come into operation as follows—

(a) for the purposes of this regulation and regulations 2, 3, 5, 7 and 8 on 2nd October 1995, and

(b) for the purposes of regulations 4 and 6 on 3rd October 1995.

(2) In the case of a person who was entitled to housing benefit in respect of 1st October 1995, regulation 3(4)(b) and (7) shall have effect—

(a) on the day immediately following the day on which the person's benefit period, which includes 1st October 1995, ends, and

(b) on any day thereafter.

(3) Regulations 4 and 6 shall have effect in relation to any particular claimant—

(a) 1992 c. 7

(b) 1992 c. 8

(c) 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))

(d) See section 150(1)(b) of the Social Security Administration (Northern Ireland) Act 1992

- (a) except where sub-paragraph (b) applies on 3rd October 1995;
- (b) where a claimant has an award of disability working allowance or family credit which is current on 2nd October 1995, on the day following the expiration of that award.

(4) Subject to paragraph (5), regulations 2 and 7 shall have effect in relation to any particular claimant at the beginning of the first benefit week to commence for that claimant on or after 2nd October 1995 which applies in his case.

(5) Regulation 2(4)(b) shall have effect—

(a) in the case of a claimant who was in receipt of income support on 1st October 1995 and in respect of whom no further claim for income support has been made, on—

- (i) the date when the claimant's circumstances are first reviewed by an adjudication officer in consequence of an application for a review by the Department made under section 24 of the Social Security Administration (Northern Ireland) Act 1992, following the receipt of information provided by the claimant in response to an enquiry by the Department as to his current circumstances, or
- (ii) 1st October 1998 if this is sooner, or

(b) in any other case, on the date of any claim for income support.

(6) For the purposes of this Regulation—

“adjudication officer” means an adjudication officer appointed under section 36 of the Social Security Administration (Northern Ireland) Act 1992;

“benefit week” has the same meaning as in the Income Support Regulations;

“claimant” means a claimant for disability working allowance, family credit or, as the case may be, for income support.

(7) In these Regulations “the Income Support Regulations” means the Income Support (General) Regulations (Northern Ireland) 1987(a).

(8) 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 Income Support Regulations

2.—(1) The Income Support Regulations shall be amended in accordance with paragraphs (2) to (10).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “pay period”(c) there shall be inserted the following definition—

(a) S.R. 1987 No. 459; relevant amending regulations are S.R. 1988 Nos. 146 and 318, S.R. 1991 No. 338, S.R. 1992 Nos. 147 and 435, S.R. 1993 Nos. 149 and 373, S.R. 1994 Nos. 77 and 327 and S.R. 1995 No. 67

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

(c) Definition inserted by regulation 2(2)(a) of S.R. 1994 No. 327

“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;”;

(b) in the definition of “personal pension scheme”(a) for “Article 2(2) of the Order” there shall be substituted “section 1 of the Pension Schemes (Northern Ireland) Act 1993(b)”;

(c) after the definition of “residential care home”(c) there shall be inserted the following definition—

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988(d);”.

(3) In regulation 38 (calculation of net profit of self-employed earners) paragraph (12)(e) shall be omitted.

(4) In regulation 42 (notional income)—

(a) in paragraph (2) after sub-paragraph (f)(f) there shall be added the following sub-paragraph—

“(g) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;”;

(b) after paragraph (2) there shall be inserted the following paragraphs—

“(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

(a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

(ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or

(iii) income withdrawal is not available to him under that scheme, or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(a) Definition inserted by regulation 4(2)(d) of S.R. 1993 No. 373

(b) 1993 c. 49

(c) Definition inserted by regulation 2(2)(d) of S.R. 1993 No. 149

(d) 1988 c. 1

(e) Paragraph (12) was substituted by regulation 4(12)(b) of S.R. 1993 No. 373

(f) Sub-paragraph (f) was added by regulation 5(c) of S.R. 1992 No. 147

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (evidence and information)(a).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B):”

(5) In regulation 51(2) (notional capital) after sub-paragraph (c) there shall be added “or” and the following sub-paragraph—

“(d) a personal pension scheme or retirement annuity contract,”

(6) In regulation 52 (capital jointly held)—

(a) in paragraph (1)(b) for words from “to the whole beneficial interest” to the end there shall be substituted—

“to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

(a) that interest is solely owned by the claimant, and

(b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,

and dividing the same by the number of persons who have a beneficial interest in the capital in question”;

(b) for paragraph (2)(c) there shall be substituted the following paragraph—

“(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).”

(7) In Schedule 1 (persons not required to be available for employment) in paragraph 5(d) (persons incapable of work) after sub-paragraph (a) there shall be inserted the following sub-paragraph—

“(aa) is treated as incapable of work by virtue of regulations made under section 167D of the Contributions and Benefits Act (incapacity for work: persons to be treated as incapable or capable of work)(e); or”

(a) Paragraph (5) is inserted by regulation 5(3) of these regulations

(b) Paragraph (1) was amended by regulation 52 of S.R. 1988 No. 318

(c) Paragraph (2) was amended by regulation 23 of S.R. 1988 No. 146

(d) Paragraph 5 was substituted by regulation 2(11)(a) of S.R. 1995 No. 67

(e) Section 167D was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

- (8) In Schedule 2 (applicable amounts)—
- (a) in paragraph 12(1)(b)(i) (additional condition for the higher pension and disability premiums)(a) for “is incapable of work” there shall be substituted “is, or is treated as, incapable of work,”;
- (b) in paragraph 12(1)(b)(ii) after “or so incapable” there shall be inserted “, or has been treated as so incapable,”.
- (9) In Schedule 9 (sums to be disregarded in the calculation of income other than earnings)—
- (a) paragraph 14 shall be omitted;
- (b) in paragraph 53(b)—
- (i) after “Benefits Act” there shall be inserted “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(c)”;
- (ii) after “that Act” there shall be inserted “or the rate of that pension under that Order”.
- (10) In Schedule 10 (capital to be disregarded)—
- (a) for paragraph 5(d) there shall be substituted the following paragraph—
- “5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;
- (b) after paragraph 23(e) there shall be inserted the following paragraph—
- “23A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;
- (c) in paragraph 24(f) at the end there shall be added “except where the claimant has a reversionary interest in the property in respect of which rent is due”.

Amendment of the Housing Benefit (General) Regulations

3.—(1) The Housing Benefit (General) Regulations (Northern Ireland) 1987(g) shall be amended in accordance with paragraphs (2) to (10).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “payment” there shall be inserted the following definition—

“ “pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or

(a) Paragraph 12(1)(b) was substituted by regulation 2(12)(a)(ii) of S.R. 1995 No. 67

(b) Paragraph 53 was added by regulation 4(9)(d) of S.R. 1994 No. 77

(c) S.I. 1983/883

(d) Paragraph 5 was substituted by regulation 5 of S.R. 1992 No. 435

(e) Paragraph 23 was added by regulation 37(e) of S.R. 1988 No. 146

(f) Paragraph 24 was added by regulation 37(e) of S.R. 1988 No. 146

(g) S.R. 1987 No. 461; relevant amending regulations are S.R. 1988 Nos. 117 and 424, S.R. 1990 No. 136, S.R. 1991 No. 337, S.R. 1992 Nos. 201, 404 and 435, S.R. 1993 Nos. 195 and 233, S.R. 1994 No. 88 and S.R. 1995 No. 129

scheme administrators, as the case may be, of the scheme or contract concerned;”;

(b) in the definition of “personal pension scheme”(a) for “section 167(1) of the Social Security Administration (Northern Ireland) Act 1992” there shall be substituted “section 1 of the Pension Schemes (Northern Ireland) Act 1993”;

(c) after the definition of “rent” there shall be inserted the following definition—

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”.

(3) In regulation 31(11) (calculation of net profit of self-employed earners)(b) the definition of “retirement annuity contract” shall be omitted.

(4) In regulation 35 (notional income)—

(a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted—

“Except in the case of—

(a) a discretionary trust;

(b) a trust derived from a payment made in consequence of a personal injury, or

(c) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;”;

(b) after paragraph (2) there shall be inserted the following paragraphs—

“(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

(a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

(ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or

(iii) income withdrawal is not available to him under that scheme, or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

(a) Definition inserted by regulation 2(b) of S.R. 1994 No. 88

(b) Paragraph (11) was substituted by regulation 6(b) of S.R. 1994 No. 88

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the appropriate authority which shall take account of information provided by the pension fund holder in accordance with regulation 73(5) (evidence and information)(a).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B)."

(5) In regulation 43(2) (notional capital) after sub-paragraph (c) there shall be added "or" and the following sub-paragraph—

"(d) a personal pension scheme or retirement annuity contract,".

(6) In regulation 44 (capital jointly held)—

(a) in paragraph (1) for the words from "to the whole beneficial interest" to the end there shall be substituted—

"to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

(a) that interest is solely owned by the claimant, and

(b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,

and dividing the same by the number of persons who have a beneficial interest in the capital in question.";

(b) for paragraph (2)(b) there shall be substituted the following paragraph—

"(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1)."

(7) In regulation 73 (evidence and information) after paragraph (3)(c) there shall be added the following paragraphs—

"(4) Where a claimant or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement

(a) Paragraph (5) was added by regulation 3(7) of these regulations

(b) Paragraph (2) was amended by regulation 6 of S.R. 1988 No. 117

(c) Paragraph (3) was added by regulation 8(b) of S.R. 1992 No. 141 and amended by S.R. 1992 Nos. 201 and 404 and S.R. 1993 Nos. 195 and 233

to a pension under, a retirement annuity contract, he shall where the appropriate authority so requires furnish the following information—

- (a) the name and address of the pension fund holder;
- (b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(5) Where the pension fund holder receives from an appropriate authority a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (4) refers, the pension fund holder shall provide the appropriate authority with any information to which paragraph (6) refers.

(6) The information to which this paragraph refers is—

- (a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;
- (b) in the case of—
 - (i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme, or
 - (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”

(8) In Schedule 2 (applicable amounts) in paragraph 12(1)(b)(i) (additional condition for the higher pensioner and disability premiums)(a) for “is incapable of work” there shall be substituted “is, or is treated as, incapable of work”.

(9) In Schedule 4 (sums to be disregarded in the calculation of income other than earnings)—

- (a) paragraph 12 shall be omitted;
- (b) in paragraph 55(b)—
 - (i) after “Benefits Act” there shall be inserted “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”;
 - (ii) after “that Act” there shall be inserted “or the rate of that pension under that Order”.

(10) In Schedule 5 (capital to be disregarded)—

(a) Paragraph 12(1)(b) was substituted by regulation 10(d)(i) of S.R. 1990 No. 136 and further substituted by regulation 8(c) of S.R. 1995 No. 129

(b) Paragraph 55 was added by regulation 11(c) of S.R. 1994 No. 88

(a) for paragraph 6(a) there shall be substituted the following paragraph—

“6. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;

(b) after paragraph 30(b) there shall be inserted the following paragraph—

“30A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;

(c) in paragraph 31(c) at the end there shall be added “except where the claimant has a reversionary interest in the property in respect of which rent is due”.

Amendment of the Family Credit (General) Regulations

4.—(1) The Family Credit (General) Regulations (Northern Ireland) 1987(d) shall be amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “payment” there shall be inserted the following definition—

“ “pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees; managers or scheme administrators, as the case may be, of the scheme or contract concerned;”;

(b) in the definition of “personal pension scheme”(e) for “Article 2(2) of the Order” there shall be substituted “section 1 of the Pension Schemes (Northern Ireland) Act 1993”;

(c) after the definition of “qualifying person”(f) there shall be inserted the following definition—

“ “retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”.

(3) In regulation 22(12) (calculation of net profit of self-employed earners)(g) sub-paragraph (b) shall be omitted.

(4) In regulation 26 (notional income)—

(a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted—

(a) Paragraph 6 was substituted by regulation 4 of S.R. 1992 No. 435

(b) Paragraph 30 was added by regulation 20(c) of S.R. 1988 No. 424 and amended by regulation 19 of S.R. 1991 No. 337

(c) Paragraph 31 was added by regulation 20(c) of S.R. 1988 No. 424

(d) S.R. 1987 No. 463; relevant amending regulations are S.R. 1988 Nos. 131 and 303, S.R. 1990 No. 387, S.R. 1991 No. 326, S.R. 1992 Nos. 201 and 435, S.R. 1993 Nos. 233 and 373 and S.R. 1994 No. 77

(e) Definition inserted by regulation 3(2)(c) of S.R. 1993 No 373

(f) Definition inserted by regulation 3(2)(b) of S.R. 1992 No. 201 and amended by regulation 3(2)(b) of S.R. 1993 No. 233

(g) Paragraph 12 was substituted by regulation 3(6)(b) of S.R. 1993 No. 373 and amended by regulation 3(11)(b) of S.R. 1994 No. 77

“Except in the case of—

- (a) a discretionary trust;
- (b) a trust derived from a payment made in consequence of a personal injury, or
- (c) a personal pension scheme or retirement annuity contract where the claimant is aged under 60,”;

(b) after paragraph (2) there shall be inserted the following paragraphs—

“(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

- (a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—
 - (i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;
 - (ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or
 - (iii) income withdrawal is not available to him under that scheme, or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (evidence and information)(a).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).”.

(5) In regulation 34(2) (notional capital) after sub-paragraph (c) there shall be added “or” and the following sub-paragraph—

(a) Paragraph (5) is inserted by regulation 5(3) of these regulations

- “(d) a personal pension scheme or retirement annuity contract.”
- (6) In regulation 35 (capital jointly held)—
- (a) in paragraph (1)(a) for words from “to the whole beneficial interest” to the end there shall be substituted—
- “to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—
- (a) that interest is solely owned by the claimant, and
- (b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,
- and dividing the same by the number of persons who have a beneficial interest in the capital in question.”;
- (b) for paragraph (2)(b) there shall be substituted the following paragraph—
- “(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).”.
- (7) In Schedule 2 (sums to be disregarded in the calculation of income other than earnings)—
- (a) for paragraph 12(c) there shall be substituted the following paragraph—
- “12. Any Jobmatch Allowance payable pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973(d) where the payments will cease by the date on which the period under section 127(3) of the Contributions and Benefits Act (period of award) is to begin.”;
- (b) in paragraph 52(e)—
- (i) after “Benefits Act” there shall be inserted “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983”;
- (ii) after “that Act” there shall be inserted “or the rate of that pension under that Order”.
- (8) In Schedule 3 (capital to be disregarded)—
- (a) for paragraph 5(e) there shall be substituted the following paragraph—
- “5. Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;

(a) Paragraph (1) was amended by regulation 6 of S.R. 1988 No. 303

(b) Paragraph (2) was amended by regulation 10 of S.R. 1988 No. 131

(c) Paragraph 12 was amended by regulation 2(5)(c) of S.R. 1990 No. 387

(d) 1973 c. 50; section 2 was amended by sections 9 and 11 of, and paragraph 9 of Schedule 2 and Schedule 3 to, the Employment and Training Act 1981 (c. 57)

(e) Paragraph 52 was added by regulation 3(14)(c) of S.R. 1994 No. 77

(f) Paragraph 5 was substituted by regulation 3 of S.R. 1992 No. 435

(b) after paragraph 24(a) there shall be inserted the following paragraph—

“24A. The value of any funds held under a personal pension scheme or retirement annuity contract.”;

(c) in paragraph 25(b) at the end there shall be added “except where the claimant has a reversionary interest in the property in respect of which rent is due”.

Amendment of the Social Security (Claims and Payments) Regulations

5.—(1) The Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(c) shall be amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) (interpretation) after the definition of “partner” there shall be inserted the following definitions—

“pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;

“personal pension scheme” has the same meaning as in section 1 of the Pension Schemes (Northern Ireland) Act 1993(d) in respect of employed earners and in the case of self-employed earners, includes a scheme approved by the Board of the Inland Revenue under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988(e);

“retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”.

(3) In regulation 7 (evidence and information) after paragraph (3) there shall be added the following paragraphs—

“(4) In the case of a person who is claiming disability working allowance, family credit or income support, where that person or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the Department so requires furnish the following information—

(a) the name and address of the pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(5) Where the pension fund holder receives from the Department a request for details concerning a personal pension scheme or retirement

(a) Paragraph 24 was inserted by regulation 15(b) of S.R. 1988 No. 131 and amended by regulation 10 of S.R. 1991 No. 326

(b) Paragraph 25 was inserted by regulation 15(b) of S.R. 1988 No. 131

(c) S.R. 1987 No. 465; to which there are amendments not relevant to these regulations

(d) 1993 c. 49

(e) 1988 c. 1

annuity contract relating to a person or any partner to whom paragraph (4) refers, the pension fund holder shall provide the Department with any information to which paragraph (6) refers.

(6) The information to which this paragraph refers is—

(a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;

(b) in the case of—

(i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme, or

(ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”

(4) In regulation 32 (information to be given when obtaining payment of benefit) after paragraph (2) there shall be added the following paragraphs—

“(3) In the case of a person who is claiming income support, where that person or any partner is aged not less than 60 and is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, he shall where the Department so requires furnish the following information—

(a) the name and address of the pension fund holder;

(b) such other information including any reference or policy number as is needed to enable the personal pension scheme or retirement annuity contract to be identified.

(4) Where the pension fund holder receives from the Department a request for details concerning a personal pension scheme or retirement annuity contract relating to a person or any partner to whom paragraph (3) refers, the pension fund holder shall provide the Department with any information to which paragraph (5) refers.

(5) The information to which this paragraph refers is—

(a) where the purchase of an annuity under a personal pension scheme has been deferred, the amount of any income which is being withdrawn from the personal pension scheme;

(b) in the case of—

(i) a personal pension scheme where income withdrawal is available, the maximum amount of income which may be withdrawn from the scheme, or

- (ii) a personal pension scheme where income withdrawal is not available, or a retirement annuity contract, the maximum amount of income which might be withdrawn from the fund if the fund were held under a personal pension scheme where income withdrawal was available,

calculated by or on behalf of the pension fund holder by means of tables prepared from time to time by the Government Actuary which are appropriate for this purpose.”.

Amendment of the Disability Working Allowance (General) Regulations

6.—(1) The Disability Working Allowance (General) Regulations (Northern Ireland) 1992(a) shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 2 (interpretation)—

(a) after the definition of “payment” there shall be inserted the following definition—

“ “pension fund holder” means with respect to a personal pension scheme or retirement annuity contract, the trustees, managers or scheme administrators, as the case may be, of the scheme or contract concerned;”;

(b) in the definition of “personal pension scheme”(b) for “Article 2(2) of the Order” there shall be substituted “section 1 of the Pension Schemes (Northern Ireland) Act 1993”;

(c) after the definition of “qualifying person”(c) there shall be inserted the following definition—

“ “retirement annuity contract” means a contract or trust scheme approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988;”.

(3) In regulation 25(14) (calculation of net profit of self-employed earners)(d) sub-paragraph (b) shall be omitted.

(4) In regulation 29 (notional income)—

(a) in paragraph (2) for the words from “Except in the case” to “personal injury,” there shall be substituted—

“Except in the case of—

(a) a discretionary trust;

(b) a trust derived from a payment made in consequence of a personal injury, or

(c) a personal pension scheme or retirement annuity contract where the claimant is aged under 60;”;

(a) S.R. 1992 No. 78; relevant amending regulations are S.R. 1992 No. 201, S.R. 1993 Nos. 233 and 373 and S.R. 1994 No. 77

(b) Definition inserted by regulation 2(2)(c) of S.R. 1993 No. 373

(c) Definition inserted by regulation 2(2)(b) of S.R. 1992 No. 201 and amended by regulation 2(2)(b) of S.R. 1993 No. 233

(d) Paragraph (14) was substituted by regulation 2(6)(b) of S.R. 1993 No. 373 and amended by regulation 2(4)(b) of S.R. 1994 No. 77

(b) after paragraph (2) there shall be inserted the following paragraphs—

“(2A) Where a person, aged not less than 60, is a member of, or a person deriving entitlement to a pension under, a personal pension scheme, or is a party to, or a person deriving entitlement to a pension under, a retirement annuity contract, and—

(a) in the case of a personal pension scheme, he fails to purchase an annuity with the funds available in that scheme where—

(i) he defers, in whole or in part, the payment of any income which would have been payable to him by his pension fund holder;

(ii) he fails to take any necessary action to secure that the whole of any income which would be payable to him by his pension fund holder upon his applying for it, is so paid, or

(iii) income withdrawal is not available to him under that scheme, or

(b) in the case of a retirement annuity contract, he fails to purchase an annuity with the funds available under that contract,

the amount of any income foregone shall be treated as possessed by him, but only from the date on which it could be expected to be acquired were an application for it to be made.

(2B) The amount of any income foregone in a case to which either head (2A)(a)(i) or (ii) applies shall be the maximum amount of income which may be withdrawn from the fund and shall be determined by the adjudication officer who shall take account of information provided by the pension fund holder in accordance with regulation 7(5) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 (evidence and information)(a).

(2C) The amount of any income foregone in a case to which either head (2A)(a)(iii) or sub-paragraph (2A)(b) applies shall be the income that the claimant could have received without purchasing an annuity had the funds held under the relevant personal pension scheme or retirement annuity contract been held under a personal pension scheme where income withdrawal was available and shall be determined in the manner specified in paragraph (2B).”

(5) In regulation 37(2) (notional capital) after sub-paragraph (c) there shall be added “or” and the following sub-paragraph—

“(d) a personal pension scheme or retirement annuity contract,”.

(6) In regulation 39 (capital jointly held)—

(a) in paragraph (1) for the words from “to the whole beneficial interest” to the end there shall be substituted—

(a) Paragraph (5) is inserted by regulation 5(3) of these regulations

“to an equal share of the whole beneficial interest therein; and the value of that equal share shall be calculated by taking the value of the whole beneficial interest calculated in accordance with the foregoing provisions of this Chapter, as though—

(a) that interest is solely owned by the claimant, and

(b) in the case of a dwelling, none of the other joint owners occupies the dwelling concerned,

and dividing the same by the number of persons who have a beneficial interest in the capital in question.”;

(b) for paragraph (2) there shall be substituted the following paragraph—

“(2) Any premises or land not wholly owned by the claimant shall be disregarded for such period as is reasonable in the circumstances to enable the collection of such information as is necessary to determine the treatment of capital in accordance with paragraph (1).”.

(7) In Schedule 1 (disability which puts a person at a disadvantage in getting a job) in paragraph 6 for “pick up with each hand” there shall be substituted “,with one hand, pick up”.

(8) In Schedule 3 (sums to be disregarded in the calculation of income other than earnings)—

(a) after paragraph 11 there shall be inserted the following paragraph—

“**11A.** Any Jobmatch Allowance payable pursuant to arrangements made under section 2(1) of the Employment and Training Act 1973 where the payments will cease by the date on which the period under section 128(6) of the Contributions and Benefits Act (period of award) is to begin.”;

(b) in paragraph 50(a)—

(i) after “Benefits Act” there shall be inserted “or pension under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983(b)”;

(ii) after “that Act” there shall be inserted “or the rate of that pension under that Order”.

(9) In Schedule 4 (capital to be disregarded)—

(a) for paragraph 5(c) there shall be substituted the following paragraph—

“**5.** Any future interest in property of any kind, other than land or premises in respect of which the claimant has granted a subsisting lease or tenancy, including sub-leases or sub-tenancies.”;

(b) after paragraph 24 there shall be inserted the following paragraph—

“**24A.** The value of any funds held under a personal pension scheme or retirement annuity contract.”;

(a) Paragraph 50 was added by regulation 2(7)(c) of S.R. 1994 No. 77

(b) S.I. 1983/883

(c) Paragraph 5 was substituted by regulation 2 of S.R. 1992 No. 435

- (c) in paragraph 25 at the end there shall be added “except where the claimant has a reversionary interest in the property in respect of which rent is due”.

Transitional provision with respect to the Income Support Regulations

7.—(1) In determining whether a claimant is entitled to income support on or after 2nd October 1995 and whether he satisfies the provisions of either—

- (a) regulation 4(2)(c)(v) of the Income Support Regulations (temporary absence from Northern Ireland)(a), or
- (b) paragraph 7 of Schedule 1 to those Regulations (disabled students not required to be available for employment);

in a case where the claimant, for a period up to 12th April 1995, was continuously incapable of work for the purposes of paragraph 5 of Schedule 1 to the Income Support Regulations (persons incapable of work not required to be available for employment), as it was then in operation, that period of incapacity shall be treated as forming part of a subsequent period of incapacity beginning not later than 7th June 1995 to which the provisions referred to in paragraphs (a) or (b) refer and which is continuous to the date of the determination in question.

(2) In regulation 4 of the Disability Working Allowance and Income Support (General) (Amendment) Regulations (Northern Ireland) 1995 (transitional provisions with respect to the Income Support Regulations)(b)—

- (a) in paragraph (5) for “that date” there shall be substituted “13th April 1995”;

(b) after paragraph (5) there shall be added the following paragraph—

“(6) Where—

(a) a determination of the amount of a person’s benefit has been made in a case to which paragraph (5), as originally made, had effect, and

(b) an appeal to which regulation 8(2A) or 11(2A) of the Income Support Regulations (persons not required to be available for employment or registration for employment)(c) refers, remains outstanding on 2nd October 1995,

the amount of any benefit to which he is entitled shall continue to be determined under paragraph (5), as originally made, until the determination of the appeal.”.

Amendment of the Housing Benefit (Miscellaneous Amendments) Regulations

8.—(1) The Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1995(d) shall be amended in accordance with paragraphs (2) and (3).

(a) Head (v) was substituted by regulation 2(2) of S.R. 1995 No. 67

(b) S.R. 1995 No. 67

(c) Regulations 8(2A) and 11(2A) were inserted by regulation 2(3)(b) and (5)(c) of S.R. 1995 No. 67

(d) S.R. 1995 No. 129

- (2) In regulation 1(3) (citation, commencement and interpretation) at the end there shall be inserted “ and “the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a)”.
- (3) In regulation 11 (transitional provisions)—
- (a) after paragraph (1) the following paragraph shall be inserted—
- “(1A) Where on 12th April 1995, the disability premium was applicable to a claimant and in the period from and including 13th April 1995 to 1st October 1995 paragraph (1) either did not apply or ceased to apply in his case, if—
- (a) for the period for which paragraph (1) did not apply or ceased to apply, the claimant was incapable of work or was treated as incapable of work in accordance with the provisions of, and regulations made under, Part XIII A of the Contributions and Benefits Act (incapacity for work), and
- (b) any break in the period of incapacity did not exceed a period of 56 continuous days,
- with effect from and including 2nd October 1995 for so long as he is incapable of work or is treated as incapable of work, the disability premium shall be applicable in his case.”;
- (b) in paragraph (2) for “Paragraph (1)” there shall be substituted “Paragraphs (1) and (1A)” and after “incapable of work” there shall be inserted “or ceases to be treated as incapable of work”.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 20th September 1995.

(L.S.)

W. G. Purdy

Assistant Secretary

The Department of the Environment for Northern Ireland hereby consents to regulations 3 and 8 of the foregoing Regulations.

Sealed with the Official Seal of the Department of the Environment for Northern Ireland on 20th September 1995.

(L.S.)

C. D. Doake

Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations further amend the Income Support (General) Regulations (Northern Ireland) 1987 (“the Income Support Regulations”), the Housing Benefit (General) Regulations (Northern Ireland) 1987 (“the Housing Benefit Regulations”), the Family Credit (General) Regulations (Northern Ireland) 1987 (“the Family Credit Regulations”), the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987, the Disability Working Allowance (General) Regulations (Northern Ireland) 1992 (“the Disability Working Allowance Regulations”), the Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1995 and the Disability Working Allowance and Income Support (General) (Amendment) Regulations (Northern Ireland) 1995.

The Income Support Regulations, the Housing Benefit Regulations, the Family Credit Regulations and the Disability Working Allowance Regulations are amended to—

- (a) insert new definitions of “pension fund holder” and “retirement annuity contract” and amend the definition of “personal pension scheme” (regulations 2(2), 3(2), 4(2) and 6(2));
- (b) extend the provision governing the calculation of notional income as it has effect with respect to personal pensions and retirement annuity contracts (regulations 2(4), 3(4), 4(4) and 6(4));
- (c) exclude personal pension schemes and retirement annuity contracts from the calculation of a person’s notional capital (regulations 2(5), 3(5), 4(5) and 6(5));
- (d) amend the provision governing the treatment of a person’s entitlement to capital which is jointly held (regulations 2(6), 3(6), 4(6) and 6(6));
- (e) amend the Schedules specifying sums to be disregarded in calculating income other than earnings (regulations 2(9), 3(9), 4(7) and 6(8));
- (f) amend the Schedule specifying sums to be disregarded in calculating capital (regulations 2(10), 3(10), 4(8) and 6(9)).

The Housing Benefit Regulations are amended with respect to the information that must be provided to an appropriate authority on a claim for housing benefit by the claimant and any person or organisation which manages his personal pension scheme, or administers his retirement annuity contract (regulation 3(7)).

The Disability Working Allowance Regulations are further amended with respect to the disabilities which put a person at a disadvantage in getting a job (regulation 6(7)).

In the Income Support Regulations and the Housing Benefit Regulations the additional condition governing entitlement to a higher pensioner or disability premium is amended with respect to persons who are treated as incapable of work (regulations 2(8) and 3(8)).

Transitional provision is made with respect to certain persons incapable of work on 12th April 1995 with respect to their entitlement to benefit while temporarily absent from Northern Ireland or with respect to disabled students who are incapable of work and also with respect to the amount of benefit to which certain claimants are entitled, where an adjudication officer first determines on or after 13th April 1995 that the claimant does not satisfy the incapacity for work test (the all work test) and an appeal against that determination is outstanding on 2nd October 1995 (regulation 7).

The transitional provisions in the Housing Benefit (Miscellaneous Amendments) Regulations (Northern Ireland) 1995 are amended with respect to a person's entitlement to a disability premium where he was entitled to that premium on 12th April 1995 and he is treated as incapable of work from 13th April 1995 (regulation 8).

In the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 regulations 7 and 32 are amended to specify the information to be provided by claimants for disability working allowance, family credit and income support and by the person or organisation which manages his personal pension scheme, or administers his retirement annuity contract (regulation 5).

In so far as these Regulations are required, for the purposes of regulations 2(6)(b), 3, 4(6)(b), 6(6)(b) and 8, to be referred to the Social Security Advisory Committee under section 149(2) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8), ("the 1992 Act"), 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 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 149(3) of, and paragraph 10 of Schedule 5 to, the 1992 Act, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.